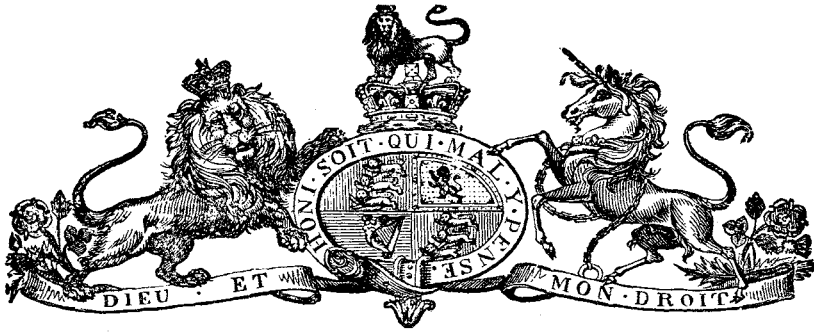


T A S M A N I A.



1890.

ANNO QUINQUAGESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 54.

AN ACT to authorise certain Persons to A.D. 1890.
construct and maintain a Railway from
Mount *Dundas* to the Town of *Zeehan*, in
the County of *Montagu*.

[28 November, 1890.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited for all purposes as “The Mount *Dundas* Short title. and *Zeehan* Railway Act.”

2 In the construction and for the purposes of this Act the following Interpretation. terms shall, if not inconsistent with the context or subject matter, have the respective meanings hereby assigned to them :

“Crown Lands” or “Crown Land” shall mean any lands in the Colony which are or may become vested in the Crown, and have not been and are not dedicated to some public use, and includes all lands of the Crown which are or may be occupied for pastoral or mining or other purposes under any lease or licence issued in pursuance of any Act of Parliament in this Colony :

“Person” includes “Company” :

Mount Dundas and Zeehan Railway.

A.D. 1890.

“Company” includes every company, association, partnership, or firm, whether corporate or unincorporate, and wheresoever and howsoever incorporated, associated, or formed, which carries on business in this Colony :

“The said lease” means the lease made under Section Three of this Act :

“The said lessees” includes any persons who are lessees, assignees, transferees, or under-lessees under the said lease :

“Land previously leased” means land comprised in any lease or licence issued in pursuance of any Act of Parliament of this Colony :

“The first lessee” means any “person” entitled to occupy any “land previously leased :”

“The Commissioner” shall mean (1) any one of the Commissioners of Goldfields for *Tasmania* ; (2) any one of the Commissioners of Mines :

“Minister” shall mean the Minister of Lands and Works for the time being.

Lease may be granted to Messrs. *La Monte* and *Russell* for purpose of constructing railway.

3 It shall be lawful for the Minister, with the consent of the Governor in Council, to grant to Messieurs *John Dye La Monte* and *John Russell*, for any term not exceeding Twenty-one years, at a nominal rental, a lease of any Crown Land not exceeding one chain in width, for the forming, maintaining, and working of a railway, and also such area of Crown Land for all stations, sidings, crossings, side-cuttings, cuttings, embankments, and conveniences in connection with the said railway as may be proper, subject to such covenants, terms, and conditions as to the Governor in Council may seem fit. The said railway shall be constructed and worked from a point within the Mineral Section marked on the official chart in the name of — *Anderson*, and numbered 2303-87M, to a point at or near the terminus of the *Zeehan* Railway at the Town of *Zeehan* to be approved by the Governor in Council.

Matters to be provided for in lease.

4 The said Lease shall, among other things, contain provision—

i. For constructing the Railway to a gauge of Three feet Six inches, curves not less than Five chains radius, steel rails of not less than Forty pounds to the yard, and a grade not less than 1 in 40, in a substantial manner for the carriage of vehicles at a rate of at least Twelve miles per hour with a load of not less than Four tons upon each axle of such vehicle, and maintaining such Railway, subject to the above provisions as to the weight and speed of vehicles thereon, to the satisfaction of the Governor in Council or such officer as may be appointed by the Governor in Council :

ii. For working such Railway under such Rules and By-laws as the Governor in Council may from time to time approve, both with regard to the Railway proper and any agreement with the Minister providing for the junction with or passage over the *Zeehan* Railway, or any agreement between the Minister and the said Lessees for the passage over or along their Railway of any engines, carriages, waggons, or other vehicle of the

Mount Dundas and Zeehan Railway.

Zeehan Railway, or for the haulage of such engines, carriages, waggons, and vehicle respectively, or for the conveyance of goods and passengers over their Railway: A.D. 1890.

- iii. For fixing the rates and tolls to be charged for the carriage of passengers, goods, and other things: Provided such rates and tolls per mile do not exceed the authorised rates and tolls on "The Zeehan Railway," as fixed by "The Zeehan Railway Construction Act, 1889:"
- iv. For settling the mode in which the said Lease and the works connected and used therewith may be resumed by the Crown at any time after the expiration of Seven years from the date of the Lease, and before the expiration of the said Lease, upon giving to the Lessees or their agent Six months' notice of their intention so to do, and the amount of the compensation to be paid to the said Lessees therefor, and the mode in which such compensation shall be ascertained.

Such compensation shall not exceed the actual cost of *bonâ fide* construction work (exclusive of any Promoters' expenses) with an amount added equal to Twenty per centum on such cost of construction.

Provided that at the time of such resumption the said Railway shall be in such repair and condition as hereinbefore specified; and provided that if at the time of such resumption the said Railway shall not be in such repair and condition as hereinbefore specified, then the sum necessary to put the said Railway in the repair and condition hereinbefore specified shall be deducted from the purchase money, and in case of dispute shall be settled by arbitration:

- v. For road crossings for public or private purposes:
- vi. For providing for the forfeiture of the said Lease unless—
 - (a) The survey of the Railway is completed, and a copy of plans and sections are deposited with the Minister of Lands and Works, within Three months of the date of this Act:
 - (b) The construction of the Railway is commenced in a *bonâ fide* manner within Six months from the date of this Act:
 - (c) The said Railway is completed, fully equipped, and ready for traffic, to the satisfaction of the Governor in Council, within Fifteen months from the date of this Act:
 - (d) The work under the said Lease is duly and properly completed and maintained in good working order and condition:
 - (e) The said Railway provides for the maintenance of engines and rolling stock sufficient for the tonnage which may be offered for carriage:
 - (f) The conditions of the said Lease are duly performed.

5 For the purpose of ascertaining the actual cost of *bonâ fide* construction work under this Act, the Lessees shall, upon completion of the said Railway, and thereafter from year to year, submit to the Auditor-General accounts and proper vouchers of all construction works; and upon computing the amount of compensation to be paid

Accounts of cost of construction to be submitted to Auditor-General.

Mount Dundas and Zeehan Railway.

A.D. 1890.

to the Lessees in the event of the Lease and the works connected and used therewith being resumed, the amount of the accounts as passed by the Auditor-General shall be deemed to be the actual cost of the construction of the Railway.

New construction works to be approved by Governor in Council.

6 Upon the Railway being completed and opened for traffic no new works of construction in connection with the Railway shall be commenced or carried out without the consent of the Governor in Council, and in the event of such works being carried out without such consent such works shall not be deemed construction works for the purpose of computing the amount of compensation upon the resumption of the Lease as aforesaid.

Accounts of construction, &c. subject to 52 Vict. No. 43.

7 The accounts of the Lessees in and about the construction and maintenance of the Railway shall be subject to all the provisions of "The Audit Act, 1888," in the same manner in all respects as if such accounts had been specifically mentioned therein.

Power to cross roads and streets.

8 The Governor in Council may, by the said lease or at any time thereafter, grant to the said lessees the power to construct the said railway across any road or street, subject to such conditions as may be thought fit, and the said lessees shall thereupon have power to construct accordingly.

Effect of lease.

9 The said lease shall, subject to the provisions of Section Twenty, operate and take effect merely as a licence to the said Lessee to form, maintain, and work the said railway, and shall not confer any right or title to any mines or minerals.

Protection to rights of first lessee.

10 In case the said lease comprises any land previously leased, then the said lease shall not affect the rights of the first lessee, except so far as may be necessary for carrying out the objects of the said lease, and the first lessee may accordingly exercise all powers conferred upon him in respect of the land previously leased: Provided that he shall not carry on any mining operations within Fifty feet of the surface of any land comprised in the said lease, nor in such a way as to endanger or inconvenience the works of the said lessee.

Settlement of disputes.

Should any dispute arise between any persons under this Section the same shall be decided by the Commissioner, who shall have power to decide what, if anything, shall be done or shall not be done by any person, and what damages and costs, if any, shall be paid by any person.

Notice of intention to make railway.

11 In case the said lease shall comprise any land previously leased, then the said lessees shall serve upon the first lessee a notice describing with all reasonable accuracy, by means of a plan or otherwise, the proposed course, direction, or situation of the said railway.

The said lessee may enter after notice.

12 The said lessees may for the purpose merely of surveying and taking levels, after giving not less than Twenty-four hours' nor more than Seven days' notice to the first lessee, enter upon any land of the first lessee which may be comprised in the said lease without the previous consent of any person.

Compensation to first lessee.

13 Before any work shall be constructed under or in pursuance of the said lease through, over, or upon any land previously leased, the

Mount Dundas and Zeehan Railway.

first lessees shall be paid by the said lessees such compensation (if any) as shall be determined by agreement between the first lessee and the said lessees; and if such compensation shall not be fixed by agreement within One month after the service of the notice mentioned in Section Eleven, then such compensation (if any) shall be determined by the Commissioner.

A.D. 1890.

14 In estimating the compensation (if any) to be paid to the first lessee, regard shall be had only to the damage (if any) to be sustained by the first lessee by reason of the severing of the lands occupied by the said lessees from the other lands of the first lessee, or otherwise injuriously affecting such other lands or buildings or mining works by the exercise of the powers given to the said lessees by the said lease. The Commissioner shall not be bound to award any sum for damage unless in his opinion substantial damage shall have been sustained.

Compensation,
how estimated.

15 In case of non-payment of any sum of money awarded by the Commissioner under this Act within such period as the Commissioner shall at any time appoint, the Commissioner shall, for the purpose of enforcing payment of such sum, have and may exercise all the powers conferred upon a Justice of the Peace by *The Magistrates Summary Procedure Act*.

Commissioner
may exercise
power conferred
on Justices.

16 The Commissioner shall have and may exercise, for the purpose of procuring and enforcing the attendance of persons and witnesses, and for hearing and determining any matter brought before him under this Act, all the powers conferred upon a Justice of the Peace by *The Magistrates Summary Procedure Act*; and such Commissioner may award and order that one party shall pay to the other party such costs and expenses as to such Commissioner shall seem just and reasonable; and the amount thereof shall be recoverable in the same manner as costs ordered by a Justice of the Peace to be paid may be recovered under the said Act.

Power to enforce
attendance of
witnesses.

17 Either party to any proceeding before the Commissioner under this Act may at any time within Twenty days after the Commissioner has given his decision thereon appeal to the Supreme Court, or a Judge thereof, against the decision of the Commissioner, and such Court or Judge may make any Order as to the costs of such appeal, and by and to whom the same are to be paid.

Appeal.

18 In addition to the land acquired by the said lessees under the said lease, the said lessees may purchase, acquire, and take such other land as may be necessary for the purposes of this Act.

Power to
purchase land.

19 *The Lands Clauses Act* shall, except as hereby varied, be incorporated with this Act; but there shall not be incorporated with this Act Sections Eight and Nine of the said *Lands Clauses Act*.

*The Lands
Clauses Act
incorporated.*

In the construction of this Act and the said incorporated Act this Act shall be deemed to be the Special Act, and the said lessees shall be deemed to be "the Promoters of the undertaking."

20 The said lessees may from time to time for the purposes of this Act fell timber and use and carry away the same, and dig and use clay, stone, and other material upon any Crown Land comprised in the said lease, and may fell all timber which in the opinion of the said lessees it may be necessary to remove for the safe working of the said Railway,

Materials from
Crown Lands.

Mount Dundas and Zeehan Railway.

A.D. 1890.
Compensation.

notwithstanding anything contained in Section Nine of this Act: Provided, that full compensation shall, in the case of land belonging to the first lessee, be made to all parties interested in such land for the damage done under this Section, and such compensation shall be settled by arbitration in the mode prescribed by *The Lands Clauses Act* in cases of disputed compensation.

Application to
Supreme Court
to declare lease
void for breach.

21 In the event of the Lessees being guilty of any breach of any of the conditions, provisions, or stipulations of the said Lease or of this Act the Attorney-General shall, when and so often as any such breaches may happen, apply by summons to a Judge of the Supreme Court of *Tasmania* to declare the said Lease forfeited upon such grounds as may be set forth in such summons.

Judge may
declare lease null
and void.

22 If on the hearing of such summons such Judge shall be satisfied, either by affidavit or otherwise, that the Lessees have been guilty of any of the breaches of the conditions, provisions, or stipulations in the said Lease or of this Act, such Judge may, and he is hereby authorised and empowered to, order and declare such Lease to be forfeited, and thereupon such Lease shall become absolutely null and void. And such Judge may make such order as to the costs of such application as he may think fit.

Upon resumption,
&c. Railway
vested in
Minister.

23 Upon the resumption or forfeiture of the said Lease and the works connected and used therewith, the Railway constructed by the said Lessees, and all the right, title, and interest of the said Lessees, and of any person or persons claiming, by, through, or under such Lessees in and to the same, and all the rights, privileges, powers, and advantages whatsoever affecting or appurtenant to the said Railway which may be vested in, held, enjoyed, or possessed by or conferred on the said Lessees, shall, without the necessity of any transfer or connecting title other than this Act, be transferred to and become vested in the Minister freed and discharged from all claims and demands of any person whomsoever in all respects in the same manner as the said Lessees or such other person or persons held, possessed, enjoyed, used, and exercised the same.

This Act not to
prevent Minister
constructing
Railway.

24 Nothing contained in this Act, or in any Lease issued hereunder, shall be deemed to prevent the Minister of Lands and Works from constructing any Line of Railway which Parliament may at any time hereafter authorise in the vicinity of or adjacent to the said Line of Railway.

Regulations.

25 The Judges of the Supreme Court may from time to time make, alter, and rescind Regulations for the following purposes:—

- I. For prescribing the form of any notice required by this Act, and the mode of service thereof, and the persons upon whom the the same may be served:
- II. For prescribing the mode in which proceedings shall be taken before the Commissioner, and for regulating the practice and procedure before him, and for the fees to be paid thereon:
- III. For prescribing the mode in which appeals shall be brought before the Supreme Court:
- IV. For determining the person or persons whose receipt for compensation money, or whose signature to any agreement for compensation, shall be binding.