ANNO PRIMO & SECUNDO

VICTORIÆ REGINÆ.

****

Cap. lxxxii.

An Act to alter the Line of the *Birmingham* and *Derby* Junction Railway. [27th *July* 1838.]

WHEREAS an Act was passed in the Sixth Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for making a Railway from the* London *and* Birmingham *Railway, near* Birmingham, *to* Derby, *to be called* "*The* Birmingham *and* Derby *Junction Railway,*" *with a Branch;* which Railway was by the said Act authorized and directed to be made in the Line or Direction described and set forth in the Maps or Plans and Books of Reference deposited with the several Clerks of the Peace for the Counties of *Worcester*, *Warwick*, *Stafford*, and *Derby*, and for the Borough of *Derby*, as in the said recited Act is mentioned, and which are herein-after referred to as the original Plan and Book of Reference; and by the said Act several Persons were united and made One Body Corporate, by the Name and Style of "The *Birmingham* and *Derby* Junction Railway Company:" And whereas another Act was passed in the Seventh Year of the Reign of His late Majesty and in the First Year of the Reign of Her present Majesty, intituled *An Act to rectify a Mistake in an Act of the last Session of Parliament, for making a Railway from the* London *and* Birmingham *Railway, near* Birmingham, *to* Derby, *to be called* "*The* Birmingham *and* Derby *Junction Railway,*" *with a Branch:* And whereas it is expedient that the said Company should have Power to make the Deviation herein-after mentioned in a Portion of the Line by the said first-recited Act of Parliament authorized to be made; but such Object 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

6 & 7 W. 4. c. 35.

Powers of recited Acts extended to this Act.

Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all the Powers, Authorities, Directions, Penalties, Forfeitures, Payments, Exemptions, Remedies, Regulations, Rules of Interpretation or Construction, Provisions, Clauses, Matters, and Things contained in the said recited Acts (except such of them or such Parts thereof respectively as are by this Act expressly repealed, altered, or otherwise provided for) shall extend and be construed to extend to this Act, and to the several Works and Things hereby authorized or required to be made and done, and shall operate and be in force in respect of the Objects and Purposes of this Act, as fully and effectually to all Intents and Purposes whatsoever, and the said recited Acts and this Act shall be deemed, construed, and taken to be One Act as fully and effectually, as if the same Powers, Authorities, Directions, Penalties, Forfeitures, Payments, Exemptions, Remedies, Regulations, Rules, Provisions, Clauses, Matters, and Things were repeated and re-enacted in this Act, and had formed Part thereof with reference also to the Works and Things to be made and done hereunder.

Power to make Deviation.

II. And be it further enacted, That it shall be lawful for the said Company to make the Alteration or Deviation herein-after mentioned in and from the Line of the said Railway as authorized by the said first-recited Act to be made, and to make and maintain the said Railway and Works according to the altered Line or Course, and upon, across, under, or over the Lands delineated on the Plan and Section and described in the Book of Reference deposited as herein-after mentioned with the Clerk of the Peace for the County of *Warwick*, which latter Plan and Book of Reference are herein-after referred to as the new Plan and Book of Reference; that is to say, from or near to a certain Field in the Parish of *Little Packington* in the County of *Warwick*, numbered 39 on the said original Plan, and also numbered 39 on the said new Plan, to a certain other Field in the Parish of *Hampton in Arden* in the said County, and numbered 77 on the said new Plan, there to form a Junction with the *London* and *Birmingham* Railway; and the said Company are hereby authorized and required to abandon such Parts of the said original Line of Railway as by reason of the said Alteration will be rendered useless or unnecessary; and all the Powers, Authorities, Privileges, and Directions which by the said recited Act are given for making and maintaining the Portion of the said original Line of Railway, by this Act authorized to be abandoned, shall from and immediately after the making of the Alteration herein mentioned cease and determine.

Plan and Section to remain with Clerk of the Peace, and be open to Inspection.

III. And whereas a Map or Plan (being the new Plan herein-before mentioned) and a Section describing the Line and Levels of the said intended Alteration of the said Railway, and the Lands in and through which the same is intended to be made, together with a Book of Reference to such Plan (being the new Book of Reference herein-before mentioned) containing the Names of the Owners or reputed Owners, Lessees or reputed Lessees, and of the Occupiers of such Lands, have been deposited for public Inspection with the Clerk of the Peace for the said County of *Warwick*; be it therefore enacted, That the same Map or Plan and Section (being those approved of by

Parliament) and the same Book of Reference so respectively deposited as last aforesaid shall remain with and be kept by the said Clerk of the Peace for the County of *Warwick*, and all Persons shall at all seasonable Times have Liberty to inspect and take Copies of the same or Extracts therefrom, paying to the said Clerk of the Peace the Sum of One Shilling for every such Inspection, and after the Rate of Sixpence for every One hundred Words copied therefrom; and true Copies of the same Plan, Section, and Book of Reference respectively, or of so much thereof respectively as may relate to any Matter in question, shall be and are hereby declared to be good Evidence in all Courts of Law and elsewhere.

Copies thereof to be Evidence.

IV. And be it further enacted, That it shall be lawful for the said Company to make the said Alteration and the Works connected therewith as hereby authorized in the Line or Course and in or through the Lands delineated on the said new Plan, subject as hereinafter provided, although such Lands or any of them, or the Situation thereof respectively, or the Names of the respective Owners, Lessees, or Occupiers thereof, may happen to be omitted, mis-stated, or erroneously described in the Schedule to this Act annexed, or in the Book of Reference to the said last-mentioned Plan, if it shall appear to any Two Justices of the Peace for the County or Place within which such Lands may be situate, and be by them certified in Writing, that such Omission, Mis-statement, or erroneous Description proceeded from Inadvertence or Mistake; and the Certificate of such Justices shall be deposited with and be kept by the said Clerk of the Peace of the said County of *Warwick*.

Unintentional Errors in Plans, &c. deposited not to affect the Execution of the Act.

V. Provided always, and be it further enacted, That nothing herein contained shall authorize the said Company or any Person to take, injure, or damage, for the Purposes of this Act, any House or other Building which was erected on or before the Eighteenth Day of *May* One thousand eight hundred and thirty-eight, or any Ground which was then set apart and used as a Garden, Orchard, Yard, Park, Paddock, Plantation, planted Walk, or Avenue to a House, or any inclosed Ground planted as an Ornament or Shelter to a House, or as a Nursery for Trees, without the Consent in Writing of the Owner and Occupier thereof respectively, other than and except such as are specified in the Schedule to this Act annexed, unless the Omission thereof in the said Schedule shall have proceeded from Mistake, and unless it shall be so certified in manner herein-before provided for in cases of unintentional Errors in the said Book of Reference.

Buildings, &c. not to be taken unless in Schedule.

VI. And be it further enacted, That in making the said Railway it shall not be lawful for the said Company to deviate from the Levels of the said Railway, as referred to the common Datum Line described on the Section so approved of by Parliament, and as marked on the same, to any Extent exceeding in any Place Five Feet, or in passing through Towns Two Feet, without the Consent of the Owners, Lessees, and Occupiers of the Land in, through, or over which such Deviation is intended to be made; or in case any Street or public Carriage Road shall be affected by such Deviation, then the same shall not be made without the Consent of the Trustees or Commissioners thereof, or if there be no such Trustees or Commissioners, without the Consent of

Limiting Deviation from Section.

Two

Two or more Justices of the Peace in Petty Sessions assembled for that Purpose, and acting for the District in which such Street or public Carriage Road may be situate, or without the Consent of the Commissioners for any public Sewers, or the Proprietors of any Canal or Navigation affected by such Deviation; and that no Increase in the Inclination or Gradients of the said Railway as denoted by the said Section shall be made in any Place to an Extent exceeding the Rate of Three Feet *per* Mile; and where in any Place it is intended to carry the Railway on an Arch or Arches as marked on the said Plan or Section, the same shall be made accordingly; and where a Tunnel is marked on the said Plan or Section as intended to be made at any Place, the same shall be made accordingly, unless the Owners, Lessees, and Occupiers of the Land in or through which such Tunnel is intended to be made shall consent that the same shall not be so made: Provided nevertheless, that it shall be lawful for the said Company, with such Consent as aforesaid, and not otherwise, to make a Tunnel or an Arch or Arches as aforesaid not marked on the said Plan or Section, so that no such Tunnel shall be of greater Length than Two hundred Yards, and that no Two Tunnels shall be at a less Distance from each other than One hundred Yards, measured on the Line of the Railway: Provided always, that Notice of every Petty Sessions to be holden for the Purpose of obtaining such Consent as aforesaid shall, Fourteen Days previous to the holding of such Petty Sessions, be given in some Newspaper circulating in the County, and also be affixed upon the Church Door of the Parish in which such Deviation or Alteration is intended to be made, or if there be no Church, on some other Place to which Notices are usually affixed: Provided also, that for the Purpose of consenting to any such Deviation from the said Section, and to any tunnelling or arching as aforesaid, the Word "Owners" shall be deemed and taken to mean such Persons as are herein or in or by the said first-recited Act capacitated to agree for the Sale of and to convey Land for the making of the said Railway, and the Consent of such Persons, with or without the Consent of any other Persons interested as Owners in the said Lands, shall be deemed and taken to be sufficient for such Purposes.

Limiting Alteration of Curves.

VII. And be it further enacted, That it shall not be lawful to diminish the Radius of any Curve, as described on the Plan of the said Deviation deposited with the Clerk of the Peace as aforesaid, unless such Radius exceed One Mile, nor to diminish it in any such Case so that it shall become less than One Mile, nor to diminish any greater Radius by more than a Quarter of a Mile, unless where it exceeds Two Miles, or by more than Half a Mile, unless where it exceeds Three Miles on the said Plan.

As to Bridges, &c., over or under the Holyhead Road.

VIII. And whereas in making the said intended Alteration in the Line of the said Railway it is proposed by the said Railway Company to form and construct an Archway to carry the said Railway under the Turnpike Road leading from *London* to *Holyhead*, and usually known as the *London* and *Holyhead* Road, at or near *Bickenhill* in the County of *Warwick*; and it will be necessary to erect a Bridge on the said Road over such Archway to carry the said Road over the same; be it therefore enacted, That Plans and Specifications of every Bridge which it may be necessary to erect or construct in the Line of the

the said *London* and *Holyhead* Road, for carrying any Part of such Road over the said Railway, and also Plans and Specifications of every Archway proposed to be formed and constructed by the said Railway Company under the said Turnpike Road, and of the Approaches thereto, and of the Parapet or retaining Walls, Embankments, and Fences thereof respectively, shall be submitted to the Commissioners for the Time being acting under the Authority of an Act passed in the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for transferring to the Commissioners of His Majesty's Woods and Forests the several Powers now vested in the* Holyhead *Road Commissioners, and for discharging the last-mentioned Commissioners from the future Repair and Maintenance of the Roads, Harbours, and Bridges now under their Care and Management*, for the Inspection, Perusal, and Approval of the said Commissioners previously to the Commencement of the Erection or Construction of any such Bridge or Archway, or of the Approaches thereto, or of the Parapet or retaining Walls, Embankments, or Fences thereof respectively; and that the Width or Height of every such Bridge or Archway, and the Mode of Construction thereof, and of the Approaches thereto, and the Parapet or retaining Walls or Embankments and Fences thereof respectively, shall be settled and determined by the Engineer for the Time being of the said Commissioners and by the Engineer for the Time being of the said Company, and in the event of their differing in Opinion with regard thereto, then by some third Person to be appointed by them, whose Decision on the Matters referred to him shall be final and conclusive: Provided always nevertheless, that the Width of the said *London* and *Holyhead* Road shall not be less than Thirty Feet, or the Line or Level of the same be in any Manner altered or varied by reason of the erecting or constructing any such Bridge, or of the said Railway being made or carried under the said Turnpike Road; and every such Bridge or Archway, and the Approaches thereto, and the Parapet or retaining Walls or Embankments and Fences thereof respectively, shall be made by the said Company in the Manner herein-before prescribed, and shall at all Times thereafter be maintained and kept in good, substantial, and perfect Repair, by and at the Expence, Costs, and Charges of the said Railway Company, and to the Satisfaction in all respects of the said Commissioners for the Time being for carrying into execution the said recited Act of the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth.

3 & 4 W. 4. c. 43.

IX. And whereas it is expedient to guard against Accidents, and also to prevent Obstruction or Inconvenience to Passengers and others, and to general Traffic upon or along the said *London* and *Holyhead* Road; be it further enacted, That in performing the Works necessary for carrying the said Railway under the said *Holyhead* Road the said Company shall and they are hereby required to take or cause to be taken and used all such Precautions, and for that Purpose to make and construct all such temporary Works and Things as may from Time to Time be proper and necessary in the Judgment and Opinion of the said Commissioners for the Time being for carrying into execution the said recited Act of the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, or of their Engineer, for

For the Prevention of Accidents on the Holyhead Road.

for preventing Accidents, Injury, Obstruction, or Inconvenience to Passengers and others, or to the Traffic passing upon or along the said Road or any Part thereof.

Penalty on Company obstructing the Holyhead Road.

X. And be it further enacted, That if by reason or in the Execution of any of the Works by the herein-before recited Acts or this Act authorized to be made, or by reason of the bad State of Repair of any such Works, or if by any Act or Omission of the said Railway Company, or any of their Agents, Servants, or Workmen, the said *London* and *Holyhead* Road or any Part thereof, or the Passengers, Horses, Cattle, or Carriages travelling or passing upon or along the same, shall, during the Continuation of such Works or the making of any Repairs thereto, be unnecessarily obstructed or impeded, then the said Railway Company shall pay to the said Commissioners for the Time being acting in execution of the said recited Act of the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, as or by way of ascertained Damages, the Sum of Five Pounds for every Hour during which such Obstruction or Impediment shall continue, and so in proportion for any less Time than an Hour, and in default of Payment of the said Sum or such Proportion thereof as shall become due, on Demand made of the Treasurer or any Officer of the said Railway Company, the said Commissioners for the Time being acting in execution of the said recited Act of the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, or the Secretary or Clerk for the Time being of the said Commissioners, may sue for and recover the same, together with full Costs of Suit, against the said Railway Company by Action of Debt or on the Case, in any of Her Majesty's Courts of Record at *Westminster*; and in case the said Bridges or Archway or the Approaches thereto, or the Parapet or retaining Walls, Embankments, or Fences thereof respectively, or any Part thereof respectively, shall not be kept in good, substantial, and perfect Repair in all respects, it shall be lawful for the said Commissioners to do or cause the necessary and proper Repairs to be done thereto, and to recover the Amount of the Expences from the said Railway Company by Action of Debt or on the Case, with full Costs of Suit, in any of Her Majesty's Courts of Record at *Westminster*.

As to the Junction with the London and Birmingham Railway.

XI. And whereas the Line of Railway by this Act authorized to be made will unite with the *London* and *Birmingham* Railway at a Point different to that authorized by the first-recited Act; be it therefore enacted, That all Clauses, Provisions, and Regulations contained in the said first-recited Act relating to the Junction of the *Birmingham* and *Derby* Junction Railway with the *London* and *Birmingham* Railway shall extend and be construed to extend to this Act and to the Junction with the last-mentioned Railway, and shall operate and be in force as fully and effectually to all Intents and Purposes with regard to the said Junction as if the same Clauses, Provisions, and Regulations were repeated and re-enacted in this Act.

Justices to appoint Special Constables.

XII. And be it further enacted, That it shall be lawful for a Majority of the Justices of the Peace assembled at some Petty Sessions of any District where the Works of the said Railway shall be in Progress,

Progress, and they are hereby required, to appoint from Time to Time such fit and proper Persons as may be named to them by the said Company and as they shall think proper to be Special Constables within the said Railway and other Works, and every or any Part thereof, during the Progress thereof, and until the same shall be completed; and every Person so appointed shall make a solemn Declaration, to be administered by any One Justice of the Peace, duly to execute the Office of Constable within the Limits hereafter mentioned; and every Person so appointed and having made such Declaration as aforesaid shall have Power to act as a Constable for the Preservation of the Peace, and for the Security of Persons and Property against Felonies and other unlawful Acts within the Limits of the said Railway and other Works, and within Half a Mile therefrom, and shall have, use, exercise, and enjoy all such Powers, Authorities, Protections, and Privileges for the apprehending Offenders as well by Night as by Day, and for doing all Acts, Matters, and Things for the Prevention, Discovery, and Prosecution of Felonies and other Offences, and for the Preservation of the Peace, as Constables duly appointed now have by the Laws and Statutes of this Kingdom; and in case the said Company shall fail to nominate to the said Justices a sufficient Number of fit and proper Persons to be appointed by them as Constables upon being required so to do, the said Justices may, within Seven Days after such Default, nominate any Person or Persons whom they may think proper to act as Constables aforesaid; and it shall be lawful for any Two Justices to dismiss or remove any such Constable from his Office of Constable, and to appoint another fit and proper Person in his Stead, to be nominated by the said Company as aforesaid, or in case of their Default as aforesaid then to be nominated by the said Justices; and upon every such Dismissal or Removal all Powers, Authorities, Protections, and Privileges by virtue of such Appointment as aforesaid vested in any Person so dismissed or removed shall wholly cease; and every Person so appointed by such Justices as aforesaid shall, during such Time as he shall act as Constable for the Purposes aforesaid, receive from the said Company such reasonable Salary as the said Justices shall appoint, and such Salary shall be payable at such Times and in such Manner as the said Justices shall appoint, and shall be recoverable in the same Manner as Damages to a small Amount are by the said recited Act directed to be recovered.

Extending Period for purchasing Lands and completing the Deviation.

XIII. And be it further enacted, That the Time by the said recited Acts limited for the compulsory purchasing of Lands for the Purposes of the said Undertaking, and the Time by the said recited Acts limited for the Completion of the said Undertaking, shall be and the same are hereby respectively extended and enlarged; that is to say, the Time limited for the compulsory purchasing of Lands, so far only as relates to the Line of Deviation by this Act authorized and the Works connected therewith, for the Term of One Year from the Expiration of the Time limited by the said recited Acts, and the Time limited for the Completion of the said Undertaking to the Nineteenth Day of *May* One thousand eight hundred and forty-three.

For defraying the Expences of this Act.

XIV. And be it further enacted, That all the Costs, Charges, and Expences of obtaining and passing this Act, and all other Costs, Charges,

Charges, and Expences in any way incident thereto, may be paid and defrayed by the said Company out of the Money already raised and received, or out of the first Money to be raised or received by virtue of the said first-recited Act or this Act, in preference to any other Payment whatever.

Act declared public.

XV. And be it further enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all Judges, Justices, and others.

SCHEDULE to which the foregoing Act refers.

COUNTY OF WARWICK.

Description of Property.	Owners or reputed Owners.	Lessees.	Occupiers.
Parish of Hampton in Arden.—Hamlet or Township of Hampton in Arden.			
Osier Bed - - - -	John Harris and Thomas Wedge.	- - - - - -	Charles Wedge.
Ditto - - -	Ditto - -	- - -	Ditto.
Ditto or Plantation - -	Ditto - -	- - -	Ditto.
Parish of Bickenhill.—Hamlet or Township of Hill Bickenhill.			
Osier Bed and Plantation -	Earl of Aylesford -	- - -	Earl of Aylesford.
Hovel and Yard - - -	Ditto - -	- - -	Charles Wedge.
Plantation - - -	Ditto - -	- - -	Earl of Aylesford.
Parish of Little Packington.—Hamlet or Township of Little Packington.			
Plantation - - -	Earl of Aylesford -	- - -	Earl of Aylesford.
Wood - - - - -	Ditto - -	- - -	Ditto.
House, Outbuildings, and Garden	Ditto - -	- - -	Isaac Cashmore.
House, Garden, and Shop - -	Ditto - - -	- - -	LateThomasHillsen.
House and Garden - -	Ditto - -	- - -	Thomas Hill jun.
Ditto - - - - -	Ditto - - -	- - -	John Greenhill.
Ditto - - - -	Ditto - -	- - -	William Brookes.
Garden - - - - -	Ditto - - -	- - -	Ditto.
House, Buildings, and Garden -	Ditto - -	- - -	John Woodhouse.
Pinfold - - - - -	Ditto - -	- - -	Lord of the Manor.
House, Barn, Stable, Buildings, Yards, and Garden.	Ditto - - -	- - -	Richard Smout and Mary Smout.
Wood - - - - -	Ditto - -	- - -	Earl of Aylesford.

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