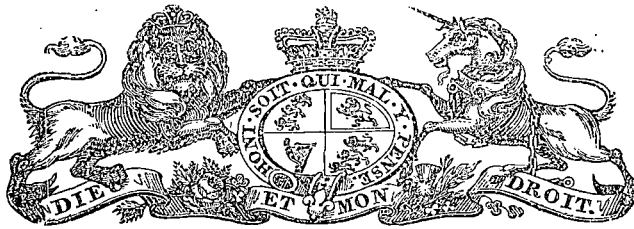


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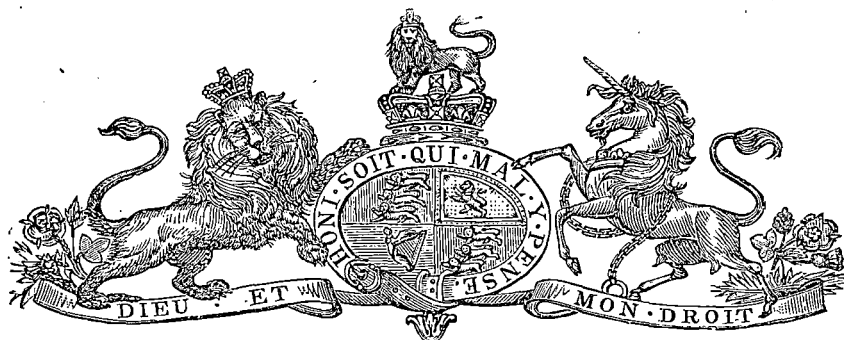
PARLIAMENT OF TASMANIA.

V. D. L. COMPANY'S WARATAH AND ZEEHAN
RAILWAY ACT, (PRIVATE):

Opinion of the Law Officers of the Crown and others as to right of
the Company to construct Branch Line from Rosebery to Lyell, &c.

Presented to both Houses of Parliament by His Excellency's Command.

Cost of printing—£3 18s.



V. D. L. COMPANY'S WARATAH AND ZEEHAN RAILWAY
ACT, (PRIVATE):

BRANCH LINE FROM ROSEBERY TO LYELL.

V. D. L. COMPANY'S WARATAH-ZEEHAN RAILWAY.—BRANCH LINE.

My views in connection with this matter were given at length in the House on 28th October, 1897, and are reported in the *Mercury* of the following day. I am now asked to give an opinion, upon the application of the Emu Bay Railway Company, Limited, for a lease for a branch line under Section 8 of 59 Vict. (the V. D. L. Company's Waratah and Zeehan Railway Act). Recognising the difficulties that ensued last year owing to the promise by Ministers to grant a lease for a branch line, caused by the doubts expressed as to what was or was not a branch line, and with the view of disarming hostile critics who insinuated that my opinion would probably be given to suit the views held by Ministers, I have deemed it necessary to call in the aid of the Solicitor-General, so that the two opinions, if divergent, may be submitted to some counsel of high standing.

I find by 55 Vict. No. 15, Section 27, the length of a branch line was limited to 10 miles, but no definition of what constituted a branch line was given. In 59 Vict. V. D. L. Company's Act the 10 mile limit was eliminated, and the Act itself silent upon the meaning of branch railways. From which I conclude that in giving within the latter Act the power to the Executive to grant a lease for a branch line, it was the intention of the Legislature to leave the question of length of line to the discretion of the Governor in Council. There is no law from which a conclusion can be deduced as to what is a branch line. This is a mere matter of fact, to be judged from the particulars of each case, and is a question for railway experts to determine from their knowledge of the conduct of railway business. But such opinions, it seems to me, are only necessary when grave doubts might exist that in granting an application Ministers might be exceeding their powers in consenting to what is really a railway rather than merely a deviation to feed a trunk line.

Under ordinary circumstances not much consideration would be required in coming to the conclusion that an application based upon the plan submitted was one meet for Ministers to deal with ; and I know of no outside reason why there should be any doubt from a legal point of view that in acceding to the request of the Company Ministers should have any fear that their action was in contravention of the Act under which the application is made.

D. C. URQUHART, *Attorney-General.*

Attorney-General's Chambers, Franklin Square, Hobart,
12th July, 1898.

EMU BAY RAILWAY COMPANY, LIMITED, AND BRANCH LINE FROM
ROSEBERY TO QUEENSTOWN.

It appears that in pursuance of Section 4 of "The Van Diemen's Land Company's Waratah and Zeehan Railway Act," (59 Vic., private Act), the primary lease has been granted to the Emu Bay Railway Company, Limited, for the construction, maintenance, and working of a railway from a point on the Emu Bay and Bischoff Railway to a point near Zeehan and near Leslie Junction on the Mount Dundas and Zeehan Railway.

The Company are the assignees under Section 91 of the Act of the Van Diemen's Land Company.

The Company now apply to the Minister of Lands and Works for a lease under Section 8 of the Act "for the construction of a branch line from a point on the Company's main line in the vicinity of Rosebery to Queenstown."

The railway now being constructed under the primary lease to Zeehan (hereinafter referred to as "the primary line") will extend for the distance of 55 miles, and I am instructed that the proposed branch line to Queenstown will extend for the distance of 25 miles.

The question arises whether the Minister, with the consent of the Governor in Council, may lawfully grant a lease for the construction of the proposed branch line, and this depends upon the meaning of Section 8 of the Act. Of course the scope and provisions of the whole Act must be carefully considered in coming to any conclusion. There does not appear to be any definition of a "branch line," nor am I able to glean from the Act any provision which cuts down or modifies the words of Section 8.

This Section provides that a lease may be granted for the construction "of *such branch lines of railway* from the said railway to *such termini* as may be determined upon by the Company and "approved by the Governor in Council, and also such area of Crown Land for all Stations," &c.

The Legislature might very easily have controlled this power by any number of restrictions as to the *length* and *direction* and *termini* of branch lines, and, indeed, restrictions of this nature do find a place in *subsequent* legislation, and also in the *previous* Act, 55 Vict. No. 16, (the Waratah and Zeehan Railway.)

The power given by Section 8, however, as to granting a lease for branch lines is unrestricted as to all the above matters, and I am of opinion that the proposed line is a branch line within the meaning of Section 8, and that the Minister, with the consent of the Governor in Council has power to grant it.

It may be argued that if the primary line is only 55 miles long, then a branch line from it should not extend for such a distance as 25 miles, or that a branch line should not extend in some particular direction.

I do not think that any arbitrary rule of this kind can be laid down, or that restrictions may be read into Section 8, which have been omitted and, presumably, deliberately omitted, by the Legislature.

The Legislature appears to have trusted Ministers with certain legal powers, and Ministers are responsible to Parliament for the way in which such powers are executed.

If the expression "branch line" is considered a technical one, and there is any plain and recognised usage or custom among railway experts which gives to such expression a meaning more restricted than the expression in its ordinary sense would imply, then such restricted interpretation might, according to the canons of construction, be read into Section 8.

I am not aware, however, of the existence of any such usage or custom, and I apprehend that the circumstances of each particular case must always be taken into consideration. This appears to be so having regard to the opinions (with the papers forwarded to me) of three railway experts, namely, Messrs. Charles Oliver, Chief Commissioner of Railways, Sydney; John Mathieson, Commissioner of Victorian Railways; and Alan G. Pendleton, Commissioner of Railways in South Australia. These three gentlemen all concur in the opinion that the proposed line is undoubtedly a branch line.

None of these gentlemen give any *precise definition* of the meaning of the term "branch line," and I assume that, as before stated, each case depends upon the particular circumstances surrounding it.

Taking, then, the words "branch lines" in their ordinary sense, I fail to see why the proposed line to Queenstown is not a branch line.

The traffic on the line will feed the primary line. It appears that the primary line (and this is recognised in Section 4 of the Act) was built to be used in conjunction with the line already constructed from Emu Bay, and that the conjoined lines tap a *port* on the North-West Coast of the Colony, and that such lines will run from that port to Zeehan, a distance of — miles. I think it must be admitted that the proposed line to Queenstown would undoubtedly be a branch line if the conjoined lines are considered as one.

A reference to the conjoined lines appears to be permissible for the purposes of the argument; but, even if this is not so, I am still of opinion that the proposed line is a branch line as regards the primary line now being constructed. For the purposes of the above opinion, I assume that the primary line will be constructed to Zeehan.

Should the Company stop short at Rosebery, I have some doubt as to whether the lease applied for can be legally granted.

Under the Act the Company have a right to stop at Rosebery. The granting of any lease for a branch line is entirely a matter of discretion, and a condition may be inserted in any such lease that the primary line will be constructed to Zeehan.

I may add generally that I have some diffidence in advising upon this question—I am not skilled in railway matters, and moreover the question is one as to which conflicting opinions appear to exist. For the reasons given above, however, my own opinion is that the proposed line is a branch line within the meaning of Section 8.

ALFRED DOBSON,
Solicitor-General's Chambers.
9th July, 1898.

The Emu Bay Railway Company, Limited,
39, Queen-street, Melbourne, March 1st, 1898.

SIR,

THE Board of this Company have the honour to request your opinion on the following statement:—

By an Act of the Parliament of Tasmania, called "The Van Diemen's Land Company's Waratah and Zeehan Railway Act," certain rights are conferred upon the Van Diemen's Land Company, from whom this company has acquired them, for the construction, maintenance, and working of a railway from a point near Waratah, on the existing Emu Bay and Mount Bischoff Line, to a point near the Town of Zeehan. Section 4 of the Act reads as follows:—

"It shall be lawful for the Minister, with the consent of the Governor in Council, to grant to "The Van Diemen's Land Company," for a term of Thirty years, at a nominal rental, and in accordance with the provisions of this Act, a primary lease of any Crown Land, not exceeding one chain in width, for the construction and maintenance and working of a railway from a point on the Emu Bay and Bischoff Railway, to a point on the Mount Dundas and Zeehan Railway, distant not more than one mile from the station on such railway known as Leslie Junction; and also such area of Crown Land for all stations, sidings, crossings, side-cuttings, cuttings, embankments, spoil-banks, and ballast, and other conveniences in connection with the said railway as may be proper, subject to such covenants, terms, and conditions as to the Governor in Council may seem fit."

The accompanying plan shows the existing Emu Bay and Mount Bischoff Line (48 miles long), which extends from Burnie on the North Coast of Tasmania to Waratah; and also the proposed course (as now surveyed) of the Railway authorised by the Act. The length of the railway authorised by the Act (called the Waratah and Zeehan Line), from its junction with the existing Emu Bay and Mount Bischoff Line to its terminus near Zeehan, as shown by the plan, is about 55 miles.

In addition to the right of constructing the Waratah and Zeehan Railway, the Act confers upon the Van Diemen's Land Company certain rights with regard to the construction of branch lines of railway. Section 8 of the Act reads as follows:

"The Minister may from time to time, with the consent of the Governor in Council, grant to the company for the unexpired residue of the term of the said lease, a lease of any piece of Crown land not exceeding one chain in width, for the construction thereon of such branch lines of railway from the said railway to such termini as may be determined upon by the company and approved by the Governor in Council, and also such area of Crown land, and all stations, sidings, crossings, side-cuttings, cuttings, embankments, and conveniences in connection with the said branch lines of railway as may be necessary or proper."

"Any such lease as last aforesaid shall be subject to all the provisions of this Act as far as the same may be applicable, and shall contain such of the provisions and stipulations hereby required to be contained in the primary lease as the Governor in Council may think necessary or applicable to such branch lines, and shall be renewable in like manner with the primary lease."

It is now desired to construct a railway from a point on the Waratah and Zeehan Railway to Gormanston, (Mount Lyell.) The proposed route of the railway (as now surveyed) is shown on the plan by means of a dotted red line, and is about 25 miles in length.

Your opinion as a railway expert is requested as to whether this proposed line to Mount Lyell would be a branch line, as mentioned in section 8, quoted above.

I am, Sir,
Your obedient Servant,

C. L. HEWITT, *Secretary.*

JOHN MATHIESON, *Esq., the Victorian Railways,*
Spencer-street, Melbourne.

Victorian Railways, Commissioner's Office,
Spencer-street, Melbourne, 18th March, 1898.

SIR,

ON Wednesday last I received your favour of the 1st instant, forwarding me a copy of clauses 4 and 8 of the Tasmanian Act of Parliament, which gives to the Van Diemen's Land Company the right to construct and work a railway from a point on the Emu Bay and Mount Bischoff line to a point near the town of Zeehan, and joining there with the railway from Macquarie Harbour to Dundas; and also giving the same company power to construct "such branch lines from the said railway to such termini as may be determined by the company and approved by the Governor in Council."

After considering the clauses and looking at the plan, I think there can be but one opinion, and that is that the line shown as starting from a point on the Zeehan line and running towards Mount Lyell is strictly, in accordance with Clause 8, only a branch line.

I have the honour to be,
Sir,

Your obedient Servant,

JNO. MATHIESON.

L. HEWITT, *Esq., Secretary Emu Bay Railway*
Company, Limited, 39, Queen-street, Melbourne.

The Emu Bay Railway Company, Limited,
39, Queen-street, Melbourne, 2nd March, 1898.

SIR,

THE Board of this Company have the honour to request your opinion on the following statement:—

By an Act of the Parliament of Tasmania, called "The Van Diemen's Land Company's Waratah and Zeehan Railway Act," certain rights are conferred upon the Van Diemen's Land Company—from whom this Company has acquired them—for the construction, maintenance, and working of a railway from a point near Waratah on the existing Emu Bay and Mount Bischoff Line to a point near the Town of Zeehan. Section 4 of the Act reads as follows:—

"It shall be lawful for the Minister, with the consent of the Governor in Council, to grant to 'The Van Diemen's Land Company' for a term of thirty years, at a nominal rental, and in accordance with the provisions of this Act, a primary lease of any Crown Land, not exceeding one chain in width, for the construction and maintenance and working of a railway from a point on the Emu Bay and Bischoff Railway to a point on the Mount Dundas and Zeehan Railway, distant not more than one mile from the station on such railway known as Leslie Junction, and also such area of Crown Land for all stations, sidings, crossings, side-cuttings, cuttings, embankments, spoil-banks, and ballast and other conveniences in connection with the said railway as may be proper, subject to such covenants, terms, and conditions as to the Governor in Council may seem fit."

The accompanying plan shows the existing Emu Bay and Mount Bischoff Line (48 miles long), which extends from Burnie, on the north coast of Tasmania, to Waratah; and also the proposed course (as now surveyed) of the railway authorised by the Act. The length of the railway authorised by the Act (called the Waratah and Zeehan Line), from its junction with the existing Emu Bay and Mount Bischoff Line to its terminus near Zeehan, as shown by the plan, is about 55 miles.

In addition to the right of constructing the Waratah and Zeehan Railway, the Act confers upon the Van Diemen's Land Company certain rights with regard to the construction of branch lines of railway. Section 8 of the Act reads as follows:—

"The Minister may from time to time, with the consent of the Governor in Council, grant to the Company for the unexpired residue of the term of the said lease a lease of any piece of Crown

land, not exceeding one chain in width, for the construction thereon of such branch lines of railway from the said railway to such termini as may be determined upon by the Company and approved by the Governor in Council, and also such area of Crown land for all stations, sidings, crossings, side-cuttings, cuttings, embankments, and other conveniences in connection with the said branch lines of railway as may be necessary or proper.

"Any such lease as last aforesaid shall be subject to all the provisions of this Act so far as the same may be applicable, and shall contain such of the provisions and stipulations hereby required to be contained in the primary lease as the Governor in Council may think necessary or applicable to such branch lines, and shall be renewable in like manner with the primary lease."

It is now desired to construct a railway from a point on the Waratah and Zeehan Railway to Gormanston (Mount Lyell). The proposed route of the railway, (as now surveyed), is shown on the plan by means of a dotted red line, and is about 25 miles in length.

Your opinion, as a railway expert, is requested, as to whether this proposed line to Mount Lyell would be a Branch Line, as mentioned in Section 8 quoted above.

I have, &c.

C. L. HEWITT, *Secretary.*

CHARLES OLIVER, *Fsq., Chief Commissioner of Railways, Sydney.*

*Office of the Railway Commissioners of New South Wales,
Sydney, 9th March, 1898.*

SIR,

I AM in receipt of your letter of the 3rd instant, furnishing certain information with reference to the "Van Diemen's Land Company's Waratah and Zeehan Railway Act," together with extracts from that Act, and also a tracing showing the Emu Bay and Bischoff Railway, the line in course of construction in accordance with the provisions of the Act before mentioned, and the proposed branch line to Gormanston (Mount Lyell), the letter on behalf of the Directors of the Emu Bay Railway Company, Limited, concluding with a request for my opinion as to whether the proposed line to Gormanston (Mount Lyell) would be a branch line as mentioned in Section 8 of the Act referred to.

Assuming that the Act referred to (the complete text of which I have not before me) contains no interpretation of the term "branch line," it does not appear to me that there is room for doubt in the matter. The 4th Section of the Act most distinctly defines the line which is to be constructed in accordance with the provisions of the Act. It is described from point to point, therefore there can be no possible question as to its being the main or parent line as contemplated by the Section of the Act quoted in your letter. Section 8 provides for the granting of a lease of land for the purpose of "the construction thereon of such branch lines of railway to such termini as may be determined, &c.;" clearly the words "said railway" refer to the railway defined in the Act, which must, of course, be the main or parent line, and the branch which is proposed from that main or parent line to Mount Lyell must be a branch line coming within the enacted authority for the "construction of such branch lines of railway."

Regarded from a railway point of view, the facts before me, in my opinion, clearly indicate that the line referred to in your letter, if constructed, would be a branch line.

Your faithfully,

CHARLES OLIVER.

C. L. HEWITT, *Esq., the Secretary of the Emu Bay
Railway Co. Ltd., 39, Queen-street, Melbourne, Victoria.*

*The Emu Bay Railway Company, Limited,
39, Queen-street, Melbourne, 2nd March, 1898.*

SIR,

THE Board of this Company have the honour to request your opinion on the following statement:—

By an Act of the Parliament of Tasmania, called "The Van Diemen's Land Company's Waratah and Zeehan Railway Act," certain rights are conferred upon the Van Diemen's Land Company—from whom this Company has acquired them—for the construction, maintenance, and working of a railway from a point near Waratah on the existing Emu Bay and Mount Bischoff Line to a point near the Town of Zeehan. Section 4 of the Act reads as follows:—

"It shall be lawful for the Minister, with the consent of the Governor in Council, to grant to "The Van Diemen's Land Company" for a term of thirty years, at a nominal rental, and in accordance with the provisions of this Act, a primary lease of any Crown Land, not exceeding one

chain in width, for the construction and maintenance and working of a railway from a point on the Emu Bay and Bischoff Railway to a point on the Mount Dundas and Zeehan Railway distant not more than one mile from the station of such Railway, known as Leslie Junction, and also such area of Crown Land for all stations, sidings, crossings, side-cuttings, cuttings, embankments, spoil-banks, and ballast, and other conveniences in connection with the said Railway as may be proper, subject to such covenants, terms, and conditions, as to the Governor in Council may seem fit."

The accompanying plan shows the existing Emu Bay and Mount Bischoff Line (48 miles long), which extends from Burnie, on the North Coast of Tasmania, to Waratah, and also the proposed course (as now surveyed) of the railway authorised by the Act. The length of the railway authorised by the Act (called the Waratah and Zeehan Line), from its junction with the existing Emu Bay and Mount Bischoff Line to its terminus near Zeehan as shown by the plan, is about 55 miles.

In addition to the right of constructing the Waratah and Zeehan Railway, the Act confers upon the Van Diemen's Land Company certain rights with regard to the construction of branch lines of railway. Section 8 of the Act reads as follows:—

"The Minister may from time to time, with the consent of the Governor in Council, grant to the Company for the unexpired residue of the term of the said lease a lease of any piece of Crown land, not exceeding one chain in width, for the construction thereon of such branch lines of railway from the said railway to such termini as may be determined upon by the Company and approved by the Governor in Council, and also such area of Crown land for all stations, sidings, crossings, side-cuttings, cuttings, embankments, and conveniences in connection with the said branch lines of railway as may be necessary or proper.

"Any such lease as last aforesaid shall be subject to all the provisions of this Act as far as the same may be applicable, and shall contain such of the provisions and stipulations hereby required to be contained in the primary lease as the Governor in Council may think necessary or applicable to such branch lines, and shall be renewable in like manner with the primary lease."

It is now desired to construct a Railway from a point on the Waratah and Zeehan Railway to Gormanston (Mt. Lyell). The proposed route of the Railway (as now surveyed) is shown on the plan by means of a dotted red line, and is about 25 miles in length.

Your opinion as a railway expert is requested as to whether this proposed Line to Mt. Lyell would be a Branch Line as mentioned in section 8 quoted above?

I have, &c.

C. L. HEWITT, *Secretary.*

ALAN G. PENDLETON, *Esq.*

Melbourne, 2nd March, 1898.

SIR,

I HAVE to acknowledge the receipt of your letter of 1st instant.

The proposed line of railway to Mount Lyell would, in my opinion, undoubtedly be a branch line.

I am, Sir,

Your obedient servant,

ALAN G. PENDLETON.

The Secretary Emu Bay Railway Company, Limited.

*Tasmanian Government Railways,
General Manager's Office, Hobart, 13th July, 1898.*

MEMORANDUM FOR THE RIGHT HON. THE PREMIER.

Subject—Line from Rosebery to Lyell.

REPLYING to your letter of yesterday, the line from Rosebery to Lyell, as shown on map deposited with the Survey, is a branch line. In this opinion I am guided by experience.

There are, however, authorities on the subject if it is desired to seek further opinion. Ivatts, in his "Glossary of Railway Terms," defines a branch line as follows:—"Branch line, a Railway line connecting with the main line at a junction." A. M. Wellington, in his "Railway Location," devotes a chapter to the subject of branch lines—see page 731 and following.

FRED. BACK, *General Manager.*