

*Railways.*

## No. XL.

RAILWAYS.

An Act to make provision for the construction by the Government of Railways in the Colony of New South Wales. [2nd December, 1854.]

Preamble.

WHEREAS the making of Railways throughout the Colony of New South Wales would be of great public advantage by opening additional certain and expeditious means of communication between distant towns and places and by facilitating communication between the City of Sydney and the remote districts of the Colony and it is necessary for the public interests that such Railways should be made and completed with all convenient speed And whereas by an Act of Council made and passed in the thirteenth year of Her present Majesty's reign intituled "*An Act to incorporate a Company to be called the Sydney Railway Company*" a Company was established and incorporated for making completing and maintaining Railways in the said Colony and it was directed that the first of such Railways thereby authorized to be made should commence at or near to the City of Sydney and pass through the Counties of Cumberland and Camden to the Town of Goulburn in the County of Argyle and also through such other places in the County of Cumberland as might be deemed a most desirable route for carrying a Railway towards Bathurst And whereas by a certain other Act of Council made and passed in the seventeenth year of the reign of Her present Majesty intituled "*An Act to establish and incorporate a Company to be called The Hunter River Railway Company*" a certain other Company was established and incorporated with power to make complete and maintain a single or double line of Railway commencing at such point in or near Newcastle in the Colony aforesaid as might appear convenient to the Directors of the said Company and terminating at such point in or near to East Maitland or West Maitland as might appear proper and convenient And whereas the said Companies respectively have commenced the Railways and works authorized by the said recited Acts to be made but it has been found that they are unable by reason of the difficulty of raising the large amounts of capital required for that purpose and from other causes to complete their respective undertakings or to proceed with the same as expeditiously as the interests of the public require and it is expedient that the said works and all other Railways to be constructed throughout the Colony should be carried on and completed by Commissioners for Railways to be appointed by the Governor and that Her Majesty's Government should be empowered for and on behalf of Her Majesty to purchase from the said Companies their respective interests in the lines of Railway and other works commenced or made and executed and vested in the said Companies respectively under and by virtue of the said recited Acts And whereas there is not sufficient time during the present Session of the Legislative Council to prepare and duly consider a complete measure for the making and maintaining of such Railways but nevertheless it is expedient that some provision should be immediately made in order to prevent the abandonment or suspension of the works already commenced by the said Companies Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof as follows :—

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1. From and after the passing of this Act all the powers rights privileges interests authorities and immunities granted to the Corporation called "The Sydney Railway Company" by the above recited Act of Council made and passed in the thirteenth year of Her present Majesty's reign shall cease and determine except in so far as the same apply to the line of Railway from the City of Sydney to the Town of Parramatta and the said Company shall thereafter have power to make complete and maintain the last-mentioned line of Railway only.

Powers of the Sydney Railway Company to be limited to the making of a line of Railway from Sydney to Parramatta.

2. It shall be lawful for the Governor and he his hereby authorized to nominate and appoint three fit and proper persons to be Commissioners for making completing and maintaining Railways throughout the Colony of New South Wales and also for carrying into effect all other provisions contained or referred to in this Act And the Governor shall have power to remove or suspend any person so appointed and as often as any person so appointed shall die resign or become incapable or shall be removed or suspended it shall be lawful for the Governor in like manner to appoint either permanently or temporarily as the case may require another fit and proper person to be a Commissioner in the place of the Commissioner so dying resigning or becoming incapable or being removed or suspended Provided always that any two of the Commissioners for the time being may continue to act notwithstanding one vacancy by any means in the number of Commissioners.

Governor authorized to appoint Commissioners of Railways.

3. The Commissioners so to be appointed as aforesaid and their successors in office shall be and they are hereby constituted a body corporate by the name style and title of "The Commissioners for Railways" and by that name shall have perpetual succession and a common seal and shall and may sue and be sued plead and be impleaded answer and be answered unto defend and be defended in all Courts and places whatsoever and shall have power and authority to purchase and hold lands to them and their successors and assigns for the use of the said Railways and works and generally for the purposes of carrying this Act into effect and also to sell and dispose of the said lands again if necessary.

Commissioners incorporated.

4. One of such Commissioners shall be appointed by the Governor to be "Chief Commissioner" and any two of such Commissioners shall form a quorum and such Commissioners or any two of them at a duly constituted meeting shall have full power and authority to do all such acts matters and things as shall be necessary for carrying into effect the purposes of this Act and the said Chief Commissioner shall have the general management and superintendence of the officers of the said Company and of the works to be carried out but subject nevertheless to the control of a meeting of the Commissioners.

Appointment of Chief Commissioner.

5. The said Commissioners shall appoint regular periodical times of meeting and shall also be at liberty to meet at all other times as occasion may require provided that no extraordinary meeting from which any one of such Commissioners shall be absent shall be deemed to be duly constituted unless the absent Commissioner shall previously have had not less than twelve hours notice of the time and place of such meeting which said notice shall be in writing signed by the Secretary and shall be delivered to such Commissioner in person or left at his usual place of abode or transmitted to him by post so that he may in the ordinary course of the post receive the same twelve hours before the time appointed for such meeting.

Meetings of Commissioners.

6. The Commissioners shall and may appoint and employ a Secretary and such engineers surveyors and other officers and such agents servants and workmen as in their discretion they may deem necessary and proper for the execution of the powers and duties vested in the said Commissioners by virtue of this Act.

Appointment of officers.

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Power to borrow money on security of General Revenue of the Colony.

7. It shall be lawful for the Governor with the advice of the Executive Council to borrow from any person or persons upon the security of the General Revenues of the Colony by the sale of Debentures bearing interest at a rate not exceeding five per centum per annum such sum and sums of money as may from time to time be appropriated by Votes and Acts of the Legislative Council for making and executing the Railways and works hereby authorized to be made and for carrying this Act into execution and all such sums shall be paid into the hands of the Colonial Treasurer for the time being to be by him paid over to the Commissioners for Railways as the same may be required for the purposes of this Act.

Power to the Governor to appropriate £400,000 for the year 1855.

8. It shall be lawful for the Governor to appropriate out of the moneys to be raised under the authority of the last preceding clause during the year one thousand eight hundred and fifty-five all such sum and sums of money as he shall deem expedient not exceeding in the whole four hundred thousand pounds towards the making and executing the Railways and works hereby authorized and in and towards otherwise carrying this Act into execution and the Treasurer of the said Colony shall issue and pay all such sums as shall be required for the purposes aforesaid upon such days and in such proportions as the Governor for the time being by any warrant or order in writing to be signed by him shall from time to time order and direct and shall place the same to the credit of the Commissioners in such Bank as the Commissioners may appoint.

Regulation as to payment of salaries and other moneys.

9. All salaries shall be paid in equal monthly instalments on the first Monday of each month and all accounts for works performed for and articles supplied to the said Commissioners in carrying into effect the provisions of this Act on being duly certified by the proper officer and passed by the said Commissioners at any duly convened meeting of the said Commissioners shall be forthwith paid by the said Commissioners provided that all cheques for the payment of moneys shall be signed by at least two of the Commissioners and countersigned by the Secretary in evidence of their having been duly passed.

Expenditure to be under control of Legislative Council.

10. The entire expenditure of moneys upon the said works and otherwise in carrying out the purposes of this Act (except in respect of sums awarded by competent authority as compensation or damages for any loss or injury sustained by any person in or by the execution of this Act and the taxed costs of the action or proceeding in or under which such compensation shall have been awarded) shall be subject to the control of the Legislative Council and shall be regulated by Votes and Acts of the said Council in the same manner as the ordinary public expenditure of the Colony and accounts of all moneys whatsoever received by the said Commissioners in relation to the works to be executed under this Act and of the expenditure thereof shall be laid before and shall be subject to examination by the said Legislative Council in the same manner as if the same were a part of the General Revenues of the said Colony.

Regulations as to accounts.

11. The Secretary or some other officer to be appointed for that purpose by the said Commissioners shall in books to be kept for that purpose and in such manner and form as the Commissioners shall direct enter true accounts of all moneys received and paid and such books shall at all times be open to the inspection of the said Commissioners and all the accounts with all the vouchers and papers relating thereto shall in the months of January and July be submitted to the inspection of two Auditors to be nominated and appointed by a Resolution of the Legislative Council of the said Colony for the purpose of being examined and audited from the first day of January to the thirtieth day of June and from the first day of July to the thirty-first day of December inclusively then respectively preceding and if the said

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said accounts shall be found to be correct the Auditors shall sign the same and certify to their correctness and after such accounts shall have been so examined and audited in the month of January the Secretary or other officer so to be appointed as aforesaid shall make out in writing and submit to the said Commissioners a full abstract of his accounts for the preceding year in such form as the Commissioners may direct and the said Commissioners shall forthwith cause the same to be printed and a copy of the said abstract shall in the month of February next following be published in the *New South Wales Government Gazette*.

12. The said Commissioners shall at such times and in such manner and form as the Governor shall direct furnish full and true reports of their proceedings and accounts of all moneys received and expended under the provisions of this Act which reports and accounts shall be laid by the Government before the Legislative Council as soon thereafter as practicable.

Reports of Commissioners.

13. It shall be lawful for the said Commissioners and they are hereby authorized and empowered by themselves their deputies agents officers workmen and servants (but subject to the approval of the Governor) to commence to make and thereafter to complete and maintain a single or double line of Railway with all proper works and conveniences connected therewith to such parts of the Colony as to them shall appear most expedient and also to make complete and maintain all such Railways and other works as the Sydney Railway Company were by the said recited Act authorized to make and for that purpose all the powers rights privileges interests authorities and immunities whatever granted to and all the duties imposed upon the Sydney Railway Company by the firstly recited Act except so far as the same apply to the line of Railway from the City of Sydney to the Town of Parramatta aforesaid and except so far as they may be altered by this Act shall be possessed by and are hereby imposed on the Commissioners to be appointed as aforesaid and for the purposes of this Act wherever mention is made in so much of the said firstly recited Act as is applicable hereto of "the Company" or "the Sydney Railway Company" or "the Directors of the said Company" the enactment shall be read and applied as if the Commissioners had been named therein Provided that the provisions hereof shall not apply to that portion of the line of Railway extending from the City of Sydney to the Town of Parramatta unless Her Majesty's Government shall have purchased such portion of the line from the said Company.

Powers of the Commissioners to make Railways.

14. It shall be lawful for the Governor by and with the advice of the Executive Council if the said Governor and Executive Council shall think fit so to do in the name and on behalf of Her Majesty to purchase the Railways and other works with all their lands buildings and other hereditaments stock and appurtenances whatsoever belonging to or vested in the Sydney Railway Company and the Hunter River Railway Company respectively or either of them and the said Companies are hereby authorized to sell and dispose of the same at such rates or prices as may be agreed upon between the Governor and the said Companies respectively Provided that the amount of compensation to be paid by Her Majesty's Government shall not without the further authority of the Legislature in any case exceed the rate of seven per centum upon the amount of the capital actually paid up in addition to the amount of the said capital And provided also that no such payment of seven per centum shall be payable upon any capital hereafter paid up by the shareholders of either of the said Companies beyond the amount of the regular or ordinary calls authorized by the said

Power to Her Majesty's Government to purchase Railways and works &c.

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said recited Acts respectively and upon the completion of any such sale the Railways and other works with all their hereditaments stock and appurtenances whatsoever and all the powers authorities privileges and immunities whatsoever belonging to or possessed by such Company selling the same shall thenceforth be vested in the said Commissioners and all questions of compensation for lands taken or injuries committed by the said Companies respectively or either of them shall be determined and the amount paid in accordance with the provisions of this Act.

Debentures to the extent of paid-up capital to be issued to shareholders at their option.

15. In the event of any such purchase being made as in the last preceding clause provided it shall be lawful for the Governor to issue and deliver to the shareholders at their option debentures to be secured on the General Revenue and bearing interest for ever at the rates now guaranteed by the Government to the shareholders of the said Companies respectively to the extent of their paid-up capital or to pay the like amount to such shareholders in money if they shall elect not to accept such debentures.

Power to Commissioners to contract for executing works.

16. The said Commissioners are hereby authorized and empowered to contract and enter into contracts and other agreements with any person for the purchase of materials and stock and for engaging to execute perform and construct any works hereby authorized to be made and shall have full power and authority to employ any agent they may think fit in any such matters and all such contracts may be made as follows (that is to say)—

With respect to any contract which if made between private persons would be by law required to be in writing and under seal the Commissioners may make such contract in writing and under their common seal and in the same manner may vary or discharge the same

With respect to any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith the Commissioners may make such contract in writing signed by any two of the Commissioners and in the same manner may vary or discharge the same

With respect to any contract which if made between private persons would by law be valid although made by parole only and not reduced into writing the Commissioners may make such contract by parole only without writing and in the same manner may vary or discharge the same

And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the Commissioners and their successors in office and all other parties thereto their heirs executors or administrators as the case may be and on any default in the execution of any such contract either by the Commissioners or any other party thereto such action or suits may be brought either by or against the Commissioners as might be brought had the same contracts been made between private parties only.

Proceedings to be entered in a book and to be evidence.

17. The Commissioners shall cause notes minutes or copies as the case may require of all appointments made or contracts entered into by them and of the orders and proceedings of all meetings held by them to be duly entered in books to be from time to time provided for the purpose which shall be kept under the superintendence of the Commissioners and every such entry shall be signed by the Commissioners or any two of them present at the meeting at which such appointments and contracts were made or entered into or authorized or at which such proceedings and orders were respectively had or made and such entry so signed shall be received as evidence in all Courts and before all Judges Justices and others without proof of such respective

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tive meetings having been duly convened or held or of the persons making or entering such orders or proceedings being Commissioners or of the signatures of the said Commissioners all of which last mentioned matters shall be presumed until the contrary be proved.

18. When the Commissioners shall have made and completed the map or plan and book of reference required to be made in respect of any line of Railway intended to be made they shall give notice of the lands taken ascertained set out and required for the said Railway to all the parties interested in such land or to the parties enabled by this or the first recited Act to sell and convey or release the same or such of the said parties as shall after diligent inquiry be known to the Commissioners and by such notice shall demand from such parties and the said parties are hereby required to deliver to the said Commissioners the particulars of their estate and interest in such lands and of the claims made by them in respect thereof and every such notice shall state the particulars of the lands so taken set out or required as aforesaid and that the Commissioners are willing to treat for the purchase of such of the said lands as the Commissioners are not authorized to take without the previous consent of the owner and as to the compensation to be made to all parties for the lands taken and the damage that may be sustained by them by reason of the execution of the works.

Notice of lands required.

19. All notices required to be served by the Commissioners upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode (if any such can after diligent inquiry be found) and in case any such parties shall be absent from the Colony or cannot be found after diligent inquiry shall be left with the occupier of such lands or if there be no such occupier shall be affixed upon some conspicuous part of such lands.

Service of notices on owners and occupiers of lands.

20. If for twenty-one days after the service of such notice any such party shall fail to treat with the Commissioners in respect thereof or if such party and the Commissioners shall not agree as to the amount of the compensation to be paid by the Commissioners for the interest in such lands belonging to such party or which he is by this or the said firstly recited Act enabled to sell 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 in the manner hereinafter provided for settling cases of disputed compensation but the owner or party claiming compensation shall not be at liberty to institute any proceeding for recovery of his claim until after the expiration of fourteen days from the delivery of the particulars required by this Act to be furnished by him. Provided that if no claim shall be made within twelve months after such notice as aforesaid by the party entitled to make such claim the same shall be deemed to have been waived and abandoned.

If parties fail to treat or in case of dispute question to be settled as after mentioned.

21. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity and not having power to sell or convey such lands except under the provisions in this Act contained and the compensation to be paid for any permanent damage or injury to any such lands shall not be less than shall be determined by two Justices or by arbitrators appointed in the manner hereinafter provided.

Amount of compensation to be ascertained by arbitration in case of parties under disability.

22. In all cases where any difference shall arise or if no agreement can be come to between the Commissioners and the owners of any lands or of any interest in any such lands taken or required for or injuriously affected by the works of the said Railways or any works connected therewith or by the execution of any of the powers hereby granted (including among such owners all parties by this or the said firstly

How disputes as to compensation to be settled.

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firstly recited Act enabled to sell or convey lands) as to the value of such lands or of any interest therein or as to the compensation to be made in respect thereof the same shall be settled by two Justices if in any such case the compensation claimed shall not exceed one hundred pounds and if the compensation claimed or offered in any such case shall exceed one hundred pounds the amount to be paid by the Commissioners in every such case shall be settled by arbitrators or by a jury in manner hereinafter mentioned.

Method of proceeding  
before Justices for  
settling disputes as  
to compensation.

23. It shall be lawful for any Justice upon the application of either party with respect to any question of disputed compensation by this Act authorized to be settled by two Justices to summon the other party to appear before two Justices at a time and place to be named in the summons and upon the appearance of such parties or in the absence of any of them upon proof of due service of the summons it shall be lawful for such Justices to hear and determine such question and for that purpose to examine such parties or any of them and their witnesses upon oath and the costs of every such inquiry shall be in the discretion of such Justices and they shall settle the amount thereof Provided always that if the amount awarded by the Justices shall be one-fourth less than the amount claimed the owner of the land or person claiming compensation shall pay to the Commissioners the costs of and occasioned by the inquiry.

Appointment of  
arbitrators.

24. When any question of disputed compensation or any dispute or other matter authorized or directed by this Act to be settled by arbitration shall have arisen then 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 made on the part of the Commissioners under their common seal and on the part of any other party 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 in which shall be stated the matter so required to be referred to arbitration shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party shall 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 except as hereinafter provided.

Vacancy of arbi-  
trator to be supplied.

25. If before the matter so referred shall be determined any arbitrator appointed by either party 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.

26. Where more than one arbitrator shall have been appointed such arbitrators shall before they enter upon the matters referred to them

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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 him 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.

27. If in either of the cases aforesaid the arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire it shall be lawful for any Judge 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.

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

28. 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*.

29. If where more than one arbitrator shall have been appointed either of the arbitrators 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*.

30. 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 appointed as aforesaid.

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

31. 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.

Power of arbitrators to call for books &c.

32. 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 to say—

Arbitrator or umpire to make a declaration.

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 provisions of the Act passed "*To make provision for the construction by the Government of Railways in the Colony of New South Wales*"

A. B.

Made and subscribed in the presence of  
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.

33. All the costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Commissioners unless the arbitrators shall award the same or a less sum than shall have been offered by the Commissioners 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 but if the sum awarded shall be one-fourth less than the amount claimed the

Costs of arbitration how to be borne.



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whole costs of and incident to the arbitration and award shall be borne by the claimant and the arbitrators shall direct the payment of the same accordingly 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 to be paid.

Award to be delivered to the said Commissioners.

34. The arbitrators shall deliver their award in writing to the Commissioners and the Commissioners 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.

Submission may be made a rule of Court.

35. 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.

36. 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.

Questions of compensation in certain cases to be decided by jury.

37. If the compensation awarded by the arbitrators shall exceed the sum of three hundred pounds and either party shall be dissatisfied with the award and shall desire to have the compensation settled by a jury of twelve special jurors and shall within fourteen days after the making of the award and notice thereof signify such desire by notice in writing to the other party then no steps shall be taken to enforce performance of the award but the party claiming compensation shall proceed by action in the Supreme Court in the usual mode to recover from the Commissioners the compensation to which he may be entitled under the provisions of this Act And if upon the trial of the said action the verdict shall be for a greater sum than the sum previously awarded by the arbitrators all the costs of the said action and of the arbitration and award shall be borne by the said Commissioners and if the verdict be given for a less sum than the sum so awarded all the costs of the said action and of the arbitration and award shall be borne by the owner or claimant but if the verdict of the jury shall be for the same sum awarded by the arbitrators all the costs of the said action and of the arbitration and award shall be paid by the party requiring the same to be referred to a jury and in every such case the costs of the arbitration shall be added to and be recoverable as the costs of the action.

Compensation to absent parties to be determined by a surveyor appointed by two Justices.

38. The purchase money or compensation to be paid for any lands to be purchased or taken by the Commissioners from any party who by reason of absence from the Colony is prevented from treating or who cannot after diligent inquiry be found and the compensation to be paid for any permanent injury to such lands shall be such as shall be determined by the valuation of a surveyor nominated for that purpose as hereinafter mentioned.

Two Justices to nominate a surveyor.

39. Upon application by the Commissioners to two Justices and upon such proof as shall be satisfactory to them that any such party is by reason of absence from the Colony prevented from treating or cannot after diligent inquiry be found such Justices shall by writing under their hands nominate an able practical surveyor for determining such compensation as aforesaid and such surveyor shall determine the same accordingly and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Surveyor to make a declaration.

40. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall in the presence of such Justices or one of them make and subscribe the following declaration at the foot of such nomination that is to say—

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I A. B. do solemnly and sincerely declare that I will faithfully impartially and honestly according to the best of my skill and ability execute the duty of making the valuation hereby referred to me

Made and subscribed in the }  
presence of

A. B.

And if any surveyor shall corruptly make such declaration or having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor And the said nomination and declaration shall be annexed to the valuation to be made by such surveyor and shall be delivered to the Commissioners to be kept for the purpose and in the manner hereinbefore provided in case of awards and all the expenses of and incident to every such valuation shall be borne by the said Commissioners.

Valuation to be delivered to Commissioners.

41. In estimating the purchase money or compensation to be paid by the Commissioners in any of the cases aforesaid regard shall be had by the Justices arbitrators jury or surveyors as the case may be not only to the value of the land to be purchased or taken by the Commissioners but also to the damage (if any) to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner or otherwise injuriously affecting such other lands by the exercise of the powers of this Act or the said firstly recited Act and they shall assess the same according to what they shall find to have been the value of such lands estate or interest at the time notice was given of such lands being required for the Railway and other works and the said Justices arbitrators jury and surveyors in assessing such compensation are authorized and empowered and shall take into consideration the enhancement in value of the adjoining land belonging to the party to whom compensation is to be made by the increased facilities of access to the different stations and termini of the said Railways or otherwise by reason of the making of such Railways in reduction of such compensation.

Purchase money and compensation how to be estimated.

42. In all cases where compensation shall be determined as aforesaid the Commissioners are hereby required to pay the amount of the said compensation to the party lawfully entitled thereto or to his agent duly authorized in his behalf within one month next after the amount of the said compensation shall have been determined but in every such case the party claiming payment shall be bound to make out a title to the said lands or to the interest claimed by him therein to the satisfaction of the said Commissioners.

Commissioners to pay compensation within one month.

Title to be made out.

43. If the purchase money or compensation which shall be payable in respect of any lands or any interest therein purchased or taken by the Commissioners from any corporation tenant for life or in tail married woman seised in her own right or entitled to dower guardian committee of lunatic or idiot trustee executor or administrator or person having a partial or qualified interest only in such lands and not entitled to sell or convey the same except under the provisions of this Act or the compensation to be paid for any permanent damage to any such lands amount to or exceed the sum of two hundred pounds the same shall be paid into the hands of the Master in Equity to be by him deposited in one of the Banks in the City of Sydney to the account there of such Master in Equity *ex parte* the "Commissioners for Railways" in the matter of A and B (the party entitled) pursuant to the method prescribed by any Act or by any rules for the time being in force for regulating moneys paid into the Supreme Court in its Equitable Jurisdiction and such money shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say)—In the redemption of

Purchase money payable to parties under disability amounting to £200 to be deposited in the Bank.

Application of moneys deposited.

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the quit rent or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid or affecting other lands settled therewith to the same or the like uses trusts or purposes or in the purchase of other lands to be conveyed limited and settled upon the like uses trusts and purposes and in the same manner as the lands in respect of which such money shall have been paid stood settled or if such money shall be paid in respect of any buildings taken under the authority of this Act or injured by the proximity of the works in removing or replacing such buildings or substituting others in their stead in such manner as the Supreme Court or the primary Judge in Equity shall direct or in payment to any party becoming absolutely entitled to such money.

Order for application and investment meanwhile.

44. Such money may be so applied as aforesaid upon an order of the said Court or the primary Judge in Equity made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited and until the money can be so applied it may upon the like order be invested by the said Master in Equity in the purchase of Government or real securities and the interest dividends and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Sums from £20 to £200 to be deposited or paid to trustees.

45. If such purchase money or compensation shall not amount to the two hundred pounds and shall exceed the sum of twenty pounds the same shall either be paid into the bank and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds or the same may lawfully be paid to two trustees to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable such nomination to be signified by writing under the hands of the party so entitled and in case of the coverture infancy lunacy or other incapacity of the parties entitled to such moneys such nomination may lawfully be made by their respective husbands guardians committees or trustees but such last-mentioned application of the moneys shall not be made unless the Commissioners approve thereof and of the trustees named for the purpose and the money so paid to such trustees and the produce arising therefrom shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into a bank but it shall not be necessary to obtain any order of the Court for that purpose and if such moneys shall not exceed the sum of twenty pounds the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable for their own use and benefit or in case of coverture infancy lunacy or other incapacity of such parties then such money shall be paid for their use to the respective husbands guardians committees or trustees of such persons.

Sums not exceeding £20 to be paid to parties.

46. All payments which shall be made by the Commissioners in any of the cases aforesaid to the parties entitled under this Act to receive the same shall be a good and valid discharge to the Commissioners and they shall not be bound or required to see to the application of any of the moneys paid to the Master in Equity or other person by virtue hereof or to see to the performance of any trusts.

Payments under this Act sufficient discharge to the Company.

Clause in the Sydney Railway Company's Act relating to compensation repealed.

47. From and after the passing of this Act the following clauses in the said firstly recited Act namely the thirty-second to the thirty-seventh sections inclusively shall be and the same are hereby repealed and all questions of compensation between the Sydney Railway Company and the owners and occupiers of land and all other persons claiming compensation for any matter or thing done under the authority of the said Act shall be settled and determined under

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under and subject to and in accordance with the provisions contained in this Act and for that purpose the several clauses relating to disputed compensation shall be deemed to apply as effectually as if the Sydney Railway Company had been mentioned therein.

48. In case a majority of proprietors of shares in either of the said Companies present in person or by proxy at any general meeting of the said Company shall resolve that it is expedient to dissolve the Company and to sell or dispose of the Railways and other property works and effects of the Company to Her Majesty's Government an extraordinary general meeting shall be called for the purpose of reconsidering such resolution and of affirming or disaffirming the same and if at such last-mentioned meeting the same or any modification thereof substantially in accordance therewith shall be adopted by a resolution agreed to by a majority of the votes of the proprietors present then such dissolution and sale shall take place or be made and the said Railways and other property works and effects shall be transferred accordingly Provided always that until all necessary arrangements shall be made by the Directors (who are hereby empowered to make the same) for carrying such last-mentioned resolution into complete effect and until all claims and demands upon the Company shall have been satisfied and all acts remaining to be done by the Company shall have been completed the several provisions contained in their Act of Incorporation and all powers privileges rights and duties of the Directors and of the shareholders respectively shall notwithstanding such resolution as last aforesaid remain and continue in full force so far as the same may be necessary for the winding up the concerns of the Company and making all such necessary arrangements for carrying such resolution into complete effect and for enabling the Directors to pay and satisfy all claims and demands upon the Company or to make a division amongst the shareholders of the remaining assets of the Company.

Provisions for dissolution of Sydney Railway Company and sale of effects.