CHAP. clxxv.

An Act for authorising the making of a Railway from Birmingham in the county of Warwick to King's Norton in the county of Worcester; and for other purposes. A.D. 1871.

[31st July 1871.]

WHEREAS the making of a railway commencing at Albion Wharf, Bridge Street, in the borough of Birmingham, and terminating at King's Norton in the county of Worcester (in this Act called the railway), would be of great local and public advantage:

And whereas the persons in this Act named, with others, are willing at their own expense to make the railway on being incorporated into a company (in this Act referred to as the Company or the Railway Company) and being empowered as in this Act provided:

And whereas the railway will be for almost its whole length made along the canal and on the towing-path and other land belonging to the Company of Proprietors of the Worcester and Birmingham Canal Navigation, and it is expedient that special provision be made for protection of the interests of that canal company and of the Railway Company in relation thereto, and for the admission of that canal company to participation in the management and in the profits of the railway, and that an agreement made for those and other purposes be confirmed:

And whereas it is expedient that the Midland Railway Company on the one hand, and the Company incorporated by this Act on the other hand, be authorised to enter into arrangements with respect to the management, use, working, and maintenance of the railway, and to interchange of traffic, and other matters:

And whereas the objects aforesaid cannot be attained without the authority of Parliament:

And whereas plans and sections describing the lines, situations, and levels of the intended railway and works, and a book of refer-

A.D. 1871.

ence to those plans containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of lands in the line of the proposed railway and works, or within the limits of deviation as defined on the plans, and describing those lands, have been deposited with the respective clerks of the peace for the borough of Birmingham and the counties of Warwick, Worcester, and Stafford (which respectively are in this Act referred to as the deposited plans, sections, and book of reference):

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 as the Birmingham West Suburban Railway Act, 1871.

Provisions of general Acts herein named incorporated.

2. The following enactments (as far as they are applicable for the purposes and not inconsistent with the provisions of this Act), are hereby incorporated with this Act; (that is to say,)

The Companies Clauses Consolidation Act, 1845:

Parts I. and III. (relating respectively to surrender and cancellation of shares and to debenture stock) of the Companies Clauses Act, 1863:

The Railway Clauses Consolidation Act, 1845:

Parts I. and III. (relating respectively to the construction of a railway and to working agreements) of the Railways Clauses Act, 1863:

The Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

Interpretation of terms.

3. With respect to the interpretation of terms in and for the purposes of this Act, the following provisions shall have effect; (namely,)

In this Act the term "the Company" or "the Railway Company" means the Company incorporated by this Act:

In this Act the term "the railway" means the railway authorised by this Act:

In this Act the term "the undertaking" means the undertaking authorised by this Act:

In this Act the term "the Worcester and Birmingham Canal Company" or "the Canal Company" means the Company of Proprietors of the Worcester and Birmingham Canal Navigation:

In this Act the term "the Worcester and Birmingham canal" or "the canal" means the canal of the Worcester and Birmingham Canal Company:

In this Act, and for the purposes thereof in any enactment incorporated therewith, the term "court of competent jurisdiction" shall have effect as if the debt or demand with respect to which it is used was a common simple contract debt, and not a debt or demand created by statute:

Terms to which meanings are assigned by any enactment incorporated with this Act, or which have therein special meanings, have in this Act the same respective meanings.

Company incorporated.

4. James Baldwin, Frederick Elkington, Thomas Lane, Joseph Henry Nettlefold, Henry Wiggin, and John Alfred Williams, and all other persons and corporations subscribing to the undertaking, and their executors, administrators, successors, and assigns respectively, are hereby united into a company for the purpose of making and maintaining the railway, and for other the purposes of this Act, and for those purposes are hereby incorporated by the name of the Birmingham West Suburban Railway Company, and by that name shall be one body corporate, with perpetual succession and a common seal, and with power to purchase, take, hold, and dispose of lands and other property for purposes of this Act.

Power to make railway according to deposited plans.

5. Subject to the provisions of this Act, the Company may make and maintain in the line and according to the levels shown on the deposited plans and sections the railways in this section described, with all proper stations, approaches, works, and conveniences connected therewith, and may enter on, take, and use such of the lands delineated on the deposited plans and described in the deposited book of reference as may be required for that purpose. The railways authorised by this Act are,—

(1.) A railway (in this Act called railway No. 1) commencing at Albion Wharf, Bridge Street, in the borough of Birmingham, and terminating in the parish of King's Norton in the county of Worcester on the west side of the Worcester and Birmingham Canal, 50 yards or thereabouts south of the centre of Breedon Cross Bridge:

(2.) A railway (in this Act called railway No. 2, but in the deposited plans, sections, and book of reference, and in the agreement set forth in the second schedule to this Act, called No. 3), commencing by a junction with railway No. 1 at its proposed termination as aforesaid, and terminating in the parish of King's Norton aforesaid by a junction with the Midland Railway, at a point thereon 160 yards or thereabouts west of the centre of the bridge carrying the Midland Railway over the Worcester and Birmingham canal.

A.D. 1871.

Capital.

6. The capital of the Company shall be one hundred thousand pounds, in ten thousand shares of ten pounds each.

Shares not to issue until one fifth paid up.

7. The Company shall not issue any share, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one fifth of the amount of such share is paid in respect thereof.

Calls.

8. One fifth of the amount of a share shall be the greatest amount of a call, and three months at least shall be the interval between successive calls, and four fifths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.

Power to borrow on mortgage.

9. The Company may from time to time borrow on mortgage any sum not exceeding in the whole thirty-three thousand three hundred pounds, but no part thereof shall be borrowed until the whole capital of one hundred thousand pounds is subscribed for, issued, and accepted, and one half thereof is paid up, and the Company have proved to the justice who is to certify under the fortieth section of the Companies Clauses Consolidation Act, 1845, before he so certifies, that the whole of such capital has been subscribed for, issued, and accepted, and that one half thereof has been paid up, and that not less than one fifth part of the amount of each separate share in such capital has been paid on account thereof before or at the time of the issue or acceptance thereof, and that such capital was issued bonâ fide and is held by the subscribers or their assigns, and that such subscribers or their assigns are legally liable for the same; and upon production to such justice of the books of the Company, and of such other evidence as he shall think sufficient, he shall grant a certificate that the proof aforesaid has been given, which shall be sufficient evidence thereof.

Arrears may be enforced by appointment of a receiver.

10. The mortgagees of the Company may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages by the appointment of a receiver, and in order to authorise the appointment of a receiver in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than three thousand pounds in the whole.

Debenture stock.

11. The Company may create and issue debenture stock.

Application of money.

12. All money raised under this Act, whether by shares, debenture stock, or borrowing, shall be applied for the purposes of this Act only.

First ordinary meeting.

13. The first ordinary meeting of the Company shall be held within three months after the passing of this Act.

Number of directors.

14. The number of directors elected by the Company shall be six, but the Company may from time to time reduce their number, provided that their number be not less than four.

Qualification of directors.

15. The qualification of a director elected by the Company shall be the possession in his own right of not less than fifty shares.

Quorum.

16. The quorum of a meeting of directors shall be three, of whom two shall be directors elected by the Company.

First directors.

17. James Baldwin, Frederick Elkington, Thomas Lane, Joseph Henry Nettlefold, Henry Wiggin, and John Alfred Williams shall be six of the first directors of the Company, and shall be deemed to be directors elected by the Company, and shall continue in office until the first ordinary meeting held after the passing of this Act; at that meeting the shareholders present in person or by proxy may either continue in office those directors, or any of them, or may elect a new body of directors, or directors to supply the place of those not continued in office, the directors named in this Act being, if qualified, eligible; and at the first ordinary meeting to be held in every year after the first ordinary meeting, the shareholders present in person or by proxy shall (subject to the power in this Act contained for reducing the number of directors) elect persons to supply the places of the directors then retiring from office, agreeably to the provisions in the Companies Clauses Consolidation Act, 1845, contained; and the several persons elected at any such meeting, being neither removed nor disqualified nor having resigned, shall continue to be directors until others are elected in their stead, in manner provided by the same Act, and the provisions of that Act relative to rotation of directors shall apply to directors elected by the Company, and to them only, as if they were the sole directors of the Company.

Election of directors.

Lands for extraordinary purposes.

18. The quantity of land to be taken by the Company by agreement for the extraordinary purposes mentioned in the Railways Clauses Consolidation Act, 1845, shall not exceed two acres.

Powers for compulsory purchases limited.

19. The powers of the Company for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of three years from the passing of this Act.

Confirmation of agreement in first schedule.

20. The agreement set forth in the first schedule to this Act is hereby confirmed, and the same shall, be subject to the provisions of this Act, be deemed part of this Act, and shall be carried into

A.D. 1871.

effect accordingly; and a copy of the plan therein described as thereupon endorsed and certified to be a copy by the engineer of the Railway Company shall, within three months after the passing of this Act, be deposited with the clerk of the peace for the borough of Birmingham, and the same shall remain in his custody, and the provisions of the public general Act of the session of the seventh year of King William the Fourth and the first year of Her present Majesty (chapter 83), shall apply thereto as if the same had been deposited for purposes in that Act mentioned, and a copy thereof or extract therefrom, certified by the said clerk of the peace, shall be admitted in evidence.

Provisions for the protection and benefit of the Birmingham corporation as to level of Bridge Street, width of bridges, and the laying of pipes.

21. For the protection and benefit of the mayor, aldermen, and burgesses of the borough of Birmingham (herein-after referred to as the corporation), the following provisions shall have effect:

The Company shall not raise the level of New Bridge Street to a greater extent than nine inches:

Where it shall be necessary to take down any of the bridges over the canal shown on the plan deposited in the office of the town clerk of Birmingham, and signed by Mr. William Spooner Till on behalf of the corporation, and by Messrs. Lawford and Haughton on behalf of the Company, or to construct any bridge within the borough of Birmingham for the purposes of the railway, the Company shall reconstruct the new bridges over the canal, and construct any such other bridges of the respective widths shown by the red line on the said plans:

The corporation may lay any pipe or sewer under the railway when constructed, and may for that purpose break up the soil or surface of the railway, but all works done by the corporation by virtue of the powers hereby conferred shall be done under the superintendence and to the reasonable satisfaction of, and according to such plans and at such times only as shall be reasonably approved by the engineer of the Company, and shall also be so done as not to interrupt the traffic passing on the railway.

Mode of rating the railway.

22. The Company shall from time to time be rated to all local and parochial taxes, rates, and assessments for and in respect of the lands and hereditaments taken and used by the Company for the purposes of the railway, and all buildings erected or to be erected thereon, in the same proportions as other lands and buildings adjoining or lying near the railway are or shall be rated; and so far as regards such part of the railway as shall be within the borough of Birmingham the provisions of section 129 of "The Birmingham Improvement Act, 1851," shall not apply.

Restricting interference with the lands of the Birmingham and Staffordshire Gaslight Company.

23. The Company shall not, without in every case the previous consent of the Birmingham Gaslight and Coke Company and of the Birmingham and Staffordshire Gaslight Company respectively (herein-after called the gas companies), in writing under their common seal, take, use, enter upon, or interfere with any of the lands from time to time belonging to or in the possession or under the power of the gas companies, or either of them.

Alterations of gas mains.

24. All alterations in the position or otherwise of the mains or pipes of either of the gas companies which may be required for the purpose of any works by this Act authorised shall be made and executed by and at the cost of the Company, but under the superintendence and to the reasonable satisfaction of the respective engineers for the time being of the gas companies; and no such alteration shall be commenced until after three days notice in writing shall have been given to the gas companies respectively; and any difference as to the manner of carrying out this enactment, or any matter or thing arising thereunder, shall be settled by an engineer to be appointed by the Board of Trade.

Saving rights of the gas company.

25. Except as is expressly enacted by this Act, nothing in this Act contained shall extend to prejudice, diminish, alter, or take away any of the rights, privileges, or powers of the gas companies, or either of them.

Provisions as to junction with Midland Railway.

26. The junction of railway No. 2 with the Midland Railway shall be effected subject to and in accordance with the following provisions, and not otherwise; (that is to say,)

1. The junction shall be effected at such a point within the limits of deviation delineated on the deposited plans and in all respects in such manner as shall previously have been approved of by the engineer for the time being to the Midland Railway Company; and the junction and the works connected therewith, including so much of railway No. 2 as may be situated within or upon the property of that company, shall be executed by them, and the cost thereof shall, upon demand, be repaid to them by the Company, and in default thereof may be recovered in any court of competent jurisdiction. If any difference of opinion shall arise between the two companies as to the mode of giving effect to this subsection, the same shall be determined by a referee to be appointed by the Board of Trade on the application of either of the two companies, at the cost of the Company:
2. The Company shall not, except by agreement, use, enter upon, or interfere with, or acquire any right, title, or interest to or

A.D. 1871.

in any lands belonging to the Midland Railway Company, except such as may be required for the purposes of constructing railway No. 2 and effecting the said junction, nor shall the Company with respect to such lands of the Midland Railway Company as may be so required purchase and take the same, but the Company may purchase and take, and the Midland Railway Company may and shall sell and grant accordingly, an easement or right of using the same for the purposes of the said railway and junction:

3. The Midland Railway Company may from time to time erect such signals and conveniences incident to the junction, either on their own lands or on the lands of the Company, and may from time to time appoint and remove such watchmen, switchmen, or other persons as may be necessary for the prevention of danger to or interference with the traffic at and near the junction. The working and management of such signals and conveniences, wherever situate, shall be under the exclusive regulation of the Midland Railway Company, and all the expenses of erecting and maintaining those signals and conveniences, and of employing those watchmen, switchmen, and other persons, and all incidental current expenses, shall, at the end of every half year, be repaid by the Company, and in default thereof may be recovered from them in any court of competent jurisdiction.

Construction of Breedon Cross Bridge and gradient of road.

27. The bridge to be constructed by the Company for carrying the Breedon Cross turnpike road over the railway shall be made with girders, with a flat top (if so required by the trustees of the said road), and not higher than is necessary for the free passage of the traffic along the railway, and the gradient of the road leading up to the intended bridge shall be so altered as not to be steeper than one in fifteen.

Provision with respect to the Calcutta Works.

28. With respect to the manufactory, coal wharf, lands, and buildings situate in Granville Street, in the borough of Birmingham, and herein-after referred to as the Calcutta Works, now in the occupation of Phebe Tilley Harlow and George Dickenson, trading under the firm of Harlow and Co., who are, or claim to be, the lessees thereof, the following provisions shall apply:

(1.) Before the Company shall commence any of the works authorised by this Act on the towing-path in front of the Calcutta Works, they shall give to the lessees and occupiers thereof notice in writing of their intention to purchase and take all their estate and interest in the Calcutta

Works, and thereupon the lessees and occupiers shall sell, and the Company shall purchase, all such the estate and interest of them the lessees and occupiers of and in the Calcutta Works, except the trade fixtures, engine, boiler, and machinery, at such price and compensation money as shall be settled (in default of agreement) in accordance with the provisions of the Lands Clauses Consolidation Act, 1845, as in the case of a compulsory purchase:

(2.) The purchase shall be completed and possession thereupon given at the end of one year after the service of the notice aforesaid, but so that the same be not completed before the twenty-ninth of September one thousand eight hundred and seventy-two:

(3.) If before such completion the Company desire to commence any of the works authorised by this Act on the towing-path in front of the Calcutta Works, they shall be at liberty to do so on giving to the lessees and occupiers thereof a month's notice in writing of such their intention, and paying to them, by way of deposit on and in part payment of the purchase money, the sum of two thousand pounds:

(4.) Until the payment of the said purchase money or deposit the Company shall not commence any works on the towing-path in front of the Calcutta Works, or otherwise interfere with the rights of the lessees and occupiers of the Calcutta Works on and across such towing-path:

(5.) Until the completion of the purchase as aforesaid, the Company shall not alter the level of Granville Street, except with the consent in writing of the lessees and occupiers of the Calcutta Works:

(6.) The Company shall hold the Calcutta Works, or the site thereof, when so purchased by them, for any of the extraordinary purposes authorised by the Railway Clauses Consolidation Act, 1845.

Houses of labouring classes.

29. The Company shall, not less than eight weeks before they take in any parish fifteen houses or more occupied either wholly or partially by persons belonging to the labouring classes as tenants or lodgers, make known their intention to take the same by placards, handbills, or other general notice, placed in public view upon or within a reasonable distance from such houses, and the Company shall not take any such houses until they have obtained the certificate of a justice that it has been proved to his satisfaction that they have made so known their intention to take the same.

A.D. 1871.

Deposit money not to be repaid until line opened or half the capital paid up and expended.

30. Whereas pursuant to the standing orders of both Houses of Parliament, and to an Act of the ninth and tenth years of Her present Majesty, chapter twenty, a sum of five thousand pounds, being five per cent. upon the amount of the estimate in respect of the railway authorised by this Act, has been deposited with the Court of Chancery in England in respect of the application to Parliament for this Act: Be it enacted, that notwithstanding anything contained in the said recited Act, the said sum of five thousand pounds so deposited as aforesaid in respect of the application for this Act shall not be paid or transferred to or on the application of the person or persons, or the majority of the persons, named in the warrant or order issued in pursuance of the said Act, or the survivors or survivor of them, unless the said Company shall, previously to the expiration of the period limited by this Act for completion of the railway hereby authorised to be made, either open the said railway for the public conveyance of passengers, or prove to the satisfaction of the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations that the said Company have paid up one half of the amount of the capital by this Act authorised to be raised by means of shares, and have expended for the purposes of this Act a sum equal in amount to such one half of the said capital; and if the said period shall expire before the said Company shall either have opened the said railway for the public conveyance of passengers, or have given such proof as aforesaid to the satisfaction of the Lords of the said Committee, the said sum of money deposited as aforesaid shall be applied in the manner herein-after specified; and the certificate of the Lords of the said Committee that such proof has been given to their satisfaction as aforesaid shall be sufficient evidence of the fact so certified, and it shall not be necessary to produce any certificate of this Act having passed, anything in the said recited Act to the contrary notwithstanding.

Application of deposit.

31. The said sum of money deposited as aforesaid shall be applicable, and after due notice in the London Gazette shall be applied, towards compensating any landowners or other persons whose property may have been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the said railway or any portion thereof, or who may have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the Company by this Act, and for which injury or loss no compensation, or inadequate compensation, shall have been paid, and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in

such proportions as to the Court of Chancery in England may seem fit; and if no such compensation shall be payable, or if a portion of the said sum of money shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said sum of money, or such portion thereof as may not be required as aforesaid, shall be paid to or on the application of the person or persons, or the majority of the persons, named in such warrant or order as aforesaid, or the survivor or survivors of them: Provided that until the said sum of money shall have been repaid to the depositors, or shall have become otherwise applicable as herein-before mentioned, any interest or dividends accruing thereon shall from time to time, and as often as the same shall become payable, be paid to or on the application of the person or persons, or the majority of the persons, named in such warrant or order as aforesaid, or the survivors or survivor of them.

Period for completion of works.

32. If the railway is not completed within five years from the passing of this Act, then on the expiration of that period the powers by this Act granted to the Company for making and completing the railway, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as is then completed.

Tolls for passengers.

33. The Company may demand and take in respect of the use of the railway any tolls not exceeding the following; (that is to say,)

In respect of passengers and animals conveyed on the railway:

For any person conveyed in or upon any carriage, per mile twopence; and if conveyed in or upon any carriage belonging to the Company, an additional sum per mile of one penny:

Animals.

For every horse, mule, ass, or other beast of draught or burden, and for every ox, cow, bull, or head of neat cattle conveyed in or upon any carriage, per mile threepence; and if conveyed in or upon any carriage belonging to the Company, an additional sum per mile of one penny:

For every calf, pig, sheep, lamb, or other small animal conveyed in or upon any carriage, per mile one penny; and if conveyed in or upon any carriage belonging to the Company, an additional sum per mile of one farthing:

Tolls for goods.

In respect of goods conveyed on the railway:

For all coals, cinders, dung, compost, and all sorts of manure, lime and limestone, and all undressed materials for the repair of public roads or highways, per ton per mile one penny; and if conveyed in carriages belonging to the Company, an additional sum per ton per mile of one halfpenny:

A.D. 1871.

For all coke, culm, charcoal, all stones for building, pitching, and paving, all bricks, tiles, slates, clay, sand, ironstone, and iron ore, pig iron, bar iron, rod iron, hoop iron, and all other similar descriptions of wrought iron and iron castings, not manufactured into utensils or other articles of merchandise, per ton per mile one penny halfpenny; and if conveyed in carriages belonging to the Company, an additional sum per ton per mile of one halfpenny:

For all sugar, grain, corn, flour, hides, dyewoods, earthenware, timber, staves, and deals, metals (except iron), nails, anvils, vices, and chains, per ton per mile twopence; and if conveyed in carriages belonging to the Company, an additional sum per ton per mile of three farthings:

For all cotton and other wools, drugs, manufactured goods, and all other wares, merchandise, fish, articles, matters, or things, per ton per mile threepence; and if conveyed in carriages belonging to the Company, an additional sum per ton per mile of one penny:

And for every carriage of whatever description, not being a carriage adapted and used for travelling on a railway, and not weighing more than one ton, carried or conveyed on a truck or platform belonging to the Company, per mile sixpence, and a sum of one penny halfpenny per mile for every additional quarter of a ton or fractional part of a quarter of a ton which any such carriage may weigh.

Tolls for propelling power.

34. The toll which the Company may demand for the use of engines for propelling carriages on the railway shall not exceed one penny per mile for each passenger or animal, or for each ton of goods, in addition to the several other tolls or sums by this Act authorised to be taken.

Regulations as to tolls.

35. The following provisions and regulations shall apply to the fixing of all tolls and charges payable under this Act; (that is to say,)

For all passengers, animals, or goods conveyed on the railway for a less distance than three miles the Company may demand tolls and charges as for three miles:

For a fraction of a mile beyond three miles, or beyond any greater number of miles, the Company may demand tolls and charges on animals and goods for such fraction in proportion to the numbers of quarters of a mile contained therein, and if there be a fraction of a quarter of a mile such fraction shall be deemed a quarter of a mile; and in respect of passengers, every fraction

of a mile beyond an integral number of miles shall be deemed a mile:

For a fraction of a ton the Company may demand tolls according to the number of quarters of a ton in such fraction, and if there be a fraction of a quarter of a ton such fraction shall be deemed a quarter of a ton:

With respect to all articles, except stone and timber, the weight shall be determined according to the usual avoirdupois weight:

With respect to stone and timber, fourteen cubic feet of stone, forty cubic feet of oak, mahogany, teak, beech, or ash, and fifty cubic feet of any other timber, shall be deemed one ton weight, and so in proportion for any smaller quantity.

Tolls for small parcels and single articles of great weight.

36. With respect to small parcels not exceeding five hundred pounds in weight and single articles of great weight, notwithstanding anything in this Act, the Company may demand and take any tolls not exceeding the following; (that is to say,)

For the carriage of small parcels on the railway:

For any parcel not exceeding seven pounds in weight, threepence:

For any parcel exceeding seven pounds in weight but not exceeding fourteen pounds in weight, fourpence:

For any parcel exceeding fourteen pounds in weight but not exceeding twenty-eight pounds in weight, sixpence:

And for any parcel exceeding twenty-eight pounds in weight but not exceeding fifty-six pounds in weight, ninepence:

And for parcels exceeding fifty-six pounds in weight but not exceeding five hundred pounds in weight, the Company may demand any sum which they think fit:

Provided always, that articles sent in large aggregate quantities, although made up in separate parcels, such as bags of sugar, coffee, meal, and the like, shall not be deemed small parcels, but that term shall apply only to single parcels in separate packages.

For the carriage of single articles of great weight on the railway:

For the carriage of any one boiler, cylinder, bob, or single piece of machinery, or single piece of timber or stone, or other single article the weight of which, including the carriage, shall exceed four tons but shall not exceed eight tons, the Company may demand such sum as they think fit, not exceeding sixpence per ton per mile:

For the carriage of any single piece of timber, stone, machinery, or other single article, the weight of which, with the carriage, shall exceed eight tons, the Company may demand such sum as they think fit.

A.D. 1871.

Maximum rates for passengers.

37. The maximum rate of charge to be made by the Company for the conveyance of passengers upon the railway, including the tolls for the use of the railway, and for carriages and locomotive power, and every other expense incidental to such conveyance, shall not exceed the following; (that is to say,)

For every passenger conveyed in a first-class carriage, the sum of threepence per mile:

For every passenger conveyed in a second-class carriage, the sum of twopence per mile:

For every passenger conveyed in a third-class carriage, the sum of one penny per mile.

Maximum rates for animals and goods.

38. The maximum rate of charge to be made by the Company for the conveyance of animals and goods (except such small parcels and single articles of great weight as aforesaid) on the railway, including the tolls for the use of the railway, and for waggons or trucks and locomotive power, and for every other expense incidental to the conveyance (except a reasonable charge for loading and unloading goods at any terminal station in respect of such goods, and for delivery and collection, and any other service incidental to the business or duty of a carrier, where any such service is performed by the Company), shall not exceed the following sums; (that is to say,)

For every horse, mule, ass, or other beast of draught or burden, per mile fourpence;

For every ox, cow, bull, or head of neat cattle, per mile twopence halfpenny;

For every calf, pig, sheep, lamb, or other small animal, per mile one penny halfpenny;

For all coals, cinders, dung, compost, and all sorts of manure, lime and limestone, and all undressed materials for the repair of public roads or highways, per ton per mile one penny halfpenny;

For all coke, culm, charcoal, all stones for building, pitching, and paving, all bricks, tiles, slates, clay, sand, ironstone, and iron ore, pig iron, bar iron, rod iron, hoop iron, and all other similar descriptions of wrought iron and iron castings, not manufactured into utensils or other articles of merchandise, per ton per mile twopence;

For all sugar, grain, corn, flour, hides, dyewoods, earthenware, timber, staves, and deals, metals (except iron), nails, anvils, vices, and chains, per ton per mile threepence;

For all cotton and other wools, drugs, manufactured goods, and all other wares, merchandise, fish, articles, matters, or things, per ton per mile fourpence;

And for every carriage of whatever description, not being a carriage adapted and used for travelling on a railway, and not weighing more than one ton, carried or conveyed on a truck or platform belonging to or provided by the Company, per mile sixpence, and one penny halfpenny for every additional quarter of a ton which such carriage may weigh.

Passengers luggage.

39. Every passenger travelling upon the railway may take with him his ordinary luggage, not exceeding one hundred and twenty pounds in weight for first-class passengers, one hundred pounds in weight for second-class passengers, and sixty pounds in weight for third-class passengers, without any charge being made for the carriage thereof.

Terminal station.

40. No station shall be considered a terminal station in regard to any goods conveyed on the railway unless such goods have been received thereat direct from the consignor, or are directed to be delivered thereat to the consignee.

Restrictions as to charges not to apply to special trains.

41. The restrictions as to the charges to be made for passengers shall not extend to any special train run upon the railway, in respect of which the Company may make such charges as they think fit, but shall apply only to the ordinary and express trains appointed from time to time by the Company for the conveyance of passengers and goods upon the railway.

Company may take increased charges by agreement.

42. Nothing in this Act shall prevent the Company from taking any increased charges, over and above the charges by this Act limited for the conveyance of animals or goods of any description, by agreement with the owners or persons in charge thereof, either by reason of any special service performed by the Company in relation thereto, or in respect to the conveyance of animals or goods (other than small parcels) by passenger trains.

Restriction on certain traffic.

43. Notwithstanding anything in this Act, the Railway Company shall not, without the consent of the Worcester and Birmingham Canal Company in writing under their common seal, which consent may be either general or special, and either permanent or temporary, carry any such goods as are described in classes mineral and special in the Railway Clearing House classification book for the time being; and the Railway Company shall not, without the previous consent of the Worcester and Birmingham Canal Company in writing under their common seal, apply to Parliament for, or otherwise seek for, powers or provisions by or under which they may be relieved from the restriction imposed on them by this section wholly or in part.

A.D. 1871.

Appointment of directors by Canal Company.

44. The directors of the Worcester and Birmingham Canal Company may from time to time appoint three persons to be directors of the Railway Company in addition to the directors elected by the Company, and it shall not be necessary that any person so appointed be a shareholder in the Railway Company, and the directors of the Canal Company may at any time at pleasure remove any person so appointed; and every appointment of a director under this section, either originally or on a vacancy caused by death, resignation, removal, or otherwise, and every such removal, shall be made by writing under the common seal of the Canal Company, and shall be communicated to the secretary of the Railway Company.

Restriction on extension, &c. of railway.

45. The Railway Company shall not, without the previous consent of the Worcester and Birmingham Canal Company in writing under their common seal, extend the railway on the canal beyond its terminus at King's Norton aforesaid, or sell or lease the railway or any part thereof, or dispose thereof or of any part thereof by amalgamation or otherwise, or without the like consent apply to Parliament for or otherwise seek powers for any such extension, sale, lease, or disposal.

Confirmation of agreement with Midland Railway Company.

46. The agreement, dated the 16th day of March 1871, and made between Henry Wiggin the chairman, and on behalf of the Company, of the one part, and the Midland Railway Company of the other part, which is set forth in the second schedule to this Act, is hereby confirmed and made binding on the Company and the Midland Company respectively, and full effect may and shall be given thereto.

Power to enter into traffic arrangements.

47. The Company on the one hand, and the Midland Railway Company on the other hand, may from time to time, subject and without prejudice to the provisions and restrictions in this Act contained, enter into further contracts or arrangements with respect to the following purposes, or any of them; (that is to say,)

The management, use, working, and maintenance of the railway, or of any part or parts thereof:

The supply of any rolling or working stock, and of officers and servants for the conduct of the traffic on the railway:

The payments to be made and the conditions to be performed with respect to the matters aforesaid:

The interchange, accommodation, conveyance, and delivery of traffic coming from or destined for the undertakings of the contracting companies, and the fixing and division between the said companies of the receipts arising from such traffic.

Short-distance charges.

48. During the continuance of any agreement to be entered into under the provisions of this Act for the use of the railway by the Midland Railway Company, the railways of the Company and of the Midland Company shall, for the purposes of tolls and charges, be considered as one railway; and in estimating the amount of tolls and charges in respect of traffic conveyed partly on the railway and partly on the other railway for a less distance than three miles, tolls and charges may only be charged as for three miles, and in respect of passengers for every mile or fraction of a mile beyond three miles, tolls and charges as for one mile only, and in respect of animals and goods, for every quarter of a mile or fraction of a quarter of a mile beyond three miles, tolls and charges as for a quarter of a mile only, and no other short-distance charge shall be made for the conveyance of passengers, animals, or goods partly on the railway and partly on the other railway.

Interest not to be paid on calls paid up.

49. The Company shall not, out of any money by this Act authorised to be raised by calls or by borrowing, pay interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him: Provided always, that this Act shall not prevent the Company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with the Companies Clauses Consolidation Act, 1845.

Deposits for future Bills not to be paid out of capital.

50. The Company shall not, out of any money by this Act authorised to be raised, pay or deposit any sum which, by any standing order of either House of Parliament now or hereafter in force, may be required to be deposited in respect of any application to Parliament for the purpose of obtaining an Act authorising the Company to construct any other railway, or to execute any other work or undertaking.

Railway not exempt from provisions of present and future general Acts.

51. Nothing in this Act shall exempt the railway from the provisions of any general Act relating to railways, or the better and more impartial audit of the accounts of railway companies, passed or to be passed, or from any future revision or alteration, under the authority of Parliament, of the maximum rates of fares and charges, or of the rates for small parcels, authorised by this Act.

Expenses of Act.

52. The costs, charges, and expenses preliminary to, and of and incidental to, the preparing, applying for, obtaining, and passing of this Act shall be paid by the Company.

A.D. 1871.

FIRST SCHEDULE.

Articles of Agreement, made the thirteenth day of December 1870, between the Company of Proprietors of the Worcester and Birmingham Canal Navigation, herein-after called "the Canal Company," of the first part, and Henry Wiggin, of Metchley Grange, Harborne, Esquire, on behalf of a Company intended to be formed, to be called "the Birmingham West Suburban Railway Company," of the second part.

Whereas the parties hereto of the second part intend to form a Company for the purpose of making and maintaining a railway from Birmingham to King's Norton in the county of Worcester, along the side of the Worcester and Birmingham canal, with a branch line to Harborne in the county of Stafford: Now these presents witness that, in consideration of the mutual benefits to accrue from this agreement, and with the view of promoting the interests of the shareholders in the said canal, as well as to provide for the convenience of the public in connexion with the proposed railway, it is hereby mutually covenanted and agreed by the parties hereto as follows:

1. The Railway Company shall, at its own costs, obtain the necessary parliamentary powers for the making and maintaining of the intended railway, and for the execution of the stipulations of this agreement, and the Canal Company shall concur in and not oppose the application for such powers.

2. The Canal Company will sell to the Railway Company, and the Railway Company will purchase the land of the Canal Company lying alongside of the Worcester and Birmingham canal, between the Albion Wharf, Bridge Street, Birmingham, occupied by George Goodman as lessee of the Canal Company, and Reachill's Wharf, King's Norton, not required for the purposes of the canal and towing-path, and which land is described in the plans and book of reference deposited with the clerk of the peace for the county of Warwick, subject to the exception and qualification following, namely,

1. Such part of the land as is coloured pink on the plan hereupon endorsed is excepted from the operation of this clause, and is to be acquired, if at all, under clause 5:
2. The house, buildings, and garden in the parish of King's Norton, and numbered 46 in the book of reference of railway No. 2, are also excepted from this clause:
3. Such part of the land as is shown upon the plan hereupon endorsed to be crossed by arches to be used in that way and no other.

3. The consideration for the sale of the aforesaid land, subject to the exception and qualification aforesaid, shall (independently of any other benefits secured to the Canal Company by this agreement) be a rentcharge of 1,400*l.* a year, charged and secured as provided in section 11 of the "Lands Clauses

Consolidation Act, 1845," as amended by the "Lands Clauses Consolidation Acts Amendment Act, 1860."

4. The rentcharge aforesaid is to commence on the expiration of two years from the passing of the Act, or as much earlier as any portion of the railway shall be opened for traffic, and to be payable half-yearly on days to be agreed on, and in addition to the rentcharge the Canal Company shall receive a share of the net profits of the Railway Company, to be regulated as follows; (namely,) as soon as the shareholders in the Railway Company shall have received dividends equivalent in the aggregate to 5*l.* per centum per annum on the amount of paid-up capital, under the now intended Act, calculated from the times of the payment of the component parts thereof, then interest at 5*l.* per centum per annum shall thenceforward be paid on the whole paid-up capital under the now intended Act, and subject thereto the net surplus profits shall be equally divided between the Railway Company and Canal Company at the end of each year of dividend.

5. If the Railway Company at any time desire, for the purpose of widening the viaduct on or near Goodman's Wharf, to purchase the strips of land coloured pink on the said endorsed plan, or any part of such strips, the Canal Company shall sell the same to the Railway Company in consideration of a rentcharge to be charged, secured, and paid as aforesaid, calculated at the rate of one shilling and sixpence per annum per square yard of the land sold.

6. It shall be lawful for the Railway Company, immediately upon the passing of their Act, at their own cost in all things, to do the works following; namely,

1. To narrow the present canal at certain points to be settled by the committees of the two companies, yet so as to leave a waterway of not less than 30 feet (except near to the Queen's Hospital at Birmingham, where it is not to be less than 24 feet, and under bridges, where a waterway is to be left of not less than 16 feet), and it is agreed that where the canal near to the Queen's Hospital is narrowed as aforesaid, walls shall be built in on both sides of the canal, and the canal cleared out so as to give a minimum depth of five feet of water in the shallowest part, as far as such walls shall extend.
2. To narrow the present towing-path, yet so as to leave a towing-path nine feet wide at least, except under bridges, and there of a width of six feet six inches; and,
3. To rebuild or alter such bridges as may be necessary for the making of the railway.

7. The Railway Company shall erect and maintain a screen or fence (either by a wall or otherwise) as may be determined by the committees of the two Companies, between the land of the Canal Company sold to the Railway Company and the towing-path of the canal, for the purpose of guarding against accidents to animals drawing boats along the said canal.

8. If any question arise as to the plan or execution of the works before named, and the engineers or committees or directors of the respective Companies shall not agree, then such disagreement shall be decided by an engineer to be appointed by the committees or directors of the two Companies, and the decision of such referee shall be conclusive and binding on both Companies.

A.D. 1871.

9. The Railway Company will make good all damage, if any, occasioned to the canal by the Railway Company in and during the construction of the line, and will pay the expense of all works done with the consent of the two Companies for alterations in the present canal and the towing-paths and bridges, and also all costs for all other matters necessary for giving full effect to this agreement.

10. No stoppage of traffic shall take place in the said canal by means of any act of or default of the Railway Company's engineers or contractors, without the previous consent of the committee of the said canal, or within one calendar month of any previous stoppage, and for every stoppage the Railway Company shall pay to the Canal Company as ascertained liquidated damages, and not as penalty, the sums, following; viz., for the first twenty-four hours 25*l.*, and for every twenty-four hours immediately succeeding the first twenty-four hours the sum of 50*l.*, but nothing herein contained shall authorise the continuance of any such stoppage for more than forty-eight hours; provided also, that, without prejudice to the right of the said Canal Company to recover the said sums as entire and ascertained damages, it shall be lawful for the committee of the Canal Company, if it shall appear to them that the damage actually arising from any such stoppage has been less than the sum of money payable in respect thereof as aforesaid, or that from other circumstances it would be equitable not to enforce the same, they may remit or forego the whole or any part of such sums of money.

11. All things necessary for the thorough and perfect attainment of the object in view; (namely,) the providing by the Canal Company of sufficient land for the line of railway between Birmingham and King's Norton, yet preserving what may be necessary for the efficient working of the canal, and on the part of the railway the execution of all works, and the payment of all costs, charges, and expenses of the Canal Company of this agreement and incident to the constitution of the Railway Company, and the obtaining of an Act or Acts of Parliament, inclusive of all costs, charges, and expenses which the said Canal Company may incur or be put to in or about any of the proceedings aforesaid, and the making and maintaining and working of the railway, shall be done by them respectively, although not specifically named in this agreement.

12. The Act of Parliament authorising the railway shall contain such enactments as shall be necessary to give effect to the provisions of this agreement, and enactments to the effect that the Railway Company shall not, without the consent of the Canal Company, carry any such goods as are described in classes mineral and special of railway companies regulations, except as regards traffic in such goods bonâ fide originating on or consigned to the Harborne Branch, or any extension thereof beyond Harborne, or without such consent extend the line of railway on the canal beyond the proposed limit at King's Norton, or sell or lease the railway, or dispose of it by amalgamation or otherwise, or without such consent apply to Parliament for r otherwise seek powers for such extension, sale, lease, or disposal, or for the carriage contrary to this clause of such mineral and special classes of goods as aforesaid.

13. The Act incorporating the Railway Company shall empower the committee for the time being of the Canal Company to appoint one third of the prescribed number of the directors, which one third are herein-after called "the official directors," and such official directors shall not be required to have any

other qualification than their appointment by the committee of the Canal Company. The committee of the Canal Company may remove any official director who in their opinion may become incapable or unfit, and may fill up all vacancies occurring by any such removal, or by the death or resignation of any official director.

14. All differences, if any, which may arise between the parties hereto, either as to the construction of this agreement, or incident to the fulfilment thereof, shall (except as provided in Article 8) be referred to and decided by a single arbitrator, under and according to the Railway Companies Arbitration Act, 1859, as if the two Companies were railway companies; and this agreement shall be deemed a reference in accordance with that Act.

15. If an Act of Parliament for the constitution of the Railway Company and the confirmation of this agreement shall not be obtained before the 1st day of September 1872, then it shall be lawful for the Canal Company, by notice in writing under the hand of their secretary, addressed to the Railway Company and delivered at their office or to their solicitors, or, if such company be not formed, to the parties hereto of the second part, to determine and put an end to this agreement.

16. It shall be lawful for the parties hereto of the second part to determine this agreement at any time before obtaining the intended Act of Parliament, but not afterwards, if they shall not succeed in forming the Railway Company, or in providing the necessary capital, or in obtaining the Act of Parliament before the 1st day of September 1872, or if for any other reason they shall so think fit, and shall give notice in writing under the hands of any two of them of their wish so to do, to the Canal Company, by leaving the same at their office in Birmingham.

17. So soon as the Railway Company shall be incorporated, then an agreement under the seal of the Company shall be substituted for this agreement, such substituted agreement to be identical with this, except that instead of the parties hereto of the second part the Company's corporate name shall be used.

In witness whereof the said Canal Company has affixed its corporate common seal, and the said Henry Wiggin has set his hand and seal to these presents, the day and year first above written.

The common seal of the Canal Company was hereunto affixed by order of the committee in the presence of us the undersigned two members of such committee—

Seal of the Worcester and Birmingham Canal Company

Edward Bembridge.
Thomas Ryland.

Signed, sealed, and delivered by the said Henry Wiggin, in the presence of—

L.S.

Henry Wiggin.

Arthur Ryland,
Solicitor, Birmingham.

A.D. 1871.

The SECOND SCHEDULE.

Heads of Agreement, made this 16th day of March 1871, between Henry Wiggin, of Metchley Grange, in the parish of Harborne, Esquire, the chairman and on behalf of the promoters of the Birmingham West Suburban Railway Company (herein-after called the Suburban Company) of the one part, and William John Beale, for and on behalf of the Midland Railway Company (herein-after called the Midland Company), of the other part.

1. These heads to be subject to the sanction of Parliament.

2. The Bill of the Suburban Company, now pending before Parliament, to be amended and limited to the construction of railways Nos. 1 and 3, which together will constitute a new line of railway between the Worcester Wharf in Birmingham and the main line of the Midland Company near the village of King's Norton.

3. The Suburban Company at their own expense to make and complete the new line, with stations, buildings, and works as authorised by the Act, but subject to the stipulations in the agreement with the Canal Company, scheduled thereto, to the satisfaction of the engineers of the Suburban Company and the Midland Company respectively, or, in case of difference of opinion, to the satisfaction of an engineer to be appointed by the Board of Trade.

4. After the new line is authorised to be opened for public traffic, the Midland Company, immediately and for ever afterwards, at their own expense, to maintain, manage, man, stock, work, and use the new line and works, and to work and use the same so as properly to develop and accommodate the local traffic of the district to be served by the new line, to the reasonable satisfaction of the Suburban Railway Company.

5. The Midland Company to pay all expenses of management, taxes, rates, and all other landlord and tenant's charges and outgoings, except rentcharges for land on which the line is constructed, chief rents, tithe, tithe rentcharge, and land tax.

6. The Midland Company to receive 50*l.* per annum, by half-yearly payments, for their passenger station accommodation at King's Norton.

7. The mileage charge for through traffic to be as follows,—the Midland Company to receive the actual mileage upon all traffic passing to, from, or over the new line, and going beyond King's Norton on the Midland Railway or beyond.

8. The Suburban Company to account to the Midland Company for all receipts of the Company from all traffic sources, tolls from third parties to be as between the Suburban Company and the Midland Company estimated at maximum rates, unless otherwise agreed.

9. From the total of the gross traffic conveyed by the Midland Company on or over the new line, and the receipts to be accounted for under the 8th head, the following deductions to be made:

The payments for passenger station accommodation under the 6th head;

The due proportion of mileage charges under the 7th head, Government duty;

Paid ons, paid outs, and clearing house, station to station;

Terminals, except on any station on the new line itself;

And the residue shall be the receipts divisible between the Midland Company and the Suburban Company.

10. Fifty per cent. of the divisible receipts to be paid to the Midland Company for their expenses of the maintenance, management, and working of the new line, and the other 50 per cent. to be paid to the Suburban Company.

11. The division of the gross receipts to be made half-yearly and accounts to be rendered half-yearly.

12. The Midland Company to keep all proper accounts and vouchers, and to afford proper inspections thereof to the Suburban Company, with power to make copies.

13. All rentcharges payable for land used for the construction of the new line, stations, works, and conveniences, and the interest on bonds or debentures of the Suburban Company, to be a first charge on the gross receipts, and to be paid thereout by the Midland Company, the same to be repaid to them by the Suburban Company out of their proportion of the divisible receipts from time to time; and in case of any deficiency in such proportion in any half year, the amount of such deficiency, with interest at 5 per cent. thereon from the day of payment, shall be a charge on any moneys payable to the Suburban Company by the Midland Company in any subsequent half year.

14. All differences arising between the Suburban Company and the Midland Company, and all questions as to the carrying into effect of the provisions of these heads of agreement, to be determined by arbitration under "The Railway Companies Arbitration Act, 1859," by a single arbitrator, to be, if not agreed upon, appointed by the Board of Trade with ample powers.

15. A formal agreement for carrying these heads into effect to be prepared on behalf of both Companies by J. H. Lloyd, Esq., 1, Queen's Bench Walk, with such details and incidental provisions as he thinks proper, and with such modifications as the Companies mutually agree on, and to be executed under seal, and binding on them both.

For Henry Wiggin,
Arthur Ryland.
W. Jno. Beale,
For the Midland Company.

LONDON: Printed by George Edward Eyre and William Spottiswoode,
Printers to the Queen's most Excellent Majesty. 1871.