CHAP. cxxvii.

An Act to form into a separate undertaking the Bude and Torrington Extensions of the Devon and Cornwall Railway Company, and to incorporate a company for the making and maintaining thereof; and for other purposes. A.D. 1869.

[26th July 1869.]

WHEREAS by "The Okehampton Railway (Extensions to Bude and Torrington) Act, 1865," (in this Act called the Act of 1865,) the Devon and Cornwall Railway Company (in this Act called the Devon and Cornwall Company) were authorized to make and maintain, by way of extensions of their railway, lines of railway to Bude in the county of Cornwall and to Great Torrington in the county of Devon respectively, and (section 7) to raise for the purposes of the Bude and Torrington Extensions a capital of three hundred and fifty thousand pounds, and (section 12) to borrow for the purposes of the Bude and Torrington Extensions one hundred and sixteen thousand six hundred pounds, and (section 9) the divisible profits of the Bude and Torrington Extensions were made applicable, in the first instance, for payment of a dividend on the shares (therein called extension shares) issued under the Act of 1865, and (section 10) it was enacted that the holders of those shares should not in respect thereof have or be entitled to any interest or dividend out of any profits of the Devon and Cornwall Company, except the profits of the Bude and Torrington Extensions, and (section 11) provision was made requiring the Devon and Cornwall Company to keep separate accounts for the purpose of ascertaining the divisible profits of the Bude and Torrington Extensions: 28 & 29 Vict. c. cxlix.

And whereas by the Act of 1865 (section 27) the heads of arrangement between the Devon and Cornwall Company (under their original name of incorporation, "The Okehampton Railway Company,") and the London and South-western Railway Company,

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with reference to the Bude and Torrington Extensions, set forth in the schedule to the reciting Act, were by that Act confirmed, and (sections 28 and 29) the Devon and Cornwall Company and the London and South-western Railway Company were authorized to enter into working and traffic and other arrangements with respect to the Bude and Torrington Extensions:

30 & 31 Vict. c. cxxv.

And whereas by the Devon and Cornwall Railway Act, 1867, (in this Act called the Act of 1867,) further powers were conferred upon the Devon and Cornwall Company with reference to the Bude and Torrington Extensions, and those extensions were divided into four sections, with a separate and distinct capital and borrowing power for each section:

And whereas the Devon and Cornwall Company are desirous, and it is expedient, that the Bude and Torrington Extensions should be severed from the general undertaking of the Devon and Cornwall Company, and formed into a separate and distinct undertaking, and that a company (in this Act called the company) should be incorporated for the purpose of making and maintaining those extensions, and that all the powers, rights, privileges, liabilities, and obligations conferred by or arising under the recited Acts of 1865 and 1867 should be absolutely transferred to and vested in the company:

And whereas the Devon and Cornwall Company and the London and South-western Railway Company, and the company, are desirous, and it is expedient, that the heads of arrangement set forth in the schedule to and confirmed by the Act of 1865 should be annulled, and that the heads of arrangement which are set forth in the schedule to this Act should be confirmed and substituted for those so annulled:

And whereas the objects of this Act cannot be attained 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 Bude and Torrington Junction Railway Act, 1869."

8 & 9 Vict. cc. 16. & 26. & 27 Vict. c. 118. incorporated.

2. "The Companies Clauses Consolidation Act, 1845," and Part I., relating to cancellation and surrender of shares, and Part III., relating to debenture stock, of "The Companies Clauses Act, 1863," are (except where expressly varied by this Act) incorporated with and form part of this Act.

Interpretation of terms.

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith shall have the same respective meanings, unless there be something in the subject or context repugnant to such construction; the expression "the company" means the company incorporated by this Act; the expression "the Devon and Cornwall Company" means the Devon and Cornwall Railway Company; the expression "the Act of 1865" means "The Okehampton Railway (Extensions to Bude and Torrington) Act, 1865;" the expression "the Act of 1867" means "The Devon and Cornwall Railway Act, 1867;" the expressions "the railway," "the undertaking," or "the Bude and Torrington Extensions," mean the railways authorized by the Act of 1865; and the expression "superior courts," or "court of competent jurisdiction," or any other like expression in this Act or any Act wholly or partially incorporated herewith, shall be read and have effect as if the debt or demand with respect to which the expression is used were a common simple contract debt, and not a debt or demand created by statute.

Company incorporated.

4. All persons and corporations who have already subscribed or shall hereafter subscribe to the undertaking, and their executors, administrators, successors, and assigns respectively, shall be united into a company for the purpose of making and maintaining the railway to be called "The Bude and Torrington Junction Railway," and for other the purposes of this Act, and for those purposes shall be incorporated by the name of "The Bude and Torrington Junction Railway Company," and by that name shall be a body corporate, with perpetual succession and a common seal, and with power to purchase, take, hold, and dispose of lands and other property for the purposes of this Act.

Vesting Bude and Torrington Extensions in new company.

5. Subject to the provisions of this Act, on and from the passing of this Act all the lands acquired and all the works executed by the Devon and Cornwall Company by virtue of the Act of 1865 and the Act of 1867, and all the powers, rights, and privileges conferred on the Devon and Cornwall Company by the said Acts, and the Acts or parts of Acts incorporated therewith, whether for the construction and maintenance of the Bude and Torrington Extensions, or for the purchase of lands for the purposes thereof, or for levying tolls and charges in respect thereof, or for any other purpose with relation thereto, together with the benefit, rights, privileges, obligations, claims, and demands of and under all contracts, agreements, and arrangements, shall be vested in the company, and shall be exercised by the company as fully and effectually as though the same

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powers, rights, and privileges had been originally conferred upon the company; and in like manner all the duties, obligations, and liabilities imposed upon or attaching to or incurred by the Devon and Cornwall Company with respect to the Bude and Torrington Extensions shall be performed by and attach to the company; and the Act of 1865 and the Act of 1867 respectively shall be read as though the name of the company had been used therein instead of the name of the Devon and Cornwall Company: Provided that the company and the shareholders thereof shall be exempt from the debts, duties, and liabilities with relation to the general undertaking of the Devon and Cornwall Company; and, subject to the provision next hereinafter contained, the Devon and Cornwall Company and the shareholders thereof shall be exempt from all debts, duties, and liabilities relating to the Bude and Torrington Extensions, and shall be indemnified therefrom by the company, and all the powers of the Devon and Cornwall Company with respect to the Bude and Torrington Extension shall absolutely cease: Provided also, that nothing contained in this Act shall take away or shall prejudicially affect the rights, claims, powers, or remedies possessed or enjoyed at the time of the passing of this Act by any person whatsoever, whether upon the Devon and Cornwall Company and their undertaking or upon the Bude and Torrington Extensions.

Contracts for land entered into by Devon and Cornwall Company to be executed by company.

6. All contracts for the purchase or use of land entered into by the Devon and Cornwall Company before the passing of this Act and now in force for or with relation to the Bude and Torrington Extensions, or the purchase money in respect of which contracts has not been duly paid by the Devon and Cornwall Company, shall be completed by and such lands shall be conveyed to the company, and the purchase money shall be paid and applied as though the company were named in those contracts and in the Act of 1865 and the Act of 1867 respectively, instead of the Devon and Cornwall Company.

First and subsequent meetings.

7. The first ordinary meeting of the company shall be held within twelve months next after the passing of this Act, and the subsequent ordinary meetings of the company shall be held twice in every year in the months of February or March and August or September, as the directors may appoint.

Quorum of general meetings.

8. The quorum of general meetings of the company shall be ten shareholders, present personally or by proxy, holding in the aggregate not less than five thousand pounds in the capital of the company.

Number of directors.

9. The number of the directors shall be five, but it shall be lawful for the company from time to time to reduce the number, provided that the number be not less than three.

Qualification of directors.

10. The qualification of a director shall be the possession in his right of not less than twenty-five shares.

Quorum of directors.

11. The quorum of a meeting of directors shall be three until the number of directors is reduced to three, and then the quorum shall be two.

First directors.

Election of directors.

12. Francis John Thynne, George Alfred Hillier, and such three other qualified persons as the before-named persons or the survivor of them shall hereafter nominate in that behalf, shall be the first directors of 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 the directors appointed by this Act, or any of them, or may elect a new body of directors, or directors to supply the places of those not continued in office, the directors appointed by this Act being, if qualified, eligible for re-election; and at the first ordinary meeting to be held in every year after the first ordinary meeting the shareholders present personally or by proxy shall (subject to the power herein-before 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.

Annulling of heads of arrangement scheduled to Act of 1865, and repeal of section 27 of that Act.

13. The heads of arrangement between the Devon and Cornwall Company (under their original name of incorporation, the Okehampton Railway Company,) and the London and South-western Railway Company, set forth in the schedule to and confirmed by the Act of 1865, are by this Act annulled, and shall cease to be binding on the two companies; and section 27 of the Act of 1865 (confirming those heads of arrangement) is by this Act repealed.

Confirmation of heads of arrangement in schedule.

14. The heads of arrangement set forth in the schedule to this Act are by this Act confirmed, and made binding on the parties thereto, and shall have full effect according to the terms and intent thereof.

General saving of rights and claims.

15. Notwithstanding anything in this Act contained, everything before the passing of this Act done, suffered, and confirmed

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respectively under or by virtue of the Act of 1865 and the Act of 1867 respectively, shall be as valid as if this Act had not been passed, and this Act shall accordingly be subject and without prejudice to everything so done, suffered, and confirmed respectively, and to all rights, liabilities, claims, and demands, present or future, which if this Act had not been passed would be incident to or consequent on anything so done, suffered, and confirmed respectively, and with respect to all things so done, suffered, or confirmed respectively, and to all such rights, liabilities, claims, and demands, the company shall (subject to section 5 of this Act) to all intents and purposes represent the Devon and Cornwall Company, and the generality of this provision shall not be deemed to be restricted by any other of the provisions of this Act.

Interest not to be paid on calls paid up.

16. The company shall not, out of any money by any Act relating to the company authorized 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 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.

17. The company shall not, out of any money by any Act relating to the company authorized to be raised by calls or by borrowing, pay or deposit any sum which by any standing order of either House of Parliament now or hereafter in force is required to be deposited in respect of any application to Parliament for the purpose of obtaining an Act authorizing the company to construct any other railway or to execute any other work or undertaking.

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

18. Nothing in this Act shall exempt the railways of the company from the provisions of any general Act relating to railways, or the better and more impartial audit of the accounts of railway companies, now or hereafter in force, or from any future revision or alteration, under the authority of Parliament, of the maximum rates of tolls and charges, or of the rates for small parcels, by this Act authorized.

Expenses of Act.

19. All costs, charges, and expenses of and incident to the preparing and applying for and the obtaining and passing of this Act shall be paid by the company.

The SCHEDULE referred to in the foregoing Act.

Articles of Agreement between the Devon and Cornwall Railway Company (herein-after called "the company") and the London and South-western Railway Company (herein-after called "the South-western Company.")

1. These articles are subject to the sanction of Parliament, and are in substitution for the heads of arrangement (herein-after called "the heads of 1865") dated the 27th day of March 1865, and confirmed by "The Okehampton Railway (Extensions to Bude and Torrington) Act, 1865," (herein-after called "the Act of 1865,") and the heads of 1865 are on the confirmation of the present articles by Parliament to cease and to be at an end.

2. The South-western Company consents to the passing by Parliament in the present session of provisions for dividing the company into two companies, and that these articles may and shall, after the passing of those provisions, be read and construed and shall have effect as articles between that section of the existing company to which may be assigned the power and duty of making the railways authorized by the Act of 1865 (by whatsoever name that section may be incorporated, and which is herein-after called "the new company,") and the South-western Company.

3. The railways authorized by the Act of 1865 (herein-after called the railways of 1865), instead of being made as agreed between the companies in the heads of 1865, may be made by the new company as light railways under the provisions of "The Regulation of Railways Act, 1868," so nevertheless that the same be formed and maintained on the narrow gauge exclusively, and be proper and sufficient for receiving and carrying every description of rolling stock and plant from time to time in use on any of the railways of the South-western Company, except rolling stock or plant having a greater weight than 8 tons on any one pair of wheels.

4. The railway to Bude, or in the direction of Bude beyond Holsworthy, not to be opened for public traffic before the railway to Torrington is so opened, unless the South-western Company's line from Bideford to Torrington shall be not then made and opened for traffic.

5. Subject and without prejudice to the 23rd section of the Act of 1865 the junction between the railways of 1865 and the South-western Company's railway from Bideford to Torrington near Torrington to be made at the authorized point, with all proper and necessary signals to the satisfaction of the South-western Company and the Board of Trade, and in a mode to be approved by them, and to be so made and maintained and worked by the South-western Company at the expense of the new company.

6. The junction at or near Sampford Courtnay between the railway No. 1, authorized by the Act of 1865, and the Okehampton Railway, which is now a single line, and belonging to the company, and which is authorized and agreed

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to be leased to the South-western Company for a term of 1,000 years, and is exclusively worked by that company, shall be thus arranged:—

Instead of the direct junction with the Okehampton Railway authorized by the Act of 1865 at the point indicated on the deposited plan referred to in that Act, the company or the new company shall, at the expense of the new company, form and maintain upon the lands of the Okehampton Railway a separate side line of railway in continuation of the new company's railway between the authorized point of junction of 1865 and the North Tawton station on the Okehampton Railway, with proper means of communication between that side line and the Okehampton Railway in that station, and the new company shall have the right, in common with the South-western Company, of using free of toll that side line for all purposes of their traffic on their railways, and their traffic shall be duly accommodated in the South-western Company's North Tawton station. The South-western Company solely shall conduct the traffic of the new company in that station, and the new company shall pay for that accommodation such a proportion of the expense of manning, working, and maintaining that station as the traffic carried out of and into such station by the trains of the new company shall from time to time bear to the traffic carried out of and into such station by the trains of the South-western Company (irrespective in the latter case of traffic passing beyond such station), such traffic being calculated by the numbers of passengers, parcels, live stock, and tons of goods, and not by the amounts received for conveyance.

If that portion of the Okehampton Railway between the North Tawton station and the next station to the westward thereof be made a double line, the South-western Company may, after giving six months notice in writing thereof to the new company, at the expense of the new company, convert the side line above mentioned, if it shall originally have been laid down as a light railway, into an improved railway of equal strength and quality with the Okehampton Railway, and may, at the like expense, form, construct, and complete a proper double line junction, with all proper and sufficient signals, at the point of junction in Sampford Courtnay authorized by the Act of 1865, and that junction and signals shall thereafter be maintained and worked and the improved line (theretofore the side line) shall thereafter be maintained by the South-western Company at the expense of the new company; the improved railway, being that portion of the Okehampton Railway (when doubled) between the authorized junction of 1865 and the North Tawton station, to be worked over by the trains of both companies for their respective purposes free of toll.

The expense of providing any additional station accommodation at North Tawton, required by the new company, to be paid by them, and if not specially required by that company, but deemed necessary by the South-western Company, any difference as to the necessity or as to the company by whom the expense or any portion of it shall be borne and paid to be settled by arbitration.

7. The South-western Company to have the right of running over and using the railways of 1865, or any portion thereof, and the stations thereon, with their engines, carriages, waggons, officers, and servants, to any extent they may from time to time think proper, subject nevertheless to the restrictions

contained in section 28 of "The Regulation of Railways Act, 1868," so long as the railways so run over are light railways, and such restrictions are applicable. The terms for so running to be, unless otherwise agreed, a due mileage proportion of the South-western Company's gross receipts from the through fares and rates from time to time fixed by them for the traffic carried by them on their railways, and also on or over the railways so run over, less terminals (if any) and a reasonable allowance for their expense of carrying the traffic.

Subject to the provisions of this article in respect of running powers, the respective companies to be bound to give through fares and rates, and all reasonable and proper facilities for and by through booking and through conveyance of traffic, on the principle of a mileage division with the usual clearing-house terminals; the through fares and rates, failing agreement, to be fixed from time to time by arbitration. The South-western Company to have the power of placing, at their own expense, booking clerks, goods clerks, carting agents, and inspectors at any station on the new company's lines.

8. The South-western Company to allow a rebate out of the South-western Company's receipts in respect of all through traffic conveyed to or from any of the stations on the new company's lines (except Torrington and North Tawton stations, and except any station within three miles of those respective stations, measured along those railways,) from or to any of the stations on the South-western Company's system of railways eastward of and exclusive of their Queen Street station at Exeter.

The rebate never to exceed in any one year a sum equal to £100 per mile for every mile of the new company's railways actually opened and worked in connexion with the South-western Company's system of railways, and also never to exceed £3,000 in any one year.

Such rebate never to exceed in amount the South-western Company's receipts for such traffic conveyed on their lines eastward of Exeter in any one year.

Such rebate never in any one year to be more (if any) than is requisite, with the Bude and Torrington Company's proper net receipts from all sources, to enable them to pay interest at a rate not exceeding 5 per cent. on the debenture debt and 5 per cent on the share capital of the company from time to time.

For the purposes of this article, each year is to be held as commencing on the 1st January.

9. The arrangements made by these articles, and especially those expressed in articles 6, 7, and 8, are made expressly on the condition that the new company shall not, directly or indirectly, at any time apply for, or concur in the application for, or use any running powers or facilities other than those herein mentioned over any railways from time to time owned or worked over by the South-western Company, or over the Devon and Cornwall Railway, or any portion thereof, without the consent in writing of the South-western Company.

10. In the event of any other railway than a railway belonging to or worked exclusively by the South-western Company forming a connexion with the railways of the new company, or of through booking arrangements being established between such railways, a proportionate abatement is to be

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made on the aforesaid rebate in respect of any traffic which could or might be carried by the South-western Company eastward of Exeter, in connexion with railways of the new company, but which is carried by such other railway.

11. In the event of the company and the new company, or either of them, applying to Parliament in the session of 1870 for an extension of time for the exercise of the present powers of the company, or for any such alteration of those powers as may be rendered necessary for these articles, the South-western Company consents to such application in either House of Parliament, so that the time for completing the railways be not extended beyond the 30th June 1873.

12. An extended agreement in detail for carrying into effect these heads, with such modifications (if any) thereof not inconsistent with the spirit thereof, as the two companies may agree upon, and with all proper and sufficient incidental and consequential provisions, including provisions for the settlement of all differences between the companies by a single arbitrator, under "The Railway Companies Arbitration Act, 1859," to be settled by Francis Savage Reilley, Esquire, on behalf of both parties, or him failing, by such other counsel as shall be named in that behalf by Her Majesty's Attorney General, and to be executed by them under their seals, and to bind both. As witness the seals of the company and the South-western Company, this 29th day of April 1869.

Seal of the Devon and Cornwall Railway Company.

Seal of the London and South-western Railway Company.

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