



ANNO TRICESIMO PRIMO

# VICTORIÆ REGINÆ.

A.D. 1867.

No. 22.

*An Act to encourage the formation of a Line of Railway northwards from Port Augusta by means of a Government Guarantee of Interest on the Capital expended in the formation of such Line of Railway.*

[Assented to, 19th December, 1867.]

**W**HEREAS great public advantage would arise from the construction of a line of railway northwards from Port Augusta, and it is expedient, for the purpose of encouraging the construction of such a line of railway, that the Government of the Province of South Australia should be authorized and empowered to guarantee to any person or company undertaking the construction thereof interest on the amount of capital expended by such person or company in such construction, such interest not exceeding the rate of Five Pounds per centum per annum on the amount so expended, and such guarantee not extending over a period exceeding thirty years—  
Be it therefore Enacted, by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows :

Preamble.

1. This Act may be cited for all purposes as “The Port Augusta and Northern Railway Act, 1867.”

Short Title.

2. “The Port Augusta and Northern Railway Act, 1864,” is hereby repealed.

Repeal.

3 “The Railways Clauses Consolidation Act,” No. 7 of 1847 and,

Incorporation.

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and "The Lands Clauses Consolidation Act," No. 6 of 1847, shall be incorporated with and form part of this Act, so far as applicable to the same.

Governor may enter into agreement with person or company for construction of railway.

4. It shall be lawful for the Governor, with the advice of the Executive Council, within three years from the passing of this Act, to enter into an agreement with any person or company who may be willing to contract for the construction of a railway under the provisions of this Act; and such agreement, when duly executed, shall constitute the said person or company the promoter or promoters of the undertaking under this Act: Provided that, on entering into such agreement, the Governor shall take such security as to him may seem sufficient to ensure that the same shall be duly carried into effect.

Terms of such agreement.

5. Any agreement to be made and entered into by the Governor as before mentioned shall contain the following stipulations and provisions; that is to say—

Railway to be constructed according to plan before expiration of six years.

I. The said person or company shall, within six years of the date thereof, make, construct, and open for public traffic, for the carriage of passengers and goods, a line of railway, adapted for the use of locomotive engines the propelling power to be used on which may be either horse-power or locomotive engines, with all necessary appurtenances, from Port Augusta to a point to be fixed by such agreement not being less than two hundred miles to the northward of Port Augusta, the termini and direction of such railway to be more fully described in a plan to be deposited in the office of the Surveyor-General, at Adelaide, prior to the time of making the said agreement, such plan to be approved of by the Governor and referred to in the said agreement:

Cost not to exceed £2,750 per mile.

II. The maximum amount of capital to be expended in the construction of the said railway shall not exceed Three Thousand Seven Hundred and Fifty Pounds for every mile:

Lease of lands to be granted for ninety-nine years.

III. All waste lands of the Crown required for the purposes of the construction of the said railway, and the necessary stations and other buildings connected therewith, shall be demised by the Governor to the said person or company for a term of ninety-nine years, at a rent of Twenty Shillings per annum, with a right of renewal for a further term of ninety-nine years at a like rent; and the said line of railway, and all works connected therewith, shall be free and exempt from all rates, taxes, and charges whatever:

Gauge of railway and weight of rails.

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

v. Plans,

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- v. Plans, specifications, and estimates of all works connected with the construction of the said railway and the works connected therewith shall be submitted to the Governor, and shall be approved of by him before such works shall be carried out; and the Governor shall have the power to appoint an officer to inspect the said works in the course of construction :
- Plans, &c., to be submitted to Governor, and railway to be constructed under supervision of Government.
- vi. The said person or company shall be bound to provide passenger trains, in sufficient number, for ordinary traffic to travel along the railway from one end to the other of the line at least twice every week, at the rate of not less than eight miles an hour for the whole distance travelled, including stoppages (luggage trains excepted), and there shall also be three weekly trains for goods through the whole line :
- Trains to be provided.
- vii. The said person or company shall be bound to provide conveyances for, and convey all military, police, and other forces, when proceeding on duty, and all public mails, in the ordinary trains free of charge, subject in other respects to "The Railways Clauses Consolidation Act," No. 7 of 1847; and, in the event of war or civil commotion, the said person or company shall, on the requisition of the Governor, place the whole of the resources of the railway at his disposal at the charges actually incurred :
- Mails and public stores, &c., to be carried free.
- viii. The Governor, or such person as shall be duly authorized for that purpose, shall have power at all reasonable times to enter into and upon the said railway, and to establish and lay down a line of electric telegraph for Her Majesty's Service, and to use the same without any charge: Provided that the work to be done in laying down such line shall be done in such a manner as not to obstruct the working of the railway :
- Governor may lay down and use telegraph.
- ix. The scale of tolls to be received by the said person or company, for the carriage of passengers or goods, shall be fixed by the Governor, with the advice aforesaid, on the second day of January in every year :
- Scale of tolls to be fixed by Governor.
- x. The Governor shall have power to appoint an officer, and from time to time to remove such officer and to appoint another in his stead, who shall be an *ex officio* director, and shall have a seat at the Board of Directors, or other governing body of the said company, in case the said railway shall be constructed by a company, and who shall exercise supervision and control over the said person or company, and the works, contracts, accounts, by-laws, acts, proceedings, transactions, and affairs of the said person or company, including a right of veto :
- Governor to appoint *ex officio* director; his powers.
- xi. The said person or company shall furnish to the officer to be appointed for that purpose by the Governor, monthly returns
- Monthly returns to be furnished by company.

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returns of all the tolls, receipts, and profits of the said railway, and the said officer may take such measures as he may deem necessary for the purpose of testing the accuracy or otherwise of such returns, and for that purpose such officer, and also such persons as he may authorize in that behalf, shall have full power and authority to examine all the books, vouchers, papers, tickets, and documents of the said person or company in reference to the said line :

Moneys received by company to be paid into Treasury monthly.

XII. All moneys received by the said person or company, after paying the working expenses of the said line of railway, shall be paid into the Government Treasury, at Adelaide, on the first day of each month, to the credit of the said person or company :

Accounts of company to be audited every six months.

XIII. Once every six months such persons as may be appointed for that purpose by the Governor, shall audit the books of such person or company, and test and verify all the returns to be rendered as aforesaid, and the balances paid into the Treasury, and generally verify the accounts of such person or company as exhibited by such books, and for the purposes of such audit such persons may call for any such information, books, papers, vouchers, or other documents as they may consider necessary, all of which such person or company shall be bound to furnish or supply, if it is in his or its power to do so ; and the said person, or the Manager or Chairman of the Board of Directors of the said company, shall be bound, if required, to make a solemn statutory declaration as to the total tonnage of all goods, and the total number of all passengers carried over the line, and the gross amount of all tolls received during the preceding six months :

On opening of every ten miles of railway, interest to be paid by Treasurer on capital expended.

XIV. On the thirty-first day of December or the thirtieth day of June next following the completion of every ten miles of the said railway to the satisfaction of the officer to be appointed by the Governor as before-mentioned, and on such portion of the line being declared open for traffic, the Treasurer shall pay to the said person or company such a sum of money as, together with the net receipts realized from the working of the said line of railway or the portion thereof so declared open, shall be equivalent to interest at the rate of Five Pounds per centum per annum from the time of such portion of the said railway being so declared open for traffic on the total amount of capital *bona fide* expended in the construction of such portion of railway and the works connected therewith, but so that such amount shall not exceed an average of Three Thousand Seven Hundred and Fifty Pounds for each mile :

Interest to be paid half-yearly.

XV. Such payments of interest shall continue to be made on the thirty-first day of December and the thirtieth day of June

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June in every year (except as hereinafter mentioned), and at the time of making such payments the said Treasurer shall also repay to the said person or company all moneys paid into the Treasury by such person or company as hereinafter mentioned:

- XVI.** If on any thirty-first day of December or thirtieth day of June the net receipts realized by the said person or company during the preceding six months from the working of the said line of railway, or the portion thereof then open, shall exceed a sum equivalent to Five Pounds per centum per annum on the amount of capital expended in the construction of the said line of railway, or such portion as may be open, then, in case the Treasurer shall at any time have paid any moneys to the said person or company upon the guarantee hereinbefore mentioned, he shall deduct one-half of the amount so in excess towards the liquidation of the amount so previously paid by him, and shall pay over the other moiety of such excess to the said person or company, but in case there shall be nothing due to the Government on account of such guarantee, then the whole of such net profit shall be paid to such person or company:
- If net receipts exceed five per cent. on capital expended, moiety of excess to be paid to Treasurer.
- XVII.** The liability of the Government under the said agreement, for payment of interest under the guarantee before-mentioned, shall absolutely cease and be determined at the expiration of thirty years from the time when the first ten miles of the said line of railway is declared open for traffic:
- Liability on guarantee to cease after expiration of thirty years.
- XVIII.** The Governor may at any time before or after the expiration of the said period of thirty years, upon giving to the said person or company twelve months' notice in writing of such being his desire, purchase the said line of railway and works, paying for the same such a sum as may be determined by the valuation of two indifferent persons, one to be chosen by the Governor and one by such person or company, with power to such valuers to appoint an umpire in case of disagreement, but so that such valuation shall not include the value of the land demised to such person or company for the purposes of the railway, the lease of which shall, on the purchase of such railway and works, become absolutely void and of no effect:
- Governor may purchase railway on giving twelve months' notice.

And the said agreement shall also contain all such provisions and stipulations in relation to the matters aforesaid, and any of them, and in relation to the said railway and the encouragement and promotion thereof, and the eventual or contingent transfer of the same or any part thereof to the Government as the said Governor, with the advice aforesaid, and the said person or company shall respectively think fit and agree upon.

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Governor authorized to demise lands required for railway.

6. The said Governor shall have full power, and he is hereby authorized, to demise to such person or company such waste lands of the Crown as may be required for the purposes of the said line of railway and the works connected therewith for the term and at the rent hereinbefore mentioned, anything in the "Waste Lands Act," No. 5 of 1857, to the contrary notwithstanding.

Railway to be kept in efficient repair.

7. The said person or company shall be bound at all times to keep the said railway, and branches, and whole undertaking in good and efficient repair and working condition; and in case it shall appear to the Governor, upon the report of any inspector appointed pursuant to "The Railways Clauses Consolidation Act," No. 7 of 1847, that the works in any part are not in good and efficient repair and working condition, it shall be lawful for the Governor, after such notice as to him shall seem fit and proper, and on default by the said person or company to direct the necessary repairs and works to be performed at the cost of the said person or company by persons to be appointed by the Governor in that behalf, and the cost of executing such repairs and works and all charges connected therewith shall and may be recovered from the said person or company at the suit of the Crown before any Court of competent jurisdiction in like manner and by such means as any person aggrieved or otherwise authorized to sue for damages or penalties might employ under the provisions of the said Act.

Rule to show cause why agreement should not be rescinded.

8. If the said person or company shall be guilty of any breach of any of the conditions, provisions, or stipulations of the said agreement or of this Act, the Attorney-General may, when and so often as any such breaches may happen, apply to the Supreme Court of the said Province for a rule, which shall be granted as of course, calling upon the said person or company to show cause, on a day to be mentioned in such rule, why the said agreement should not be rescinded, and why any lease or leases which may have been granted in pursuance hereof should not be declared forfeited upon such grounds as may be set forth in such rule, and such rule may be served upon the said person, or the manager, or other person having the management of the affairs of the said company in the said Province either personally or by leaving the same at the last known place of business of such person or company in the said Province, and being so served or left as aforesaid such rule shall be deemed for all purposes to have been duly served on such person or company, as the case may be.

Court may declare agreement rescinded and leases forfeited.

9. If, on the hearing of such rule, the Court shall be satisfied, either by affidavit or otherwise, that the said person or company has been guilty of any of the breaches of the conditions, provisions, or stipulations of the said agreement, or of this Act, set forth in the said rule, the said Court may and is hereby authorized and empowered to order and declare such agreement to be rescinded, and such lease or leases to be forfeited, and thereupon (except as hereinafter mentioned) such agreement and lease or leases shall become

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become absolutely null and void and thenceforth the said railway and all works connected therewith shall be forfeited to Her Majesty, Her heirs, and successors: Provided that the Court, upon the hearing of any such rule, may, if it shall consider that the justice of the case would be met by so doing, instead of ordering the rescission of the said agreement, and the forfeiture of the said lease or leases as aforesaid, order the said person or company to pay to the Treasurer such a sum of money as the said Court may consider reasonable, by way of penalty, for the breach of any of the conditions, provisions, or stipulations of the said agreement or of this Act: And the said Court may also make such order, as to the costs of the proceedings, as it may think fit: And any order so to be made for the payment of any sum of money, or costs as aforesaid, may be enforced in the same manner, as may for the time being be provided for the enforcement of decrees and orders of the said Court in its equitable jurisdiction.

10. The said Court may from time to time adjourn the hearing of any such rule to show cause as aforesaid, and may give to such person or company such time as to the Court may seem reasonable, for the purpose of enabling such person or company to file such affidavits as may be considered necessary in opposition to the ground set forth in the said rule, and any affidavits that may have been filed in support thereof, and may also allow further time to the Attorney-General to file any affidavits in reply as to the Court may seem expedient; and the said Court may also, if it shall see fit, direct the truth of the grounds set forth in the said rule to be decided otherwise than by affidavit, and for that purpose may direct one or more issue or issues to be tried by a jury in the like manner as issues directed by the Court in its equitable jurisdiction are tried.

Court may adjourn hearing of rule and may direct issues.

11. If the said Court shall order the said agreement to be rescinded, and the said lease or leases to be forfeited as hereinbefore mentioned, it shall nevertheless be lawful for the Governor, with the advice of the Executive Council, on the address of both Houses of Parliament, to waive such rescission and forfeiture, upon the payment of such sum or sums of money, and upon such other terms and conditions as by such address may be suggested; and, upon payment of such sum or sums of money, and compliance by such person or company with such other terms and conditions as aforesaid, the said agreement and lease or leases shall be of the like force and effect as if such order of the Court had not been made.

Governor, on address of both Houses, may waive forfeiture.

In the name and on behalf of the Queen I hereby assent to this Act.

D. DALY, Governor.