

An Act to authorize the continuation of a Tramroad from Burwood to the Wharf at Newcastle. [1st October, 1850.]

BURWOOD
AND NEWCASTLE
TRAMROAD.

WHEREAS James Mitchell of the city of Sydney Esquire being Preamble.
the owner of lands commonly known by the name of Burwood situate near Newcastle in the county of Northumberland in the Colony of New South Wales has by himself or his lessees or tenants opened a coal mine on part of the said lands and upon other part thereof erected buildings and works about to be brought into operation for the smelting of copper ores and in order to facilitate communication between the said mine and works and the Port of Newcastle has constructed a Tramroad from the entrance of the said mine to the northern boundary of the said land called Burwood at which boundary the said land is separated from Newcastle aforesaid by land granted by the Crown to the Australian Agricultural Company but over which the said Tramroad cannot be continued without legislative authority And whereas the said coal and smelting works of the said James Mitchell are likely to prove highly beneficial to the Colony and the public advantage is at present especially concerned in promoting such increase and facility in the supply of coal for local consumption and export as would result from the completion of the said Tramroad And whereas it is therefore expedient to authorize such completion upon payment of reasonable compensation to the said Australian Agricultural Company for the

Burwood and Newcastle Tramroad.

Power to James Mitchell to continue Tramroad to wharf at Newcastle.

the land to be occupied thereby Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That it shall be lawful for the said James Mitchell his heirs and assigns to make and continue a Tramroad from the said northern boundary of the land of him the said James Mitchell to the wharf at Newcastle aforesaid in the line described in a Schedule hereto annexed marked A but so that such road shall not occupy in any part thereof a greater width or breadth than thirty feet including the supports abutments and foundations thereof Provided that as to so much of the said Tramroad as shall pass along the public road the rails of the said Tramway shall not be raised more than two inches above the level of the said road unless the same shall be so far raised above the said level as to pass over the existing Staith or Tramway of the said Australian Agricultural Company now crossing over the said public road in which case the Tramway of the said James Mitchell shall be so raised as to pass ten feet at the least in the clear above the Tramway of the said company and shall be constructed in a secure and proper manner so as to ensure the safety of the traffic of the said company and of the public below or adjacent to (as the case may be) the Tramway of the said James Mitchell Provided also that the said Tramroad shall be constructed and brought into use within the term of two years from the passing of this Act and provided further that in case the said Tramroad shall cease to be used as such by the said James Mitchell his heirs and assigns for the space of one year at any one time the said ground and soil thereof shall revert to and become re-vested in the said company and provided further that nothing herein contained shall prevent the said company from carrying on any mining operations beneath the said Tramroad which shall not interfere with the safety of the said road and the traffic thereon and that the said James Mitchell shall have no further right to the soil of the said land beneath the surface than shall be requisite for the formation and repair of the said road by cutting embanking or otherwise.

Site of Tramroad to be vested in James Mitchell without conveyance.

2. And be it enacted That the ground and soil of so much of the site of the said Tramroad as passes over the land of the said Australian Agricultural Company together with such right of ingress upon the adjacent land as shall be necessary for the making and repair thereof shall be vested by virtue of this Act and without the necessity of any deed of conveyance of the land in the said James Mitchell his heirs and assigns for the purpose of a Tram or Railroad for his and their use and the use of his and their lessees and tenants subject to the provisoes hereinbefore contained And provided that if the said Australian Agricultural Company shall have at any time occasion to lay down any Tramroad or roads connected with their own mining operations it shall be lawful for them to carry any such road or roads across the road hereby appropriated to the said James Mitchell in any manner not interfering with the ordinary traffic of the said James Mitchell his heirs and assigns And provided further that at the junction of the said Tramroad with the highway between Newcastle and Maitland the said James Mitchell his heirs and assigns shall erect and maintain proper and efficient gates for the safety of the passengers and traffic on the said highway such gates to be erected and maintained across the said highway and not across the said Tramroad.

Compensation to be paid to Australian Agricultural Company of £20 per acre.

3. Provided nevertheless and be it enacted That the said James Mitchell his heirs and assigns shall pay to the said Australian Agricultural Company the sum of twenty pounds per acre and in the like proportion for any less quantity for such land of the said Company as the said Tramroad inclusive of the supports abutments and foundations

Burwood and Newcastle Tramroad.

tions thereof shall occupy but in case the said Australian Agricultural Company shall deem the said price or compensation insufficient it shall be lawful for them within the space of twelve months from the passing of this Act to apply to His Excellency the Governor to appoint and he shall thereupon appoint accordingly Commissioners to inquire into and assess the same in like manner as is enacted and directed in the case of a road through private property proclaimed by the Government under and by virtue of an Act of the Governor and Legislative Council passed in the fourth year of the reign of His late Majesty King William the Fourth intituled "*An Act for making altering and improving the Roads throughout the Colony of New South Wales and for opening and improving the Streets in the Towns thereof*" and for the purpose of such assessment the said Commissioners or any two of them shall have and possess all the powers vested in them or any two of them by the said Act and the like duties powers and regulations shall attach and apply to the parties jurors witnesses and others occupied and concerned in relation thereto and in case the price assessed on such inquiry be in excess of the sum awarded by this Act such excess shall in addition to the price awarded by this Act be paid by the said James Mitchell his heirs and assigns accordingly together with the costs of inquiry but if the price awarded upon the said inquiry shall not exceed the sum awarded by this Act the costs of the inquiry shall be paid by the parties demanding the same the amount of which costs shall be assessed and the person or persons by and to whom the same shall be paid shall be ascertained by the order of the said Commissioners and shall be recoverable by action of debt if not paid on demand pursuant to such order.

4. Provided also and be it enacted That the said James Mitchell his heirs and assigns shall if required thereto by the said Australian Agricultural Company their successors or assigns make and complete and from time to time keep in repair a good and substantial fence upon each side of so much of the said Tramroad as shall pass on the land of the said company dividing the same from the land adjacent and that if any damage shall be committed to or upon such adjacent land in the making or repairing or using of the said Tramroad by the said James Mitchell his heirs and assigns he or they shall forthwith make good the same and if the said James Mitchell his heirs or assigns shall make default in erecting or keeping repaired the said fence the said Australian Agricultural Company their successors or assigns shall be at liberty to erect or repair the same as the case may be and recover the expense necessarily incurred therein by action of debt and if the said James Mitchell his heirs or assigns shall fail to make good or compensate any such damage as aforesaid committed by them or him or his agents or servants in the making repairing or using of the said Tramroad the same may be recovered from them or him as special damages by action of assumpsit.

5. And be it enacted That this Act shall be deemed to be a public Act and shall be judicially taken notice of as such without being specially pleaded.

SCHEDULE A.

Commencing at a point on the line dividing A. W. Scott's four hundred and fifty-six acres from the Australian Agricultural Company's two thousand acres forty-six chains east from the point formed by the abuttal of the boundary between the said four hundred and fifty-six acres and James Mitchell's nine hundred and fifty acres on the aforesaid boundary of the Australian Agricultural Company's two thousand acres and bearing north-easterly through the Company's said two thousand acres to a point on the Maitland Road one chain forty-four links from its junction with the Lake Macquarie Road which passes through the said two thousand acres thence along the Maitland Road to the wharf.