CHAP. lxxvi.

An Act to enable the Glasgow and South-western Railway Company to abandon the construction of an authorised junction, and to acquire the undertaking of the Ayr and Maybole Junction Railway Company; and for other purposes. [29th June 1871.]

A.D. 1871.

WHEREAS by the Glasgow and South-western Railway (Additional Powers) Act, 1866, the Glasgow and South-western Railway Company, herein-after referred to as "the Company," were authorised to construct, amongst others, the railway secondly therein described, being a short junction between the Company's railway and their Irvine and Busby Branch: 29 & 30 Vict. c. ccii.

And whereas the construction of the said last-mentioned railway has become unnecessary, and it is expedient that the Company should be authorised to abandon the construction thereof:

And whereas the railway between Glasgow and Dalmellington, and the railway between Maybole and Girvan, are vested in and form part of the undertaking of the Company:

And whereas the Ayr and Maybole Junction Railway (herein-after referred to as "the Maybole Railway"), which extends from the Dalmellington Branch of the Company's railway near Dalrymple to Maybole, intervenes between the said railways so vested in the Company, and is worked by the Company under an agreement scheduled to and confirmed by the Glasgow and South-western and Ayr and Maybole Railways Act, 1863: 27 & 28 Vict. c. cxlviii.

And whereas it is expedient, and has been agreed, that the undertaking of the Ayr and Maybole Junction Railway Company (herein-after referred to as "the Maybole Company") should be vested in the Company upon the terms in this Act provided, and that the Maybole Company should remain incorporated only for the purposes herein-after mentioned:

And whereas the capital of the Maybole Company in shares is

A.D. 1871.

thirty-four thousand five hundred pounds, the whole of which has been fully paid up, and their mortgage debt is ten thousand five hundred pounds:

32 & 33 Vict. c. xlviii.

And whereas by the Glasgow and South-western Railway (Paisley Canal, &c.) Act, 1869, the undertaking of the Company of Proprietors of the Glasgow, Paisley, and Ardrossan Canal (therein and in this Act referred to as "the Canal Company") was vested in the Company, in consideration of the payment by the Company of the annual sum of three thousand four hundred and seventy-one pounds twelve shillings and eightpence, which was to be applied in payment of certain debts, and the interest thereon, as therein mentioned, and subject thereto in payment of dividend on the share capital of the Canal Company, and the Company were authorised to acquire and hold the whole or any part of the share capital, and to acquire and take up the said debts of the Canal Company, as therein mentioned, but they were not empowered to raise any money for that purpose:

And whereas the share capital of the Canal Company so authorised to be acquired by the Company consisted of the sum of forty-six thousand seven hundred and thirty-seven pounds eight shillings, and the said debts consisted of the sum of seventy-one thousand two hundred and eight pounds seventeen shillings and sixpence, making together the sum of one hundred and seventeen thousand nine hundred and forty-six pounds five shillings and sixpence, and such share capital and debts are in this Act respectively referred to as the canal shares and canal debts; and it is expedient that the Company should be empowered to raise money for the acquisition of and payment for such shares and debts in the manner herein-after provided:

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

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

Short title.

1. This Act may be cited for all purposes as "The Glasgow and South-western Railway Act, 1871."

Abandonment of a certain authorised branch railway.

2. The Company shall abandon the construction of the railway herein-after described and the works connected therewith; that is to say,

The railway secondly described in and authorised by the Glasgow and South-western Railway (Additional Powers) Act, 1866;

and the penalties imposed by the said Act of 1866 shall not accrue in respect of the Company not having completed and opened the said railway.

Compensation for damage to land by entry, &c. for purposes of works abandoned.

3. The abandonment by the Company, under the authority of this Act, of the railway by this Act authorised to be abandoned, shall not prejudice or affect the right of the owner or occupier of any land to receive compensation in accordance with the provisions in that behalf of the Lands Clauses Consolidation (Scotland) Act, 1845, for any damage occasioned by the entry on such land for the purpose of surveying and taking levels, or probing or boring to ascertain the nature of the soil, or setting out of the line of the work, and shall not prejudice or affect the right of the owner or occupier of any land which may have been temporarily occupied to receive compensation in accordance with the provisions in that behalf of the Railways Clauses Consolidation (Scotland) Act, 1845, so far as the same may be applicable for such temporary occupation, or for any loss, damage, or injury which may have been sustained by such owner or occupier by reason thereof, or of the exercise as regards such land of any of the powers contained in the last-mentioned Act or in the Company's said Act of 1866.

Compensation to be made in respect of works abandoned.

4. Where before the passing of this Act any contract may have been entered into or notice given for the purchasing of any land for the purposes of the railway by this Act authorised to be abandoned, full compensation shall be made by the Company to the owners and occupiers or other persons interested in such land for all injury or damage sustained by them respectively by reason of the purchase not being completed pursuant to the contract or notice, and the amount and application of the compensation shall be determined in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, for determining the amount and application of compensation paid for lands taken under the provisions thereof.

Company may apply authorised capital to general purposes.

5. The Company may apply to the general purposes of their undertaking authorised by the several Acts of Parliament relating to the Company the capital which they are by the before-mentioned Act of 1866 empowered to raise for the purposes of the railway the construction of which is by this Act authorised to be abandoned.

Vesting undertaking of Maybole Company in Company.

6. Subject to the provisions of this Act, and of Part V. of the Railways Clauses Act, 1863, the undertaking of the Maybole Company is hereby, on and after the first day of February one thousand eight hundred and seventy-one, transferred to and vested in the Company, and shall on and after that day form part of the under-

A.D. 1871.

taking of the Company, excepting all debts and moneys then due or belonging to the Maybole Company, which debts and moneys shall remain vested in the Maybole Company, and that Company shall be entitled to receive, recover, and apply the same as if this Act had not been passed: Provided always, and it is hereby enacted, that within six months next after the passing of this Act the Company shall produce to the Commissioners of Inland Revenue a copy of this Act printed by Her Majesty's printers, and duly stamped with an ad valorem stamp duty of the same amount as would have been payable in respect of a deed of conveyance of the undertaking of the Maybole Company to the Company in consideration of the annual payment by this Act provided to be made to the Maybole Company; and if the Company shall not, within the said period of six months, produce to the said Commissioners such copy of this Act, duly stamped as aforesaid, the said ad valorem stamp duty shall be recoverable from the Company, with full costs of suit, and all charges attending the same.

Part V. of 26 & 27 Vict. c. 92. incorporated.

7. For the purposes of the last preceding section of this Act, and except as otherwise provided by this Act, Part V. (relating to amalgamation) of the Railways Clauses Act, 1863, with the exception of sections 48 and 49 of that Act, is incorporated with and forms part of this Act, and for the purposes of such incorporation the Company and the Maybole Company shall be deemed to be companies amalgamated by a special Act; and in Part V. of the Railways Clauses Act, 1863, as incorporated with this Act, the expressions "the amalgamating Act" and "the special Act" shall respectively mean this Act, the expression "the amalgamated company" shall mean the Company, the expression "the dissolved company" shall mean the Maybole Company, and the expression "the time of amalgamation" shall mean the said first day of February one thousand eight hundred and seventy-one, which is herein-after referred to as "the vesting period."

Annual payment to be made by the Company to the Maybole Company.

8. As from the vesting period, and in all time thereafter, the Company shall pay to the Maybole Company the clear yearly sum of two thousand four hundred and fifty pounds, in two equal half-yearly portions, payable on the first day of February and the first day of August in each year, with interest at the rate of five pounds per centum per annum on each half-yearly portion from the time it falls due till payment thereof, and the first payment shall be made on the first day of August one thousand eight hundred and seventy-one, and the sums so to be paid shall be held to be revenue of the Maybole Company, out of which dividends to the shareholders of

that Company may be declared and paid, but so as not to impose upon the Company any obligation to see to the application of the said sums, or any responsibility for the misapplication thereof.

Maybole Company to have lien over their own undertaking.

9. The said yearly sum of two thousand four hundred and fifty pounds, and interest, if any, due thereon, shall be a debt due by the Company and a charge upon their undertaking, and for further securing the payment thereof the Maybole Company shall have a real and preferable lien and security for the same over and upon the undertaking of the Maybole Company by this Act vested in the Company, and the revenues thereof, postponed only to any mortgages granted previously to the passing of this Act by the Maybole Company during the subsistence of such mortgages, which lien and security may be enforced as herein-after provided.

Powers reserved to Maybole Company.

10. Notwithstanding anything contained in this Act or in Part V. of the Railways Clauses Act, 1863, as incorporated herewith, the Maybole Company shall, as from the vesting period, remain incorporated for the purposes of executing, prior to the passing of this Act, any mortgages or renewals of mortgages, provided the total amount of their mortgage debt do not thereby exceed the said sum of ten thousand five hundred pounds, and of receiving, and if necessary enforcing, payment of the said yearly sum of two thousand four hundred and fifty pounds, by this Act made payable to them, and any other debts and moneys due to them, and of distributing the same among their shareholders, and of enforcing and fulfilling the other provisions of this Act in which that Company are interested; and they may for those purposes continue to exercise all the powers contained in the Companies Clauses Consolidation (Scotland) Act, 1845, except the provisions of that Act with respect to the payment of subscriptions and the means of enforcing the payment of calls, with respect to the forfeiture of shares for non-payment of calls, with respect to the conversion of the borrowed money into capital, and with respect to the making of byelaws.

Company to pay mortgage debt and interest thereon of the Maybole Company.

11. As from the vesting period, the Company shall be liable to pay, and shall, as it falls due, pay the interest accruing after that date on the mortgage debt of the Maybole Company, amounting as aforesaid in the whole to the sum of ten thousand five hundred pounds, and shall also be liable to pay and shall pay off such debt, or renew or otherwise satisfy the mortgages on which the said debt is secured, when payment thereof becomes due.

Lien may be enforced by

12. In the event of any half-yearly portion of the said yearly sum of two thousand four hundred and fifty pounds, or any part thereof,

A.D. 1871.

the appointment of a judicial factor.

or any interest due thereon, not having been paid within the period of four weeks after the day on which such half-yearly portion shall have become payable, the Company may, without prejudice to any other legal remedy for recovery thereof, render effectual the lien and security herein-before provided by the appointment in manner after mentioned of a judicial factor, upon the undertaking of the Maybole Company by this Act vested in the Company, and the revenues thereof.

Mode of appointment of judicial factor.

13. The application for the appointment of such judicial factor shall be made by summary petition to the Court of Session in either division thereof, or in time of vacation to the Lord Ordinary on the Bills, in the name of the Maybole Company, and the Court of Session or the Lord Ordinary on the Bills, as the case may be, is hereby authorised and required from time to time, on any such application being made, and after such notice to the Company as such Court or Lord Ordinary shall think fit, to appoint some person as judicial factor to the effect and with the powers herein-after mentioned, unless previously to such application being advised the amount of the sums due, with interest and costs, shall have been paid; and a certified copy of the interlocutor making such appointment shall be a sufficient warrant for the judicial factor thereby appointed entering upon his office.

Powers and duties of judicial factor.

14. The judicial factor so appointed, on finding security in common form, shall collect or cause to be collected and shall receive the tolls, rates, and charges, and whole gross revenues arising from or exigible in respect of the use of the undertaking of the Maybole Company by this Act vested in the Company, and in respect of the traffic thereon, and the Company, and all officers of the Company who may on their behalf receive such tolls, rates, charges, and gross revenues, or any part thereof, shall account for and pay over the same to the judicial factor, weekly or otherwise, as he may direct, and he shall apply the moneys so received by him, first in payment of the interest, if any, due upon mortgages granted by the Maybole Company as aforesaid, and next in payment to the Maybole Company of the arrears of the said yearly sum of two thousand four hundred and fifty pounds due to them, with interest and expenses, including the expenses of the application for the appointment of such judicial factor and his expenses while in office, and after such mortgage interest, arrears due to the Maybole Company, interest thereon, and expenses shall have been paid, the judicial factor shall pay over the balance remaining in his hands (if any) to the Company; and such judicial factor shall continue in office not only until all arrears due to the Maybole Company at the date of his

appointment, with interest and expenses as aforesaid, are paid, but also until any sums which shall become due to the Maybole Company during his continuance in office, with interest and expenses as aforesaid, shall have been paid; and upon payment of all such arrears and interest and expenses the powers of the judicial factor shall cease, and he shall account to the Company for his intromissions.

Company to keep separate accounts if required by judicial factor.

15. In the event of a judicial factor having been appointed as aforesaid, he may require the Company to keep, and upon such requisition being made the Company shall keep, during the continuance of the judicial factory, at the expense and in the books of the Company, separate detailed accounts of the tolls, rates, and charges and other gross revenue drawn from week to week from the undertaking of the Maybole Company by this Act vested in the Company; and the judicial factor and the Maybole Company, by their directors or officers, or by an accountant nominated in writing by such directors for that purpose, shall have right of access to the said books, and to all states, invoices, and accounts of traffic, for the purpose of checking the accuracy of the said detailed accounts; and the said revenue shall be reckoned on the same principle as that on which the revenue of the Maybole Company was reckoned previously to the vesting period.

Company restrained from defeating lien.

16. It shall not be lawful for the Company to prejudice the lien or security of the Maybole Company by altering or varying without reasonable cause the tolls on the railway and works over which the said lien or security extends, or by removing or withdrawing without reasonable cause the locomotive engines, carriages, waggons, or other plant usually employed upon the said railway or works, or in any other way; but the Company shall, from and in all time after the vesting period, well and efficiently maintain, renew, and work the Maybole Railway and stations thereof, as they were bound to maintain, renew, and work the same prior to the vesting period; and it shall be competent for the Court of Session in either division thereof, and in time of vacation for the Lord Ordinary on the Bills, and they are hereby respectively empowered from time to time, on the application by summary petition of the Maybole Company, to make such orders as to the said Court or Lord Ordinary shall seem proper for preventing the said lien or security from being prejudiced, and for enforcing the efficient maintenance, renewal, and working of the Maybole Railway and stations thereof as aforesaid, and for carrying out the other provisions of this Act with reference to the Maybole Company.

A.D. 1871.

Restricting appeal.

17. No interlocutor or order pronounced or made under any of the provisions of this Act upon any application of the Maybole Company, or in relation to any question between that company and the Company, shall be subject to appeal to the House of Lords, but any such interlocutor or order, if pronounced or made by the Lord Ordinary on the Bills, shall be subject to review by the Inner House of the Court of Session: Provided always, that the operation of any such interlocutor or order, and the powers of any judicial factor appointed thereby, shall not be suspended pending such review.

Power to Company to raise additional money by creation of shares.

18. The Company may from time to time, for the purpose of acquiring and paying for the canal shares, raise such sums of money as may be necessary, not exceeding twenty-five thousand two hundred and fifty pounds (exclusive of the moneys which they are or may be authorised to raise by any other Act or Acts of Parliament), by the creation of new ordinary and new preference shares or stock in their undertaking, which shares or stock shall form part of the general capital of the Company; and the clauses and provisions of the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the following matters; (that is to say,)

The distribution of the capital of the Company into shares;
The transfer or transmission of shares;
The payment of subscriptions and the means of enforcing the payment of calls;
The forfeiture of shares for nonpayment of calls;
The consolidation of shares into stock;
The remedies of creditors of the Company against the shareholders;
The provision to be made for affording access to the special Act;

and Parts I. and II. of the Companies Clauses Act, 1863, shall extend and apply to the Company and to the additional capital which they are by this Act authorised to raise.

Shares not to issue until one fifth paid up.

19. The Company shall not issue any share or portion of stock created under the authority of this Act, nor shall any share or portion of stock vest in the person accepting the same, unless and until a sum not being less than one fifth of the amount of such share or portion of stock shall have been paid in respect thereof.

Power to borrow on mortgage.

20. The Company may from time to time, for the purpose of paying for the canal debts, borrow on mortgage any sum not exceeding in the whole sixty-five thousand pounds, exclusive of the moneys which they are or may be authorised to borrow under any

other Act of Parliament, and the provisions of the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the borrowing of money on mortgage or bond, shall extend and apply to the money by this Act authorised to be borrowed, and the money so borrowed shall be applied exclusively towards the payment for the canal debts, and to no other purpose: Provided always, that the Company shall not raise any part of the said sum of sixty-five thousand pounds by the creation and issue of debenture stock: Provided also, that every sum of money accruing to the Company under the provisions of the Glasgow and South-western Railway (Paisley Canal, &c.) Act, 1869, in respect of the canal debts from time to time acquired and held by the Company, shall be applied by them in reduction of the amount which they are by this Act and the other Acts relating to the Company from time to time empowered to raise by borrowing.

Existing mortgages of Company to have priority.

21. All mortgages and bonds granted by the Company in pursuance of the powers of any Act of Parliament before the passing of this Act, and which shall be subsisting at the time of the passing thereof, shall during the continuance of such mortgages and bonds have priority over any mortgages to be granted by the Company by virtue of this Act; and all mortgages granted by the Maybole Company before the passing of this Act, and which shall be subsisting at the time of the passing thereof, shall during the continuance of such mortgages have priority, as respects the undertaking of the Maybole Company by this Act transferred to the Company, over any mortgages granted or to be granted by the Company.

Interest or dividend on calls not to be paid out of capital.

22. The Company shall not, out of any money by this Act, or any Act relating to the Company, authorised to be raised by calls in respect of shares, or by the exercise of any power of borrowing, pay interest or dividend to any shareholder on the amount of calls made in respect of shares held by him in the capital by this Act authorised to be created: Provided always, that the Company may pay to any such shareholder such interest on money advanced by him beyond the amount of the calls actually made as shall be in conformity with the provisions in the Companies Clauses Consolidation (Scotland) Act, 1845, in that behalf contained.

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

23. The Company shall not, out of any money by this or any Act relating to the Company authorised to be raised for the purposes of such Act or Acts, pay or deposit any sum of money which, by any standing order of either House of Parliament for the time being in force, may be required to be deposited in respect of any application to Parliament for the purpose of obtaining an Act authorising the

A.D. 1871.

Company to construct any railway, or to execute any other work or undertaking.

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

24. Nothing herein contained shall be deemed or construed to exempt the railways of the Company from the provisions of any general Act relating to railways, or to the better or more impartial audit of the accounts of railway companies, now in force or hereafter passed in the present or any future session of Parliament, or from any future revision or alteration, under the authority of Parliament, of the maximum rates of fares and charges, or of the tolls for small parcels, authorised to be taken by the Company.

Expenses of Act.

25. All the expenses of obtaining this Act, or preparatory or incident thereto, whether incurred by the Company or the Maybole Company, shall be paid by the Company.

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