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# EDWARDI VII REGIS.

A.D. 1909.

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No. 982.

An Act to provide for the Construction of a Railway from Cummins Railway Station, *via* Darke's Peak, to a Point near the Northern Boundary of the County of Jervois and near the South-Western Corner of the Hundred of Solomon, and for other purposes.

[*Assented to, December 11th, 1909.*]

**B**E it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as "The Darke's Peak Railway Act, Short title. 1909."

2. The Acts mentioned in the First Schedule to this Act, and all Acts heretofore or hereafter passed amending or substituted for the said Acts, or any of them, shall, so far as they are severally applicable, be incorporated and read with this Act. Acts incorporated herewith.

3. The South Australian Railways Commissioner (hereafter in this Act called "the Commissioner") may construct and maintain— Authority to construct railway.

(a) A railway (hereafter in this Act called "the said railway") from Cummins Railway Station, *via* Darke's Peak, to such point as he deems proper on or near the northern boundary of the County of Jervois and at or near the south-western corner of the Hundred of Solomon, as the said railway is delineated

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delineated in the plan deposited in the office of the Surveyor-General, in Adelaide, signed "Walter Rutt, Chief Engineer for Railways," and dated the twenty-seventh day of September, one thousand nine hundred and nine; or as the said railway is delineated in any plans after the passing of this Act so deposited, pursuant to any law for the time being in force as to the deposit of such plans; and

- (b) All proper works and conveniences connected with, or for the purposes of, the said railway, or the said railway and any existing railway:

Provided that in case the Houses of Parliament are not sitting at the time when any plans and books of reference are deposited in the office of the Surveyor-General under section 9 of "The Railways Clauses Act, 1876," the Commissioner may make deviations under the said section before causing copies of such plans and books of reference to be laid before Parliament; but such copies shall be laid before both Houses of Parliament within fourteen days after the next sittings of such Houses respectively.

## Gauge and rails.

4. The gauge of the said railway shall be three feet six inches, and the rails used in the construction thereof shall be of iron or steel, and of the weight of not less than forty pounds to the yard.

## Tolls and charges.

5. The Commissioner may demand for the use of the said railway, and in respect thereof, and for the carriage of goods and passengers thereon, and for the loading and unloading of goods, such tolls, charges, and rates as are from time to time fixed by the Commissioner, in manner prescribed by any Act or Acts under which the Commissioner fixes tolls, charges, and rates in respect of the railways under his control.

## Appropriation of tolls, &amp;c.

6. All tolls, rents, dues, charges, rates, and sums of money which are received and levied under authority of this Act shall be paid, in such manner as is prescribed by the Governor, to the Treasurer of the said State for the public purposes of the said State.

## Tenders to be called for.

7. The Commissioner shall call for tenders for the construction of the said railway, to be sent in within such time, to such place, and to be upon such terms, conditions, and provisions as he deems advisable, and may accept or reject any tender, and may construct the said railway although no tender for the construction thereof has been accepted.

## Method of determining purchase-money and compensation for land taken.

8. Notwithstanding any thing in any of the Acts incorporated with this Act, whenever the Commissioner desires to purchase or take any land for the purposes of this Act, and the price to be paid therefor, and the compensation (if any) to be made in consequence of the taking thereof, are not determined by agreement in writing, signed by or on behalf of the owner of such land and the Commissioner

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missioner, within twenty-one days after the Commissioner has given notice to such owner, as required by section 18 of "The Lands Clauses Consolidation Act," that he requires to purchase or take such land. such price and compensation (if any) shall be determined in the following manner:—

- i. The Commissioner may give notice in writing to such owner of his intention to have the price and compensation (if any) settled by arbitration, and may, by the same or a subsequent notice in writing to such owner, nominate and appoint an arbitrator to act in the reference on behalf of the Commissioner :
- ii. Such owner may, within twenty-one days after the giving of such notice appointing an arbitrator, give notice in writing to the Commissioner agreeing that such arbitrator shall be sole arbitrator, or nominating and appointing another arbitrator to act in the reference on behalf of such owner :
- iii. Each such notice nominating and appointing an arbitrator, or agreeing to the appointment of a sole arbitrator, shall be deemed a submission to arbitration on the part of the party by whom the same is given ; and after the giving of any such notice neither party shall have power to revoke the appointment thereby made or such submission without the consent of the other party, nor shall the death of either party operate as a revocation :
- iv. Unless such owner, within twenty-one days after the giving by the Commissioner as aforesaid of notice nominating and appointing an arbitrator, gives notice to the Commissioner, as provided by paragraph ii. hereof, agreeing that such arbitrator shall be sole arbitrator or nominating and appointing another arbitrator, the Commissioner may appoint the arbitrator nominated and appointed by him to act on behalf of both parties ; and such arbitrator shall proceed to hear and determine the matter and shall give his award determining the price and compensation (if any) to be paid :
- v. All the provisions of sections 26 to 35 inclusive, of "The Lands Clauses Consolidation Act" shall, *mutatis mutandis*, apply with respect to the determination of the said price and compensation :
- vi. No notice, appointment, or award made under this section shall be set aside or be invalid for irregularity or error in matter of form :
- vii. Every award under this section of arbitrators, or of a single arbitrator (in a case where it is agreed, as mentioned in paragraph ii. hereof, that an arbitrator shall be the sole arbitrator, or where a single arbitrator is empowered by this

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this section to give an award), or of an umpire, shall be final: Provided always that where an arbitrator or umpire has misconducted himself, the Court may remove him, and that where an arbitrator has misconducted himself, or an arbitration or award has been improperly procured, the Court may set the award aside. "Court" in this paragraph means the Supreme Court or a Judge thereof:

- viii. A submission to arbitration under this section shall have the same effect as if it had been made an order of the Supreme Court; and an award under this section may, by leave of the Supreme Court or a Judge thereof, be enforced in the same manner as a judgment or order of the said Court to the same effect:
- ix. The provisions of sections 19 and 20 of "The Lands Clauses Consolidation Act" as to the service of notices shall apply to notices under this section:
- x. In this section the word "owner" includes any person having any estate or interest in the land in question, or by "The Lands Clauses Consolidation Act" enabled to sell and convey the same, and the word "land" includes any estate or interest in the land in question:
- xi. Sections 22 to 25 inclusive, sections 38 to 62 inclusive, and sections 64 to 68 inclusive of "The Lands Clauses Consolidation Act," section 6 of the Act No. 26 of 1855-6, being an Act to amend the "Lands Clauses Consolidation Act," and sections 5 to 11 inclusive of the "Lands Clauses Consolidation Amendment Act, 1881," shall not apply with respect to the determination of the said price and compensation.

Purchase-money of certain Crown lands to go to Loan Fund, and income to revenue.

**9.** (1) When any Crown lands situated as mentioned in the Second Schedule are, after the passing of this Act, sold or granted or contracted to be sold or granted by or on behalf of the Crown, whether under an agreement containing a covenant to purchase or otherwise, all purchase-moneys received in respect of such land shall be paid to the credit of the Loan Fund, and, unless and until otherwise provided by Parliament, the interest on such moneys shall be applied as revenue for the general purposes of this State.

(2) When Crown lands are sold or granted or contracted to be sold or granted under an agreement containing a covenant to purchase, or otherwise upon credit, subsection (1) shall apply only to so much of the moneys to be paid under such agreement or otherwise as represents the purchase-money, as distinguished from interest thereon and rent, and so much thereof as represents such interest and rent shall, unless and until otherwise provided by Parliament, be applied as revenue for the general purposes of the State.

(3) This

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(3) This section shall apply to any lands situated as aforesaid which, when sold or granted or contracted to be sold or granted as aforesaid, are subject to any lease or licence granted by or on behalf of the Crown, as well as to all other Crown lands so situated.

In the name and on behalf of His Majesty, I hereby assent to  
this Bill.

DAY H. BOSANQUET, Governor.

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THE SCHEDULES.

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## Section 2.

## THE FIRST SCHEDULE.

Ordinance No. 6 of 1847.—“The Lands Clauses Consolidation Act.”

Act No. 26 of 1855-6, being an Act to amend “The Lands Clauses Consolidation Act.”

Act No. 202 of 1881.—“The Lands Clauses Consolidation Amendment Act, 1881.”

Ordinance No. 7 of 1847.—“The Railways Clauses Consolidation Act.”

Act No. 6 of 1858, being an Act to amend “The Railways Clauses Consolidation Act.”

Act No. 32 of 1876.—“The Railway Clauses Act, 1876.”

Act No. 414 of 1887.—“The South Australian Railways Commissioners Act, 1887.”

Act No. 512 of 1891.—“The South Australian Railways Commissioners Act Amendment Act, 1891.”

Act No. 612 of 1894.—“The South Australian Railways Commissioners Act Amendment Act, 1894.”

Act No. 912 of 1906.—“The South Australian Railways Commissioners Further Amendment Act, 1906.”

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## Section 9.

## THE SECOND SCHEDULE.

i. All Crown lands which are situated on either side of the railway and within sixteen miles thereof, except such as lie to the west of the existing railway from Port Lincoln to Yeelanna; and

ii. All other Crown lands situated within sixteen miles of the terminus of the railway.

In this Schedule “the railway” means the railway to be constructed under this Act.