

Mr. Hobbs.

KAMO AND KAWAKAWA RAILWAYS CONNECTION RAILWAY CONSTRUCTION.

ANALYSIS.

- | | |
|---|---|
| <p>Title.
Preamble.
1. Short Title.
2. Interpretation.
3. Authority to construct railway.
4. Governor and company may have running powers over each other's lines.
5. Powers of construction.</p> <p style="text-align: center;">CONCESSIONS OF LAND.</p> <p>6. When company formed Governor may cause withdrawal from reservation of Puhipuhi kauri forest.
7. If Puhipuhi Forest insufficient, then Crown land adjoining line, or elsewhere within Whangarei or Bay of Islands Counties, to be set aside.
8. Progress selection by company for land when complete sections of railway finished. (1.) How value of land to be calculated. (2.) Right of Crown to select for equal area. (3.) Issue of Crown grants to company, and terms thereof. (4.) Such grants may include sites for stations, &c. (5.) Value of lands to be granted not to exceed 50 per cent. of cost of railway.
9. Power to purchase Native lands.</p> <p style="text-align: center;">BORROWING POWERS.</p> <p>10. Company may borrow money on debentures. Agents for raising loan.
11. Creditors of company to have no claim on colonial revenue.</p> | <p>12. Form of debentures. (1.) Time and place of payment. (2.) Interest payable not to exceed 6 per cent. (3.) Debentures and coupons transferable by delivery.
13. Debentures to be a first charge on assets of company and railway. (1.) Certificate as to amount of debt of company. (2.) Certificate as to amount to be borrowed. (3.) Penalty for falsely giving or signing certificates. (4.) Sinking fund. (5.) May be charged on net profits of company. (6.) Sinking fund to be applied to pay off loan. (7.) Company may reborrow to pay off loans.
14. In default of payment of debenture or coupon Receiver may be appointed. (1.) Company's property to vest in Receiver. (2.) Powers for recovery of moneys, &c., to vest in Receiver. (3.) Receiver to give security. (4.) Application of money by Receiver. (5.) When debentures paid off Receiver's power to cease.
15. Unpaid principal and interest to be a debt of the company.
16. Debenture-holder not to sell, or apply for order to sell, without first giving notice to Governor.
17. In case of purchase by Governor, what moneys to be paid to company.</p> <p style="text-align: center;">REPEAL.</p> <p>18. Modifications of principal Act in respect of said railway.
Schedules.</p> |
|---|---|

A BILL INTITULED

Title.	AN ACT to authorize the Construction of a Railway to connect the Whangarei-Kamo Railway with the Kawakawa Railway, under "The Railways Construction and Land Act, 1881," with certain Modifications of the said Act.	5
Preamble.	WHEREAS it is desirable to give further facilities for the construction by private enterprise and for the working of a line of railway in the North Island to connect the Whangarei-Kamo Railway with the Kawakawa Railway:	
	BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—	10
Short Title.	1. The Short Title of this Act is "The Kamo and Kawakawa Railways Connection Railway Construction Act, 1887."	
Interpretation.	2. In this Act, if not inconsistent with the context,—	15
	"The railway" and "the said railway" shall mean the Kamo and Kawakawa Railways Connection 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;	20
	"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;	25
	"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.	30
Authority to construct railway.	3. Notwithstanding anything contained in "The Railways Construction and Land Act, 1881," the Governor in Council may, at any time prior to the <i>thirty-first</i> day of December, one thousand eight hundred and eighty- <i>nine</i> , 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 railway to connect the Whangarei-Kamo Railway with the Kawakawa Railway, both in the North Island, by such route as the Governor in Council shall determine.	35
	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:	40 45

211

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.

4. 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.

5. 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.

45

CONCESSIONS OF LAND.

6. On the making of the contract the Governor in Council may, on the application of the company, forthwith cause the Crown lands described in the First Schedule to this Act, and generally known as

When company formed Governor may cause withdrawal from reservation of Puhipuhi kauri forest.

the Puhipuhi kauri forest, containing seventeen thousand and one hundred and seventy acres, more or less, which, by Proclamation of the Governor of the eighth day of December, one thousand eight hundred and eighty-five, were set apart as a State forest under "The New Zealand Forests Act, 1885," to be withdrawn from reservation as aforesaid by Proclamation in the *Gazette*; and such lands may be so withdrawn from time to time as may be necessary; and the company shall be entitled to the whole of the land in the said Schedule described, so long as the same does not exceed the quantity to be granted.

If Puhipuhi Forest insufficient, then Crown land adjoining line or elsewhere in Whangarei or Bay of Islands Counties to be set aside.

7. If there is not sufficient land in the Puhipuhi Forest Reserve to satisfy the claim of the company in respect of the construction of the railway, then Crown land adjoining the line of railway, or elsewhere within the Counties of Whangarei and the Bay of Islands, or if not capable of being provided in the contract, as shall subsequently be approved by the Governor in Council, shall be set aside, in such places within the aforesaid counties as shall be provided in the contract, by Proclamation gazetted, which shall set out a general description of the lands thereby affected; and in such case the company shall be entitled to so much of the land so set apart as shall be equivalent to the amount of land they are entitled to over and above the area of the Puhipuhi Forest Reserve.

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 Forest Reserve, or, if insufficient, 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—

How value of land to be calculated.

(1.) 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.

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:

213

5 (2.) 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.

Right of Crown to select for equal area.

10 (3.) 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.

15 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.

20 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 :

25 (4.) 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 :

Such grants may include sites for stations, &c.

30 (5.) 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 :

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

35 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 two hundred and ten thousand pounds.

40 9. Notwithstanding anything contained in "The Native Land Administration Act, 1886," the company may contract or agree with the owners of any Native land along, or adjoining to, or within ten miles from the line of railway for the purchase or other acquisition of such land; and no person shall, in respect of any such contract, be
45 liable to any penalty in such Act provided against private individuals acquiring Native lands; but all negotiations for any Native land under the authority of this section shall be carried on and completed under the Act hereinabove last named; and a Committee under such Act may convey or demise land to the company, subject to section
50 twenty thereof.

Power to purchase Native lands.

BORROWING POWERS.

Company may borrow money on debentures.

10. 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. 5

Agents for raising loan.

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 authorised 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. 10 15

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.

Creditors of company to have no claim on colonial revenue.

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. 20

Form of debentures.

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. 25

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

Time and place of payment.

(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. 30

Interest payable not to exceed 6 per cent.

(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. 35 40

Debentures and coupons transferable by delivery.

(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. 45

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

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.

Certificate as to amount of debt of company.

(1.) 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 the amount previously borrowed and then outstanding and 50

215

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 certi-
ficate had, at the date of such certificate, been previously
borrowed and then remained outstanding and unpaid.

5
10
15
(2.) A certificate in the form or to the effect set forth in the
Second Schedule of this Act, duly executed, and pur-
porting 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-
ceding subsections, he shall be guilty of a misdemeanour,
and punishable by imprisonment with or without hard
labour for not exceeding three years.

Penalty for falsely
giving or signing
certificates.

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

Sinking fund.

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.

(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.

May be charged on
net profits of
company.

(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.

Sinking fund to be
applied to pay off
loan.

(7.) When the principal of any loan becomes payable the
company may reborrow 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 accumu-
lated sinking fund for the payment thereof.

Company may re-
borrow to pay off
loans.

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 sum-
mary 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

In default of pay-
ment of debenture
or coupon Receiver
may be appointed.

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. 5 10

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 the Receiver, and in respect of all moneys hereby invested in him, cease to be exercised by the company, and shall be exercised by the Receiver. 15

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.

Application of
money by Receiver.

(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:—

(a.) In the payment of the expenses of the application and order, and of the expenses of any sale authorised as aforesaid; 25

(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; 30

(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: 35

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. 40

When debentures
paid off Receiver's
power to cease.

(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. 45

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

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. 50

217

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 shall have first given notice in writing to the Governor of his 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 purpose 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.

Modification of principal Act in respect of said railway.

SCHEDULES.

Schedules.

FIRST SCHEDULE.

PUHIPUHI FOREST RESERVE.

ALL that area in the Provincial District of Auckland, containing by admeasurement 17,170 acres, more or less, bounded towards the north generally by the Mokotuna Stream and Native land; towards the east generally by the Taparahaia River and the Kaimanaku River; towards the south generally by Native Reserve No. 12 and Puhipuhi numbers 5 and 4; and towards the west generally by the Waiotu River.

SECOND SCHEDULE.

"THE KAMO AND KAWAKAWA RAILWAYS CONNECTION RAILWAY CONSTRUCTION
ACT, 1887."

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 out-
standing and unpaid, do not exceed in the whole the sum of £

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

THIRD SCHEDULE.

"THE KAMO AND KAWAKAWA RAILWAYS CONNECTION RAILWAY CONSTRUCTION
ACT, 1887."

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 o
£ , 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 .