

New Zealand.



ANALYSIS.

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1884, No. 15.

AN ACT to authorize the Construction of the East and West Coast Title. (Middle Island) Railway, under "The Railways Construction and Land Act, 1881," with certain Modifications and Extensions of the said Act, also of a Railway to connect Nelson with the

said East and West Coast Railway, and to authorise the Construction of the Putaruru and Rotorua Railway.

[6th November, 1884.]

Preamble.

WHEREAS it is desirable to give further facilities for the construction, by private enterprise, and for the working of a line of railway to connect the east and west coasts of the Middle Island, and of a junction therefrom to Nelson: And whereas it is also desirable to give facilities for the construction, by private enterprise, of a certain line of railway in the North Island:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act is “The East and West Coast (Middle Island) and Nelson Railway and Railways Construction Act, 1884.”

Interpretation.

2. In this Act, if not inconsistent with the context,—

“The railway” and “the said railway” shall mean the East and West Coast (Middle Island) line of railway.

“The contract” or “agreement” means the contract entered into under the principal Act and this Act between the Governor in Council and the company as to the construction of the railway:

“The principal Act” means “The Railways Construction and Land Act, 1881,” and all its amendments, including this Act, unless where special reference is made to any particular section, when it shall mean “The Railways Construction and Land Act, 1881,” only:

“The company” shall, in addition to the interpretation contained in section two of the principal Act, mean any syndicate, person, or persons with whom any contract shall be made by the Governor for the construction of the said railway, and the successors, heirs, executors, administrators, or assigns of such company, syndicate, person, or persons.

Verbal amendment
in section 118 of
Act of 1881.

3. Section one hundred and eighteen of the principal Act is hereby amended by the omission of the words “seven years,” and the substitution of the words “ten years” in lieu thereof.

EAST AND WEST COAST (MIDDLE ISLAND) RAILWAY.

Authority to con-
struct railway.

4. Notwithstanding anything contained in “The Railways Construction and Land Act, 1881,” the Governor in Council may, at any time prior to the first day of the session of the General Assembly now next ensuing, contract under the provisions of the principal Act and this Act with any company, syndicate, or person, whether acting on behalf of itself or himself, or as the duly-authorized attorney or agent of any other company, syndicate, or person, for the construction of a line of a railway to connect the east and west coasts of the Middle Island by such route as the Governor in Council shall determine.

Any contract so made shall be valid and effectual to all intents

and purposes, and shall not be avoidable by any resolutions passed in the manner prescribed by the principal Act, unless such contract shall be repugnant to any other provisions thereof, or of this Act; and the company contracted with shall, immediately after the making of such contract, be entitled to proceed with the construction of the line of railway to be constructed by it:

Provided that, in case any contract so entered into shall be lawfully avoided by reason of such repugnancy as aforesaid, such company shall not be entitled to any claim for compensation against or from Her Majesty the Queen, or the Government of the colony, by reason of such avoidance, or by reason of anything done by the company under the provisions thereof or under the provisions of the principal Act in respect thereof:

Provided also that the allocation of the land to be granted to such company shall be subject to the approval of the General Assembly, in the manner prescribed by sections thirteen and fourteen of the principal Act.

5. The Governor may from time to time enter, on behalf of Her Majesty the Queen, into an agreement with the company, upon such terms and conditions as may be agreed:

Governor and company may have running powers over each other's lines.

(1.) Providing that any trains or rolling-stock the property of Her Majesty or the Government of the colony, and either with or without passengers or goods, may be run upon the said railway after the completion thereof, or any portion thereof, and that any trains or rolling-stock the property of the company, and either with or without passengers or goods, may be run upon any line or lines of railway the property of Her Majesty or the Government of the colony; and

(2.) As to the payments to be made by the one to the other of them of such rates of charges as may be fixed in that behalf, and as to the time and mode of payment of such charges, and the keeping of accounts between the Governor and the company in respect of any such agreement, and generally upon such terms and conditions as may be necessary to give effect to this section.

In any such agreement provision may be made as to stoppage at the terminal and other stations on any line of railway as may be specified in any such agreement: Provided that any such agreement shall be determinable on either side by one year's notice.

6. The company shall have all the powers granted under Part II, of the principal Act in relation to the construction of railways, and of disposing of surplus land not required for the railway, as provided in section fifty-one of the principal Act, saving in any such last-mentioned case, as follows:—

Powers of construction.

The proceeds of any sale or of any fine or premium on the granting or surrendering of any lease shall be paid to and form part of the capital funds of the company, and all rents or moneys other than any such fine or premium as aforesaid derived from any lease shall be paid to and form part of the income of the company.

CONCESSIONS OF LAND.

When company formed, Governor may cause withdrawal from sale of Crown lands adjoining proposed line.

7. On the making of the contract, the Governor in Council may, on the application of the company, forthwith cause a sufficient area of Crown lands for a distance not exceeding fifteen miles on each side of the proposed line of railway, or, if there shall not be any or sufficient land on each side, then upon one side of the proposed line of such railway, to be withdrawn from sale.

Lands to be withdrawn by Order in Council gazetted.

(1.) Such lands shall be withdrawn from sale by Order in Council to be published in the *Gazette*, which order shall set out a general description of the lands thereby affected, and such lands may be so withdrawn from time to time as may be necessary.

Land to be surveyed.

(2.) When the contract has become capable of taking effect, the Governor shall cause all such lands to be surveyed into such convenient blocks as may be specified in any contract.

Size and shape of blocks.

Every such block shall be rectangular, except as hereinafter provided: Provided that no block shall have a greater frontage to the line of railway than one mile. The cost of surveying the blocks of land so to be surveyed as aforesaid shall be borne one-half by the Government and the other half by the company.

Company entitled to each alternate section.

(3.) The company shall only be entitled to an alternate choice of the blocks of land so surveyed as aforesaid in such manner as may be provided by the contract; and in no case shall the land so granted to the company include more than one-half the frontage to the line.

Natural boundaries may be taken advantage of.

(4.) When it is desirable to secure natural boundaries, the Governor in Council may alter the boundary of any rectangular block; but no such block shall be altered so as to have a greater frontage to a watercourse than one-half the depth of such block.

Progress selection by company for land when complete sections of railway finished.

8. Whenever the Minister for Public Works is satisfied that the whole line of railway, or any section thereof which can be usefully worked for public traffic, has been well and faithfully constructed under the provisions of the principal Act and this Act, and in accordance with the contract and the plans and specifications forming part thereof, and that the same is complete and fit for public traffic, the Governor may, from the several blocks of land provided to be set aside under this Act, allow the company to select an acreage, the value of which shall bear the same proportion to the value of the total percentage of land to be granted for the entire line as the value of the section completed does to the estimate for the entire line.

Right of Crown to select for equal area.

(1.) Upon the selection of every individual block, and simultaneously therewith, and prior to any further selection by the company, the Minister aforesaid, or some one person appointed by him from time to time, shall have the right to select a block of land equal in size to that previously selected by the company, or as near thereto as possible;

If no land adjoining line available, then other land benefited by construe-

(2.) If there is not sufficient Crown land adjoining the line of railway, then Crown land which, in the opinion of the Governor in Council, is or will be specially benefited by the

construction of the railway shall be set aside in such places as shall be provided in the contract, and the preceding provisions so far as applicable shall apply, except that it shall not be necessary to survey the land in blocks; and the company shall be entitled to the whole land so withdrawn, so long as the same does not exceed the quantity to be granted.

tion of railway to be set aside.

- (3.) The value of the land to be granted under this Act shall be calculated upon the estimated market value thereof immediately prior to the making of the contract, irrespective of any Land Act or regulations made thereunder, and without regard to any prospective value that will be given to such lands by the proposed undertaking, but no land shall be deemed of a less value than ten shillings per acre.

How value of land to be calculated.

Such value shall be ascertained by the Surveyor-General on behalf of the Governor and some person to be appointed by the company, and, in case of their disagreement, by some person to be chosen by the Surveyor-General and such first-mentioned person; and their certificate, or that of any two of them, in writing of such value, given for the purposes of the contract, shall be binding and conclusive both upon the Governor in Council and the company;

- (4.) Whenever any land for which the company may be entitled to a grant under this Act is in the lawful occupation of any person as a tenant or licensee of the Crown, the company shall, before receiving the grant thereof, be required by the aforesaid Minister either to pay to the owner for the time being the value of improvements, to be determined as in the principal Act provided, or to select instead of such block an equal area of available Crown land adjacent thereto: Provided that nothing herein contained shall affect any rights or interests acquired under any miners' rights or business licenses granted under the authority of "The Gold Fields Act, 1866;" or "The Mines Act, 1877," or any regulation made under or in conformity with the said Acts;

Company to pay value of improvements to persons holding land as tenant or licensee of the Crown.

- (5.) Crown grants shall be issued for the blocks or sections to which the company may be entitled as soon as conveniently may be after the selection thereof, in accordance with this Act.

Issue of Crown grants to company and terms thereof.

The company shall be entitled to any coal found upon any land comprised in any such grant, and may work the same without paying any royalty; but otherwise all such land shall be subject in all respects to the provisions of "The Resumption of Land for Mining Purposes Act, 1882."

Every Crown grant issued under this Act shall contain a power to the Governor on behalf of the Crown, at any time within five years from the issue of the grant, to

take and lay off for roads or streets through any land comprised therein, or sites for schools or other public buildings, or other public purposes, such part of such land not exceeding five per centum as the Governor may think fit.

All other provisions of any Act for the time being in force and generally applicable to grants of land from the Crown shall extend and apply to grants made under this Act.

Such grants may include sites for stations, &c.

(6.) Any grant made under this Act may include all such sites for railway-stations, stores, and other buildings connected with or used by the railway, as may be provided for by the contract, or may be deemed reasonably necessary for the purposes of the company;

Value of lands to be granted not to exceed 50 per cent of cost of railway.

(7.) The value of the Crown lands to be granted to the company under the authority of this Act, or the contract made thereunder, shall not exceed fifty per centum of the cost of the said railway, as estimated in the contract entered into between the Governor in Council and the company:

Provided that such value shall not include the value of any land granted gratuitously for the construction of the permanent-way, or as sites for railway-stations, stores, or other buildings: Provided further that the cost of the railway for the purposes of such computation shall not exceed one million five hundred thousand pounds;

Coal fields reserves excluded from Act.

(8.) No lands described in the schedules to "The Westland and Nelson Coal Fields Administration Act, 1877," shall be deemed to be Crown lands in the meaning of this Act;

Land within mining districts also excluded.

(9.) No lands now used for mining purposes, or which shall be known gold-workings shall be deemed Crown lands under this Act.

BORROWING POWERS.

Company may borrow money on debentures.

9. The company may, from time to time, under the authority of this Act, borrow and take up at interest such sum or sums of money as may be necessary for completing the construction of the railway; and for such purpose may issue debentures under this Act.

Agents for raising loan.

10. The company may appoint any joint-stock company, or any such company and one or more persons, or any two or more persons, within or without the colony, to be agents for raising and managing any loan authorized to be raised under this Act, and such agents shall have full power to raise such loans by bonds, debentures, or otherwise, in such manner, at such times, in such parts, and upon such terms and conditions as the company shall direct; and to give and grant any necessary discharge or acquittance for the moneys raised under any such loan, or otherwise to dispose of moneys as the company shall prescribe.

All such bonds and debentures shall be signed by the Chairman and Treasurer on behalf of the company, or shall be signed by the agents, if any, for raising the loan.

11. No claim of any debenture-holder, or of any creditor of the company, shall attach to or be paid out of the public revenues of New Zealand or by the Government thereof.

Creditors of company to have no claim on colonial revenue.

12. Every debenture issued under this Act shall be in such form as the company or the agents aforesaid may from time to time approve, and shall be numbered consecutively so that no two debentures shall at any time bear the same number, and shall be for a sum of not less than one hundred pounds each.

Form of debentures.

The provisions of the last-preceding section shall be stated on the face of each debenture and coupon respectively issued under this Act.

(1.) Every such debenture shall be repayable, both as to principal and interest, at a place within or without the colony named in the debenture, and at a time named therein, not exceeding the term of twenty-five years from the issue thereof.

Time and place of payment.

(2.) The interest on every such debenture shall not exceed six per centum on the amount thereof, and shall be payable half-yearly or otherwise; and separate coupons for each sum so payable, in such form as the company or the agents aforesaid shall approve, and numbered consecutively for each debenture, shall be attached thereto.

Interest payable not to exceed 6 per cent.

(3.) Debentures and coupons respectively shall be transferable by delivery; and payment to any person in possession of any such debenture or coupon of the sum named therein shall discharge the company of all liability in respect of such debenture or coupon.

Debentures and coupons transferable by delivery.

13. All such debentures, and the interest payable thereon, shall be a first charge on the entire assets of the company, including the railway and everything pertaining thereto.

Debentures to be a first charge on assets of company and railway.

(1.) A certificate in the form or to the effect set forth in the First Schedule of this Act, duly executed, and purporting to be signed on behalf of the company, stating the amount previously borrowed and then outstanding and unpaid, shall be conclusive evidence in any Court of judicature, as against the said company, that no more than the total sum of money mentioned in the said certificate had, at the date of such certificate, been previously borrowed and then remained outstanding and unpaid.

Certificate as to amount of debt of company.

(2.) A certificate in the form or to the effect set forth in the Second Schedule of this Act, duly executed, and purporting to be signed on behalf of the company, stating that the sum or sums named in such last-mentioned certificate are authorized to be borrowed, shall be conclusive evidence in any Court of judicature, as against the said company, that the company is lawfully authorized to borrow the sum or sums of money mentioned in the said certificate, and that all conditions had been duly performed, observed, and fulfilled.

Certificate as to amount to be borrowed.

(3.) If any person shall fraudulently and falsely give or sign any such certificate as is mentioned in the last two pre-

Penalty for falsely giving or signing certificates.

ceding subsections, he shall be guilty of a misdemeanour, and punishable by imprisonment with or without hard labour for not exceeding three years.

Sinking fund.

- (4.) Before raising any loan the company may make provision for the repayment thereof,—

By making, with or without a sinking fund, the whole loan repayable at a stated period, or any parts thereof at stated periods, together with interest thereon in the meantime, not exceeding the rate hereinbefore mentioned.

May be charged on net profits of company.

- (5.) In order to provide funds for the creation of a sinking fund, the company may permanently appropriate any portion of the net profits of the company.

Sinking fund to be applied to pay off loan.

- (6.) When the principal of any loan becomes payable, the accumulated sinking fund provided for repaying the same shall be applied in the payment thereof.

Company may re-borrow to pay off loans.

- (7.) When the principal of any loan becomes payable, the company may re-borrow moneys under the provisions of this Act, for the purpose of paying so much of the said principal moneys as is not provided for by any accumulated sinking fund for the payment thereof.

In default of payment of debenture or coupon, Receiver may be appointed.

14. If any person holding a debenture issued under this Act, or holding a coupon for payment of interest on any such debenture shall tender such debenture or coupon for payment of the principal thereby secured, or interest thereon, at the place at which such principal or interest respectively is payable, and at the time when such principal or interest respectively is payable, or at any time thereafter, and such principal or interest respectively shall not be paid in full, such person may apply to a Judge of the Supreme Court, by petition in a summary way, for relief under this Act; and the Judge may, if satisfied of the truth of the matters alleged in such petition, order that such part of the company's property as is liable under the provisions of this Act for the payment of such money shall be absolutely sold, at such time or times, place or places, and either altogether or in parts, and subject to such terms and conditions as such Judge directs, and may in the meantime appoint a Receiver of the rents, income, and profits of such property.

Company's property to vest in Receiver.]

- (1.) Such part of the company's property as is liable under the provisions of this Act for payment of the principal moneys secured by any debentures, and as is specified in the order of the Judge in that behalf, and all securities held by the company as accumulated sinking fund for the repayment of such debentures, shall from the date of the said order, by virtue thereof and without any deed or other instrument whatever, vest in the Receiver, and shall cease to be vested in the company.

Powers for recovery of moneys, &c., to vest in Receiver.

- (2.) All powers for the recovery of tolls, rents, or other moneys of the company shall, after the appointment of a Receiver, and in respect of all moneys hereby vested in him, cease to be exercised by the company, and shall be exercised by the Receiver.

Receiver to give security.

- (3.) Every Receiver shall, before entering on his office, give such

security for the faithful execution thereof as the Judge directs.

- (4.) All moneys arising from any sale as aforesaid, and all moneys received by the Receiver, shall be applied only under the order of a Judge of the Supreme Court, as follows:—

Application of money by Receiver.

(a.) In the payment of the expenses of the application and order, and of the expenses of any sale authorized as aforesaid;

(b.) In the payment of such remuneration to the Receiver, and in such expenses of his office, as the Judge directs;

(c.) In the payment of the principal moneys secured by the said debentures, with interest thereon respectively at the rate aforesaid, until all such principal moneys have been paid;

(d.) The residue shall be paid to the company; and the Receiver shall account for all such moneys in such manner as the Judge directs:

Provided that in the distribution of the assets of the company, arising from such sale or otherwise, no debenture-holder shall have any preference over any other debenture-holder by reason of any priority of date, by obtaining the order aforesaid or otherwise howsoever, but all debenture-holders shall rank alike.

- (5.) When all the principal moneys so secured are paid, or at any time by an order of the Judge of the Supreme Court upon the application of the company, the powers of the Receiver shall cease; and he shall forthwith pay any moneys in his hands to the company.

When debentures paid off, Receiver's power to cease.

15. The principal moneys secured by every debenture issued under this Act, and the interest secured by every such debenture, shall, when the same respectively becomes payable, be a debt of the company to the holder for the time being of such debenture or of the coupon for such interest for the amount named therein respectively.

Unpaid principal and interest to be a debt of the company.

16. No debenture-holder shall sell, or make application for an order to sell under section fourteen hereof, any portion of the company's property unless and until he or they shall have first given notice in writing to the Governor of his or their intention to sell or to apply for such an order, and unless the Governor shall within three months next after the receipt of such notice have failed to give to such debenture-holder notice of his intention to purchase, or unless he shall previously give to such debenture-holder notice in writing that it is his intention not to purchase.

Debenture-holder not to sell, or apply for order to sell, without first giving notice to Governor.

17. If the Governor exercises the power of purchase conferred by the principal Act, and the railway or any part thereof purchased shall be then charged with any moneys borrowed by the company, and the moneys charged shall be less than the purchasing price determined by arbitration, pursuant to the provisions of sections one hundred and fourteen to one hundred and nineteen of the principal Act both inclusive, the price to be paid to the company shall be the difference between the moneys charged and the price so to be determined.

In case of purchase by Governor, what moneys to be paid to company.

If the moneys charged shall be more than the price so determined, the company shall pay to the Governor the difference between the price so determined and the money charged.

If the money charged, or any part thereof, shall bear interest at a higher rate than five per centum per annum, the arbitrators who determine the price to be paid for the purchase shall determine what, if any, is a proper sum to be allowed to the Governor as a rebate in respect of any interest on the amount charged in excess of five per centum per annum; and the amount so ascertained, if any, shall be added to the principal money, and as between the Governor and the company shall be deemed the amount charged upon the railway.

REPEAL.

18. For the purposes of the foregoing provisions of this Act, sections fifty-two to one hundred and six, both inclusive, and sections one hundred and twelve and one hundred and thirteen of the principal Act relating respectively to the borrowing of money, the rating of lands, and the concession of land to a company, shall be deemed to be repealed, but otherwise the principal Act shall have full force and effect in respect of the railway to be constructed under the authority of this Act, and the company constructing the same, except as herein is specially provided in modification thereof.

NELSON JUNCTION AND PUTARURU TO ROTORUA RAILWAYS.

19. Subject to the conditions and provisos contained in section four of this Act, and notwithstanding anything contained in "The Railways Construction and Land Act, 1881," the Governor in Council may, at any time prior to the first day of the session of the General Assembly now next ensuing, contract under the provisions of the Act last aforesaid and this Act with any company, syndicate, or person, whether acting on behalf of itself or himself, or as the duly-authorized attorney or agent of any other company, syndicate, or person,—

- (1.) For the construction of a line of railway to connect Nelson with any part of the herein above-mentioned East and West Coast (Middle Island) Railway; or
- (2.) For the construction of the railway from Putaruru to Rotorua, subject however, so far as the last-mentioned railway is concerned, to, *inter alia*, the provisions in Part V. of "The Railways Construction and Land Act, 1881."

20. All the provisions of the principal Act, and of this Act shall be construed, *mutatis mutandis*, and shall, save as hereinafter mentioned, operate in respect of the railways which may be authorized to be constructed under the last-preceding section hereof, and the companies constructing such railways respectively, in the same manner as the said provisions shall operate in respect of the railway which may be authorized to be constructed under section four of this Act, and of the company constructing such last-mentioned railway:

Provided that sections seven and eight of this Act shall not apply in respect of the construction of the railway from Putaruru to Rotorua, or of the company constructing such railway.

Modifications of principal Act in respect of said railway.

Authority to construct Nelson Junction Railway and Putaruru to Rotorua Railway with same privileges.

Provisions of this Act to apply to railways in last section.

21. The cost of the railway to connect Nelson with the East and West Coast (Middle Island) Railway shall not, for the purposes of this Act, be computed to cost more than one million pounds.

Cost of Nelson Junction.

22. The Governor in Council may, on the application of any company which has entered into a contract with the Governor for the construction of a railway under the principal Act, declare that in respect of such company the borrowing powers contained in sections nine to sixteen, both inclusive, of this Act shall apply as from and after a day to be specified in such order.

When borrowing powers to apply.

Thereupon the aforesaid sections shall come into operation accordingly, and shall supersede all provisions of the principal Act in conflict therewith in so far as such aforesaid company is concerned.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

“THE EAST AND WEST COAST (MIDDLE ISLAND) AND NELSON RAILWAY AND RAILWAYS CONSTRUCTION ACT, 1884.”

Certificate of Existing Liabilities of the [Name of Company].

THIS is to certify that, prior to this the day of , 18 , the above Company has borrowed under the above Act the sum of £ , and no more; and that the debentures issued in respect of the moneys so borrowed, and now outstanding and unpaid, do not exceed, in the whole, the sum of £ .

Issued under the seal of the said Company, this day of 18 .

SECOND SCHEDULE.

“THE EAST AND WEST COAST (MIDDLE ISLAND) AND NELSON RAILWAY AND RAILWAYS CONSTRUCTION ACT, 1884.”

Certificate of Authority given by the [Name of Company] to borrow Money.

THIS is to certify that the above Company is authorized to borrow the sum of £ and to issue debentures bearing interest at a rate not exceeding six pounds per centum per annum, payable half-yearly, as security for the repayment of the moneys authorized to be borrowed as aforesaid: And it is hereby certified that all conditions required by law to enable the said company to borrow the said sum of £ have been duly performed, observed, and fulfilled.

Issued under the seal of the said Company, this day of 18 .