

# Dunedin and Port Chalmers Railway.

## A BILL INTITULED

AN ACT to validate "The Dunedin and Port Chalmers Title.  
Railway Lands Compulsory Taking Ordinance  
1870" and for other Purposes.

**W**HEREAS the Ordinance of the Superintendent and Provincial Preamble.  
Council of Otago the Short Title whereof is "The Dunedin

and Port Chalmers Railway Lands Compulsory Taking Ordinance  
1870" was passed for the purpose of authorizing the construction of  
5 the railway therein mentioned and the taking of certain lands therein  
specified for the purposes of such railway and amongst others certain  
lands below high watermark: And whereas the said Ordinance is  
invalid so far as the same purports to deal with or affect Crown lands  
and lands below high watermark: And whereas doubts have arisen  
10 whether the said invalidity of the said Ordinance does not render the  
said Ordinance wholly invalid: And whereas a considerable part of the  
land authorized to be taken by the said Ordinance has been acquired  
thereunder and a considerable part of the railway works authorized to  
be constructed have been constructed: And whereas certain of the  
15 owners of the land authorized to be taken by the said Ordinance and  
not yet acquired thereunder have refused to allow the lands owned  
by them to be taken or to submit to the amount of compensation to  
be paid to them for the taking of the land or for the injuriously  
affecting the same being settled and determined under the provisions  
20 of "The Land Clauses Consolidation Act 1863:" And whereas the  
construction and maintenance of a railway between Dunedin and Port  
Chalmers would be of great public advantage and it is expedient that  
the Promoters of the said railway as defined in the said Ordinance  
should be empowered to construct the railway specified in the said  
25 Ordinance and to acquire the lands mentioned in the Schedule to  
the said Ordinance except the lands below high watermark therein  
mentioned and that the force of law should be given to the said  
Ordinance from the passing thereof subject to the provisions herein  
contained:

30 **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 shall be "The Dunedin and Port Chalmers Railway Act 1871."

Provisions of "The Dunedin and Port Chalmers Railway Lands Compulsory Taking Ordinance 1870" to be deemed to have had force of law from 29th July 1870.

2. Except so far as herein provided, the provisions contained in the Ordinance of the Superintendent and Provincial Council of the Province of Otago, of which the Short Title is "The Dunedin and Port Chalmers Railway Lands Compulsory Taking Ordinance 1870" shall be deemed to have had the force of law on the twenty-ninth day of July one thousand eight hundred and seventy and continually thereafter to have had the force of law and shall henceforth be deemed to have and shall have the force of law as if such provisions had been and were incorporated in an Act of the General Assembly coming into operation on the said twenty-ninth day of July and shall be deemed to have taken effect and shall take effect accordingly. 5 10

## Interpretation.

3. Such provisions shall be construed and read as if the words "General Assembly of New Zealand in Parliament assembled and by the authority of the same" had been substituted in the enacting part in lieu of the words "Superintendent of the Province of Otago by and with the advice and consent of the Provincial Council thereof." 15

Acts &c. done before the passing of this Act to have effect.

4. All things done and all acts and proceedings commenced taken or completed before the passing of this Act under by virtue or in pursuance of the said Ordinance or any provisions incorporated therein shall from the time of the doing of such things or the commencement taking or completion of such acts or the commencement taking or completion of such proceedings be deemed to have been and be as valid and binding as if done commenced taken or completed after the passing of this Act and as to all such acts and proceedings as shall have been commenced before the passing of this Act the same shall and may be continued and completed as if this Act had been passed before the commencement thereof: And all estates interests rights and privileges which by reason of any act done or proceeding taken under or in pursuance of the said Ordinance would have been acquired if such Ordinance had been valid at the time of the passing thereof or the powers and authorities thereby conferred had been conferred by an Act of the General Assembly coming into operation on the said twenty-ninth day of July, one thousand eight hundred and seventy shall be deemed to have been and shall be as legally fully and sufficiently acquired as if such act had been done or proceeding had been taken under or in pursuance of an Act of the General Assembly coming into operation on the said twenty-ninth day of July and containing provisions like to those in the said Ordinance: And it is hereby expressly provided that subject to the provisions of the said Ordinance the said Promoters shall be deemed from the said twenty-ninth day of July to have had until the passing hereof and thenceforth to have full power and authority to make construct and maintain a railway with wharves jetties approaches and other necessary erections and conveniences connected therewith such railway commencing at a point at or near the junction of High Street Crawford Street and Rattray Street in the City of Dunedin in the Province of Otago (being portion of reclaimed ground known as the Railway Reserve) and passing from in through or over the following city town and territorial divisions of the said Province namely—The City of Dunedin the North Harbour and Blueskin Districts Upper Harbour West District Sawyer's Bay District Town of Port Chalmers and Otago Harbour and terminating at a point situated in Koputai Bay in the Otago Harbour opposite the Harbour Reserve in the Town of Port Chalmers in the said Province as the line of the said railway is set forth in the plan deposited with the Clerk of the Provincial Council of Otago before the 20 25 30 35 40 45 50 55

commencement of the Session of the said Council during which the said Ordinance was passed or within the limits of deviation set forth in the said plan and passing through over or under the several sections streets roads and places enumerated in the Schedule to the said Ordinance annexed.

5 5. Nothing in this Act contained shall be deemed to authorize the said Promoters to take the lands below high watermark in the Otago Harbour specified in the Schedule to the said Ordinance, but so much of the said Ordinance as purports to authorize the taking thereof is hereby declared to be invalid and of no effect: Provided however that it shall be lawful for the said Promoters to make construct and maintain on the said lands below high watermark or within the said limits of deviation so much of the said railway and wharves jetties approaches and other necessary erections as are shown on the said plan to be intended to be constructed on such lands or within such limits of deviation and to maintain thereon so much of the said railway wharves jetties approaches and other erections as before the passing of this Act may have been so erected: And the said Promoters are freed indemnified and discharged of from and against all prosecutions and suits to which they may be liable for or by reason of such construction: Provided that all persons who would have been entitled to have and bound to accept compensation under "The Lands Clauses Consolidation Act 1863" for any lands taken or injuriously affected by the said Promoters if the said Ordinance had had the force of law at its commencement shall on the passing of this Act be entitled to have and be bound to accept compensation determined under the provisions of "The Lands Clauses Consolidation Act 1863," unless the same shall have previously to the passing hereof been so determined.

Lands between high watermark not to be taken.

6. And whereas certain persons have taken proceedings in the Supreme Court for the purpose of staying prohibiting or preventing the construction of said railway or certain portions thereof and the taking of certain lands mentioned in the said Schedule to the said Ordinance and the continuing and taking proceedings under the said Ordinance and "The Lands Clauses Consolidation Act 1863" for the purpose of acquiring certain of the said lands and the determining the amount of compensation to be paid for the taking of such land or injuriously affecting the same: And whereas it is fair and just that such parties should not by reason of the passing of this Act be deprived of their remedy against the Promoters for the recovery of the costs of such proceedings: It is therefore hereby enacted that nothing in this Act contained shall deprive such persons as aforesaid of their right to receive the costs of any such proceedings against the Promoters and if the Promoters shall refuse to pay any such costs after being taxed as between party and party and demand made it shall be lawful for any such person who shall have incurred such costs to apply in a summary way and on notice to the Promoters to any Judge of the Supreme Court for an order on such Promoters to pay such taxed costs and such Judge shall hear and determine such application and if he shall think fit make an order for the payment of such costs or so much thereof as he shall think such persons ought to recover from the Promoters.

Railway may be constructed on lands below high watermark.

SCHEDULE.

By what Legislature passed.	Short Title of Ordinance.
The Superintendent and Provincial Legislature of the Province of Otago.	"The Dunedin and Port Chalmers Railway Lands Compulsory Taking Ordinance, 1870."