

NEW ZEALAND.

ANNO VICESIMO QUARTO ET VICESIMO QUINTO

VICTORIÆ REGINÆ.

Local and Personal.

No. 3.

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AN ACT to empower the Dun Mountain Copper Mining Company (limited) to construct a Railway and for other purposes. Title.
[17th August 1861.]

WHEREAS it is expedient that the Dun Mountain Copper Mining Company (limited) should be authorised and empowered to make and maintain a Railway necessary sidings and approaches thereto from the Mines and Lands of the said Company to the Harbour of Nelson for the purpose of conveying from the said Mines and Lands the Ores and Minerals and other produce, arising therefrom and for other purposes: Preamble

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

Dun Mountain Railway.

Short Title.

I. The Short Title of this Act shall be the "Dun Mountain Railway Act 1861."

Interpretation.

II. The terms hereunder mentioned shall for the purpose of construing this Act have the force and signification hereby attached to them unless there be something in the context repugnant thereto or inconsistent therewith that is to say :—

The terms "Plan" and "Section" shall mean the plan and section respectively of the proposed railway signed by the Speaker of the House of Representatives and the Clerk of the General Assembly respectively and hereafter to be deposited in the office of the Superintendent of the Province of Nelson.

The term "Lands" shall comprise land tenements and hereditaments of any tenure and buildings and shall include any estate or interest therein.

The term "Company" shall mean the Dun Mountain Copper Mining Company (limited) and shall include their servants agents workmen and assigns.

The term "Person" shall include bodies Politic and Corporate.

Company may construct a Railway.

III. It shall be lawful for the Company to make and maintain a Railway either with single or double track for waggons and other carriages with all necessary sidings approaches byeways roads branches piers wharves bridges cuttings embankments drains watercourses and fences and all other necessary works commencing in Section No. 35 on the lands of the Company proceeding thence across the road lying between Sections 35 and 36 thence through Sections 36 and 27 thence through other lands and across Manuka road along Brook-street Manuka-street Alton-street Hardy-street Wai-mea-street and the Haven road passing to the North clear of the Salt Water Culvert and terminating at or near to the Albion Wharf all in the Province of Nelson as the same is more particularly delineated and described in the said plan.

Company may carry goods, &c.

IV. Over and along such Railway and works or upon any part thereof the Company may lead and carry away all such copper and other ores and all such mineral and other produce as shall from time to time be raised obtained or gotten from the Mines and Lands of the Company and may carry and convey all such goods and materials as may be necessary for the works and purposes of the said Company and may carry passengers goods and merchandise and may do all such other things as may by them be deemed requisite and as are usually done and performed by Railway Companies in such manner as to them may seem most convenient without paying any rent toll or other charge for or in respect of the same.

Power to take and hold land and construct works, &c.

V. Subject to the provisions restrictions and conditions contained in this Act or in any Act wholly or in part incorporated herewith the Company may exercise any of the following powers and execute any of the following works (that is to say)—

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They may without any previous agreement with the owner or occupier of such lands enter upon any lands or other places in the Province of Nelson and take the levels of the same.

They may enter upon take and hold all lands or any part thereof comprised within the limits of deviation delineated in the said plan (save and except as hereinafter mentioned).

They may from time to time make maintain alter or discontinue such drains cuts sluices sidings approaches branches jetties wharves bridges culverts cuttings embankments fences and other works as may be necessary for making maintaining and using the said Railway.

They may without previous payment tender or deposit enter upon and use any land within the said Province for the purpose of taking earth or clay therefrom and they may as aforesaid enter upon and use any lands adjacent for making temporary roads or approaches thereto or to the works Provided always that before they make such temporary use of any such lands they shall give twenty-one days notice of such their intention to the owners and occupiers of such lands except in the case of accident to the works requiring immediate reparation Provided also that the Company shall until any land taken by them for temporary use be given up to the owner pay to the owner half-yearly reasonable compensation for the use of such land and for any damage or injury done to the crop or to the surface of the land or otherwise and such compensation shall be settled if they cannot agree with the owner as in cases of disputed compensation.

They may during the construction of the said Railway and other works respectively fell timber and use the same and dig take and use clay stones and rubbish upon and from any convenient part of the Waste Lands of the Crown not being public highways and may lay and place upon any convenient part of the said lands any timber clay stones rubbish and ballasting which they may require for the purposes of the said Railway and other works respectively.

They may make lay and place and from time to time amend and repair one main Railway either with single or double track with all necessary sidings and byeways thereto in the usual manner by digging the soil and levelling the ground and ballasting upon over and along all or any part of the public highways and streets comprised within the said limits of deviation.

VI. Provided always that the power of purchase of lands hereinbefore conferred shall not extend to any public street or highway. Highways not to be purchased.

VII. The Company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of this Act or injuriously affected by the construction or maintenance of the Railway and works by this Act authorised or otherwise by the execution of the powers hereby conferred full compensation for the value of the lands so taken or used and for all damages sustained by such owners occupiers and other persons by reason of the exercise as to such lands of Compensation to be made by Company for lands taken or injuriously affected.

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the powers vested in the Company by this Act or any Act wholly or in part incorporated herewith Provided always that the Company shall not be liable to make any compensation to any person for the user or occupation of any public street or highway.

Railway not to interrupt traffic over roads and streets.

VIII. The said Railway and other works shall as far as possible be so made as not to impede injure prevent or interrupt any ordinary or rightful traffic upon the said public highways or streets respectively and so as not to increase the cost of making maintaining repairing and upholding the same or to interfere with or include within the breadth thereof any public footpath bordering or running along any of the said highways or streets respectively.

Levels of street and Railway to coincide.

IX. In every case where the level of the Railway shall not coincide with that of the portion of the street immediately adjacent the Company shall at its own cost and expense within three months after laying down such rails on such street raise or reduce such portion of the street over its whole remaining width to the level of the Railway and shall leave the portion of the street so raised or reduced in as complete a state in all respects as it was in immediately before the commencement of such alteration.

Penalty for non-compliance

X. Provided always that if at any time the Board of Works of the City of Nelson shall make any complaint to a Justice of the Peace to the effect that the provisions in clauses VIII and IX are being infringed or not properly carried into effect by the Company it shall be lawful for a Bench of not less than three Magistrates at any time before the completion of the portion of the works so complained of to make such order upon the Company for securing due compliance by them with these provisions as to such Bench shall seem just and in default of the Company complying with such order they shall be liable to pay a penalty to the said Board of Works not exceeding £5 for each such default to be recovered in a summary way.

Company may place materials on public roads and streets.

XI. During the making of the said Railway and other works and for the purposes thereof the Company may subject to the last preceding provision from time to time as occasion may require lead place lay and fix wood timber earth stones gravel rails posts sleepers and other materials in and upon any such public Highways and Streets or any part of the same respectively and may use and employ workmen horses carts and carriages to cut dig and make trenches watergates and watercourses therein or thereon for the purpose of keeping the said Railway and other works dry and free from water and may do all other necessary acts and things as well for the making and constructing of the said Railway and other works as for the repairing and upholding of the same when and as often as occasion shall require.

Company to employ locomotive power carriages, &c.

XII. It shall be lawful for the Company to use and employ locomotive engines or other motive power and carriages and

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waggons to be drawn or propelled thereby and to make such reasonable charges for the carriage and conveyance of passengers goods and merchandise as they may from time to time determine upon Provided always that such charge shall not be at a greater rate than 2s. per ton per mile for Goods and 4d. per mile for each Passenger Provided also that no locomotive engine shall be allowed to be used within the boundaries of the City of Nelson nor shall any truck carriage or waggon used by the Company for the conveyance of goods travel along any street in the City of Nelson at a rate of speed exceeding four miles an hour.

XIII. The amount of charge payable to the Company in respect of goods produce and merchandise under one ton in weight or measurement carried from or to the station in Nelson to or from the Wharf shall be any sum not exceeding two shillings and sixpence. Charge for Parcels.

XIV. For the purposes of this Act a ton shall mean a ton calculated by weight or measurement at the option of the Company. Ton defined.

XV. The Company shall run one train at least every day from the station in Nelson to the terminus at the harbour and a return train if on each day at the time fixed by the Company for the starting of such train from the station in Nelson there shall be tendered there to the Company money amounting to ten shillings at the least for rates from the said station to the said terminus. One Train daily.

XVI. The station of the Company in Nelson shall be at such place as shall be agreed upon between the Company and the Board of Works and if they do not agree within six months from the passing of this Act shall be determined by five Justices by an Order to be made in the usual manner. Station at Nelson.

XVII. In case default shall be made in payment of any money due and payable to the Company under the authority of this Act the same may be recovered by the Company upon the suit of the person from time to time appointed and authorised by the Company to receive the same And it shall be lawful for the Company to detain the goods and merchandise in respect of which such money shall be payable until the money payable in respect thereof shall have been fully paid and satisfied. Power to retain goods in default of payment of charge.

XVIII. It shall be lawful for the Company from time to time to make such bye-laws for regulating the affairs of the Company and the management of the said railway and the fixing of the charges for the conveyance of passengers and goods thereon as they may think fit and to repeal or alter any such bye-laws Provided that such bye-laws shall not be repugnant to the provisions of this Act or to the laws then in force in that part of the Colony where the same are to have effect and such bye-laws shall be in writing under the hands of the local Committee for the time being of the Company and if affecting Bye-laws may be made.
Bye-laws may be repealed or altered.

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other persons than the officers and servants of the Company shall be published as hereinafter is provided.

Bye-laws may be enforced by penalties.

XIX. The Company by the bye-laws so to be made by them may subject to the approval of the Superintendent and Executive Council for the time being of the Province of Nelson aforesaid impose such reasonable penalties as they may think fit not exceeding five pounds for each breach of such bye-laws Provided that every such bye-law shall be so framed as to enable the Justices or Resident Magistrate before whom any penalty imposed thereby shall be sought to be recovered to order the whole or a part only of such penalty to be paid.

Bye-laws to be posted.

XX. All such bye-laws relating to other persons than the officers and servants of the Company when the same shall have been made approved and published as aforesaid shall be printed in legible letters and shall be put up in some conspicuous place in the principal office of the Company and be open to inspection without fee or reward and in case any person shall prevent the same being inspected at all reasonable times he shall for every such offence be liable to a penalty not exceeding five pounds.

Bye-laws to be binding on all parties.

XXI. All bye-laws made according to the provisions of this Act when so published and put up shall be binding upon and be observed by all parties and shall be a sufficient warrant for all persons acting under the same.

Company to repair public roads and streets.

XXII. The Company shall from time to time make good and sufficiently repair and amend all damage injury or spoil which shall be done to or upon any public highway or street in through over and along which any railway sideway or byeway or other road or way shall be made by the Company under the authority of this Act and in case of neglect or refusal so to do after having received seven days notice to make such repairs and amendments as may be requisite from the Board of Works or other person duly authorised to have the superintendence or control of the public highways or streets or any of them such Board or other person shall have power to effect such repairs and amendments and shall recover the expense incurred in so doing from the Company in a summary manner.

Penalty for damage to way.

XXIII. If any person shall wilfully do or commit any damage injury or spoil or any nuisance to or upon the said Railway or other roads or ways or to or upon any other works of or belonging to the Company such person shall for every such offence forfeit and pay to the Company any sum not exceeding Five Pounds over and above the damages occasioned thereto.

Penalty for leaving trucks, &c., on public roads.

XXIV. If any person shall leave any truck or carriage or waggon used upon the said Railway upon any public road or street at any time between sunset and sunrise such person shall for every such offence forfeit and pay a fine not exceeding Five Pounds.

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XXV. In case the Company shall be desirous at any time of abandoning the working of the said Railway or any part thereof it shall be lawful for the Company to remove and take away for their own use all rails sleepers engines machinery and other materials then lying upon or used in the making construction or working of the said Railway Provided nevertheless that the Company shall amend all damage and injury done by them to the Highways or Streets by reason of such abandonment or removal and in default thereof shall be subject to the same proceedings and penalties as are hereinbefore contained with respect to the repairs of Roads.

Power to take up rails, &c., on abandoning Railway.

XXVI. In case the said Railway shall be abandoned or if the same or any part thereof shall be out of repair so as to prevent traffic thereon for a period of twelve calendar months after notice from any person or persons to the Company to repair the same it shall be lawful for the Superintendent of the said Province by notification in the *Government Gazette* of the said Province to take possession of so much of the land used for the said Railway as shall be part of any public highway or street.

If Railway abandoned or out of repair after certain period Government may take possession of highways, &c.

XXVII. It shall be lawful for the Company after giving one month's notice of their intention so to do in some newspaper published in the City of Nelson and in the said *Government Gazette* to apply to the Justices of the Peace for an order and thereupon not less than five Justices may make an order to prohibit all carts carriages and wheeled vehicles from crossing or passing over or along the Railway and works hereby authorised to be made within the limits of the City of Nelson except at such places and at such times and in such manner as shall be specified in such order Provided that this power shall not extend to the Haven Road.

Justices may order that railway shall not be crossed in the city except at certain places, &c.

XXVIII. Any order so made may by the like authority from time to time be annulled or varied after the like notices shall have been given by or to the Company.

Order may be annulled or varied.

XXIX. Every such order shall be published in the said *Government Gazette*.

Order to be published.

XXX. After such publication any person who shall contravene the order to be made as aforesaid shall forfeit and pay to the Company for each offence any sum not exceeding Five Pounds.

Penalty for breach.

XXXI. Subject to the provisions of this Act the following Sections of the Act of the Imperial Parliament called the "Lands Clauses Consolidation Act 1845" shall be incorporated with this Act *mutatis mutandis*:

Land Clauses Consolidation Act 1845 incorporated.

With respect to the purchase of lands by agreement Sections numbered 6 to 14 both inclusive

With respect to the purchase and taking of lands otherwise than by agreement Sections numbered 18 to 68 both inclusive

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Procedure of Justices.

XXXIX. For the purpose of settling matters to be decided by them under the foregoing provision one Justice may on the request of either party summon the parties and witnesses to appear before two or more Justices at a time and place to be named in the summons any two or more Justices may at such time and place hear the parties their Counsel Agents and Witnesses and may further proceed as in cases of summary proceeding and may make such order in the premises as to them may seem meet Provided always that the Company shall not be bound or compellable to make such branch Railway.

Powers and liabilities of Company with respect to branch Railways.

XL. If the Company shall think fit to make such branch Railway they shall for the purposes of making maintaining and repairing the same have and be subject to all and the same powers rights protection liabilities and restrictions as are hereinbefore given to or imposed upon them with respect to the streets or highways mentioned or referred to in this Act and contained within the said limits of deviation excepting only the reservation hereinbefore expressed with reference to the Haven Road.

Non-liability of Company to assessments or municipal rates.

XLI. The Company shall not be liable to any rate or assessment in respect of the Railway or any works by this Act authorised to be made.