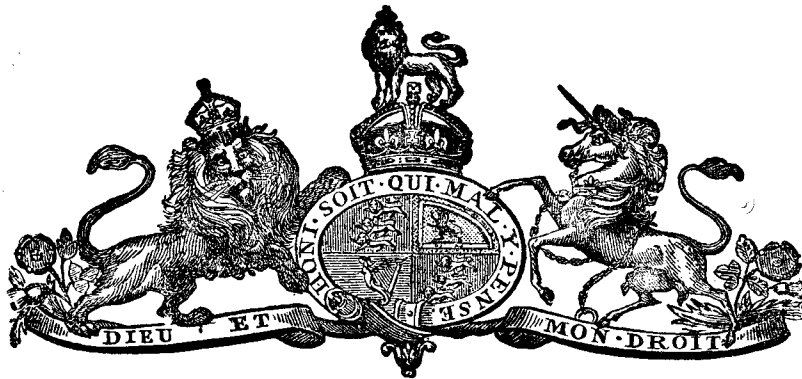


T A S M A N I A.



1910.

ANNO PRIMO

GEORGII V. REGIS,

No. 58.

ANALYSIS.

1. Short title.
2. Repeal of 9 Edw. VII. No. 42.
3. Interpretation.
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AN ACT to authorise the Construction of a certain Line of Railway from *Burnie* to *Flowerdale*. A.D. 1910.
[13 January, 1911.]

BE it 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 "The *Burnie-Flowerdale* Railway Construction Act, 1910." Short title.

8d.]

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Repeal of 9 Edw.
VII. No. 42.

2—(1.) “The Land for *Burnie-Flowerdale* Railway Acquisition Act, 1909,” is hereby repealed.

(2.) All agreements made for the purchase of land under or by virtue of the lastmentioned Act shall be deemed and taken to have been made under or by virtue of, and shall be subject to, the provisions of this Act.

(3.) Notwithstanding any steps that may have been taken prior to the commencement of this Act towards compulsorily acquiring any land for the purposes of the line of railway authorised to be constructed under this Act, the provisions of “The Lands Resumption Act, 1910,” and not those of “The Lands Clauses Act,” shall apply.

Interpretation.

3 In this Act, unless the context otherwise determines—

“The Minister” means the Minister of Lands and Works for the time being, and includes any contractor or other person appointed or employed by him :

“The railway” and “the said railway” includes all works, buildings, stations, and erections erected or built on or connected with the railway to be constructed under this Act, the land upon which the same are or may be respectively erected or built, all land used in connection therewith, and all plant, rolling stock, steam engines, machinery, and carriages used with the same :

“The purposes of this Act” means the execution of all works necessary to construct, uphold, and maintain the railway to be constructed under this Act.

Minister to cause
railway to be
constructed.

4 It shall be lawful for the Minister to cause to be constructed and completed a line of railway from *Burnie to Flowerdale*.

Provided that it shall not be lawful for the Minister to commence to construct the said line of railway until all the land deemed necessary for the construction of such railway has been surrendered to or vested in His Majesty the King, or binding contracts approved by the Crown Solicitor have been entered into.

Limit of
expenditure and
defrayment of
cost.
55 Vict. No. 82.
56 Vict. No. 56.

5—(1.) The expenditure for the construction and completion of the said line of railway (including all expenditure for or in relation to land) shall not exceed the sum of One hundred and five thousand Pounds.

(2.) Of the said sum of One hundred and five thousand Pounds authorised to be so expended, the sum of Five thousand Pounds shall be charged on and paid out of the sum of Five thousand Pounds appropriated for the purposes of “The Land for *Burnie-Flowerdale* Railway Acquisition Act, 1909,” and the Treasurer may reappropriate such sum accordingly ; the further sum of Fifty-eight thousand Pounds shall be charged on and paid out of the sum of Fifty-eight thousand one hundred and thirty-eight Pounds Seven Shillings and Ten Pence, being the unappropriated balance of a sum of Two hundred thousand Pounds borrowed, under the authority of Acts 55 *Victoriae* No. 82 and 56 *Victoriae* No. 56, for the construction of a railway from *Ulverstone* to

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Burnie, and it shall be lawful for the Treasurer of *Tasmania* to appropriate the said unappropriated balance accordingly to the extent of Fifty-eight thousand Pounds.

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The balance of the moneys to be expended under and for the purposes of this Act shall be defrayed out of moneys to be provided by Parliament for that purpose.

6 All the provisions contained in Sections Five, Eight, Ten, Twelve, and Thirteen, Sections Fifteen to Twenty-five inclusive, and Sections Thirty-one and Thirty-two of "The Railway Construction Act, 1885," are hereby incorporated with this Act, and where in any of the said incorporated sections the said Act is referred to it shall be deemed to mean this Act.

Provisions of 49 Vict. No. 41 incorporated.

7--(1.) The provisions of "The Lands Resumption Act, 1910," shall apply, subject to any modifications or alterations made by this Act.

Application of "The Lands Resumption Act, 1910."

(2.) Any claim for compensation under Section Twelve of "The Railway Construction Act, 1885," shall be made and determined under "The Lands Resumption Act, 1910," in like manner as in the case of a claim under that Act for damage suffered by reason of the exercise of any powers under Part III. of that Act, and the provisions of "The Lands Resumption Act, 1910," applicable in the case of any such last-mentioned claim, especially Section Thirty-seven thereof, shall, with any necessary alterations, apply in the case of every claim for compensation under Section Twelve of "The Railway Construction Act, 1885."

(3.) The powers exercisable under Section Twenty-five of "The Lands Resumption Act, 1910," may be exercised on or in relation to any land, whether in the vicinity of the land purchased, acquired, or taken or not.

(4.) In its application in relation to any land acquired compulsorily for the purposes of this Act, Section Thirty-five of "The Lands Resumption Act, 1910," shall be read and construed as if—

- i. The words "on the Seventeenth day of *November*, 1909," were substituted for the words "on the First day of *January* last preceding the First day of the Parliament in which the special Act was passed," in lines Nine, Ten, and Eleven : and
- ii. The words "after the Seventeenth day of *November*, 1909," were substituted for the words "after the First day of *January* referred to in Paragraph i. or ii., as the case may be," in lines Thirteen and Fourteen : and
- iii. All the words in Subsection (2.) after the word "value" in line Four thereof were omitted.

8 It shall be lawful for the Minister of Lands and Works to enter into an agreement with the *Emu Bay* Railway Company, Limited, in the form contained in the draft of the agreement set forth in the schedule, and such agreement shall contain the terms, covenants, conditions, and provisions set forth in the said draft.

Minister may enter into the agreement with *Emu Bay* Company set forth in schedule.

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SCHEDULE.

DRAFT PROPOSED AGREEMENT between the Minister for Railways and the Emu Bay Railway Company Limited with reference to a Station Site at Burnie for the purpose of the extension of the Government Railway System to Flowerdale.

AN AGREEMENT made the _____ day of _____ 1910 BETWEEN the EMU BAY RAILWAY COMPANY LIMITED (hereinafter called "the Company" which expression shall if the context so admits refer to the Company or its assigns) of the one part and the HONOURABLE ALEX. HEAN being and as the Minister for Railways under "The Railway Management Act 1891" (hereinafter called "the Minister" which expression shall if the context so admits refer to the Minister for Railways for the time being or his assigns) of the other part. WHEREAS the Company is the lessee of the railway coloured pink in the plan hereunto annexed marked A under and by virtue of a certain indenture of lease bearing date the 28th day of December 1903 and made between the Emu Bay and Mount Bischoff Railway Company Limited of the one part and the Company of the other part for the residue of a term of 99 years commencing from the 1st day of October 1897. AND WHEREAS the Company is by virtue of a certain other indenture of lease bearing date the 4th day of July 1906 and made between the Van Diemen's Land Company of the one part and the Company of the other part the lessee of the two strips of land coloured blue in the said plan for the residue of a term of 99 years commencing from the 1st day of October 1897 which said two strips of land together with the strip of land coloured pink on the said plan are hereinafter called "the station area." AND WHEREAS pursuant to a certain arrangement between the Government of Tasmania and the Company the Company has up to the date of this Agreement been permitted access to and enjoyed the use of the Railway station-yard in the Town of Zeehan in Tasmania the property of the Government of Tasmania and in further pursuance of such arrangement the servants of the said Government have shunted the Company's trains in the said yards attended to their luggage mails and van goods have issued tickets on behalf of the said Company kept accounts and reports and have banked the moneys received on behalf of the Company and the Company's goods have also been handled by the servants of the Government and their goods accounts kept by them. AND WHEREAS by a certain other arrangement between the Government of Tasmania and the Company the Company has up to the date of this Agreement permitted the Government engines to water daily at the Company's Station-yard at South Burnie the Company's servants have shunted the Government trains in the said yard have issued tickets on behalf of the Government and kept accounts of goods and coaching. All Government traffic at the said station has been unloaded by the Company and the Company has dealt with all goods traffic and shunted empty Government trucks on to Government trains. AND WHEREAS by "The Burnie-Flowerdale Railway Construction Act 1910" (hereinafter called "the said Act") the Minister is empowered to construct a railway from Burnie aforesaid to Flowerdale (hereinafter called "the said railway" which expression shall include any extension thereof) and in connection therewith the Minister has requested the Company to grant to him running powers over the railways now and hereafter to be constructed upon the station area and upon the railway between the station area and the junction of the Government Railways with the Company's railway at South Burnie (which said railway is coloured yellow on the said plan) which the Company has agreed to do upon the Minister entering into such agreement as is hereinafter contained. Now THIS INDENTURE WITNESSETH that it is hereby mutually agreed between the Company on the one part and the Minister on the other part:—

1.—(a) The expression "running powers" shall mean the right to run over and use (subject to this agreement) with engines carriages and wagons and officers and servants in charge of engines and trains that portion or portions of the rail-

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way or railways in respect of which the expression is used and all yards cart-roads platforms sidings junctions (including junctions with other railways) turntables points signals water-tanks and cranes engine-sheds weighbridges standing or movable machinery appliances and conveniences of and connected with such portion or portions of railway or railways.

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(b) The expression "General Manager" shall mean the General Manager of the Tasmanian Government Railways for the time being or other the person or body corporate for the time being having the management of the Tasmanian Government Railways.

2. For the purpose of working the said railway and the railway from Launceston to Burnie or either of such railways separately the Minister shall as from the date of this Agreement have running powers over the railways now and hereafter to be constructed upon the station area as far as the point marked *X* on the plan hereunto annexed marked *B* and upon the railway coloured yellow on the said plan marked *A*.

3. In consideration of the running powers conferred upon him by the last preceding clause the Minister will with all convenient despatch after the date of this Agreement make and complete upon the station area to the reasonable satisfaction of the Manager of the Company and in accordance with the plans and specifications hereunto annexed marked respectively *C* and *D*.

- (a) A station and station-yard a weighbridge and all necessary fittings and furniture signal works sidings and fencing.
- (b) All necessary sheds cranes provision for water and conveniences for the accommodation and conduct of the traffic on the railways within the station area and so that such traffic shall be efficiently and safely worked.

In the construction of the aforesaid works and conveniences the Minister shall interfere as little as possible with the sidings and other works belonging to the Company and not unnecessarily impede the traffic.

4. The Minister will for a period of six months after the opening of the said railway bear the cost of any works and conveniences within the station area that in the joint opinion of the General Manager and the Manager for the time being of the Company may be necessary and thereafter the cost of all additional works and conveniences which may in the joint opinion of the General Manager and the Manager for the time being of the Company be necessary for the joint benefit of the parties hereto shall be shared in such proportions as they respectively benefit such proportions to be determined by the General Manager and the Manager for the time being of the Company or if they are unable to agree by arbitration under Clause 13 hereof.

5. On the opening of the said railway for public traffic and at all times thereafter during the continuance of this agreement the Company will—

- (a) Maintain renew and uphold the railway and the works shown on the plan hereunto annexed marked *B* the cost of such maintenance and renewal to be borne by the Company and the Minister in equal shares.
- (b) Maintain renew and uphold all additional works and conveniences; the cost of such maintenance and renewal to be borne by the Company and the Minister in the same proportions as the cost of such works and conveniences was borne.
- (c) Provide and employ all station-masters booking-clerks porters workmen gatekeepers and watchmen.
- (d) Work the said railway within the station area and also work and maintain the said railway coloured yellow during the continuance of this Agreement.

6. The Company will keep all such accounts and vouchers as shall be proper and sufficient for the purposes of Clause 5 (a) of this Agreement which accounts and vouchers shall be open at all reasonable times for the inspection and transcription by the officers and agents of the Minister and the Company will afford to the Minister his officers and agents all proper and sufficient facilities for such inspection and transcription accordingly. The Company will once in

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every year commencing from the date of the opening of the said railway transmit to the General Manager at Hobart an accurate abstract of such accounts as are from time to time necessary for any of the purposes of this Agreement.

7. The Company will insure the said station and all other buildings from time to time within the boundaries of the station area against loss or damage by fire to the full value thereof in some insurance office of repute to be approved of in writing from time to time by the Minister and will duly and punctually pay all premiums and moneys necessary for effecting and keeping up the said insurance when the same shall become due (such payments to be deemed part of the maintenance under Clause 5 (a) of this Agreement) and will on demand produce to the Minister the policy or policies of such insurance and the receipt for every such payment. AND FURTHER that in case of destruction of or damage to the said station or other buildings the Company will with all convenient speed spend and lay out all moneys received in respect of such insurance in rebuilding in a good and substantial manner the premises so destroyed or damaged and in case such moneys shall be insufficient for such purpose such deficiency shall be made good by the Company and the Minister equally.

8. During the continuance of this Agreement the arrangements between the Government and the Company with respect to the Zeehan and Burnie stations respectively as hereinbefore set forth shall except so far as they are varied by this Agreement be continued as between the Minister and the Company. The services and work to be rendered and performed by the Minister under the arrangement with respect to the Zeehan station shall be deemed to be the consideration or part of the consideration for the services rendered by the Company under the arrangement with respect to the Burnie station and *vice versa*. The said consideration shall be subject to revision at the option of either party at the expiration of every successive period of three years from the date of this Agreement if the party exercising such option shall be of opinion that the services and work performed under the one arrangement are not a fair and reasonable consideration for the services and work performed under the other arrangement. Provided that such option must be exercised by notice in writing served upon the other party within a period of 30 days from the date of the expiration of any such period as aforesaid and in the event of the parties hereto being unable to agree upon the consideration the points in difference shall be referred to arbitration as hereinafter mentioned. For the purposes of this clause the "Burnie station" shall mean the Company's present station at South Burnie until the opening of the said railway when the same shall mean the station to be made and completed by the Minister under this Agreement.

9. All Government engines and trains when within the station area or upon the railway coloured yellow on the said plan marked A shall be under the control of the Company.

10. The Company will retain the handling of all goods whether for the Company or the Minister between the Burnie station and the present pier or breakwater at Burnie and any other piers or breakwaters and any wharves jetties or quays which may hereafter be constructed and the Minister shall be allowed the same facilities of access as are now enjoyed by the Company to all such piers breakwaters wharves jetties or quays. PROVIDED that the Company shall be entitled to be paid by the Minister a reasonable shunting charge for all Government trucks taken to and from such piers breakwaters wharves jetties or quays from and to the point marked X on the said plan hereunto annexed marked B.

11. In running over and using any railway or portion of a railway and in using any station and convenience under any of the provisions of this Agreement the regulations and by-laws for the time being in force on or at the premises so used shall be at all times observed by the Company or the Minister as the case may be so far as such regulations and by-laws shall be applicable.

12. The Minister shall indemnify and save harmless the Company against and from all losses charges and expenses to be incurred or sustained by reason of any injury or loss of life to any passenger or person or of any loss of or damage to any goods engines carriages or wagons by the act neglect or default of the Minister or any person employed by him and the Company shall indemnify and save harmless the Minister against and from all losses charges damages and expenses

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by reason of any injury or loss of life to any passenger or person or of any loss of or damage to any goods engines carriages or wagons by the act neglect or default of the Company or of any person employed by the Company. A.D. 1910.

13. All differences which may arise between the Minister and the Company or their assigns touching—

- (a) the true intent or construction of this Agreement or
- (b) the carrying into effect of any of the clauses of this agreement whether such clauses shall refer to arbitration or not or
- (c) any of the incidents or consequences of this Agreement or
- (d) the working of the said traffic or
- (e) any breach or non-performance or alleged breach or non-performance of this agreement or
- (f) any liabilities damage losses costs or expenses in respect thereof or any claim or demand in anywise relating to the premises—

shall be referred to the arbitration of two persons one to be appointed by each party or their umpire. And this shall be deemed to be a submission to arbitration within "The Arbitration Act 1892" or any statutory modifications or re-enactment thereof for the time being in force the provisions whereof shall apply as far as practicable.

14. Any notice hereby authorised or required to be given by the Minister to the Company shall be sufficiently given by posting the same in a registered letter addressed to the Company at its registered office in Tasmania or by leaving the same at the registered office of the Company in Tasmania and any notice hereby authorised or required to be given by the Company to the Minister shall be sufficiently given by posting the same in a registered letter addressed to the Minister for Railways at the office of the Minister in Hobart or by leaving the same at the office of the Minister in Hobart aforesaid.

15. The Company for themselves their successors and assigns do hereby covenant with the Minister to pay the rent reserved by the said leases and to perform and observe the covenants conditions and provisions therein contained.

16. Any claim on the part of the Minister arising under this Agreement may be recovered or enforced in accordance with the provisions of "The Crown Remedies Act 1891" or any statutory modification thereof for the time being in force.

17. If and in so far as the failure of the Company or the Minister to carry out any of the provisions of this Agreement is due to strikes or lock-outs then such failure to the extent to which it is so due shall not constitute any default or breach of contract on the part of the Company or the Minister as the case may be and no penalties or damages shall be payable to the Minister by the Company or to the Company by the Minister in respect thereof.

18. This agreement shall continue in force until the expiration by effluxion of time of the said terms created by the said respective indentures of lease of the 28th day of December 1903 and the 4th day of July 1906.

