

Kaitangata Railway and Coal Company Limited Empowering Act 1875

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An Act to authorize The Kaitangata Railway and Coal Company, Limited, to make construct and maintain a Railway connecting the Main Southern Trunk Railway in the Province of Otago with the Township of Kaitangata and the Coal Mines adjacent thereto in the said Province, and to make provision for other the proposed works of the said Company.

Preamble

WHEREAS a public company has been formed and duly incorporated under The Joint Stock Companies Act 1860, by the name or style of **The Kaitangata Railway and Coal Company, Limited**, for the purpose, amongst others, of constructing and maintaining a line or lines of railway connecting the Dunedin and Clutha Railway at the Township of Stirling with the Township of Kaitangata and the coal mines adjacent thereto in the said province, and of constructing and maintaining wharves and jetties on and abutting upon the Clutha River in connection with the said railway and coal mines: And whereas it is expedient that the said company shall be authorized to construct and maintain and work the said railway and works by an Act of the General Assembly of New Zealand:

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

1 Short Title

The Short Title of this Act shall be The Kaitangata Railway and Coal Company Limited Empowering Act 1875.

2 Interpretation

The following words and expressions used in this Act and any Act wholly or partially incorporated herewith shall have the meanings hereby assigned to them, unless there be something in the context repugnant to such construction, that is to say,

The respective expressions **the company**, **the promoters of the undertaking**, shall mean the Kaitangata Railway and Coal Company, Limited; and if the company, under the powers herein contained, assign the undertaking to any person, then the expression **the company** shall mean the person to whom the company shall, under the powers herein contained, assign the undertaking, and shall then and thereupon cease to mean the said company.

The word **Minister** shall mean the Minister for Public Works appointed under The Immigration and Public Works Act 1870.

The word **land** shall include messuages lands tenements and hereditaments of any tenure, and any estate or interest therein.

The terms **plan**, **section**, and **book of reference** shall mean the plan, section, and book of reference respectively of the proposed branch railway deposited in the Examiners Office at Wellington.

The expression **two Justices** shall mean two or more Justices of the Peace met and acting together, or a Resident Magistrate, or Chairman of Petty Sessions under The Petty Sessions Act 1865.

The expression **the undertaking** shall mean the railway and works authorized to be constructed by the company and to be executed under this Act, and the right to construct and maintain

the same, and, where not inconsistent with the context, all the powers and privileges belonging and appertaining thereto.

Power to company to construct railway, &c

3 Power to company to make construct and maintain railway

It shall be lawful for the company to make and construct and maintain a railway, with proper works approaches and conveniences connected therewith, connecting the Dunedin and Clutha Railway with the Township of Kaitangata, and the coal mines adjacent thereto, and passing from in through or into the following townships and territorial divisions of the said province, namely, North Molyneux District, Township of Newington, Township of Kaitangata, Township of Kaitangata South, and commencing at a point situate at Stirling on the said Dunedin and Clutha Railway, on section numbered seven, block twelve, in the said district, and terminating at a point situate on section numbered four, block three, said district, as the said line of the said railway is set out in the plan and described in the book of reference, or within the limits of deviation set forth in the said plan, being one hundred and twelve yards on either side of the said line, and passing over or under the several sections roads streets and places referred to and enumerated in the Schedule hereto.

4 Power to construct wharves and jetties

It shall be lawful for the company, by and with the consent of the Governor, to construct erect and maintain wharves and jetties upon and abutting upon the Clutha River at or near Kaitangata aforesaid, as may be by the company, with such consent as aforesaid, determined upon, and to charge such tolls and rates for the use and occupation thereof as shall be fixed by Proclamation under the hand of the Governor.

5 Governor may permit use of waste lands of Crown

The Governor may, by Proclamation in the New Zealand Gazette, give to the company, their successors and assigns,

but subject to the provisions herein contained, exclusive permission to use such portions of the land required for the purposes of such railway within the limits of deviation shown on the plan as may then be vested in the Crown or the Superintendent of the Province of Otago, or as may be subject to any Waste Lands Act in force in that part of the colony where the railway is to be constructed: Provided that no such permission shall be given in respect of any such lands which may have been granted or agreed to be granted under any law now or hereafter in force.

The Governor may in like manner permit any part of the railway to be constructed on and along any part of any public highway, and also that any part of such line of railway may be constructed on or through any public reserves. No person or body shall be entitled to any compensation for any road or land so used or occupied.

Provided that no permission to be given as aforesaid shall, in the case of Crown lands or lands subject to any Waste Lands Acts as aforesaid, be deemed to authorize the taking and using of such lands if the same or any of them shall be under any lease or license for pastoral or other purposes except upon and subject to the terms of section seven hereof with respect to compensation.

6 Power to enter and take lands &c

Subject to the provisions of this Act, and the Acts wholly or partially incorporated herewith, the company may exercise all or any of the powers conferred by this Act or the said incorporated Acts for the construction of the railway, and may enter upon or cause to be entered upon all lands which they are authorized to use or acquire under this Act for the purpose of making such surveys as may be necessary, and may take and use all such lands as the company shall have permission to use as aforesaid, and may take and hold all the lands specified in the plan and book of reference and required for the railway along the line so set forth and described as aforesaid, or within the limits of deviation, and may temporarily occupy and use such lands as may be necessary on either side of the railway during the construction thereof.

7 Compensation to be awarded

Subject to the provisions of this Act, all persons being owners of, or having any less estate or interest in, any lands so taken under authority of this Act, or which may be damaged by the construction of the railway, shall be entitled to receive compensation for such land or damage, the amount whereof shall be ascertained in the manner set forth in the Act of the General Assembly of New Zealand called The Lands Clauses Consolidation Act 1863, which Act and any Act amending the same for that and other purposes, is incorporated with and shall form part of this Act.

8 Land belonging to infants

In case any infant whose lands are taken or injuriously affected under this Act has no legal guardian resident within the colony, the word “guardian” when used in The Lands Clauses Consolidation Act 1863, shall, for the purposes of this Act, be held to mean the Registrar or Deputy Registrar of the High Court of New Zealand for the judicial district in which such lands are situate. And if there shall be more than one such Registrar or Deputy Registrar within such District, then the Registrar or Deputy Registrar whose office shall be nearest to the place where the lands are situate shall be deemed to be the guardian of such infant.

The words “High Court” were substituted, as from 1 April 1980, for the words the “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

9 Incorporation of Railway Clauses Consolidation Act 1845

The following sections of the Act of the Imperial Parliament cited in England as The Railway Clauses Consolidation Act 1845, save so far as they shall be expressly varied by or be inconsistent with the provisions of this Act or The Lands Clauses Consolidation Act 1863, shall be and the same are hereby incorporated with this Act, and shall, save as aforesaid, form part of this Act, and be construed together herewith and with

the other Acts also incorporated herewith as forming one Act, that is to say:—

- With respect to the construction of the first-mentioned Act and of the Acts incorporated therewith, sections numbers two to six, and thirteen to twenty-four.
- With respect to the temporary occupation of land near the railway during the construction thereof, sections numbers thirty to forty-five.
- With respect to the crossing of roads or other interference therewith, sections numbers forty-six to sixty-seven.
- With respect to works for the accommodation of lands adjoining the railway, sections numbers sixty-eight to seventy-six.
- With respect to mines lying under or near the railway, sections numbers seventy-seven to eighty-five.
- With respect to the carrying of passengers and goods upon the railway and the tolls to be taken thereon, sections numbers eighty-six to one hundred and six.
- With respect to the regulating of the use of the railway, sections numbers one hundred and eight to one hundred and eleven.
- With respect to the leasing of the railway, sections numbers one hundred and twelve and one hundred and thirteen.
- With respect to the engines and carriages to be brought on the railway, sections numbers one hundred and fourteen to one hundred and twenty-five.
- With respect to the settlement of disputes by arbitration, sections numbers one hundred and twenty-six to one hundred and thirty-nine.
- With respect to the recovery of damages not specially provided for and of penalties and to the determination of any other matter referred to Justices, sections numbers one hundred and forty to one hundred and fifty-eight.
- And also section number one hundred and sixty; and the numbers of the sections hereby incorporated shall be

inclusive of the first-named section and the last-named section in each case herein provided for.

Provided that wherever in such Act the following words are used they shall mean the words hereinafter severally set opposite to them that is to say—the words

- **The Commissioners of Her Majesty's Treasury, The Commissioner of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings, The Lord High Admiral of the United Kingdom of Great Britain and Ireland, or The Commissioners for executing the office of Lord High Admiral** as aforesaid, shall severally mean the Governor of New Zealand.
- **The Secretary of the Admiralty** shall mean the Colonial Secretary of New Zealand.
- **Superior Courts, The Court of Chancery, The Court of Queen's Bench, The Court of Exchequer, General Quarter Sessions, Quarter Sessions,** shall mean severally the High Court of New Zealand.
- **The promoters of the undertaking** shall mean the company, or in case the company shall sell and assign the undertaking, shall mean the person to whom the same shall be assigned.
- **The United Kingdom, the kingdom, the county,** shall mean that part of the Colony of New Zealand where the railway is to be constructed.
- **The Bank** shall mean the bank where the business of the company shall for the time being be transacted.
- **The Board of Trade** shall mean the Governor in Council.
- **Clerk of the Peace, One of the Masters of the Court of Queen's Bench, Accountant-General of the Court of Chancery in England, Accountant-General of the Court of Exchequer in Ireland, Taxing Master of the Court of Chancery, Master in Chancery,** shall mean severally the Registrar or Deputy Registrar of the High Court of New Zealand within the judicial district where the railway may be intended to be or be in course of construction; and if there be more than one such Registrar, then the term shall be taken to mean such Registrar in that part of the colony where the

railway is proposed to be constructed as the Governor may from time to time appoint for the purposes of this Act.

- **The Lands Clauses Consolidation Act** shall mean the Act of the General Assembly of New Zealand shortly intituled The Lands Clauses Consolidation Act 1863, and any Act amending the same.

Provided also, that where the words of the said Railway Clauses Consolidation Act 1845, would, from the said Act being framed with reference to England and Ireland, be inapplicable to the circumstances of the Colony of New Zealand, the said Act shall be read and interpreted so as to make them applicable to the circumstances of the said colony, and so as to insure that the operation of the said Act shall be secured by this Act for the benefit and control of the railway:

Provided further, that in any case where, having regard to the circumstances attending the construction of the railway under this Act, or the nature of the country through which it passes, any of the provisions of The Railway Clauses Consolidation Act 1845, incorporated herewith shall not be applicable to such railway or any part thereof, it shall be lawful for the Governor, on the application of the company, if in his opinion it is expedient so to do, by Proclamation to declare that such of the said provisions as shall be mentioned in such Proclamation shall not apply to such railway or any part thereof to be particularly specified in such Proclamation.

The words "High Court" were substituted, as from 1 April 1980, for the words the "Supreme Court" pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Controlling powers over railway.

10 Powers of Governor as to inspection of railway, &c

During the construction of the said railway and the execution of the works connected therewith, and after the completion thereof, the Governor shall be at liberty at all reasonable times to direct any engineer or other proper officer of the General Government to inspect the works, the rolling-stock, and buildings of the company, and any requisition which the Governor shall hereafter, upon the recommendation of the said engineer or other officer as aforesaid make, requiring the company to effect any necessary alteration or repair in to or upon the

works rolling-stock or buildings of the company, shall be immediately thereafter obeyed and carried out.

11 Governor to give possession of land to company

Within three calendar months after the passing of this Act the Governor shall deliver to the company or any contractor engineer servants or workmen authorized by them, possession of all lands the use of which the said Governor is hereinbefore empowered to give to the company, their successors and assigns, for the purposes of the railway: Provided always, that with respect to Crown lands or waste lands or public reserves or roadways of which possession may be so given to the company, the company shall acquire no more than a right to use or an easement in and upon the said lands for the purposes and to the extent hereby enacted and declared, but revocable only in the event of the Governor exercising the power of pre-emption hereinafter contained.

12 Company to proceed forthwith with construction of works

The company shall without any inexcusable delay, immediately after possession shall be given by the Governor as aforesaid, commence or resume the construction of the railway works, and shall prosecute the same to completion without delay or intermission, unless hindered or prevented by some unforeseen cause or impediment; and the company shall also in like manner, and as the state of the said railway works shall permit and require, proceed with the erection of all buildings, and supply the necessary accommodation for the safe proper and convenient conduct of passengers and goods traffic on the said railway.

13 Governor may make regulations

The Governor may, from time to time, by Proclamation to be published in the New Zealand Gazette, make alter and revoke bye-laws

Fixing rates fares and rent, to be charged by the company for the carriage of goods and passengers, and the storage of goods in any of the company's sheds or warehouses;

Regulating the number of trains to run each day, the time of their arrival and departure from the terminal and intermediate stations;

Prescribing the description and quantity of rolling stock which the company shall keep on the line or lines to be specified in such bye-laws, and the state and condition in which the same shall be kept and maintained;

Generally imposing such restrictions upon the conduct of the business and traffic of the company as may, in the opinion of the Governor, be most conducive to the public interest and welfare; and in and by any such bye-laws the Governor may affix a penalty of not exceeding two hundred dollars to the breach of any of the bye-laws so to be proclaimed as aforesaid.

The expression “two hundred dollars” was substituted, as from 10 July 1967, for the expression “one hundred pounds” pursuant to section 7(1) Decimal Currency Act 1964 (1964 No 27).

14 Governor may enter into agreements with company for running powers over line &c

The Governor may also from time to time enter into and make arrangements with the company upon such terms and conditions as may from time to time be agreed upon between the Governor and the company, providing that any trains or rolling-stock the property of Her Majesty or the General Government of the colony may be run upon the railway after the completion thereof, and that any trains or rolling-stock the property of the company may be run upon any line or lines of railway the property of Her Majesty or the General Government of the colony, and in any such agreement provision may be made as to stoppage at the terminal and other stations on any line of railway, and specified in any such agreement. The Governor and the company may also, from time to time in manner aforesaid, agree 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 may enter into and agree upon such terms as may be necessary to give effect to this section of this Act.

15 Power to Governor to purchase railway on giving notice

The Governor shall be entitled at any time, upon giving six calendar months' notice in writing to the company, to purchase the railway works of the company, together with its rolling-stock plant implements, and all its rights powers and privileges, at a price to be determined by arbitration, the award being that of three arbitrators, or any two of them, one arbitrator being chosen by the Governor, another by the company, and the third arbitrator by the two other arbitrators.

In determining the price to be paid to the company, the said arbitrators shall not award any compensation to the company in respect of the lands the use of which shall have been acquired from the Governor under the provisions of this Act, but the company shall require in respect of such lands, the fair value of all improvements made on such lands, to be ascertained as hereinafter provided.

Upon payment of the compensation to be awarded under the provisions hereof the company shall assign and transfer to Her Majesty all their estate property and interest in the said railway plant rolling-stock and everything appurtenant thereto. No compensation whatever shall be paid for the goodwill of the railway, but the arbitrators in determining the price to be paid to the company aforesaid, shall take as a basis of the valuation the cost of other similar railway works and rolling-stock at the time when the works being the subject of such arbitration were constructed or the rolling-stock was acquired, as the case may be; and the arbitrators shall also take into consideration the depreciation in the permanent way rolling-stock buildings and other works of the railway; and after such valuation shall have been arrived at as aforesaid, the arbitrators shall add a sum equal to ten dollars per centum to the amount of such valuation, and the sum so arrived at shall be accepted by the company in full of all claims and demands in respect of the purchase of the railway: Provided nevertheless, that nothing herein contained shall authorize the purchase by the Governor of the coal mines of the company, or of the works connected therewith, and the machinery rolling-stock plant implements sheds and depots required by the company in connection with the said coal mines, and that on any such purchase by the Gov-

error due provision shall be made for the carriage of the coals of the company along and over the line of railway so to be purchased, and the lines of railway connected therewith, upon terms to be determined by arbitration as aforesaid.

The expression “ten dollars” was substituted, as from 10 July 1967, for the expression “ten pounds” pursuant to section 7(2) Decimal Currency Act 1964 (1964 No 27).

16 Company not to sell mortgage or assign railway without consent

The company shall not voluntarily mortgage sell assign part with or in any manner encumber or charge their beneficial interest in the railway without the consent in writing of the Governor first had and obtained.

17 Power to Governor to take possession in case of delay in works or neglect to run trains

In the event of any unreasonable or inexcusable delay by the company in the prosecution of the works connected with the railway, or in the event of the company, after the completion of the said works in whole or in part, so that the whole or any complete part or section of such railway may be used for the purposes of traffic failing or neglecting for the space of three clear days without reasonable excuse to run trains at the times and in manner fixed by and determined in any bye-law to be made by the Governor under this Act, or if the company shall in the opinion of the Governor commit or suffer a wilful breach of any agreement to be made under the fourteenth section of this Act, it shall be lawful for the Governor to take possession and assume the management of such railway, and complete the same and conduct the traffic thereon, charging the company with all outlay and expenditure which may be entailed, and crediting the company with all earnings and receipts, and in such event there shall be paid by the company to the Governor, and by the Governor to the company, the balance which shall thereafter be found to be due from the one to the other of them

from time to time, the accounts being computed and rendered at intervals of not less than six calendar months.

Miscellaneous provisions

18 Company may sell or lease surplus lands voluntarily acquired with consent of the Governor

It shall be lawful for the company, with the consent of the Governor first obtained, to lease from time to time at such rent and on such conditions as they may think reasonable all or any of the lands which they have acquired, or may hereafter acquire, by voluntary agreement, for the purposes of the railway, or to sell or convey all or any of such lands in such manner and on such conditions as they may deem proper.

19 Company not responsible for error or omission in plan, &c

No advantage shall be taken of or against the company or any interruption be given during or after the making of the railway on account of any error or omission in the plan or book of reference in any case in which it shall appear to two Justices, to be certified by writing under their hands, that such error or omission proceeded from mistake.

20 Company may deviate from line of works in plan

The company in constructing the railway may deviate from the line of works laid down in the plan, but may not take or use for the purpose of such deviation any land not comprised within the limits of deviation set forth in the plan and book of reference without the consent in writing of the owner of such land.

21 Lands acquired to vest in Company

Subject to the provisions hereinbefore contained, all lands acquired by the company from any person for the purposes of the railway, and all property real or personal, of what description soever belonging or appertaining to the said railway, shall be and are hereby declared to be vested in and shall be deemed to be the property of the company: Provided also that if the

company shall sell or assign the undertaking to any person after they shall have acquired any lands or property under the powers herein contained, it shall be lawful for the company to convey any lands or real property so acquired by or vested in them, and to assign or transfer any personal property so acquired by or vested in them to the person to whom the undertaking shall be so sold.

22 Contracts &c to be in name of company

All contracts and other agreements to be entered into under authority of this Act, or of any Act incorporated wholly or partially herewith, shall be entered into in the name of the company.

23 Company to take security from receivers of tolls

Security shall be taken by the company in such amount and in such manner as they shall deem necessary, from any collector or receiver of any tolls or charges collected under the authority of this Act, for the faithful execution of his office.

24 Accounts to be kept

Full and accurate accounts shall be kept of all moneys received and expended under the provisions and for the purposes of this Act, and such accounts shall be balanced once in each year at the least; and it shall be lawful for the Governor from time to time to prescribe the mode and form in which such accounts shall be kept, and either to prescribe in manner aforesaid generally or for any company in particular.

Such accounts shall be audited once in each year at the least, and for this purpose an auditor or auditors shall be appointed by the Governor.

For the purpose of auditing such accounts, the company shall cause the accounts, together with all the books and vouchers relating to the railway, to be produced to the auditor or auditors.

The remuneration of the auditor or auditors, and his or their expenses, shall be defrayed out of the funds levied under this Act, and if the company shall at any time fail to make suffi-

cient provision for such remuneration and expenses, it shall be lawful for the Governor to fix the amount thereof: and if the company shall fail duly to pay and discharge the amount so fixed, the same may be paid to the auditor by the Colonial Treasurer for the time being, and be recovered by him in his own name from the company.

25 Annual abstract to be prepared

An annual abstract shall be prepared of the total receipts and expenditure of all funds levied under this Act, or received for the purposes hereof during the then past year, under the several distinct heads of receipts and expenditure, with a statement of the balance of the said accounts duly audited and certified by the company, and also by the auditor or auditors thereof, and a copy of such annual account shall be lodged in the office of the Minister of Public Works, at Wellington, on or before the thirty-first day of January in each year, and such accounts shall be open at all reasonable times to the inspection of the public without payment of any fee.

26 The Railways Regulation and Inspection Act 1873, and other Acts to extend to this Act

The Railways Regulation and Inspection Act 1873, and all other general Acts of the General Assembly relating to railways, and **The Railway Offences Act 1865**, and any Act amending the same, shall be deemed and construed to extend to the railway by this Act authorized to be made, and subject to this Act, shall be read therewith as if incorporated herein.

**Schedule
North Molyneux District**

Block XII, sections 1, 2, 3, 4, 5, 6, 7; block X, sections 2, 3, 4, 5, 6, 7, 8; block VIII, sections 1, 2, 3; block VII, sections 3, 4, 5, 6, 7; block IV, sections 1, 2, 3, 4, 5: block III, section 5, and all intervening roads.

Township of Newington (sub-division of sections 1 and 2, block IV)

Elizabeth street, Bridge street, sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22; Mill Street, Clyde Terrace, Waste Land and Sheds Road Reserve and all intervening roads or streets.

Kaitangata Stream.

Township of Kaitangata.

Road and reserve, block XXX, section 14, Exe Street, Water Street, Exmouth Street, Torquay Street, Berry Street, Dartmouth Street, Stuart Street, Prawl Street, Eddystone Street: block XXX, sections 8 and 9; block XXXI, sections 1, 2, 4; block V, sections 1, 2, 22; block XXXII, section 1; block IV, sections 1, 2, 3, 4, 5, 6, 20, 21, 22; block XXXIII, section 1; block III, sections 4, 6, 21; block II, sections 1, 2, 3, 4, 22; block I, sections 1, 2, 3, 4, 21, 22; block XXX, sections 10, 11, 12, 13; block XXIX, sections 9, 10; railway temporary reserve block XXX, section 7; block XXX, sections 3, 4, 5, 6; block XXXI, sections 3, 5, 6; reserve block V, section 4; reserve block V, section 3; block XXXII, sections 2, 3, 4, 5, 6, 7; block XXXIII, section 2; block III, sections 1, 2, 3, 5, 7, 20, 22; block II, sections 5, 6, 7, 20, 21; block I, sections 5, 6, 7, 20; Clutha River reserve and all intervening roads or streets.

Township of Kaitangata South.

Elizabeth Street; Swanston Street; Queen Street; block XIX, sections 1, 2, 3, 4, 5, 6, 26, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39; block XX, sections 1, 2, 3, 4, 5, 6, 7, 8, 27, 28, 35, 36, 37, 38; block XXI, sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 26, 27, 28; block XXII, sections 1, 2, 3, 4, 5, 6.