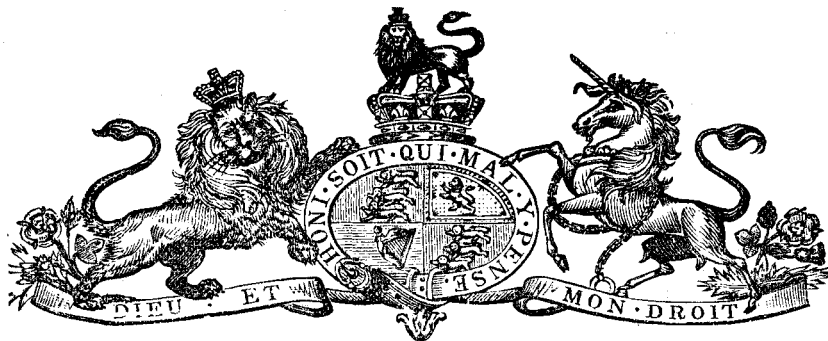


T A S M A N I A.



1891.

ANNO QUINQUAGESIMO-QUINTO

VICTORIÆ REGINÆ,

No. 23.

AMENDMENT 58-14

AN ACT to authorise "The New Dundas Tramway Company, Limited," to construct and maintain a Railway from the Zeehan Railway to Mineral Lease 2574-87M, in the County of Montagu. [19 October, 1891.] A.D. 1891.

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 New Dundas Tramway Company's Act." Short title.

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

"Crown Lands" or "Crown Land" shall mean any land 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 or applied for in pursuance of any Act of Parliament of this Colony:

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“ Person ” includes “ Company ” :

“ 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 :

“ Owner ” means owner or occupier :

“ The said lease ” means the lease made under Section Three of this Act, or any renewal thereof, or any lease or leases of any branch line or lines of railway which may be issued under the authority of this Act :

“ The said lessees ” or “ the lessees ” means the *New Dundas Tramway Company, Limited*, being a Company registered at *Melbourne* under “ The Companies Act, 1890,” of the Colony of *Victoria*, and includes any persons who are lessees, assignees, transferees, or under-lessees from the said Company under the said lease, or any renewal thereof, or any lease or leases of any branch line which may be issued under the authority of this Act :

“ 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 :

“ The said railway,” or “ the railway ” shall mean the railway mentioned in the Section next hereinafter contained, and any branch line or lines of railway which may at any time be constructed under the authority of this Act, or of any lease which may be issued thereunder :

“ Road or street ” or “ public road or street ” shall include any railway or tramway :

“ Goods ” shall mean and include merchandise, goods, chattels, live stock, and all other things of every description.

Lease may be granted for purpose of constructing railway.

3 It shall be lawful for the Minister, with the consent of the Governor in Council, to grant to the lessees, for a term of Twenty-one years, at a nominal rental, and in accordance with the provisions of this Act, a lease of any Crown land not exceeding One chain in width, for the construction and maintenance and working of a railway from a point within the Mineral Section marked on the official chart with the number 1215-87M to a point at or near the Mineral Section numbered on the official chart 2574-87M, 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.

Conditions and stipulations of lease.

4 The said lease, in addition to providing for the construction and maintenance of the said railway in accordance with the stipulations and conditions hereinafter contained, and in accordance with such other conditions and stipulations not inconsistent with this Act as the

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Governor in Council may deem necessary to secure the efficient construction, maintenance, and working of the said railway, shall provide— **A.D. 1891.**

- i. For the junction of the said railway with the *Zeehan* Railway, and the passage over or along the said railway of any engines, carriages, waggons, or other vehicles of "The *Zeehan* Railway," or for the haulage of such engines, carriages, waggons, and vehicles respectively, or for the conveyance of goods and passengers over the said railway in any such carriages, waggons, or other vehicles as aforesaid, in accordance with the terms and conditions of any agreement that may from time to time be made between the Minister and the lessees in that behalf :
- ii. That the lessees shall properly fence the said railway in all places in which they shall be required by adjoining owners or occupiers, or by the Minister, to do so :
- iii. That the lessees shall carry on the said railway all mails which the Postmaster-General shall require them to carry thereon, for such reasonable compensation as may from time to time be agreed upon by them and the Postmaster-General :
- iv. For a renewal from time to time of the said lease for a further term not exceeding Twenty-one years, upon and subject to all the conditions herein prescribed and all the provisions of this Act :
- v. That the said lease shall be forfeited if—
 - (a) The construction of the railway is not commenced in a *bonâ fide* manner within One month from the date of this Act :
 - (b) The said railway is not completed, fully equipped, and ready for traffic, to the satisfaction of the Governor in Council, within Fifteen months from the date of this Act, or within such further time as the Governor in Council may see fit to allow :
 - (c) The said railway is not at any time during the continuance of the said lease, without reasonable cause, properly and efficiently maintained and worked in accordance with the provisions of this Act :
 - (d) The lessees do not provide and maintain engines and rolling stock sufficient for the conveyance of passengers and the tonnage which may be offered for carriage on the said railway :
 - (e) The conditions of the said lease are not all duly performed.

5 The said lease shall, subject to the provisions of Section Thirty-two, operate and take effect as a licence to the lessees to form, maintain, and work the said railway, but shall not confer any right or title to any mines or minerals. **Effect of lease.**

6 The said railway shall have a gauge of Three feet Six inches, with curves of a radius of not less than Five chains, and steel rails of not less than Forty pounds to the yard, and a grade not steeper than One in Forty. **Gauge, grade, &c. of railway.**

7 The said railway shall be constructed in a substantial manner fit for the carriage of vehicles at a rate of not less than Twelve miles per hour with a load of not less than Four tons upon each axle of every **Railway to be constructed in substantial manner, &c.**

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vehicle, and shall be maintained and worked by the lessees, in accordance with the provisions of this Act and subject thereto, to the satisfaction of the Governor in Council or such officer as the Governor in Council may appoint.

Before commencing to construct railway lessees to deposit plans with the Minister.

8 Before the lessees shall commence to construct the said railway, they shall deposit with the Minister a plan of the line of the said railway and of the lands through which it is to pass; and the Minister may require such alterations as he thinks necessary to be made in the plans deposited with him as aforesaid, in order to bring the same into accordance with the provisions of this Act: Provided always, that the detailed plans, sections, and specifications of the said railway shall, from time to time, be lodged with the Minister as the construction of the said railway proceeds, and the lessees shall construct the said railway in accordance with the plans, sections, and specifications so deposited with the Minister, and thereafter approved of by him, with such alterations therein as he may have approved or required to be made.

Railway may be inspected during construction.

9 The Governor in Council may from time to time appoint one or more officers to inspect the said railway during the construction thereof, and it shall be lawful for every officer so appointed for the purpose aforesaid from time to time to enter upon the said railway during the construction thereof and to inspect the manner in which the same is being constructed, and the condition and state of repair thereof; and the Minister, upon the report of any such officer as aforesaid, may require the lessees to make such additions or repairs to the said railway as may be necessary to make the said railway comply with the plans, sections, and specifications thereof approved of by the Minister or to ensure the safety of the said railway; and the lessees shall, within such time as the Minister shall require, make all such additions or repairs to the said railway as the Minister shall so require as aforesaid.

Railway not to be used until Engineer certifies.

10 No part of the said railway shall be opened for public traffic until the Engineer-in-Chief or such officer as the Minister may appoint has certified that such part of the said railway has been efficiently constructed, and all the rolling stock to be used thereon is in good and efficient condition and repair, and may be safely used for public traffic thereon.

Railway to be kept in proper repair.

11 After the said railway is completed the lessees shall properly and efficiently maintain and work the said railway; and the Governor in Council may from time to time appoint one or more officers to inspect the said railway and to report upon the state and condition of repair thereof and in the manner in which the same is being maintained and worked; and it shall be lawful for every officer so appointed for the purpose aforesaid from time to time to enter upon the said railway and to inspect the same and all the rolling stock thereof, and the manner in which the said railway is being worked; and the Minister may, upon the report of any such officer as aforesaid, require the lessees to make such repairs to the said railway and such repairs or additions to the rolling-stock thereof as may be necessary to ensure the safety of the said railway or of the passengers travelling thereon, or the efficient maintenance and working of the said railway in accordance with the provisions of this Act and the stipulations and conditions of the said lease; and the lessees shall, within such time as the Minister

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shall require, make all such repairs and additions to the said railway and the rolling-stock thereof as the Minister shall so require as aforesaid. A.D. 1891. —

12 It shall be lawful for the lessees from time to time to demand, take, collect, levy, and make such reasonable tolls, rates, fares, and charges for the carriage and conveyance of passengers, goods, merchandise, and other things over and along the said railway, as may from time to time be fixed by any By-law to be made as hereinafter mentioned; but such tolls, rates, fares, and charges for the carriage and conveyance of passengers shall not at any time exceed Four-pence per mile for First-class passengers, and Three-pence per mile for Second-class passengers, and for the carriage and conveyance of merchandise, goods, and live stock shall not at any time exceed double the rates of the *Tasmanian* Government Railways as set forth in the Manual of Rates in force at the time of the passing of this Act; but a truck load shall be computed at Four tons. When the carrying capacity of a truck shall exceed Four tons, the weight loaded over that quantity (if consigned) will be charged *pro ratâ*. Rates and tolls.

Provided that Members of the Parliament of *Tasmania* shall be entitled to travel free on the said Line. Provided also, that after the expiration of Ten years from the date of the said lease, the Governor in Council may from time to time, on giving three months' notice in writing to the lessees, reduce any such tolls, rates, and charges to any sums not being less than two-thirds of the sums respectively hereinbefore mentioned.

13 In case default is made in payment of any money due and payable in respect of the carriage or conveyance of any passenger or any goods, or in respect of the demurrage or storage of any goods, under the authority of this Act, the same may be recovered by the lessees in a summary way before any Justice of the Peace; and it shall be lawful for the lessees to detain the goods in respect of which such money is payable until the same shall have been fully paid and satisfied; and also if such goods have been detained during a period of not less than Six months, to sell the same or so much thereof as may be necessary by public auction to be duly advertised, and to apply the proceeds in or towards satisfying the money so due and payable. Rates and tolls may be recovered.

14 It shall be lawful for the Minister, with the consent of Parliament, from time to time to enter into an agreement with the lessees whereby the Minister shall undertake either to maintain and work the said railway, or to maintain or work the same, and to provide all locomotives, carriages, waggons, and other rolling-stock necessary for that purpose, together with the requisite staff of officers and men, upon such terms and conditions as may be agreed upon. Minister may agree to maintain and work railway.

15 It shall be lawful for the Minister, with the consent of the Governor in Council, from time to time to grant to the lessees, upon such terms and conditions and for such periods as the Minister, with the consent of the Governor in Council, shall think fit, running powers over, along, and upon any railway belonging to the Government of *Tasmania*. Minister may grant running powers.

16 It shall be lawful for the Minister, with the consent of the Governor in Council, from time to time at or after the expiration of the said lease to grant a renewal thereof to the lessees for a further term not exceeding Twenty-one years, upon and subject to all the conditions Minister may renew lease or resume land upon notice.

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herein prescribed, and all the provisions of this Act so far as the same may be applicable.

Minister may resume land upon notice.

17 It shall be lawful for the Minister, with the consent of Parliament, at any time after the expiration of Twenty-one years from the date of the said lease, or at any time after any renewal of the said lease, to give the lessees notice of the intention of the Crown to resume the land comprised in the said lease, and in any other lease granted under the authority of this Act at the expiration of Six months after the date of such notice, and to take and acquire the permanent way, rolling stock, and equipment of the said railway, and to compensate the lessees as hereinafter provided.

Until such resumption or any forfeiture of the said lease shall have taken place, all the rights, powers, privileges, benefits, concessions, advantages, and liabilities conferred or imposed upon the lessees by this Act, or by any lease thereunder, shall, as far as the same be applicable, continue in force in like manner and to the like effect as if the said lease was still undetermined.

Compensation upon resumption of land comprised in lease.

18 The amount of compensation to be paid to the lessees upon the resumption by the Crown of the land comprised in the said lease shall be the actual cost of *bond fide* construction work (exclusive of any Promoter's expenses) with an amount added equal to Twenty per centum on such cost of construction, and the value of all equipment, rolling-stock, appliances, goods, and chattels of the said lessees used or intended for use on or in connection with the said railway :

Provided, that if at the time of such resumption the said railway shall not be in good and efficient repair and condition, and sufficient in all respects for the traffic thereof, then the sum necessary to put the said railway in such repair and condition as aforesaid shall be deducted from the sum that would otherwise be payable to the lessees as such compensation, and, in case of dispute, shall be settled by arbitration as hereinafter provided.

If Governor and lessees cannot agree, may proceed to arbitration.

19 In the event of the Governor in Council and the lessees not agreeing upon the sum to be paid to the lessees upon the resumption by the Crown of the land comprised in the said lease, the question shall be referred to the determination of Five arbitrators, Two of whom shall be appointed by the Governor in Council, and Two of whom shall be appointed by the lessees, and the Fifth arbitrator shall be appointed by the Four other arbitrators.

If lessees fail to appoint arbitrators.

20 If the lessees fail or refuse to appoint Two arbitrators for the purpose aforesaid within a period of Three months after having received notice in writing from the Minister so to do, it shall be lawful for the Governor in Council to appoint two arbitrators to act with the Two arbitrators appointed by the Governor in Council, and such Four arbitrators shall appoint a Fifth arbitrator, and the Five arbitrators so appointed shall determine the price or sum to be paid by the Crown upon the resumption of the land comprised in the said lease.

Vacancy in arbitrators.

21 If any vacancy shall occur among the arbitrators before they have fixed such price or sum aforesaid, such vacancy shall be filled up by the appointment of another arbitrator by the same authority by which the arbitrator whose place has become vacant was appointed.

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22 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 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.

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

23 The accounts of the lessees in and about the construction 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.

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

24 In addition to the land acquired by the lessees under the said lease, the lessees may purchase, acquire, and take such other land as may be necessary for the purposes of this Act or of any railway constructed thereunder; and the cost of so purchasing, acquiring, and taking such other land, and the cost of all buildings or other works constructed on the same, shall be included in the cost of construction work mentioned in Section Eighteen.

Power to purchase land.

25 For the purpose of enabling the lessees to purchase, acquire, and take other land as hereinbefore provided, *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. 21 Vict. No. 11.

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

26 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 or forfeiture of the lease as aforesaid.

New construction works to be approved by Governor in Council.

27 Nothing in this Act contained shall extend to charge or make liable the lessees further or in any other case than where according to the laws of this Colony stage-coach proprietors and common carriers would be liable, nor shall extend in any degree to deprive the said lessees of any protection or privilege which common carriers or stage-coach proprietors may be entitled to, but, on the contrary, they shall at all times be entitled to the benefit of every such protection and privilege.

Not to be liable to a greater extent than common carriers.

28 It shall be lawful for the lessees, subject as aforesaid, to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers, goods, and things of every kind, and live stock of every kind as shall be offered for that purpose, and to make and sue for such charges in respect thereof as hereinbefore

Authority to employ locomotive engines, carriages, and other locomotive powers, &c.

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specified; Provided, that all such tolls be at all times charged equally to all persons and after the same rate in respect to all passengers, goods, things, cattle, and live stock as aforesaid, of the like number or quantity, or carriages of the same description and conveyed or propelled by a like carriage or engine passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular person travelling upon or using the railway.

Penalty for bringing dangerous goods on the railway.

29 No person shall be entitled to carry, or to require to be carried, upon the railway, any aquafortis, oil of vitriol, gunpowder, lucifer matches, or any goods which in the judgment of any person employed on the railway may be of a dangerous nature; and if any person sends by the railway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other person employed as aforesaid with whom the same are left at the time of so sending, he shall forfeit a sum of not less than Two Pounds nor more than Twenty Pounds for every such offence; and it shall be lawful for the person to whom the same is rendered to refuse to take any parcel suspected to contain goods of a dangerous nature, or he may require the same to be opened to ascertain the fact.

Power to cross roads and streets.

30 The power hereinbefore conferred upon the lessees to purchase and take land under the provisions of *The Lands Clauses Act* shall not enable them to purchase or take any public road or street, but the Governor in Council may, by the said lease or at any time thereafter, grant to the lessees the power to construct the said railway across any specified public road or street, subject to such conditions as may be thought fit, and the lessees shall thereupon have power to construct the said railway across any such public road or street.

Materials from private land.

31 The lessees, for the purpose of constructing, repairing, and maintaining the said railway, may, after Fourteen days' notice to the owner or occupier, enter upon any uncultivated land mentioned in such notice, 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, whether for such material or in the removal thereof.

Materials from Crown lands.

32 The 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 lessees it may be necessary to remove for the safe working of the said Railway, notwithstanding anything contained in Section Five 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

Compensation.

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settled by arbitration in the mode prescribed by *The Lands Clauses Act* in cases of disputed compensation. A.D. 1891.

33 Subject to the provisions of this Act, it shall be lawful for the lessees, for the purpose of constructing the said railway, to execute any of the following works; that is to say,— Construction of works.

To enter upon any lands 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 the said lessees 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 the said lessees may think proper :

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 draw water from any stream or river in the vicinity of the railway for the supply of locomotives and other purposes, at such elevation as may be necessary to secure a fall into any railway tank by natural gravitation :

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 the said lessees may think proper :

From time to time to 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 :

Provided that in the exercise of the above-mentioned powers the lessees 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.

34 Before the lessees 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 the lessees as to the necessity for such fences and gates, such fences and gates as any Two Justices shall deem necessary for the purposes aforesaid, on application being made to them by either party. Lessees to separate the lands before using them.

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Before roads
interfered with
others to be
substituted.

35 If in the exercise of the powers hereby granted it be found necessary to crosscut through, raise, sink, or use any part of any road, whether carriage road or horse road, either public or private, so as to render it impassable for or dangerous to, or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the lessees shall, before operations are commenced, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be.

Power to enter
upon adjoining
lands to repair
accidents subject
to certain
restrictions.

36 In case of accidents or slips happening, or being apprehended, to the cuttings, embankments, or other works of the said railway, it shall be lawful for the lessees and their workmen and servants to enter upon the land adjoining thereto at any time whatsoever for the purpose of repairing or preventing such accidents, and to do such work as may be necessary for the purpose; but in every such case the lessees shall within Forty-eight hours after such entry make a report to the Minister specifying the nature of such accident or apprehended accident, and of the works necessary to be done, and such powers shall cease and determine if the said Minister shall after considering the said report certify that their exercise is not necessary for the public safety: Provided, that such works shall be as little injurious to the said adjoining lands as the nature of the accident or apprehended accident will admit of, and shall be executed with all possible despatch; and full compensation shall be made to the owners and occupiers of such lands for the loss, injury, or inconvenience sustained by them respectively by reason of such works, the amount of which compensation in case of any dispute about the same shall be settled in the same manner as cases of disputed compensation in other cases under this Act: Provided also, that no land shall be taken permanently for any such works otherwise than is herein provided with respect to the lands originally taken for the purpose of making the said railway.

Protection to
rights of first
lessee.

37 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 object of the said lease, and the first lessees 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 Twenty 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 lessees: Provided, that any person causing any injury or damage to such railway by mining thereunder shall be liable for such injury or damage to the said lessees.

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.

38 In case the said lease shall comprise any land previously leased, then the 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.

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- 39** The 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. A.D. 1891.
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The lessees may enter after notice.
- 40** In any case in which a notice is required to be served on the first lessee under this Act, the same shall be deemed to be duly served if such notice is served upon the person in charge of or occupying the land in respect of which such notice is given, or, if there be no person in charge of or occupying such land, then such notice shall be deemed duly served upon proof of the same having been posted in some conspicuous place on the said land. How notices must be served.
- 41** Before any work shall be constructed under or in pursuance of the said lease through, over, or upon any land previously leased, the first lessee shall be paid by the lessees such compensation (if any) as shall be determined by agreement between the first lessee and the lessees; and if such compensation shall not be fixed by agreement within One month after the service of the notice mentioned in Section Thirty-eight, then such compensation (if any) shall be determined by the Commissioner. Compensation to first lessee.
- 42** 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 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 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.
- 43** 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.
- 44** 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.
- 45** Either party to any proceeding before the Commissioner under this Act may at any time within Thirty 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 Appeal.

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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.

Penalty on persons omitting to fasten gates.

46 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.

Compensation how determined.

47 Whenever by this Act compensation is directed to be made by the lessees 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.

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

48 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.

Costs of arbitration, how to be borne.

49 In any case where land or material is required for the purposes of such railway, if the lessees, before any steps are taken under *The Lands Clauses Act*, offer in writing 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.

Penalty for damage to instruments, railway, &c.

50 If any person shall wilfully interfere [with, move, injure, or damage any poles, stakes, marks, or instruments used by the lessees or their agents, servants, or workmen, for the purpose of 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 the lessees, such person shall for every such offence forfeit and pay to the lessees a sum not exceeding Twenty Pounds over and above the damages occasioned thereto.

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51 If the lessees shall be guilty, without reasonable cause, of any breach of any of the conditions, provisions, or stipulations of the said lease, or of this Act, and such breach shall continue after reasonable notice shall have been given by the Governor in Council to the said lessees to put an end to or remedy the same, the Attorney-General may, when and so often as any such breaches may happen, apply to the Supreme Court for a Rule calling upon the lessees to show cause, on a day to be mentioned in such Rule, why the said lease should not be declared forfeited upon such grounds as may be set forth in such Rule; and such Rule may be served upon the lessees, either by delivering the same to the agent of the lessees under this Act personally, or by leaving the same at the registered office of the lessees hereunder.

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If lessees guilty of breaches of lease or of Act, the Attorney-General may move Supreme Court to declare lease forfeited.

52 If on the hearing of such Rule the Court shall be satisfied, either by affidavit or otherwise, that the lessees have been guilty, without reasonable cause, of any of the breaches of the conditions, provisions, or stipulations in the said lease or of this Act set forth in the said Rule, and that any such breach has continued after such reasonable notice as is mentioned in the immediately preceding Section has been given, the said Court may, and is hereby authorised and empowered, to order and declare such lease to be forfeited, and thereupon (except as hereinafter mentioned) such lease shall become absolutely null and void.

Supreme Court may declare lease forfeited, or may order Promoters to pay a sum of money to Treasurer.

Provided, that the Court upon the hearing of any such Rule may, if it shall consider that the justice of the case would be met by so doing, instead of ordering the forfeiture of the said lease as aforesaid, order the lessees to pay to the Treasurer such a sum of money as the said Court may consider reasonable by way of penalty for the breach of any of the conditions, provisions, or stipulations of the said lease or of this Act. And the said Court may also make such Order as to the costs of the proceedings as it may think fit; and any Order so to be made for the payment of any sum of money or costs as aforesaid may be enforced in the same manner as may for the time being be provided for the enforcement of decrees and orders of the said Court in its Equitable Jurisdiction.

53 The said Court may from time to time adjourn the hearing of any such Rule to show cause as aforesaid, and may give to the lessees such time as to the Court may seem reasonable for the purpose of enabling the lessees to file such affidavits as may be considered necessary in opposition to the ground set forth in the said Rule, and any affidavits that may have been filed in support thereof, and may also allow further time to the Attorney-General to file any affidavits in reply as to the Court may seem expedient; and the said Court may also, if it shall see fit, direct the truth of the grounds set forth in the said Rule to be decided otherwise than by affidavit, and for that purpose may direct one or more issue or issues to be tried by a jury in the like manner as issues directed by the Court in its Equitable Jurisdiction are tried.

Court may adjourn the hearing, and may grant time to file affidavits;

and may order issues to be tried by a jury.

54 If the said Court shall order the said lease to be forfeited as hereinbefore mentioned, it shall nevertheless be lawful for the Governor, with the advice of the Executive Council, on the address of both Houses of Parliament, to waive such forfeiture upon the payment of such sum or sums of money, and upon such other terms and conditions

If Court order lease to be forfeited, Governor in Council may waive same upon Address of Parliament.

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as by such Address may be suggested ; and upon payment of such sum or sums of money, and compliance by the lessees with such other terms and conditions as aforesaid, the said lease shall be of the like force and effect as if such Order of the Court had not been made.

Upon resumption
&c. railway
vested in
Minister.

55 Upon the resumption of the land comprised in the said lease as hereinbefore provided, or upon the forfeiture of the said lease, the railway constructed by the lessees, and all the right, title, and interest of the lessees, and of any person or persons claiming, by, through, or under such lessees in and to the said railway and all works connected or used therewith, and all lands acquired by the lessees under the authority of this Act, 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 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 lessee or such other person or persons held, possessed, enjoyed, used, and exercised the same.

Compensation
to lessees upon
forfeiture.

56 The Minister may, with the consent of Parliament, upon such forfeiture as aforesaid make to the lessees fair and reasonable compensation for all construction work of the lessees under the authority of this Act or of the said lease, and for the rolling stock, equipment, goods, and chattels of the said lessees used or intended for use in connection with the said railway according to the value thereof at the time of such forfeiture, and such compensation shall in case of difference or dispute be determined in like manner as is provided in Sections Nineteen, Twenty, and Twenty-one : Provided, that in no case shall such compensation exceed the amount actually paid by the lessees for such construction work, rolling stock, equipment, goods, and chattels, nor the value of the same at the time of such forfeiture.

This Act not to
prevent Minister
constructing
railway.

57 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.

58 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 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.

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59—(1.) After the said railway is completed and opened for traffic, the Minister may from time to time, with the consent of Parliament, grant to the lessees for the unexpired residue of the term of the said lease a lease of any piece of Crown land, not exceeding One chain in width, for the construction thereon of such branch lines of railway from the said railway to such termini as may be thought proper by the said lessees for assisting the development or for the better and more convenient working of any mineral lands occupied under the provisions of any Act of the Parliament of *Tasmania*, and as may be approved by Parliament, and also such area of Crown land for all stations, sidings, crossings, side-cuttings, cuttings, embankments, and conveniences in connection with any of the said branch lines of railway as may be necessary or proper.

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Minister may grant lease for branch lines of railway.

(2.) Any such lease shall be subject to the provisions of this Act so far as applicable, and with such exceptions as Parliament may deem necessary, and shall contain such of the provisions and stipulations hereby required to be contained in the said first-mentioned lease as Parliament may think necessary or applicable to such branch lines, and shall be renewable in like manner with the said lease.

(3.) The length of any such branch line shall not exceed Four miles, but the grade of any such branch line may, with the approval of Parliament, be steeper than One in Forty.

60—(1.) The said Company incorporated and registered in *Melbourne*, in the Colony of *Victoria*, under the name of "The New Dundas Tramway Company, Limited," shall, if not already registered under "The Mining Companies (Foreign) Act," forthwith register under that Act with the Secretary of Mines the name and place of abode or business of the person appointed by such Company to carry on the business of the Company in *Tasmania*, and also the situation of the Office of such Company; and the person so registered shall be deemed to be the Agent of such Company, and such Office shall for all purposes be the Registered Office of such Company.

Company to have a Registered Office in *Tasmania*.

48 Vict. No. 16.

(2.) Upon such registration the said Company may sue and be sued in its corporate name in *Tasmania*, and proceedings against such Company shall be in the same manner, and the liabilities of the Company and of all persons in respect of such registration shall be the same, as provided by "The Mining Companies (Foreign) Act."

61 It shall be lawful for the lessees from time to time to make such By-laws for regulating their affairs and the management of the said railway, and of any railway which may be purchased by the lessees or worked in connection therewith, and the buildings and works connected therewith, and for fixing the tolls, rates, fares, and charges for the carriage and conveyance of passengers, goods, and other things thereon, as they may think fit, and for all purposes which are usually comprised in the By-laws of any railway company; and it shall be lawful for the lessees to repeal, alter, or amend any such By-laws from time to time: Provided that such By-laws shall not be repugnant to the provisions of this Act or to the said lease; and such By-laws shall be in writing under the hand of the lessees, and, if affecting other persons than their own officers and servants, and not being By-laws fixing such charges as aforesaid, shall be subject to the approval of the Governor in Council, and be published as hereinafter is provided.

Power to make By-laws.

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By-laws may be enforced by penalties.

62 The lessees, by the By-laws so to be made by them, may, subject to the approval of the Governor in Council, impose such reasonable penalties as they may think fit, not exceeding Twenty Pounds, for each breach of such By-laws or any of them.

By-laws to be published.

63 All such By-laws relating to other persons than the servants and officers employed upon the said railway, not being tables of the charges for the conveyance of passengers, goods, and other things thereon, shall be published in the *Gazette*; and all such By-laws shall be printed in legible letters and exhibited in some conspicuous place in the principal Office of the railway, and at every station on the said railway, and be open to inspection without fee or reward; and in case any person wilfully obliterates any of the letters or figures thereon, or wilfully prevents the same being inspected at some reasonable time, he shall for every such offence be liable to a penalty not exceeding Five Pounds.

By-laws to be binding.

64 All By-laws made according to the provisions of this Act, when so published and put up, shall be binding upon and observed by all parties, and shall be sufficient warrant for all persons acting under the same.

Proof of By-laws.

65 The production of a copy of the said By-laws purporting to have been made as aforesaid shall, in all proceedings against the officers and servants of the said Company, be accepted as proof thereof in any Court of Law or Equity. And *prima facie* evidence of any such By-laws may be given in all Courts of Justice and in all legal proceedings whatsoever by the production of a copy of the *Gazette* purporting to contain any such By-laws.

By-laws to be laid before Parliament.

66 All By-laws made by the lessees under this Act shall be laid before both Houses of Parliament within Fourteen days of the making thereof if Parliament is in Session, and if not, then within Fourteen days after the commencement of the next Session.

Offences to be dealt with summarily.

67 All offences against this Act or any By-law made in pursuance of this Act shall be heard and determined, and all orders shall be made, and all penalties and sums of money imposed or made payable by this Act or any such By-law shall be recovered, in a summary way in the mode prescribed by *The Magistrates Summary Procedure Act*, and all penalties received by virtue of any such By-law shall be paid to the said lessees.

19 Vict. No. 8.

Appeal from penalties.

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

19 Vict. No. 10.

The lessees may construct telegraph.

69 The lessees may construct, maintain, and work and use for their own profit one or more lines of Electric Telegraph and Telephones along the route of the said railway, and along the route of any branch line of railway which the lessees are by this Act authorised to construct; but Government messages shall have priority on such lines of Telegraph and Telephones, if required; and, subject to the use of such lines of

New Dundas Tramway Company.

Telegraph and Telephones by the lessees, and to the priority (if claimed) of Government messages, such lines of Telegraph and Telephones shall be open for receiving and sending messages by all persons without preference or favour, and at the same rates as those charged for like messages on Government lines of Telegraph and Telephones: Provided that the Minister may, with the consent of the Governor in Council, at any time prohibit the lessees from carrying on such lines of Telegraph or Telephones for a profit.

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70 The Government may affix Telegraphic and Telephonic wires upon any posts erected by the lessees along the route of the said railway or along the route of any branch line of railway which the lessees are by this Act authorised to construct, and may maintain and use such wires for the purposes of Telegraphic and Telephonic communication.

Government may affix wires.

71 It shall be lawful for the lessees, with the consent of the Governor in Council, from time to time to let the said railway and tolls, rates, fares, and charges, together with all or any equipment or rolling-stock of the lessees; and during the continuance of any such letting the person to whom the same shall be let, or the persons or person by him appointed, are hereby empowered to demand, levy, and take the said tolls, rates, fares, and charges, and to use the said engines and rolling-stock, and to manage the railway and works of the said lessees, in like manner, and shall have the like remedies and rights, and be subject to the like liabilities in respect of the same, as the lessees would have been empowered, or would have had, and would have been subject to, but for such letting.

Lessees may let tolls, &c.

72 Subject to the provisions of this Act, the lessees may, from time to time, give and execute mortgages of or charges upon the said railway or its equipment, or any branch line, or the tolls, rates, fares, and charges on any such railway or branch line, for the purpose of securing the payment of any sum or sums of money borrowed or raised by the lessees for the purposes of this Act or of the said railway or the payment of any dividends or interest; and such mortgages or charges may be in such form, and contain such powers and provisions, as the lessees may deem expedient.

Power to mortgage.

73 Until the said lease shall be issued the lessees shall have all the rights, powers, privileges, benefits, concessions, advantages, and liabilities conferred or imposed upon them by this Act so far as the same shall be necessary for the survey and construction of the said railway.

Lessees to have all powers of this Act until lease issued.

74 In the event of any dispute, question, or difference arising between the lessees and the Minister or any official to whom any powers are given by this Act, the same shall be referred to and decided by arbitration in like manner as is mentioned in Sections Nineteen, Twenty, and Twenty-one.

Disputes referred to arbitration.

75 The lessees shall, within One month after the passing of this Act, place at interest on fixed deposit the sum of One thousand Pounds, in the name of the Treasurer of the Colony, in some bank in *Hobart* to

Deposit of £1000.

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be approved of by the said Treasurer, and shall deliver to the Treasurer the deposit receipt for such sum.

The lessees shall be entitled to the interest on such deposit of One thousand Pounds during the period it remains in the name of the Treasurer in such bank as aforesaid.

The Treasurer shall transfer or deliver the said deposit receipt to the lessees as soon as the Minister shall report to him that the said railway has been constructed to the extent of Two miles in accordance with the provisions of this Act, and shall do any other act necessary to enable the said lessees to obtain payment thereof.

If the railway shall not be so constructed to the extent of Two miles with due expedition to the satisfaction of the Minister, the said sum of One thousand Pounds and all interest accruing thereon shall be absolutely forfeited to Her Majesty, and shall become part of the Consolidated Revenue Fund of the Colony.