CHAPTER cxxxviii.

An Act for enabling the Great Southern and Western Railway Company to construct a new or substituted Railway at Cork; to acquire additional Lands for the purposes of their undertaking; to raise and widen certain of their Bridges; to reduce the number of Directors; and for other purposes. A.D. 1878.

[4th July 1878.]

WHEREAS it is expedient that the Great Southern and Western Railway Company (in this Act called "the Company") should be empowered to construct the railway, to widen the bridge, to maintain the level crossing, to abandon the construction of the railway, and to execute the other works in this Act mentioned, and to acquire for such purposes, and for other purposes connected with their undertaking, the lands and buildings in this Act also mentioned:

And whereas plans and sections showing the respective lines and levels of the new railway and works above referred to and by this Act authorised to be made, and plans of the lands above referred to and by this Act authorised to be acquired and appropriated, and also books of reference containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of the lands required or which may be taken for the purposes or under the powers of this Act, were duly deposited with the clerks of the peace for the several counties within which those works will be constructed and those lands are situate, which plans, sections, and books of reference are in this Act referred to as the deposited plans, sections, and books of reference:

And whereas by the Great Southern and Western Railway Act, 1872 (herein-after called "the Act of 1872"), the Company were empowered to construct various works, and amongst them two railways, therein described as Number 1 and Number 2, and were empowered to apply, out of the moneys thereby authorised to be raised and borrowed, two sums not exceeding the respective sums 35 & 36 Vict. c. cxxxiv.

A.D. 1878.

of fifty thousand pounds and five thousand pounds towards the cost of constructing such railways, and it is expedient that the Company should be empowered to apply a further sum of money towards their construction:

And whereas by a certificate of the Board of Trade dated the seventeenth of May one thousand eight hundred and seventy, and intituled "The Great Southern and Western Railway (Reduction of "Directors) Certificate, 1870," the Company were authorised to reduce the number of directors to twelve, and it is expedient to further reduce that number:

And whereas by an agreement between the Company and the Cork Harbour Commissioners, which agreement is contained in a schedule to the Great Southern and Western Railway Act, 1876, (herein-after called "the Act of 1876,") the Company agreed to pay to the Cork Harbour Commissioners a sum of thirteen thousand five hundred pounds for the purpose of enabling the said Commissioners to execute certain works at Queenstown for the accommodation of the Company:

39 & 40 Vict. c. cxlii.

And whereas a further agreement has been entered into between the Company and the Commissioners, under the provisions of which the Company agree to pay to the Commissioners the additional sum of two thousand five hundred pounds in consideration of certain improvements in the said works, and it is expedient that such agreement be sanctioned and confirmed:

And whereas it is expedient that such further powers should be granted to the Company as are herein-after mentioned:

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

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

Short title.

1. This Act may be cited for all purposes as the Great Southern and Western Railway Act, 1878.

Incorporation of general Acts. 26 & 27 Vict. c. 92.

2. Part I. (relating to the construction of a railway) of the Railways Clauses Act, 1863, is (except where expressly varied by this Act) incorporated with and forms 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.

A.D. 1878.

4. With reference to this Act all the provisions of sections seven, eight, and nine of the Railways Clauses Consolidation Act, 1845, shall be read and construed as if, instead of the expression "postmasters of the post towns in or nearest to such parishes in Ireland," the expression "clerks of the unions within which such parishes are included in Ireland," and as if, instead of the word "postmasters," the words "clerks of the union" had been used and inserted throughout those sections.

As to deposit of plans with clerks of unions. 8 & 9 Vict. c. 20.

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 railway and other works hereinafter described, with all proper stations, approaches, works, and conveniences connected with such railway, and may exercise the powers herein-after described, and may enter upon, take, and use such of the lands delineated on the said plans and described in the deposited books of reference as may be required for those purposes; (that is to say,)

Power to make railway according to deposited plans.

They may make a railway two furlongs eight chains and nineteen yards in length, wholly situate in the parish of Saint Ann's, Shandon, in the county of the city of Cork, in substitution for Railway No. 1, authorised to be constructed by the Great Southern and Western Railway Act, 1874, commencing at a point nineteen yards or thereabouts north of the south face of the existing tunnel adjoining the terminus of the Company's railway at Cork, and terminating at a point thirty yards or thereabouts south-west of the bridge which carries the Great Southern and Western and Cork and Youghal Railway over the Lower Glanmire Road;

37 & 38 Vict. c. xliii.

They may remove the present iron girder bridge which carries the Lower Glanmire Road, leading from the city of Cork to Youghal and Queenstown, over the railway at the north side of the Cork Station, and may substitute a bridge of a wider span;

They may raise the bridge over the railway carrying the road from Ballyfermot to Chapelizod, and the approaches thereto;

They may widen the bridge which carries the railway over the road from Chapelizod to Kilmainham;

They may maintain the crossing by their railway of Upper Sheriff Street in Dublin at the spot where the railway now crosses the said street, instead of at the spot authorised by the twelfth section of the Act of 1872.

6. Previous to the commencement of the construction of the new bridge which carries the Lower Glanmire Road over the railway at the north side of the Cork Station, as authorised by this Act, working

Plans for carrying Glanmire Road bridge.

A.D. 1878.

over railway to be approved by Corporation of Cork.

drawings of such new bridge and its approaches shall be lodged by the Company at the office of the surveyor of the Corporation of Cork, and it shall not be lawful for the Company to commence the construction of such works until the plans and sections according to which it is intended that the same shall be made shall have been approved of by the said Corporation, such approval to be signified in writing under the hand of the town clerk for the time being of the said Corporation, and such works shall be constructed only according to such plans and sections as shall have been so approved of as aforesaid: Provided, in case any difference shall arise between the Company and the said Corporation with respect to the said working drawings, or with respect to the construction of the said bridge and approaches, such differences from time to time, as the same shall arise, shall be settled and determined by an arbitrator to be appointed by the Board of Trade upon the application of either of the parties, and the decision of such arbitrator shall be final, and the works shall be carried out accordingly by the Company.

Period for completion of works.

7. The railway shall be completed within three years from the passing of this Act.

Trains not to be shunted over Upper Sheriff Street.

8. It shall not be lawful for the Company, or for any companies or persons using their railway, to shunt any trains or any engines, waggons, or carriages over or across the substituted crossing of Upper Sheriff Street authorised by this Act, or to obstruct the use of the said street, further or otherwise than is necessary for the passage of trains on or over the same, neither shall any trains, carriages, waggons, or engines stop on the said level crossing.

Railway to form part of railway of Company.

9. The Company may demand and receive for and in respect of the railway by this Act authorised the same tolls and charges which they may now receive in respect of their existing undertaking, and the railway shall in all respects be deemed part of the railway of the Company.

Company may abandon Railway Number 1 authorised by Act of 1874. 37 & 38 Vict. c. xliii.

10. The Company may abandon the construction of Railway No. 1, authorised by the Great Southern and Western Railway Act, 1874.

Compensation for damages to land by entry, &c. for purposes of railway abandoned.

11. The abandonment by the Company, under the authority of this Act, of any portion of any railway or works shall not prejudice or affect the right of the owner or occupier of any land to receive compensation for any damage occasioned by the entry of the Company 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 the line of railway, and shall not prejudice or affect the right

of the owner or occupier of any land which has been temporarily occupied by the Company to receive compensation for such temporary occupation, or for any loss, damage, or injury which has 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 Railways Clauses Consolidation Act, 1845, or the Great Southern and Western Railway Act, 1874.

8 & 9 Vict. c. 20.
37 & 38 Vict. c. xliii.

Compensation to be made in respect of railway abandoned.

12. Where before the passing of this Act any contract has been entered into or notice given by the Company for the purchasing of any lands for the purposes of or in relation to any portions of the railway or works authorised to be abandoned by this Act, the Company shall be released from all liability to purchase or to complete the purchase of any such lands; but, notwithstanding, full compensation shall be made by the Company to the owners and occupiers, or other persons interested in such lands, 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 Act, 1845, as amended by any subsequent Act, for determining the amount and application of compensation paid for lands taken under the provisions thereof.

8 & 9 Vict. c. 18.

Company liable to penalty unless railways are opened within period limited.

13. If the Company fail within the period limited by this Act to complete the railway, the Company shall be liable to a penalty of fifty pounds a day for every day after the expiration of the period so limited until the railway is completed and opened for public traffic, or until the sum received in respect of such penalty amounts to five per cent. on the estimated costs of the works; and the said penalty may be applied for by any landowner or other person claiming to be compensated in accordance with the provisions of the next following section of this Act, or by the Solicitor of Her Majesty's Treasury, and in the same manner as the penalty provided in section three of the Railway and Canal Traffic Act, 1854; and every sum of money recovered by way of such penalty as aforesaid shall be paid, under the warrant or order of such court or judge as is specified in that section, to an account opened or to be opened in the name and with the privity of the Accountant General of the Chancery Division of the High Court of Justice in Ireland, in the bank specified in such warrant or order, and shall not be paid thereout except as herein-after provided; but no penalty shall accrue in respect of any time during which it shall appear, by a certificate to be obtained from the Board of Trade, that the Company was prevented from completing or opening such line by

17 & 18 Vict. c. 31.

A.D. 1878.

unforeseen accident or circumstances beyond their control; provided that want of sufficient funds shall not be held to be a circumstance beyond their control.

Providing for application of penalty in compensation to parties, &c. injured.

14. Every sum of money so recovered by way of penalty as aforesaid shall be applicable, and after due notice in the "Dublin Gazette" shall be applied, towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the railway, or any portion thereof, or who 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 has been paid, and shall be distributed in satisfaction of such compensation as aforesaid, in such manner and in such proportions as to the said Chancery Division may seem fit; and if no such compensation is payable, or if a portion of the sum or sums of money so recovered by way of penalty as aforesaid has been found sufficient to satisfy all just claims in respect of such compensation, then the said sum or sums of money recovered by way of penalty, or such portion thereof as may not be required as aforesaid, shall either be forfeited to Her Majesty, and accordingly be paid or transferred to or for the account of Her Majesty's Exchequer in such manner as the Chancery Division thinks fit to order, on the application of the Solicitor of Her Majesty's Treasury, and shall be carried to and form part of the Consolidated Fund of the United Kingdom, or, in the discretion of the said Chancery Division, if the Company is insolvent and has been ordered to be wound up, or a receiver has been appointed, shall wholly or in part be paid or transferred to such receiver or to the liquidator or liquidators of the Company, or be otherwise applied as part of the assets of the Company for the benefit of the creditors thereof.

On expiration of time limited for completion of railway power to cease.

15. If the railway authorised by this Act shall not be completed within the period limited by this Act, then on the expiration of such period the powers by this Act granted to the Company for making and completing the said railway, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall then be completed.

Company may acquire additional lands for general purposes.

16. Subject to the provisions of this Act, and in addition to the other lands which they are by this Act authorised to acquire, the Company may from time to time enter upon, take, use, and appropriate to purposes connected with their undertaking all or any of the lands, houses, and buildings following delineated on the

deposited plans and described in the deposited books of reference relating thereto respectively; (that is to say,)

Certain lands situate on the north side of Upper Sheriff Street, and abutting upon east wall and adjoining lands in the possession of the Company, in the parish of Saint Thomas, and county of the city of Dublin;

Certain lands situate on the south side of said Upper Sheriff Street, in the same parish and county of the city as last aforesaid, abutting upon lands now in the possession of the Company;

Certain portions of land in the townland of Inchicore South, parish of Saint Jude's, township of New Kilmainham, and county of Dublin, lying west of the public road from Kilmainham to Clondalkin, and south of the engine house, premises, and works of the Great Southern and Western Railway Company at Inchicore;

Certain portions of land in the townland of Inchicore North, parish of Saint Jude's, township of New Kilmainham, and county of Dublin, lying adjacent to the railway bridge over the public road leading from Kilmainham to Chapelizod, and north of the Great Southern and Western Railway;

Certain lands and premises in the townland of Inchicore South, parish of Saint Jude's, township of New Kilmainham, and county of Dublin, lying on the north of the Great Southern and Western Railway Company's works, and between the same railway and the public road leading from Kilmainham to Chapelizod;

Certain portions of land in the townland of Ballyfermot Lower, parish of Ballyfermot, and county of Dublin, lying north and south of the Great Southern and Western Railway, and east of the public road from Ballyfermot to Chapelizod;

Certain portions of land in the townland of Ballyfermot Upper, parish of Ballyfermot, and county of Dublin, lying north and south of the Great Southern and Western Railway, and west of the said road leading from Ballyfermot to Chapelizod, and adjacent to the railway bridge at same place;

Certain portions of land adjoining the last-mentioned land in townland of Gallanstown, parish of Ballyfermot, and county of Dublin, lying south of the Great Southern and Western Railway, and adjoining the railway farm bridge in same place;

Certain portions of land in the townland of Jamestown, parish of Drimnagh, and county Dublin, lying south-west of the Great Southern and Western Railway Company's Inchicore works at same place;

A.D. 1878.

Certain portions of land in the townlands of Townparks and Broomfield East, parish of Middleton, and county of Cork, adjoining the Middleton Station of the Company's Cork and Youghal Railway, and north of said railway;

Certain portions of land in the townland of Castlefleming or Heath, parish of Rathdowney, and Queen's County, lying on the western side of the Great Southern and Western Railway, adjacent to the railway bridge number 220.

Period for compulsory purchase of lands.

17. 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.

Power to apply further sums towards completion of Railways Nos. 1 and 2, and to apply corporate funds to purposes of this Act.

18. The Company may apply towards the completion of Railways Number 1 and Number 2, authorised by the Act of 1872, any sum or sums of money they may think fit, not exceeding the sum of thirty-five thousand pounds, out of any of the moneys which they now have in their hands, or which they have power to raise by shares, stock, mortgage, or debenture stock, by virtue of any Acts relating to the Company, and which may not be required for the purposes to which they are by any such Acts made specially applicable, and they may also apply to the purposes of this Act any of the said moneys they have in their hands, or which they have power to raise, and which may not be required as last aforesaid.

Reducing number of directors.

19. The Company may from time to time reduce the number of their directors, provided that their number when reduced be not less than ten, and when the number of directors shall be so reduced, five shall be the quorum of a meeting of directors.

Agreement between the Company and the Cork Harbour Commissioners confirmed.

20. The agreement between the Company of the one part and the Cork Harbour Commissioners of the other part, set forth in the schedule to this Act, is hereby sanctioned and confirmed, and made binding on the Company and the said Commissioners as fully and effectually as though the stipulations of the said agreement were severally enacted in this Act.

Saving rights of Corporation of Cork.

21. Nothing in this Act shall be construed to interfere with or in any way affect any existing right of the Corporation of Cork to such tolls and dues as they are entitled to receive and have been accustomed to collect at the time of the passing of this Act, but the same shall be enjoyed with as full and extensive means of collection and recovery as they were before the time of the passing of this Act; and all powers and privileges contained in the Great Southern and Western Railway (Ireland) Extension, Cork and Limerick, Act, 1845, for ascertaining the same, as well as the penalties thereby imposed for obstructing the ascertaining thereof,

and the remedies provided for enforcing such penalties, shall extend to this Act, anything to the contrary thereof notwithstanding. A.D. 1878.

Saving rights of Dublin Port and Docks Board.

22. Nothing contained in this Act shall interfere with or prejudicially affect any rights, powers, or privileges of the Dublin Port and Docks Board, or shall enable the Company to take or interfere with any lands or property of the said Board, further or otherwise than they are by this Act expressly authorised to take or interfere with the same.

For protection of the Alliance Gas Company.

23. Sections fourteen to nineteen (both numbers inclusive) of the Act of 1872, inserted in that Act for the protection of the Alliance and Dublin Consumers Gas Company, shall form part of this Act, and shall apply to the works by this Act authorised to be constructed as if they were works authorised to be constructed under the Act of 1872.

Railways not exempt from provisions of present and future general Rail-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 the better and more impartial audit of the accounts of railway companies, now in force or which may hereafter pass during this or any future session of Parliament, or from any future revision or alteration, under the authority of Parliament, of the authorised maximum rates of fares and charges, or for small parcels.

Expenses of Act.

25. All the costs, charges, and expenses of and attending the passing of this Act, or incidental thereto, shall be paid by the Company.

A.D. 1878.

SCHEDULE referred to in the foregoing Act.

Agreement under seal made the 13th day of February 1878, between the Cork Harbour Commissioners (herein-after called "the Commissioners") of the one part, and the Great Southern and Western Railway Company (herein-after called "the Company") of the other part.

Whereas by an agreement under seal dated the 15th day of May 1876, and made between the Commissioners of the one part and the Company of the other part, which agreement was sanctioned and confirmed by the Great Southern and Western Railway Act, 1876, and set forth in the schedule to the said Act, certain articles of agreement were entered into between the Commissioners and the Company:

And whereas a Bill is now pending before Parliament, intituled "A Bill "for enabling the Great Southern and Western Railway Company to con- "struct a new or substituted Railway to Cork; to acquire additional Lands "for the purposes of their undertaking; to raise and widen certain of their "Bridges; to reduce the number of Directors; and for other purposes:"

And whereas the said Bill contains a clause or clauses enabling the Company to enter into this agreement:

And whereas a plan or map describing the extent, nature, and position of the alterations in the quay works, the subject matter of this agreement, has been signed in duplicate by Philip Barry, Esquire, the engineer of the Commissioners, and Kennett Bayley, Esquire, the engineer of the Company, and sealed with the seals of the Commissioners and Company:

Now these presents witness as follows:

1. In addition to the sum of £13,500 in the second clause of the said agreement of the 15th day of May 1876 mentioned, the Company shall pay to the Commissioners the sum of £2,500 in the following manner; videlicet, £750 within three months of the quay works being commenced, £750 when half of the said quay shall be completed, and the remaining £1,000 when the whole is completed.
2. In substitution for the periods mentioned in the third clause of the said articles of agreement, one half of the said quay shall be completed by the Commissioners within four years, the remainder in six years from the passing of the said Great Southern and Western Railway Act, 1876.
3. The Commissioners shall increase the width of the portion of the said quay mentioned in the fourth clause of the said agreement by five feet,

as shown upon the map or plan herein referred to, and thereon coloured pink, and the said portion so widened shall, when completed, be dedicated by the Commissioners to the public, and the same shall thenceforth be a public quay.

4. The Commissioners shall construct the said quay so that its depth at low water spring tides shall be twenty-four feet.

5. Save as herein-before provided to the contrary, the said agreement of the 15th day of May 1876 is hereby in all respects ratified and confirmed. In witness whereof, the Cork Harbour Commissioners and the Great Southern and Western Railway Company have hereunto respectively affixed their corporate seals the day and year first herein written.

Common Seal of the Cork Harbour Commissioners.

Seal of the Great Southern and Western Railway Company.

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