CHAPTER clxviii.

An Act to make provision with reference to the arrears of dividend on the preference shares in the capital of the Alabama Great Southern Railway Company Limited. A.D. 1888.

[7th August 1888.]

WHEREAS in the year one thousand eight hundred and seventy-seven certain persons formed themselves into a company under the name of the Alabama Great Southern Railway Company Limited (in this Act referred to as "the Company") for the purpose of acquiring completing maintaining and working a certain railway in the United States of America now known as the Alabama Great Southern Railroad and extending from Chattanooga in the State of Tennessee to Meridian in the State of Mississippi and for other purposes connected therewith and the said Company was duly registered under the Companies Acts 1862 and 1867:

And whereas by the memorandum and articles of association of the Company as altered from time to time by special resolution the capital of the Company is fixed at two million three hundred and sixty-six thousand pounds divided into eighty thousand preference shares of ten pounds each of which sixty-seven thousand six hundred and seven have been issued and are all credited as fully paid up and one hundred and fifty-six thousand six hundred ordinary shares of ten pounds each which are all credited as fully paid up And by the said articles of association the holders of the said preference shares are entitled to be paid every year out of the profits of the Company a dividend of six pounds per centum on the amount paid up on such shares in priority to and before payment of any dividend on any other shares in the Company but they are not entitled to any payment in respect of arrears of such dividends exceeding six years and after payment of the aforesaid dividend on the preference shares the holders of ordinary shares in the Company are entitled to be paid every year out of the profits of the Company for the year last preceding so far as such profits will

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extend but no further or otherwise a dividend of six pounds per centum on the amount paid up on such shares in priority to and before payment of any dividend for such year on any other shares in the Company and after the payment thereout aforesaid such profits are to be applied rateably in payment of dividend to all the shareholders in the Company according to the amounts paid on their shares and without priority among them:

And whereas there are arrears of dividend upon the said sixty-seven thousand six hundred and seven preference shares accrued from the thirtieth day of June one thousand eight hundred and eighty-four to the thirty-first day of December one thousand eight hundred and eighty-seven amounting in the aggregate to one hundred and forty-one thousand nine hundred and seventy-four pounds fourteen shillings:

And whereas the divisible net profits of the Company now are and it is probable that they will continue to be more than sufficient to pay the current dividend at the rate of six per centum upon the said preference shares but no part thereof can be applied in payment of dividend upon the ordinary shares until the whole of the said arrears of dividend upon the preference shares shall have been discharged or provided for as aforesaid:

And whereas the position and credit of the Company would be greatly improved if the said arrears were discharged or provided for and the Company were enabled to pay dividend upon both classes of their shares and it is expedient that provision should be made for dealing with the said arrears in manner hereinafter expressed:

And whereas the objects of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title.

1. This Act may be cited for all purposes as the Alabama Great Southern Railway Company's Act 1888.

Power to defer payment of certain portion of arrears of dividend.

2. Subject to the rights by this Act reserved in favour of dissentient holders of preference shares it shall be lawful for the Company to defer payment of such portion (herein-after called "the funded arrears") of the arrears of dividend accrued prior to the first day of January one thousand eight hundred and eighty-eight upon the preference shares of the Company as the profits of the Company earned or accrued prior to that date and available for

dividend shall be insufficient to discharge upon the terms of making provision for the ultimate payment thereof together with interest thereon in the meantime after the rate of four per centum per annum in manner herein-after expressed.

Application of profits.

3. Until the whole of the funded arrears with interest thereon as aforesaid shall have been fully discharged all profits of the Company available for dividend and which shall have been earned or have accrued since the thirty-first day of December one thousand eight hundred and eighty-seven shall be appropriated or applied as follows (that is to say) :—

1. In payment in accordance with the articles of association of the Company of dividend upon the preference shares of the Company as from the first day of January one thousand eight hundred and eighty-eight ;
2. In payment of interest at the rate of four per centum per annum as from the first day of January one thousand eight hundred and eighty-eight upon the funded arrears or so much thereof as shall for the time being remain undischarged ;
3. In the appropriation of equal annual sums sufficient to discharge the whole of the funded arrears within a period of ten years from the first day of January one thousand eight hundred and eighty-eight ;
4. The payment in accordance with the articles of association of the Company of dividend upon the ordinary shares and thereafter in payment of dividend in manner prescribed by the articles of association of the Company.

The foregoing payments and appropriation shall rank in priority according to their numerical order and in case of deficiency shall be cumulative except as regards the payment of dividend as set out in sub-section 4 above.

Sums to be carried to credit of separate account and held as trust fund.

4. All sums appropriated by the Company as aforesaid towards payment of the funded arrears shall be carried to the credit of a separate account and shall be held by the Company as a trust fund applicable solely for the purpose of discharging the funded arrears The said trust fund shall be so applied by the Company when and so soon as it shall be sufficient for that purpose but it shall be lawful for the Company to make provision for the gradual discharge thereout of the funded arrears by instalments.

Payments to be made pari passu, &c.

5. Payments in discharge of the funded arrears shall so far as possible be made pari passu but it shall be lawful for the Company either out of the said trust fund or out of any profits available for

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dividend earned or accrued prior to the first day of January one thousand eight hundred and eighty-eight to make special provision with respect to the payment off of sums not exceeding twelve pounds ten shillings.

As to certificates of preference shares.

6. Every certificate of preference shares shall specify on the face of it in such form as the Company may determine whether or not such shares are subject to the provisions of this Act with reference to funded arrears.

Funded arrears not to be a debt.

7. Nothing in this Act contained shall be deemed to constitute the funded arrears or any part thereof or the interest thereon as a debt payable by the Company or to render the Company in any way liable to the payment thereof except as in this Act is expressly provided.

As to articles of association.

8. Nothing in this Act shall be deemed to alter or vary the existing provisions in the articles of association of the Company with respect to payments or appropriations out of profits for purposes other than payment of dividend.

Power to trustees, &c. to assent.

9. Any trustee executor or administrator being a holder in that capacity of preference shares shall be entitled to assent to the funding of the arrears due in respect of such shares in the manner provided for in this Act and shall not be liable for a breach of trust in respect of such assent And no part of the said funded arrears shall by force merely of anything contained in this Act be liable to be treated as capital.

Provisions with regard to dissentient shareholders.

10. This Act shall only apply to and be binding upon such holders of preference shares as have already assented to the funding of their said arrears in manner herein-before provided or who shall by notice in writing addressed to the secretary at the registered office of the Company not later than one month after the passing of this Act require the Company to fund their said arrears and their respective executors administrators and assigns The Company shall provide for payment of the arrears and current dividend due or to become due to all other holders of preference shares as though this Act had not been passed And the Company shall accordingly be bound from time to time to apply such rateable proportion of any profits available for dividend as would if this Act had not been passed have been applicable for that purpose in payment of the arrears and current dividend due or to become due upon the preference shares of such last-mentioned holders respectively But nothing in this Act shall entitle any holder of such shares to earlier payment of the arrears due thereon than he would have been

entitled to had this Act not been passed Notice of the passing of this Act and of the contents of this section shall be advertised once in the "Times" newspaper and two other daily newspapers published in London not later than one week after the passing of this Act.

Reserving Company's powers under general Acts.

11. The provisions contained in this Act shall form part of the regulations of the Company which shall be read subject to and in accordance with this Act but nothing herein contained shall be deemed to prevent the Company from modifying or altering their memorandum or articles of association and other regulations in accordance with the provisions of the Companies Acts 1862 to 1886 or any statutory modification thereof.

Act to be registered.

12. The Company shall forward to the Registrar of Joint Stock Companies a printed copy of this Act and it shall be recorded by him and if such copy is not so forwarded within three months from the passing of this Act the Company shall incur a penalty not exceeding two pounds for every day after the expiration of those three months during which the copy is omitted to be forwarded and every director and manager of the Company who knowingly and wilfully authorises or permits such default shall incur the like penalty and every penalty under this section shall be recoverable summarily.

Costs of Act.

13. All costs charges and expenses of and incident to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company.

London: Printed for Her Majesty's Stationery Office,
By Eyre and Spottiswoode, Printers to the Queen's most Excellent Majesty.

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