

MINMI AND HEXHAM
RAILWAY.

An Act to authorize the continuation of a Railway from Minmi to Hexham. [7th November, 1854.]

Preamble.

WHEREAS John Eales and John Christian of Berry Park in the county of Northumberland Esquires have opened coal mines and established collieries at Minmi in the said county and in order to facilitate communication between the said coal mines and collieries and the Hunter River are constructing a railway between Minmi and Hexham to be called "The Minmi and Hexham Railway" And whereas part of the said railway must be made upon and pass through land situate in the said county the property of John Malcolm of the city of Sydney gentleman but over which the said railway cannot be continued without legislative authority And whereas the other proprietors interested namely William Dougall Christie William Charles Wentworth and James Mitchell Esquires have each conceded to the said John Eales and John Christian the land required from them respectively for the proposed railway under the conviction that it would improve the value of their properties and otherwise benefit them And whereas the said coal mines and collieries of the said John Eales and John Christian are likely to prove beneficial to the Colony and the public are concerned in promoting such an increase in and facilities for the supply of coal for local consumption steam navigation and export as would result from the completion of the said railway And whereas the Minmi and Hexham Railway cannot be continued to the terminus at Hexham without crossing the Hunter River Railway Company's line on the level and the Hunter River Railway Company have consented to such crossing on the conditions hereinafter expressed And whereas it is desirable to authorize by legislative enactment the continuation of the Minmi and Hexham Railway subject to the provisions hereinafter contained upon payment of compensation to the said John Malcolm for such portion of his land as may be required to be occupied thereby

Be

Minmi and Hexham Railway.

Be it therefore enacted by His Excellency the Governor General of New South Wales with the advice and consent of the Legislative Council thereof—

1. It shall be lawful for the promoters to make and continue a railway from the south boundary of the said John Malcolm's land in the line described in the Schedule hereunto annexed but so that such railway shall not occupy in any part thereof a greater space in breadth than sixty-six feet including the supports abutments and foundations thereof Provided also that the railway shall be constructed and brought into use within the term of five years from the passing of this Act.

Continuing railway over land of John Malcolm.

2. The ground and soil of so much of the site of the railway as passes over the land of the said John Malcolm together with such right of ingress egress and regress upon the adjacent land as may be necessary for the making and repair thereof shall be vested by virtue of this Act and without the necessity of any conveyance in the promoters for the purposes of the railway Provided that if in the exercise of the powers hereby granted it be found necessary to cross cut through raise sink or use any part of any road whether carriage-road or horse-road so as to render it impassable for or dangerous or inconvenient to the persons entitled to the use thereof the promoters shall before the commencement of any such operations cause a sufficient road to be made instead of any road interfered with and shall at their own expense maintain such substituted road in a state as convenient as the road interfered with or as nearly so as may be And the promoters before they use the said land of the said John Malcolm for any of the purposes aforesaid shall if required so to do separate the same by a sufficient fence from the land adjoining thereto with such gates as may be required for the convenient occupation of such land 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 promoters as to the necessity for such fences and gates such gates shall be put up by the promoters as any two Justices of the Peace shall deem necessary for the purposes aforesaid on application being made to them.

Site of railway shall be vested in the promoters without conveyance.

3. The railway shall be at all times open to the public upon payment of a toll to the promoters of sixpence per ton per mile in respect of every ton of goods for every transit the party seeking transit supplying his own trucks or wagons and the promoters supplying locomotive power (being thereunto required by the party seeking transit twenty-four hours at least previously) and such supply of locomotive power shall not be compulsory on the promoters unless the party seeking transit guarantee and bring two hundred tons at the least during the twelve working hours to be mentioned in such notice But it shall be compulsory on the promoters to carry any quantity not less than forty tons if the locomotive be actually at work and all trucks when emptied shall be conveyed on their return free of cost The railway shall be at all times open to the public upon payment of a toll to the promoters of four-pence per ton per mile in respect of every ton of goods for every transit if the party seeking transit supply the locomotive power as well as trucks or wagons Provided that so long as the promoters shall supply locomotive power no other person shall use locomotive power on the line Provided that if the railway shall be damaged by parties who shall themselves use the railway for transit and supply locomotive power the promoters shall be entitled to compensation for such damage to be recovered either by action in the Supreme Court of New South Wales or if such damage do not exceed

Railway open to the public.

Minmi and Hexham Railway.

the sum of twenty pounds summarily before two Justices and in estimating such damage the promoters shall be entitled not only to compensation for the cost of repairing and restoring the railway but to the consequential damage (if any) sustained by reason of the suspension of transit. After the railway shall have been opened for transit the promoters shall continue to provide the locomotive power required for using the same (accidents excepted) until twenty-eight days notice shall have been given by them by advertisement in the *New South Wales Government Gazette* that they intend after the expiration of a day to be named in such notice to suspend or discontinue working the line or supplying the necessary locomotive power thereon whereupon it shall be lawful for any person entitled to use the railway to provide locomotive power such person paying the toll hereinbefore mentioned to be payable in such event. Provided that any person interested in using the railway upon giving three calendar months previous notice in writing of his intention so to do to the promoters may make application to the Executive Council of New South Wales to reduce the tolls limited by this Act and to create a new scale applicable to the traffic on the said railway such new scale being below the scale limited by this Act and it shall thereupon be lawful for the said Council to reduce the tolls as in the judgment of the said Council shall be reasonable. Provided that the clear divisible profits of the railway shall be annually made good to the promoters at the rate of twenty pounds for every one hundred pounds by the year of the capital proved by the promoters to have been expended by them in or about the construction of the railway after debiting the railway with the cost of maintaining the line in proper working order and crediting the railway with the carriage obtained by the promoters at the rates aforesaid.

Power to divert or alter roads.

4. For the purposes and subject to the provisions hereinafter contained it shall be lawful for the promoters their deputies agents servants and workmen and all other persons by them authorized and empowered to divert or alter the course of any road or way crossing the railway or to raise or sink any road or way in order the more conveniently to carry the same over or under or by the side of the railway.

Bridges to be constructed where railway crosses highway.

5. If the line of railway cross any public highway or parish road then either such road shall be carried over the railway or the railway shall be carried over such road by means of a bridge of the height and width and with the ascent or descent by this Act in that behalf hereinafter provided and such bridge with the immediate approaches and all other necessary works connected therewith shall be executed by and be at all times thereafter maintained at the expense of the promoters. Provided that with the consent of two Justices as after mentioned it shall be lawful for the promoters to carry the railway across any highway on the level.

Provisions in cases where roads are crossed on a level.

6. If the railway cross any public highway or parish road on a level the promoters shall erect and at all times maintain good and sufficient gates across such road 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 roads 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 person intrusted 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 Government Inspector of Railways (if any) in any case

in

Minni and Hexham Railway.

in which he shall be satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway to order that such gates shall be kept so closed instead of across the road and in such case such gates shall be kept constantly closed across the railway except when engines or carriages passing along the railway shall have occasion to cross such road in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

7. 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 promoters 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 works as may be necessary for the purpose but in every such case the promoters shall within forty-eight hours after such entry make a report to the Government Inspector of Railways if any and if not then to the nearest Bench of Magistrates 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 Government Inspector or Bench of Magistrates shall after considering the said report certify that their exercise is not necessary for the public safety Provided also 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 dispatch and full compensation shall be made to the owners and occupiers of such lands for the loss or 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 by arbitrators in the manner hereinafter mentioned And 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.

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

8. Every bridge to be erected for the purpose of carrying the railway over any road shall be built in conformity with the following regulations (that is to say)—

Construction of bridges over roads.

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a public highway and of twenty-five feet if over a parish road and of twelve feet if over a private road.

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road and fifteen feet for a space of ten feet if over a public carriage road and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet the clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private road.

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a public highway one foot in twenty feet if over a parish road and one foot in sixteen feet if over a private road not being a tramroad or railroad or if the same be a tramroad or railroad the descent shall not be greater than the ruling gradient of such tramroad or railroad.

9. Every bridge erected for carrying any road over the railway shall be built in conformity with the following regulations (that is to say)—

Construction of bridges over railroad.

There

Minmi and Hexham Railway.

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet and on each side of the immediate approaches of such bridge of not less than three feet.

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a public highway and twenty-five feet if a parish road and twelve feet if a private road.

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road one foot in twenty feet if a parish road and one foot in sixteen feet if a private road not being a tramroad or railroad or if the same be a tramroad or railroad the ascent shall not be greater than the ruling gradient of such tramroad or railroad.

The width of the bridges need not exceed the width of the road in certain cases.

10. Provided always that in all cases where the average available width for the passing of carriages of any existing road within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway the width of such bridges need not be greater than such average available width of such roads but so nevertheless that such bridges be not of less width in case of a public highway or parish road than twenty feet. Provided also that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof the promoters shall be bound at their own expense to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road not exceeding the width of such road as so widened or the maximum width herein prescribed for a bridge in the like case over or under the railway.

Existing inclination of roads crossed or diverted need not be improved.

11. Provided also that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same or the inclination of such portion of any road as may require to be altered or for which another road shall be substituted shall be steeper than the inclination hereinbefore required to be preserved by the promoters then the promoters may carry any such road over or under the railway or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed or of the road so requiring to be altered or for which another road shall be substituted.

Works for benefit of owners.

12. The promoters 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.

Fences.

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 thereon 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

Minmi and Hexham Railway.

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.

Also all necessary arches tunnels culverts drains or other Drains. 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.

Also proper watering places for cattle or compensation in lieu Watering places. thereof 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 sufficiently supplied with water as theretofore and as if the railway had not been made or as nearly so as may be and the said promoters shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places.

Provided always that the promoters 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 lands shall have agreed to receive and shall have been paid compensation instead of the making them.

13. 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 so 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 forty shillings. Penalty on persons omitting to fasten gates.

14. If within twenty-eight days after the passing of this Act the said John Malcolm and the promoters shall not agree as to the amount of the compensation to be paid by them for the said land belonging to the said John Malcolm or for any damage that may be sustained by him by reason of the execution of the works the amount of such compensation shall be settled by arbitrators in manner herein-after mentioned. Compensation clause.

15. The promoters shall (subject to the provisions hereinafter contained) have power to cross the company's railway on the level in such manner as shall be directed by the engineer of the company for the time being and the rails for such crossing shall be laid down by the promoters or by the company if they shall think fit at the expense of the promoters under and subject to the direction of such engineer. Provided that the promoters shall before they shall be at liberty to cross the said railway erect upon their own land and at all times thereafter maintain a suitable station or lodge at the place where the said railway shall cross the company's railway on the level and shall also erect and maintain good and sufficient gates across the railway on each side of the company's railway where the same shall communicate therewith such gates to be erected in accordance with and under the direction and to the satisfaction of the company's engineer. And the promoters shall employ and constantly keep employed at their own expense at the said station or lodge fit and proper persons to open and shut such gates and the persons so employed shall be under the control of the engineer and officers of the company. And the promoters shall make compensation and satisfaction to the company (the amount of such compensation and satisfaction to be ascertained and recovered in case of difference in the manner herein-after Company's protection clause.

Minmi and Hexham Railway.

after provided) for temporary permanent or recurring injury and all other damage loss costs charges and inconvenience which may be in anywise occasioned to the company by such crossing or by the laying or repair of the said rails or the non-performance by the said promoters of any of the matters and things hereby required to be performed by them or otherwise and if the promoters and the company shall not agree as to the amount of compensation to be paid by the promoters to the company for laying down such rails or for or in respect of or in relation to any of the matters and things aforesaid then such amount shall be ascertained by arbitrators in the manner hereinafter provided in case the said John Malcolm and the promoters shall not agree as to the amount to be paid by them for the land belonging to the said John Malcolm Provided that the costs of such arbitration shall be borne by the promoters and if such amount when ascertained be not paid by the promoters to the company on demand the same may be recovered from the promoters by the company in an action of debt or by any other proceeding for enforcing performance of awards in the Supreme Court of New South Wales.

Appointment of arbitrators.

16. Unless both parties shall concur in the appointment of a single arbitrator each party on the request of the other party shall nominate and appoint an arbitrator to whom such dispute or other matter shall be referred and every appointment of an arbitrator shall be under the hand of such party and such appointment shall be delivered to the arbitrator or arbitrators and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other nor shall the death of either party operate as a revocation and if for the space of fourteen days after any such dispute or other matter shall have arisen and after a request in writing shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party fail to appoint such arbitrator then upon such failure the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single arbitrator shall be final and conclusive.

Vacancy of arbitrators to be supplied.

17. If before the matter so referred shall be determined any arbitrator appointed by either party shall die or become incapable or refuse or for fourteen days neglect to act as arbitrator the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed alone and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death refusal neglect or disability as aforesaid.

Appointment of umpire.

18. Where more than one arbitrator shall have been appointed such arbitrators shall before they enter upon the matters referred to them nominate and appoint by writing under their hands an umpire to decide any matters on which they shall differ or which shall be referred to them under the provisions of this Act and if such umpire shall die or refuse or for seven days neglect to act after being called upon to do so by the arbitrators they shall forthwith after such death refusal or neglect appoint another umpire in his place and the decision of every such umpire on the matters so referred to him shall be final.

One of the Judges of the Supreme Court to appoint umpire on neglect.

19. If in either of the cases aforesaid the arbitrators shall refuse or shall for seven days after request of either party to such arbitration

Minmi and Hexham Railway.

arbitration neglect to appoint an umpire it shall be lawful for any of the Judges of the Supreme Court on the application of either party to such arbitration to appoint an umpire and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Act shall be final.

20. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable or shall refuse or for fourteen days neglect to act before he shall have made his award the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.

In case of death of single arbitrator the matter to begin *de novo*.

21. If where more than one arbitrator shall have been appointed either of the arbitrators shall refuse or for seven days neglect to act the other arbitrator may proceed alone and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If either arbitrator refuse to act the other to proceed *ex parte*.

22. If where more than one arbitrator shall have been appointed and where neither of them shall refuse or neglect to act as aforesaid such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed or within such extended time (if any) as shall have been appointed for that purpose by both of such arbitrators under their hands the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

23. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Powers of arbitrators to call for books &c.

24. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice of the Peace make and subscribe the following declaration (that is say)—

Arbitrator or umpire to make a declaration for faithful discharge of duty.

“ I A. B. do solemnly and sincerely declare that I will faithfully
 “ and honestly and to the best of my skill and ability hear
 “ and determine the matters referred to me under the pro-
 “ visions of ‘The Minmi and Hexham Railway Act.’

“ Made and subscribed in the presence of A. B.”

And such declaration shall be annexed to the award when made and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

Penalty for misconduct.

25. All the costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the promoters unless the arbitrators shall award the same or a less sum than shall have been offered by the promoters in which case each party shall bear his own costs incident to the arbitration and the costs of the arbitrators shall be borne by the parties in equal proportions unless the amount awarded shall be one-fourth less than the amount in which case the whole costs shall be paid by the claimant. Provided that if either party shall be dissatisfied with the costs allowed by the arbitrators as aforesaid the costs may be taxed by the Prothonotary or other proper officer of the Supreme Court and the amount allowed by such officer shall be the amount of costs to be paid.

Cost of arbitration how to be borne.

26. The arbitrators shall deliver their award in writing to the promoters who shall retain the same and shall forthwith on demand at their own expense furnish a copy thereof to the other party and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Award to be delivered to the promoters.

Penrith Nepean Bridge.

Submission may be made a rule of Court.

27. The submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties.

Award not void through error in form.

28. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

Interpretation clause.

29. The following words and expressions in this Act shall have the meaning hereby assigned to them unless there be something either in the subject or context repugnant to such construction. The word "promoters" shall mean the said John Eales and John Christian their heirs and assigns the word "railway" shall mean the "Minmi and Hexham Railway" the word "company" shall mean the "Hunter River Railway Company" and in citing this Act it shall be sufficient to use the expression "The Minmi and Hexham Railway Act" the word "Justice" shall mean Justice of the Peace in and for the territory of New South Wales and who shall not be interested in the matter requiring the cognizance of such Justice and where any matter shall be authorized or required to be done by two Justices the expression "two Justices" shall mean two Justices assembled and acting together in Petty Sessions and where under the provisions of this Act any notice shall be required to be given to the owner of any land or where any act shall be authorized or required to be done with the consent of any such owner the word "owner" shall be understood to mean any person or corporation who under the provisions of this Act would be enabled to sell land to the promoters.

SCHEDULE.

Commencing on the south boundary line of the said John Malcolm's six hundred and forty acres being the north boundary line of William Charles Wentworth's six hundred and forty acres being a line bearing north thirty-seven degrees east or thereabouts and continuing in that direction for a distance of one thousand three hundred and seventy-five yards (more or less) to the east boundary line of the said John Malcolm's said six hundred and forty acres which said last-mentioned boundary line divides the same from the said William Charles Wentworth's one thousand acres.
