

TASMANIA.

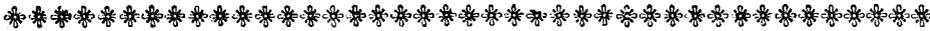


1869.

ANNO TRICESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 1.



AN ACT to authorise the Governor in Council to contract for the Construction of a Main Line of Railway through *Tasmania* upon certain Terms. [22 October, 1869.]

WHEREAS it is expedient to authorise the Governor in Council to enter into negotiations and to contract for the construction of a Main Line of Railway between *Hobart Town* and *Launceston*, or to some point on the Line of the *Launceston* and *Western* Railway, upon the Terms hereinafter set forth : Be it therefore 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 :—

PREAMBLE.

1 It shall be lawful for the Governor in Council to cause a Contract on behalf of this Colony to be entered into with any person or Company for the construction, maintenance, and working of a Main Line of Railway between *Hobart Town* and *Launceston* or any point on the *Launceston* and *Western* Railway, in consideration of the payment by this Colony to such person or Company of a sum not exceeding Three hundred thousand Pounds, or of an annual sum not exceeding Twenty-five thousand Pounds a year for a period of Twenty years.

Power to contract.

2 In such Contract regard shall be had to the gauge of such Line of Railway, the weight of rails per yard, the number of trains per diem, the speed, the fares for transit of passengers and goods by one train daily, the conveyance of mails; and the future right to purchase the said Line.

Terms to be inserted in Contract.

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Crown land may be leased for Railway.

3 It shall be lawful for the Governor in Council to authorise and require the Commissioner of Crown Lands to lease at a peppercorn rent for a term not exceeding Ninety-nine years to any such person or Company any land of the Crown through which such Line may pass, or which may be required for the purposes of goods or passenger stations or otherwise for such Line, and every such lease when once granted shall be renewable ; but every such lease and renewal shall contain a condition for the forfeiture of such lease or renewal in case the land thereby leased ceases to be used for the purposes of this Act.

Powers of the Company.

The Company may take land.

4 Subject to the provisions of this Act, such person or Company is hereby empowered to purchase and take land in accordance with the provisions of *The Lands Clauses Act* for the purpose of constructing thereon the said Railway and all necessary works connected therewith ; and subject to the provisions of this Act, *The Lands Clauses Act* shall be incorporated with this Act, and for the purposes of such incorporation such person or Company shall be deemed to be the Promoters of the undertaking.

Materials from Crown Lands.

5 Such person or Company may from time to time, for the purpose of constructing, repairing, and maintaining the said Railway and other works, fell timber and carry away the same, and dig and use clay, stone, and other material, upon and from any convenient part of the Waste Lands of the Crown not being public highways ; and may place and deposit upon any convenient part of the said lands any timber, clay, stone, rubbish, waste, spoil, and ballasting as such person or Company may think proper.

Materials from private land.

6 Such person or Company, for the purpose of constructing, repairing, and maintaining the said Railway and works, may, after Fourteen days' notice to the Owner or Occupier, enter upon any uncultivated land, and may fell, carry away, and use indigenous timber, except when the same is used for ornament or shelter to any dwelling-house, and may also dig, quarry, carry away, and use clay, stone, or other material, and may place and deposit upon any such land any materials, waste, or spoil ; provided that full compensation for taking any of such materials, or for depositing any such materials, waste, or spoil, as in this Section mentioned, shall be made to all parties interested for the damage thereby sustained.

Construction of works.

7 Subject to the provisions of this Act, it shall be lawful for such person or Company, for the purpose of constructing the said Railway and Works, to execute any of the following works ; (that is to say),—

To enter upon any lands without notice to survey and take the levels of the same :

To make or construct upon, across, under, or over any lands, streets, roads, rivers, creeks, or other waters such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, culverts, drains, arches, cuttings, fences, and other works as such person or Company may think proper :

To divert or alter, as well temporarily as permanently, the course of any streams of water, roads, streets, or ways, or raise or sink the level of any such roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the Railway as such person or Company may think proper :

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To make drains or conduits into, through, or under any lands adjoining the said Railway, for the purpose of conveying water from or to the said Railway :

To erect and construct such houses, warehouses, goods-sheds, offices, and other buildings, yards, stations, wharfs, engines, machinery, and apparatus, and other works and conveniences, as such person or Company may think proper :

To, from time to time, alter, repair, or discontinue the before-mentioned works, or any of them, and substitute others in their stead :

To do all other acts necessary for making, maintaining, altering, or repairing and working the said Railway and work :

Provided that in the exercise of the above-mentioned powers such person or Company shall do as little damage as can be, and shall make full compensation in manner hereinafter and in any Act incorporated herewith provided to all parties interested for all damage by them sustained by reason of the exercise of such powers.

8 Before such person or Company shall use any such lands for any of the purposes aforesaid, they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also to all private roads used by them as aforesaid put up fences and gates in like manner in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads; and in case of any difference between the owners or occupiers of such roads and lands and such person or Company as to the necessity for such fences and gates, such fences and gates as any Two Justices, not being Shareholders, shall deem necessary for the purposes aforesaid, on application being made to them by either party.

Company to separate the lands before using them.

9 The power of taking and purchasing land by this Act conferred shall not enable such person or Company to purchase or take any highway or street, but such person or Company may, with the consent of the Governor in Council, lay the necessary rails for the said Railway along or across any such highway or street, doing as little damage as possible; and such person or Company may, upon obtaining the like consent, raise or lower the level thereof or divert the same.

Streets and highways how affected by this Act.

10 The said Railway and their Works shall as far as possible be so made as not to impede, injure, prevent, or interrupt any ordinary or rightful traffic upon the said public highways or streets respectively, and so as not to increase the cost of making, maintaining, repairing, and upholding the same: Provided always, that if at any time the City Surveyor so far as respects the City of *Hobart*, or the Town Surveyor so far as respects the Town of *Launceston*, or the District Surveyor so far as respects any Municipality, or the Minister of Lands and Works so far as respects the other portions of the Line of Railway, shall make any complaint to a Justice of the Peace to the effect that the provisions in this Section are being infringed, or not properly carried into effect by such person or Company, it shall be lawful for a Bench of not less than Two Justices, at any time before the completion of the portion of the Works so complained of, to make such order upon such person or Company for securing due compliance by them with these provisions as to such Bench shall seem just; and in default of such person or Company

Railway not to interrupt traffic over roads and streets.

Penalty for non-compliance.

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complying with such order they shall be liable to a penalty to the said Surveyor, or Minister of Lands and Works, not exceeding £5 for each such default, to be recovered in a summary way; and they shall also be liable to the cost of remedying every such impediment, injury, prevention, or interruption as in this Section is mentioned, such cost to be assessed by the said Bench, or any Two or more Justices, and also recovered in a summary way.

Company to repair damage to streets, &c.

11 Such person or Company shall, from time to time, make good, repair, and amend all damage which is done by such person or Company to or upon any highway or street in, through, over, or along which the said Railway or works are constructed; and in case of neglect or refusal so to do after having received Seven days notice to make such repairs and amendment as may be requisite from the City Surveyor as far as respects the City of *Hobart*, or from the Town Surveyor as far as respects the Town of *Launceston*, from the District Surveyor so far as respects any Municipality, and from the Minister of Lands and Works so far as respects the other portion of the Line of the said Railway, or other persons duly authorised to have the superintendence or control of the streets, or roads, or highways, or any of them, such Surveyor, or Minister of Lands and Works, or other persons, shall have power to effect such repairs and amendments, and shall recover the expenses incurred in so doing from such person or Company in a summary way upon complaint before Two Justices of the Peace.

Entry on land to survey.

12 It shall be lawful for the Governor in Council to authorise any person or Company, without any previous notice, to enter upon any lands and survey and take the levels of the same with a view to entering into negotiations under this Act.

Crossing of Roads.

Provision in cases where roads are crossed on a level.

13 Where the Railway crosses any public road or street on a level, such person or Company shall erect, and at all times maintain, good and sufficient gates across such road or street on each side of the said Railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road or street on each side of the Railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates, and such gates shall be kept constantly closed across such road or street on both sides of the Railway except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such Railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the Railway and prevent cattle or horses passing along the road from entering upon the Railway, and the persons entrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of Forty Shillings for every default therein: Provided always, that it shall be lawful for the Governor in Council, in any case in which the Governor in Council may be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road or street should be kept closed across the Railway, to order that such gates shall be kept so closed instead of across the road or street, and in such case such gates shall be kept constantly closed across the Railway, except when engines or carriages passing along the

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Railway shall have occasion to cross such road or street, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the roads or streets.

14 Where the Railway crosses any private or occupation road on a level such person or Company shall allow 12 feet of the Railway for the same; and from time to time such person or Company may make and maintain other private level crossings or occupation roads when and at such places as such person or Company may think fit, and shall allow 12 feet of the Railway for all such roads; and in all such cases such person or Company shall likewise erect and maintain good and sufficient field gates, set and placed in the line of the fence on each side of the Railway, and all such field gates shall also be opened and shut by the person and persons using and passing through the same as soon as he and the carriage, cattle, or other animals under his care have passed through the same. Crossing of private roads.

Works for Protection and Accommodation of Lands.

15 Such person or Company shall make, and at all times thereafter maintain, the following works for the accommodation of the owners and occupiers of lands adjoining the Railway; (that is to say,) Gates, bridges, &c.

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the Railway as shall be necessary for the purpose of making good any interruptions caused by the Railway to the use of the lands through which the Railway shall be made; and such works shall be made forthwith after the part of the Railway passing over such lands shall have been laid out or formed, or during the formation thereof;

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the Railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout by reason of the Railway, together with all necessary gates made to open towards such adjoining lands and not towards the Railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be; Fences.

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the Railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the Railway as before the making of the Railway, or as nearly so as may be; and such works shall be made from time to time as the Railway works proceed; Drains.

Also proper watering places for cattle where by reason of the Railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the Railway had not been made, or as nearly so as may be; and the Company shall make all necessary water-courses and drains for the purpose of conveying water to the said watering places: Watering places.

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Provided always, that such person or Company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the Railway, nor to make any accommodation works with respect to which the owners and occupiers of the land shall have agreed to receive, and shall have been paid, compensation instead of the making them.

Differences as to accommodation works to be settled by Justices.

16 If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by Two Justices not being Shareholders in the Company; and such Justices shall also appoint the time within which such works shall be commenced and executed by such person or Company.

Execution of works by owners on default by the Company.

17 If for Twenty-eight days next after the time appointed by such Justices for the commencement of any such works such person or Company shall fail to commence such works, or having commenced shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs, and the reasonable expenses thereof shall be repaid to the party by whom the same shall so have been executed; and if there be any dispute about such expenses, the same shall be settled by Two Justices not being Shareholders in the Company: Provided always, that no such owner or occupier or other person shall obstruct or injure the Railway, or any of the works connected therewith, for a longer time, nor use them in any other manner, than is unavoidably necessary for the execution or repair of such accommodation works.

Power to owners of land to make additional accommodation works.

18 If any of the owners or occupiers of lands affected by such Railway shall consider the accommodation works made by such person or Company, or directed by such Justices to be made by such person or Company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by such person or Company, or in case of difference as shall be authorised by Two Justices not being Shareholders in the Company.

Such works to be constructed under the superintendence of the Company's Engineer.

19 If such person or Company so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of their Engineer, and according to plans and specifications to be submitted to and approved by such Engineer.

Accommodation works not to be required after Five years.

20 Such person or Company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the Railway after the expiration of the prescribed period, or if no period be prescribed, after Two years from the completion of the works, and the opening of the Railway for public use

Owners to be allowed to cross until accommodation works are made.

21 Until such person or Company shall have made the bridges or other proper communications which they shall, under the provisions herein contained, have been required to make between lands intersected by the Railway, and no longer, the owners and occupiers of such lands, and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses, and other animals,

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directly, but not otherwise, across the part of the Railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the Railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements with such person or Company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the Railway.

22 If any person omit to shut and fasten any gate set up at either side of the Railway for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the carriage, cattle, or other animals under his care have passed through the same, he shall forfeit for every such offence any sum not exceeding Ten Pounds.

Penalty on persons omitting to fasten gates.

Compensation.

23 Whenever by this Act compensation is directed to be made by the Company to any persons whose interests are affected by the exercise of the powers hereby conferred, such compensation shall be settled by arbitration in the mode prescribed by *The Lands Clauses Act* in cases of disputed compensation.

Compensation how determined

24 In estimating the amount of compensation for severance or otherwise to be paid to any person for or in respect of land or material taken or used for the purposes of the said Railway, the Arbitrators or Umpire shall take into consideration the benefit that is likely to accrue to the person to whom such land or material belongs by reason of the construction of such Railway through the land affected, and the Arbitrators or Umpire, in awarding compensation to be paid for or in respect of such land or material, shall make such deduction for such benefit as shall be deemed just; and in case it appears to the Arbitrators or Umpire that the benefit likely to accrue to the person through whose land such Railway is about to be taken is equal to or greater than the loss he will sustain by reason of the taking or using of his land or material for such Railway, the Arbitrators or Umpire shall award that no compensation is to be paid, and thereupon the same rights shall accrue as if compensation had been awarded and duly paid.

In estimating compensation to be paid for land taken for Railway, benefit to owner to be considered.

25 In any case where land or material is required for the purposes of such Railway, if the person or Company which contracts for the construction thereof, before any steps are taken under *The Lands Clauses Act*, tenders to the person entitled to receive the same compensation for severance and otherwise for such land or material, then if such person refuses to accept the same and to convey the land so required, or to permit the same to be used or material taken as the case may be, and a reference to Arbitration takes place under *The Lands Clauses Act*, and the Arbitrators or Umpire award a sum not exceeding the amount of compensation so tendered, all the costs of the reference, arbitration, and award shall be paid by such person, and such payment may be enforced by action in any Court of competent jurisdiction on a count for money paid at the request of such person.

Costs of Arbitration, how to be borne.

26 If any person shall wilfully interfere with, move, injure, or damage any poles, stakes, marks, or instruments used by such person or Company, or their agents, servants, or workmen, for the purpose of

Penalty for damage to instruments, Railway, &c.

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surveying or marking out the Line of the Railway or otherwise in connection therewith; or if any person shall wilfully do or commit any damage, injury, or spoil, or any nuisance to or upon the said Railway or other roads or ways, or to or upon any other works of or belonging to such person or Company, such person shall for every such offence forfeit and pay to such person or Company a sum not exceeding Twenty Pounds over and above the damages occasioned thereto.

Recovery and Appropriation of Penalties.

Offences to be dealt with summarily, 19 Vict. No. 8.

27 All offences against this Act, and all penalties and sums of money imposed or made payable by this Act, shall, where no other proceeding is by Law provided, be heard, determined, and recovered in a summary way by and before Two Justices of the Peace in the mode prescribed by *The Magistrates Summary Procedure Act*; and all penalties received by virtue of this Act shall, if not otherwise specially directed, be paid to such person or Company, and shall form part of the moneys at their disposal for the purposes of this Act.

Appeal from Penalties.

Appeal from penalties, 19 Vict. No. 10.

28 Any person who thinks himself aggrieved by any penalty imposed under the authority of this Act which is recoverable in a summary way may, unless otherwise expressly provided, appeal against the same in the mode prescribed by *The Appeals Regulation Act*.

Short Title.

Short Title.

29 This Act may be cited as "The Main Line of Railway Act."