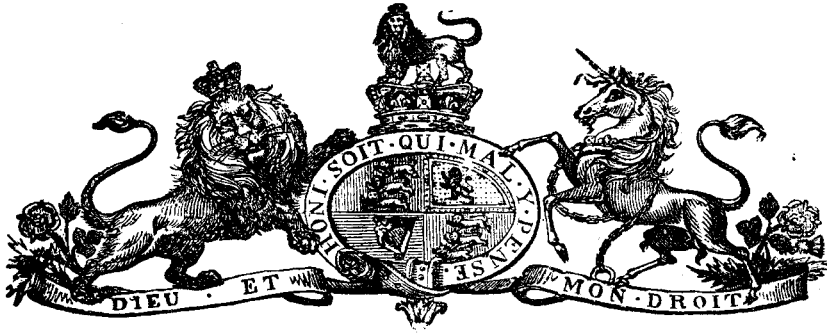


T A S M A N I A



1885.

ANNO QUADRAGESIMO-NONO

VICTORIÆ REGINÆ.

AN ACT to enable *John William Wyett* to A.D. 1885.
construct a Tramway or Railway.
[5 December, 1885.]

WHEREAS it is expedient to enable *John William Wyett* to **PREAMBLE.**
construct a Tramway or Railway from the Public Jetty at *Beauty Point*, in the Township of *Ilfracombe*, in the County of *Devon*, through the Town of *Beaconsfield*, to a Limekiln or Quarry at *Flowery Gully*, belonging to *Adye Douglas*, and situated on Lot 497 in the Parish of *Winkleigh*, in the said County; and also a Branch Tramway or Railway commencing at *Bowen's Jetty*, on the River *Tamar*, in the said County, and joining the said *Beauty Point* and *Flowery Gully* Line at a point about One mile and Forty-one chains distant from *Beauty Point Jetty* :

Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as "*Wyett's Tramway Act.*" Short title.

2 In this Act—

"Promoter" means the said *John William Wyett*, his executors, administrators, and assigns : Interpretation.

"Owner" means the person appearing on the Valuation Roll for any district through which the Tramway passes as the owner of any lands therein :

"Plan" means the plan of the proposed Tramway signed by the said Promoter and lodged in the office of the Minister of Lands and Works :

"The Minister" means the Minister of Lands and Works for the time being :

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“ Person ” includes bodies politic and corporate, and includes the expression “ Local authority.” “ Persons ” is included in “ person ” where necessary :

“ Tramway ” includes “ Railway ” :

“ Road ” includes “ street ” :

“ Works ” includes approaches, embankments, cuttings, bridges, culverts, and all other conveniences connected with or necessary for the Tramway :

“ Local authority ” means the Municipal authority, Main Road Board, Road Trust, or persons having the control or management of the road in respect of which such expression is used, if the same is used in respect of any particular road ; but if the same is not used in respect of any particular road, it means any person having the control or management of any road.

Plans to be deposited.

3 Upon the passing of this Act the plan shall be deposited with the Minister, and be kept safely by him and his successors in his office, and be at all convenient times open for public inspection without fee ; and all persons may make copies thereof and extracts therefrom.

Errors in plan.

4 No advantage shall at any time be taken of or against the Promoter on account of any error or omission in such plan in any case in which the Engineer-in-Chief for the time being certifies by writing under his hand that such error or omission proceeded from mistake.

General Powers.

Deviation.

5 The Promoter in constructing the Tramway and works may deviate from the Line laid down in the plan to the extent of Two chains on either side, but may not take or use for the purpose of such deviation any lands not comprised within the limits of such Two chains without the consent in writing of the owner of such lands or his authorised agent.

Powers to enter and construct Tramway.

6 The Promoter may by himself, his engineers, surveyors, agents, officers, and workmen, and all other persons by them authorised, enter into and upon the lands and public and other roads and places shown upon the said plan through or along or over which the Tramway is intended to pass, and in or upon which the said works are to be constructed, and thereon make, maintain, work, and use a Tramway, either with one or more than one track or set of rails for waggons and other carriages, with all proper plates, turn-outs, turn-tables, crossings, junctions, sidings, approaches, roads, branches, cuttings, embankments, drains, and fences, and all other necessary works, commencing at the *Beauty Point Jetty* and at *Bowen's Jetty*, and terminating at the Limekiln and Quarry on Lot 497 aforesaid, as the same are more particularly delineated in the said plan, and may from time to time alter and remove, and if necessary replace all such works and things as aforesaid as may be necessary for the efficient working of the said Tramway.

Power to make tramways for

7 The Promoter may, subject to the provisions of this Act, construct, maintain, and work any lines of Tramway from and forming a

Wyett's Tramway.

junction with the lines hereby authorised along or across any road or footpath for the purpose only of entering, leaving, or using any stables, sheds, or other premises which the Promoter may from time to time use in connection with the business of the said Tramway.

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purpose of entering stables or sheds.

8 It shall be lawful for the Promoter throughout the whole line, subject to Section Twenty-one, Sub-section Six, where the same shall be applicable, and after Seven days' notice in writing served upon the owner of any other Tramway, to cross or connect with any other Tramways of or belonging to any other person for the necessary purpose of the formation of the Tramway authorised by this Act.

Right to cross other tramways or railways.

9 It shall be lawful for the Promoter to use and employ locomotive engines or any other motive power, and carriages or waggons to be drawn or propelled; and to make charges for the carriage and conveyance of mails, passengers, goods, stock, and merchandise as he may from time to time determine upon, by any by-laws to be by him passed as hereinafter mentioned, but subject to the approval of the Governor in Council.

Promoter may employ locomotive engines, &c., and make charges.

Purchase and Entry on Land.

10 The Promoter may from time to time purchase and take, in the mode prescribed by *The Lands Clauses Act*, such land as he may deem necessary for the purpose of constructing, maintaining, repairing, or improving the said Tramway and works, or of obtaining materials for any such purpose, or as he may deem necessary for any other of the purposes of this Act; and, subject to the provisions of this Act, *The Lands Clauses Act* shall be incorporated with this Act, and for the purposes of such incorporation the Promoter shall be the Promoter of the undertaking.

Power to take Land.

21 Vict. No. 11.

11 Any notice required to be given by the Promoter under *The Lands Clauses Act*, or this Act, shall be sufficient if signed by the Promoter or by his Solicitors.

Signature of notice.

12 Subject to the provisions contained herein, or in any Act incorporated herewith, the Promoter may—

Power to enter, take, and hold Land, &c.

- (1.) Without any previous agreement with the owners, enter upon any land, and take levels and other particulars necessary for a survey of the same, and after Seven days' notice in writing to the owner or occupier, enter upon, take, and hold all lands, or any part thereof, comprised within the limits of deviation delineated in the said plan, save and except as hereinafter mentioned.
- (2.) From time to time make, maintain, alter, or continue such drains, sidings, approaches, culverts, embankments, fences, and other works as may be necessary for making, maintaining, and using the said Tramway and works.
- (3.) Without previous payment, tender, or deposit, enter upon and use any land for the purpose of taking earth, gravel, clay, or other materials therefrom, and enter upon and use any lands adjacent for making temporary roads or approaches thereto or to the works: Provided always that, before temporary use is made of any such lands, the

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Promoter shall give Fourteen days' notice of his intention to the owners and occupiers of such lands, except in case of accident to the works requiring immediate repair, the Promoter shall pay to the owner or occupier of such land reasonable compensation for the use thereof, and for any damage or injury done thereto, or to any crop thereon; and such compensation shall be settled, in case of disagreement, as in cases of disputed compensation.

- (4.) During the construction of the Tramway and works respectively, the Promoter may fell and use timber, and dig, take, and use clay, gravel, stone, and rubbish upon and from any convenient part of the Waste Lands of the Crown, not being public highways, and may lay and place thereon any timber, clay, stone, rubbish, and ballasting required for the purposes of the said Tramway or works respectively.

Roads or high-ways not to be purchased.

The power of purchasing land hereby conferred shall not extend to any public road or highway.

Compensation to be made for Lands taken or injuriously affected.

13 The Promoter shall make to all persons interested in any lands taken or used for the purposes of this Act, or injuriously affected by anything done under the authority thereof, full compensation for the value of the lands so used, and for all damages sustained by such persons by reason of the exercise of the powers vested in the Promoter by this Act; and if any dispute arise between the Promoter and any person interested, such dispute shall, if not otherwise provided for by this Act, be referred to arbitration in the manner hereinafter prescribed.

Penalty for damage to pegs, &c.

14 If any person wilfully interferes with, injures, or damages any instrument or thing used by the Promoter, or if any person wilfully commits any damage, injury, or spoil, or any nuisance to or upon the Tramway or works, or to or upon any other works of or belonging to the Promoter, such person shall, for every such offence, forfeit and pay any sum not exceeding Twenty Pounds over and above the damages occasioned thereto.

Compensation to be ascertained under *The Lands Clauses Act*.

15 The amount and application of the purchase-money and other compensation payable by the Promoter in any of the cases aforesaid shall be determined in the manner provided by *The Lands Clauses Act* for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

Traffic over Road not to be interrupted.

16 The Tramway and works, throughout their whole length, shall, as far as possible, be made so as not to injure any public highway, or impede, prevent, or interrupt any ordinary rightful traffic thereon, or increase the cost of making, maintaining, repairing, and upholding the same. This section shall not limit or interfere with the provisions hereinafter contained as to the construction of the Tramway in the town of *Beaconsfield* and the township of *Ilfracombe*.

Completion of Tramway.

17 The Tramway shall be constructed fit for passenger and goods traffic within one year from the passing of this Act, or within such further time from the end of the said one year as the Governor-in-Council may see fit to allow. And upon expiration of the said one year or of such further time (if any) as may have been allowed as

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aforesaid, the powers of this Act granted to the Promoter for constructing such Tramway shall cease. A.D. 1885.

Construction within Beaconsfield and Ilfracombe.

18 Within the limits of the town of *Beaconsfield* and the township of *Ilfracombe* aforesaid, the Tramway shall be constructed and maintained, as nearly as may be, in the middle of the road, excepting in roads where the existing width of the same will render it compulsory to keep altogether on one side, or to place the Tramway in such other position on the road as may allow for passing traffic; but at no part of the road shall the Tramway be so laid that a less space than three feet shall intervene between the outside of the footpath on either side of the road and the rail of the Tramway nearest thereto. Provided that the Promoter may, with the consent of the local authority, construct the Tramway elsewhere than as aforesaid, and may also, with such consent, lay down a line, connected with the main line, for the purpose of a siding, or for the purpose of connecting two parallel lines of rails.

Regulations as to
Construction of
Tramway and
Branches.
33 & 34 Vict.
c. 78, s. 9.

19 The Tramway shall, within the said limits, be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road. The Tramway shall, within such limits, be constructed as to design, materials, and workmanship, to the satisfaction of the local authority; and should any dispute arise as to the sufficiency of the Tramway in this respect, the matter in dispute shall be settled in manner hereinafter provided for.

Mode of forma-
tion of Tramway.
Ib., sect. 25.

20 The Tramway shall be constructed and maintained, within the said limits, in such a way as not to cause any injury or impediment to the use by the public for the purposes of traffic of any road whereon the same shall be laid, and the public shall at all times be entitled to the free uninterrupted use of every part of such road, save when any conveyance of the Promoter shall be passing over or be about to pass over any part thereof or be standing thereon, and then the public shall not be entitled to the use of the part of such road over which such conveyance shall be passing or about to pass or upon which such conveyance shall be standing. Provided that no conveyance shall stand at any point in any such road other than a terminus, siding, or turn-out, except for the purpose of taking up or setting down passengers, and then only for a reasonable time.

Tramway not to
impede traffic.

21 Within the said limits the Promoter may, from time to time, for the purpose of making, forming, laying down, maintaining, and renewing the Tramway, open and break up any road, subject to the following Regulations:—

Power to break
up Roads, &c.
Ib., s. 26.

- (1.) He shall in the execution of work that is altogether new give to the local authority notice of his intention, specifying the time at which he will begin such work, and the portion of road proposed to be opened or broken up. Such notice shall be given Fourteen days at least before the commencement of the work:
- (2.) He shall not open or break up any road for such new work, except under the superintendence and to the satisfaction of the local authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work:

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- (3.) He shall pay all reasonable expenses which may be incurred by the local authority on account of such superintendence :
- (4.) He shall not alter the level of any road without the previous consent of the local authority or some duly authorised officer thereof, and he shall be responsible for any and all damages and claims from his negligence in regard thereto which may arise in consequence of any such alteration :
- (5.) Whenever the local authority shall decide to alter any level of any road, the Promoter shall, at his own cost, raise or lower the rails and so much of the roadway maintained by the Promoter as shall be necessary to suit such altered level: Provided that where such alteration shall be deemed by the Promoter to be detrimental to the working of the Tramway, such alteration shall not be carried out without the approval of the Engineer-in-Chief :
- (6.) Where the roadway in or upon which the Tramway is proposed to be formed or laid down is crossed by any then existing Tramway on the level, any work which the Promoter may be empowered to construct, and which affects or in anywise interferes with such Tramway or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the Promoter) and to the satisfaction of the persons owning such Tramway, unless after notice to be given by the Promoter three days at least before the commencement of such work, such superintendence is refused or withheld. The cost of such superintendence shall be defrayed by the Promoter.

In all cases the Promoter shall be responsible for the sound, safe, and proper mode of carrying out the works which by this Act he is empowered to perform.

Completion of works and reinstatement of roads. 33 and 34 Vict. c. 78, s. 27.

22 When the Promoter has opened or broken up any portion of any road within the said limits, he shall be under the following further obligations; namely:—

- (1.) He shall with all convenient speed, and in all cases within Three months (unless the local authority or some duly authorised officer thereof shall extend such time by written consent), complete such work, and, to the satisfaction of the local authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus material or rubbish occasioned thereby :
- (2.) He shall in the meantime cause the place where the road is opened or broken up to be guarded in a safe manner, and to be properly lighted at night where this is necessary for the public safety :
- (3.) He shall pay all reasonable expenses of the maintenance of the road for Three months after the same is restored, as far as those expenses are incurred by such opening or breaking up :
- (4.) He shall in no case, unless the local authority or some duly authorised officer thereof otherwise consent in writing, keep any road wholly closed and unavailable for traffic.

If the Promoter fail to comply with any of the provisions of this Section, he shall for every such offence, without prejudice to the enforcement of

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specific performance of the requirements of this Act, or to any other remedy, be liable to a penalty not exceeding Five Pounds, and to a further penalty not exceeding One Pound for each day during which any such failure is wilfully continued after the first day on which such penalty is incurred.

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23 The Promoter shall, within the said limits, at his own expense at all times maintain and keep in good condition and repair, with such materials and in such manner as the local authority shall direct, and to their satisfaction, so much of any road whereon any Tramway belonging to him is laid as lies between the rails of the Tramway and so much of the road as extends Eighteen inches beyond the rails of and on each side of any such Tramway: Provided that the Promoter shall not be required to put or keep any part of such road in better repair than that in which other parts of such road are kept by the local authority, or than such road was in at the time of beginning the construction of the Tramway on such road. The material of every road opened or broken up by the Promoter may be used by him in reconstructing the road so far as the same shall be applicable to that purpose, and all such material not so used and not required by the local authority shall be removed and retained by the Promoter. If the Promoter abandon his undertaking and break up any portion of the said Tramway belonging to him, within the said limits, he shall with all convenient speed, and in all cases within Three months, unless the local authority or some duly authorised officer thereof shall extend such time by written consent, fill in the ground and make good the surface, and to the satisfaction of the local authority restore the portion of the road upon which such Tramway was laid to as good a condition as that in which the adjacent portion of the road shall then be, and shall clear away all surplus material or rubbish occasioned by such work, and he shall in the meantime cause the place where the road is opened or broken up to be guarded in a safe manner, and to be properly lighted at night in all cases where required for the public safety: Provided always, that if the Promoter fail to comply with the provisions of this Section the local authority may themselves, if they think fit, at any time after Seven days' notice to the Promoter, open and break up the road and do the works necessary for the repair and maintenance or restoration of the road to the extent in this Section above mentioned, and the expenses incurred by the local authority in so doing shall be repaid to them by the Promoter.

Repair of part of road where Tramway is laid. 33 & 34 Vict. c. 78, s. 28.

24 The local authority on the one hand, and the Promoter on the other hand, may from time to time enter into and carry into effect, and from time to time alter or renew contracts, agreements, or arrangements with respect to the keeping in repair of the whole or any portion of any road within the said limits, in or upon which the Promoter shall lay any Tramway, and with respect to the proportion to be paid by either of them of the expense of such keeping in repair.

The local authority and the Promoter may contract for keeping in repair roads on which Tramways are laid.

Ib., s. 29.

25 Where, within the said limits, the Tramway or any work connected therewith interferes with any sewer, drain, watercourse, sub-way, defence, or work in such locality, or in any way affects the sewerage or drainage of such locality, the Promoter shall not commence the Tramway or work until he shall have given to the proper authority or persons in that behalf Three days' previous notice in writing of his

For protection of Sewers, &c.

Ib., s. 31.

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intention to commence the same, by leaving such notice at the principal office or residence of such authority or persons with all necessary particulars relating thereto; nor until such authority or persons shall have signified their approval of the same: Provided that, if such authority or persons do not signify their disapproval within Three days after service of the said notice and particulars as aforesaid, the Promoter may proceed without the approval of such authority or persons, but in such case the Promoter shall execute the work in respect of which he shall have given notice as aforesaid in the most approved manner to the satisfaction of the local authority, and so as not to interfere with the public use of the said sewers and works. The Promoter shall comply with and conform to all reasonable directions and regulations of the said authority or persons in the execution of the said works, and shall provide by new, altered, or substituted works in such manner as such authority or persons shall reasonably require for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to by or by reason of the said Tramway, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the cost of the Promoter under the provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority or persons, and be maintained by it, as any sewers or works now or hereafter may be.

Preservation of
power of other
persons.

26 Nothing in this Act contained shall take away any power for the time being vested in any persons to open or break up any road within the said limits on which any Tramway shall be laid for any necessary purpose of laying down, repairing, altering, removing, examining, or inspecting any pipes or culverts for the supply of water, or for drainage, or any other purpose, but in the exercise of such powers such persons shall be subject to the following restrictions (that is to say):—

- (1.) They shall cause as little damage or inconvenience to the Promoter as possible:
- (2.) Before they commence any work whereby the traffic on the Tramway will be interrupted they shall (except in cases of urgency, when no notice shall be necessary) give to the Promoter notice of their intention to commence such work, specifying the time at which they will begin to do so. Such notice shall be given Three days at least before the commencement of the work:
- (3.) They shall not be liable to pay to the Promoter any compensation for injury done to the Tramway by the execution of such work other than the actual cost that is entailed upon the Promoter thereby, or for loss of traffic occasioned thereby, or for the reasonable and unavoidable exercise of the powers vested in them as aforesaid:
- (4.) Whenever for the purpose of enabling them to execute such works such persons shall so require, the Promoter shall either stop traffic on the part of the tramway to which the notice shall refer, or shore up and secure the same during the execution of the work there. Provided that such work shall always be completed by such persons with all possible expedition:

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- (5.) If it shall become necessary to remove the tramway from any part of the road to enable any such work to be effected, it shall be lawful for the Promoter to lay down the tramway so removed in some adjacent and convenient position, and after such work shall have been effected to replace the Tramway in its original position; and the cost of such laying down and replacing shall be borne by such persons: A.D. 1885.
- (6.) They shall execute such work so far as it immediately affects the Tramway under the superintendence of the Promoter, unless the Promoter refuse or neglect to give such superintendence at the time specified in the notice for commencement thereof, and shall not discontinue the same during its progress, and they shall execute such work at their own expense and to the reasonable satisfaction of the Promoter in such manner as not to injure the said tramway.

27 If any difference or dispute arise between the Promoter, on the one hand, and any persons to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other persons, on the other hand, with respect to any interference or control exercised or claimed to be exercised by such persons or on their behalf, or by the Promoter by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of such persons, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the Promoter, or on the question whether any work is such as ought reasonably to satisfy the local authority or persons concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall be settled by an engineer or other fit person nominated as referee by the Minister of Lands and Works on the application of either party; and the expenses of the reference shall be borne and paid as the referee directs.

Difference
between Promoter
and local authority.
33 & 34 Vict.
c. 78, s. 33.

Crossing Roads, Fencing, Gates, &c.

28 Where the Tramway crosses any public road not within the town of *Beaconsfield* or the township of *Ilfracombe*, the width of such road shall not be thereby decreased, and the Promoter shall permit the public use of so much of the Tramway as may be necessary for the purposes of such road, and shall, when required to do so by the local authority, likewise erect and at all times maintain good and sufficient cattle-guards across the Tramway on each side thereof; and the road shall after the construction of the Tramway thereon be restored to such condition, so nearly as may be, as it was in at the beginning of such construction. The provisions of Section Twenty-seven of this Act shall, so far as the same are applicable, apply to the crossing or user of any public road by the Tramway.

Crossing public
roads.

29 Where the Tramway crosses any private or occupation road not within the aforesaid town or township, the Promoter shall allow twelve feet of the Tramway for the same; and from time to time he may make and maintain other private level crossings, or occupation roads, where and at such places as he may think fit, allowing twelve feet for each such road. The provision in Section Twenty-eight of this Act as to restoration shall apply to private roads.

Crossing private
roads.

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Trains to slacken
speed crossing
public roads
adjoining stations.

Promoter to
separate Lands
before using them.

30 Where the tramway crosses any public road on a level adjoining a station, all trains on the tramway shall be made to slacken their speed before arriving at such public road, and shall not cross the same at any greater rate of speed than Four miles an hour.

31 The Promoter shall, if required so to do by the owner or occupier of any land taken and used for the purposes of the tramway, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also to all private roads used 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 Promoter as to the necessity for such fences and gates, the Promoter shall erect such fences and gates as any two Justices deem necessary for the purposes aforesaid, on application being made to them by either party.

Promoter to make
and maintain
gates, bridges, &c.

32 The Promoter shall make and at all times maintain the following works for the accommodation of the owners and occupiers of lands adjoining the Tramway; that is to say,—

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the side of, or leading to or from the Tramway, as shall be necessary for the purpose of making good any interruptions caused by the Tramway to the use of the lands through which the Tramway is made, and such works shall be made forthwith after the part of the Tramway passing over such lands has been laid out or formed or during the formation thereof.

Precautions to be
adopted where
cattle-guards are
used.

33 Should the Promoter use cattle-guards in the place of gates, the Promoter shall not be compelled to employ any person or persons to attend the crossing in respect of which such cattle-guards are used, but in such case the Promoter shall erect a notice-board on each side of the Tramway at every such crossing warning travellers as to passing trains; and whenever any train is approaching such crossing the engine whistle shall be sounded, and such whistle shall be kept sounding until the train has passed such crossing.

The rate of speed of a train while passing any such crossing on any road shall in no case exceed Six miles per hour.

Power to Lease.

Power to lease.

34 It shall be lawful for the Promoter from time to time to let the tolls and charges authorised to be taken and collected under this Act from the Tramway and works, or either of them, together with the rolling stock, and all other the appurtenances thereto belonging, and such security shall be taken by the Promoter as he may think necessary for the due payment of the rent or sum stipulated to be paid for the same; and during the continuance of any such demise the lessee, or any collector or person or persons by him appointed, is and are hereby empowered to demand and take the tolls and charges so let, and to use the same means for the recovery thereof in case of non-payment or evasion as the Promoter is by this Act empowered to use.

Wyett's *Tramway.**Arbitration.*

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35 When any dispute arises for the settlement of which no other provision is made by this Act, then such dispute shall be settled by arbitration in the manner provided by *The Lands Clauses Act*, and the appointment of an arbitrator on behalf of the Promoter shall be made under the hand of the Promoter; and any award or determination made under or by virtue of the provisions of the said Act shall be final, and shall not be set aside for irregularity or error in matter of form; and the submission to such arbitration may, on the application of either of the parties, be made a Rule of the Supreme Court.

Questions to be
settled by
arbitration

By-laws.

36 It shall be lawful for the Promoter, from time to time, to make By-laws—

Power to make
By-laws.

- (1.) For preventing the commission of any nuisance in or upon any carriage or on any premises of the Promoter :
- (2.) For regulating the travelling upon or using and working of the Tramway :
- (3.) For regulating the conduct of the officers and servants of the Promoter in his business as proprietor of the said Tramway :
- (4.) For the levying and making of tolls and charges :
- (5.) And generally for providing for the management of the affairs of the Promoter in respect of the said Tramway :

And it shall also be lawful for the Promoter, from time to time, to repeal or alter any such By-laws: Provided that such By-laws be not repugnant to law.

37 Any person offending against any By-law of the Promoter shall on conviction forfeit for every such offence a sum not exceeding Ten Pounds; and in the event of any infraction or non-observance of such By-laws being attended with danger or annoyance to the public or hindrance to the Promoter in the lawful use of the Tramway, it shall be lawful for the Promoter, his officers and servants, summarily to obviate or remove such danger, annoyance, or hindrance, and that without prejudice to the penalty incurred by the offender.

Offences against
By-laws.

38 A copy of all By-laws made by the Promoter shall be signed by the Promoter and submitted for approval to the Governor in Council, who, on being satisfied that the same are framed in conformity with law and are reasonable and proper, shall confirm the same; and no By-laws made by the Promoter shall have any force or effect until the expiration of Fourteen days after a copy of such By-laws and the confirmation thereof shall have been published in the *Hobart Gazette*.

By-laws to be
approved by the
Governor in
Council.

39 A copy of all By-laws made by the Promoter shall also be published by advertisement to be inserted once at least in each of two successive weeks in all the daily newspapers published in *Launceston* and *Hobart*, and shall be painted on boards or printed on paper and posted on boards, and hung up and affixed on some conspicuous part of every office, station, or waiting-room belonging to the Promoter.

Publication of
By-laws.

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Power of
Governor to
disallow By-laws.

40 It shall be lawful for the Governor in Council at any time to notify to the Promoter his disallowance of any By-laws then in force, and the time at which the same shall cease to be in force, and no By-laws which shall be so disallowed shall have any force or effect after the time fixed by the notice of such disallowance, saving in so far as any penalty may have been then already incurred under the same: Provided that a copy of such notice shall be published in the *Hobart Gazette* and in all daily newspapers published in *Launceston* and *Hobart*, and the time of disallowance fixed by such notice shall not be earlier than Fourteen days after the date of the first publication of such notice.

*Gazette primâ
facie* evidence of
By-laws.

41 The production of a copy of the *Hobart Gazette* containing a notice purporting to be a copy of any By-laws of the Promoter and of the confirmation thereof, or a notice of the disallowance by the Governor in Council of any By-laws of the Promoters, shall in all cases and for all purposes be deemed to be conclusive evidence that such By-laws have been duly made and confirmed or disallowed in manner therein appearing, and shall be *primâ facie* evidence that the provisions of this Act with respect to the publication of such By-laws have been complied with.

Purchase by Her Majesty.

Minister may
purchase Tram-
way.

42 It shall be lawful for the Minister, with the approval of the Governor in Council, upon giving Six months' notice to the Promoter, to purchase for and on behalf of Her Majesty—

- (1.) All the Tramway and works, and all works, buildings, stations, and erections connected therewith, and the land upon which the same are respectively erected and built or used in connection therewith:
- (2.) So much of any land heretofore purchased, or acquired, or held, or used by the said Promoter for the purposes of the Tramway and works as extends to a width of Fifty links on each side of the Tramway, measuring from the centre of the same:
- (3.) All plant, permanent way, rolling stock, machinery, and steam-engines used in connection with the Tramway and works:
- (4.) All rights, privileges, powers, and advantages whatsoever affecting or appurtenant to the Tramway and works which are vested in, held, enjoyed, or possessed by or conferred on the said Promoter, or any person claiming by, through, or under the same.

Detrayment of
cost of purchase.

43 The purchase money of the Tramway and works, and all moneys to be expended under this Act in or connected with the purchase of the Tramway and works, shall be defrayed out of moneys provided by Parliament for the purpose.

The undertaking
of the Company
vested in Her
Majesty upon
payment of the
purchase money.

44 The Tramway and works, and all the right, title, and interest of the Promoter, and of any person or persons claiming by, through, or under the Promoter in and to the same, and all the rights, privileges, powers, and advantages whatsoever affecting or appurtenant to the

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Tramway and works which are vested in, held, enjoyed, or possessed by or conferred on the said Promoter, or such person or persons, shall, upon payment of the purchase money thereof by the Minister, without the necessity of any transfer or connecting title other than this Act, be transferred to and become invested in, and be held, enjoyed, possessed, used, and exercised by Her Majesty the Queen, freed and discharged from all claims and demands by or on the part of the Promoter or any other person whomsoever, in all respects in the same manner as the said Promoter or such person or persons could have held, possessed, enjoyed, used, and exercised the same.

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45 If the Minister and the Promoter cannot agree upon the sum to be paid as the purchase money of the Tramway and works, the question shall be referred to two or more Arbitrators to be mutually agreed upon by the Minister and the said Promoter, or failing such agreement, the reference shall be made in the manner hereinafter provided.

In case of difference amount of purchase money to be settled by arbitration.

46 If the Minister and the Promoter do not agree upon the Arbitrators as aforesaid, the reference shall be made to Four Arbitrators, of whom the Minister shall appoint Two, and the remaining Two shall be appointed by the said Promoter.

How Arbitrators to be appointed.

47 If the Promoter fail to appoint such Arbitrators within Fourteen days after being thereunto requested in writing by the Minister, then the Governor in Council may appoint such Two Arbitrators; and the Arbitrators so appointed shall for the purposes of this Act be deemed to be appointed by the Promoter.

Appointment by Governor in Council.

48 Upon any reference being made to Arbitrators under this Act, if before the matters referred to them are determined any Arbitrator dies, becomes incapable, or unfit, or for Seven consecutive days fails to act as Arbitrator, the Minister or the Promoter, as the case may be, shall appoint an Arbitrator in his place.

Appointment of Arbitrators to supply vacancies.

49 If the Promoter fail, within Fourteen days after being thereunto requested in writing by the Minister, to appoint an Arbitrator in place of the Arbitrator so deceased, incapable, unfit, or failing to act, then the Governor in Council may appoint an Arbitrator; and the Arbitrator so appointed by the Governor in Council shall, for the purposes of this Act, be deemed to be appointed by the Promoter.

Appointment of Arbitrators by Governor in Council to supply vacancies.

50 When any appointment of an Arbitrator is made, the Minister or the Promoter shall have no power to revoke the appointment without the previous consent in writing of the Promoter or the Minister, as the case may be.

Appointment of Arbitrator not revocable.

51 Upon the appointment of Arbitrators under this Act, whether by mutual agreement or otherwise, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their Umpire.

Appointment of Umpire by Arbitrators.

52 If the Arbitrators do not appoint an Umpire within Seven days after the reference is made to the Arbitrators, then the Governor in Council may appoint an Umpire; and the Umpire so appointed shall, for the purposes of this Act, be deemed to be appointed by the Arbitrators.

Appointment of Umpire by Governor in Council.

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- A.D. 1885.**
- Appointment of Umpire by Arbitrators to supply vacancy.** **53** Upon any reference being made to Arbitrators under this Act, if before the matters referred to them are determined their Umpire dies, or becomes incapable or unfit, or for Seven consecutive days fails to act as Umpire, the Arbitrators shall by writing under their hands appoint an impartial and qualified person to be their Umpire in his place.
- Appointment of Umpire by Governor in Council to supply vacancy.** **54** If the Arbitrators fail to appoint an Umpire within Seven days after notice in writing to them of the decease, incapacity, unfitness, or failure to act of their Umpire, then the Governor in Council may appoint an Umpire; and the Umpire so appointed shall for the purposes of this Act be deemed to be appointed by the Arbitrators so failing.
- Succeeding Arbitrators and Umpires to have powers of predecessors.** **55** Every Arbitrator appointed in the place of a preceding Arbitrator, and every Umpire appointed in the place of a preceding Umpire, shall respectively have the like powers and authorities as his predecessor.
- Reference to Umpire.** **56** If the Arbitrators do not, within such a time as the Minister and the Promoter agree on, or, failing such agreement, within Thirty days next after the reference is made to the Arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their Umpire.
- Power for Arbitrators, &c. to call for books, &c., and administer oath.** **57** The Arbitrators and the Umpire respectively may call for the production of any documents or evidence in the possession or power of the Minister or the Promoter, or which the Minister or the Promoter can produce, and which the Arbitrators or the Umpire think necessary for determining the matter referred, and may examine witnesses on oath, and may administer the requisite oath.
- Procedure in the Arbitration.** **58** If the Minister and the Promoter do not otherwise agree, the Arbitrators and the Umpire respectively may proceed in the business of the reference in such manner as they and he respectively think fit.
- Award made in due time to bind all parties.** **59** The Award of the Arbitrators, or of the Umpire, made in writing under their or his respective hands or hand, and ready to be delivered to the Minister and the Promoter within such a time as may be agreed on, or, failing such agreement, within Thirty days next after the reference is made to the Arbitrators or the Umpire, shall be binding and conclusive on the Minister and the Promoter.
- Power for Umpire to extend period for making his Award.** **60** Provided always, that (except where and as the Minister and the Promoter otherwise agree) the Arbitrators or Umpire, from time to time, by writing under their or his hand, may extend the period within which his award is to be made; and if it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.
- Award not to be set aside for informality.** **61** No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.
- Costs of arbitration and award.** **62** Except where and as the Minister and the Promoter otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the Arbitrators and the Umpire respectively.
- Notices to be signed by Minister.** **63** Any notice required to be given by or on behalf of the Queen or Governor in Council or the Minister by virtue of the provisions of

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this Act, or in connection with or relating to the purchase of the Tramway and works, shall be sufficient if signed by the Minister. A.D. 1885.

Penalties.

64 If any person leaves any truck, carriage, or waggon used upon the Tramway upon any public road or street at any time save in manner provided by Section 20 of this Act, such person shall, for every such offence, forfeit and pay any sum not exceeding Five Pounds. Penalty for leaving trucks, &c. on public ways.

65 If any person travels or attempts to travel in any train or carriage of the Promoter without having previously paid his fare, and with intent to avoid payment thereof; or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such train or carriage beyond such distance without previously paying the additional fare for such additional distance, and with intent to avoid payment thereof; or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such train or carriage, every such person shall for every such offence forfeit to the Promoter a sum not exceeding Forty Shillings. Penalty for travelling without paying fare.

66 Every person who omits to shut and fasten any gate set up at either side of the Tramway 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, shall, upon conviction, forfeit and pay for every such offence any sum not exceeding Five Pounds. Penalty in respect of gates.

67 If any person wilfully obstructs or impedes any officer or person employed upon the Tramway in the execution of his duty thereon, or upon or in any of the stations or other works or premises connected therewith, and if any person wilfully trespasses upon the Tramway, or any of the stations or other works or premises connected therewith, and refuses to quit the same upon request made to him by any officer or person employed upon the Tramway, every such person so offending, and all others aiding or assisting therein, may be apprehended and detained by any constable, officer, or person employed upon the Tramway, and any person whom he may call to his assistance, until such offender can be conveniently taken before some Justice of the Peace, and every person so offending shall, upon conviction before such Justice, be liable either to forfeit and pay a penalty not exceeding Five Pounds, or to be imprisoned for any term not exceeding One month, as to the said Justice shall seem meet. Punishment of persons obstructing officers, or trespassing upon Tramway.

68 It shall be lawful for any constable to apprehend and detain any engine-driver, guard, porter, or other person employed upon the Tramway who is found drunk whilst employed upon the said Tramway, or who commits any offence against any By-law, or who wilfully, maliciously, or negligently does or omits to do any act whereby the life or limb of any person passing along or being upon the Tramway is or might be endangered, or whereby the passage of any of the engines, carriages, or trains is or might be obstructed or impeded, and to convey every person so offending, and any person counselling, aiding, or assisting in such offence, with all convenient speed, before some Justice, without any other warrant or authority than this Act; and every person so offending, and every person counselling, aiding, or assisting Punishment of persons employed upon Tramway guilty of misconduct.

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therein as aforesaid, shall, upon conviction before such Justice in a summary way, without information in writing, be liable to be imprisoned for any term not exceeding Two months, or else shall forfeit and pay any sum not exceeding Ten Pounds, as to the said Justice shall seem meet.

Action to be commenced within Three months.

69 No plaintiff shall recover in any action commenced in pursuance of this Act against any person for anything done whereby a penalty shall be incurred unless such action be commenced within Three months after the cause of action has accrued, and unless notice in writing of such intended action signed by the plaintiff or his attorney, specifying the cause of action, has been given to the defendant One month at least before such action or suit is commenced; and the defendant in every such action may plead the general issue, and give the special matter in evidence, and that the same was done under the authority of this Act or any Act incorporated herewith; and if the same appears to have been so done, or if such action or suit has not been brought within Three months after the cause of action had accrued, or has been brought before the expiration of One month next after such notice has been given as aforesaid, or after sufficient satisfaction made or tendered, then and in every such case a verdict shall be found for the defendant.

Plea.

User of Tramway by vehicles.

70 If any person (except by agreement with the Promoter) uses the Tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such Tramway, such person shall for every such offence forfeit and pay to the Promoter a penalty not exceeding Twenty Pounds.

Offences to be dealt with summarily.

71 All offences against this Act or any By-law, and all matters relating to tolls, charges, penalties, and sums of money imposed or made payable by this Act or any By-law, may be heard, determined, recovered, and enforced by and before any Justice of the Peace, in the mode prescribed by *The Magistrates Summary Procedure Act*, and all such tolls and charges shall be paid to the Promoter.

Appropriation of penalties.

72 All penalties received by any person by virtue of this Act shall be paid into the Treasury and form part of "The Consolidated Revenue Fund."

Appeal.

73 Any person who thinks himself aggrieved by any penalty imposed under the authority of this Act, or any Act incorporated herewith, or any By-law as aforesaid, which is recoverable in a summary way, may, unless it be otherwise expressly provided, appeal against the same in the mode prescribed by *The Appeals Regulation Act*.

Miscellaneous.

As to things done before passing of Act, Promoter to be deemed to have complied with Act.

74 If, before this Act comes into operation, the Promoter shall have constructed, or shall have in course of construction, any part of the Tramway by this Act authorised to be made, then the provisions of this Act as to the mode of construction of the said Tramway and of supervision during such construction, or as to the quality of materials to be used, or as to the notice or notices or the consent or consents to be given to or by any owner, local authority, or person or persons, or as to any matter or thing whatsoever, shall be considered to have been complied with in every particular prescribed by this Act, and the

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owner, local authority, or person or persons *primâ facie* entitled under this Act to enforce any such provisions shall not be entitled so to do in respect of any such part as aforesaid of the Tramway hereby authorised to be made. A.D. 1885.

75 The Promoter shall be answerable for all accidents, damages, and injuries happening through his default, or through the default of any person in his employment, by reason or in consequence of the defective condition of any of the works or carriages, and shall save harmless all local authorities and persons collectively and individually, and his officers and servants, from all damages and costs in respect of such accidents, damages, or injuries; and it shall be lawful for the Engineer-in-Chief by notice in writing to require the Promoter to remedy any defects in the construction of the Tramway or works, or the condition thereof, which, in the opinion of the Engineer-in-Chief, would be likely to cause any such accidents, damages, or injuries to happen to any person as aforesaid: Provided also, that it shall be lawful for the Engineer-in-Chief to appoint any fit and proper person to report on the state of the said works on his behalf. Promoter responsible for damages for defective construction, &c.

76 Notwithstanding anything in this Act contained, the Promoter shall not acquire or be deemed to acquire by virtue of this Act any right other than that of user of any road along or across which he shall lay any Tramway. Right of user only.
33 & 34 Vict.
c. 78, s. 57.

77 If at any time after the Tramway shall have been opened for traffic the Promoter shall for a period of Twelve months fail to maintain and work the said Tramway, and the fact of such failure is notified by the Governor by Proclamation published in the *Hobart Gazette*, this Act shall thereupon cease to have any force or effect as if the same had been expressly repealed. Promoters to maintain and work Tramway.

