ANNO VICESIMO SEXTO & VICESIMO SEPTIMO

VICTORIÆ REGINÆ.

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Cap. cxxvii.

An Act to authorize the *Leominster* and *Kington* Railway Company to enter into Working Arrangements with, and to lease or sell their Railway to the *West Midland* Railway Company; and for other Purposes. [13th *July* 1863.]

WHEREAS by "The *Leominster and Kington* Railway Act, 1854," the *Leominster and Kington* Railway Company (in this Act called "the *Leominster* Company") were incorporated, and were authorized to make and maintain a Railway from the *Shrewsbury and Hereford* Railway at *Leominster* to *Kington* in the County of *Hereford*, and by "The *Leominster and Kington* Railway Amendment Act, 1859," further Powers were granted to the *Leominster* Company: And whereas the *West Midland* Railway Company have, under the Powers of the Act Twenty-five and Twenty-six *Victoria*, Chapter One hundred and ninety-eight, joined in and become Parties to the Lease of the *Shrewsbury and Hereford* Railway: And whereas it is expedient that the *West Midland* Railway Company be authorized to enter into Contracts with the *Leominster* Company for the working by the *West Midland* Railway Com-

17 & 18 Vict. c. cxliv.

22 Vict. c. xxxiv.

pany of the Railway of the *Leominster* Company, and that the *West Midland* Railway Company be authorized to purchase or take on Lease the Undertaking of the *Leominster* Company, and that such Company be empowered to sell or let the same to the *West Midland* Railway Company in manner in this Act provided: And whereas the Purposes 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 any Purpose as "*Leominster and Kington* Railway Act, 1863."

Interpretation of Terms.

2. In construing this Act the following Words and Expressions shall have the respective Meanings hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction; (that is to say,)

The Expression "the Company" shall mean the *West Midland* Railway Company, and the Expression "the Two Companies" shall mean the Company and the *Leominster* Company.

Same Meanings to Words in this Act as in incorporated Acts.

3. The several Words and Expressions to which Meanings are respectively assigned by any Act wholly or partially incorporated herewith have in this Act the same respective Meanings, unless there be something in the Subject or Context repugnant to such Construction.

Power to enter into Traffic Arrangements with Leominster Company.

4. The Two Companies may from Time to Time enter into Contracts or Arrangements with respect to the following Purposes, or any of them; (that is to say,)

The Use and Working by the Company of all or any Part of the Railway of the *Leominster* Company, and the Use of the Works and Conveniences belonging thereto:

The Conveyance by the Company of the whole or any Part of the Traffic upon the Railway of the *Leominster* Company or any Part thereof:

The Division and Apportionment of such Traffic between the Companies Parties to the Contract:

The Supply of any Rolling or Working Stock required for such Purposes:

The Management, Maintenance, and Repair of the Railway of the *Leominster* Company or any Part thereof:

The Costs and Expense of such Working, Management, Maintenance, and Repairs:

The Collection, Delivery, and general Conduct of such Traffic:

The fixing, Collection, taking, and levying of the Tolls, Rates, and Charges arising on the Railway of the *Leominster* Company, or any Part thereof:

The Employment of Officers and Servants:

The Division between the Companies Parties to the Contract of the Receipts arising from the Traffic upon the Railway of the *Leominster* Company, or any Part thereof, and upon the Railways of the Company, subject to any Deductions to be made therefrom or any Rent or other Consideration to be paid by either of those Companies to the other of them by virtue of such Contract.

Duration of Contracts.

5. Any such Contract or Arrangement may be for such Term or Number of Years as may be agreed upon, but shall not have any Operation until the same shall have been approved by the Board of Trade; and no such Contract or Arrangement as aforesaid shall in any Manner increase any of the Tolls, Rates, or Charges which the Companies Parties thereto may for the Time being be respectively authorized and entitled to demand and receive from any Person or any other Company, but all other Persons and Companies shall, notwithstanding any such Contract or Agreement, be entitled to the Use and Benefit of the Railways to which the same may relate, upon the same Terms and Conditions, and upon Payment of the same Tolls, Rates, and Charges as they would have been in case no such Contract or Agreement had been entered into.

To be approved of by Board of Trade.

Not to affect Third Parties.

Agreement between Companies may be modified, if required by Board of Trade.

6. If at the Expiration of Ten Years from the making of any such Agreement for which the Approval of the Board of Trade is required by this Act, and so from Ten Years to Ten Years, the Board of Trade are of opinion that the public Interests are injuriously affected by any of the Terms or Conditions thereof, the Board of Trade may require the Parties thereto to modify the Terms and Conditions of the Agreement in such Manner as the Board of Trade may think necessary for removing the public Injury, and the Agreement shall be modified accordingly.

Public Notice at Expiration of decennial Period.

7. The Company previously to the Expiration of each decennial Period shall give such public Notice as the Board of Trade may prescribe, that the Board is about to enter on the said Revision, and will entertain Complaints with a view to the Removal of any Evil resulting to the Public from any such Arrangement.

Working Arrangements not to take effect unless approved by

8. No such Contract or Arrangement shall have any Operation or Effect unless and until the same shall have been submitted to and approved of by a Majority of not less than Three Fifths of the Votes of the Shareholders present, personally or by proxy, at a Meeting

Votes of the Shareholders.

Meeting of each Company Party thereto convened with Notice of the Object.

Meeting how to be convened.

9. Such Meeting shall be called by Advertisement inserted once in each of Two successive Weeks in a Morning Newspaper published in *London*, and in some Newspaper of the County in which the principal Office of the Company by whom or on whose Behalf such Advertisement is inserted is situate, the last of which Advertisements shall be published not less than Seven Days before such Meeting, and also by a Circular addressed to each Shareholder entitled to vote at Meetings of such Company, to be served in the Manner prescribed by "The Companies Clauses Consolidation Act, 1845," with respect to Notices required to be served by the Company upon the Shareholders.

Leasing Powers as to Leominster Company.

10. The *Leominster* Company from Time to Time may lease their Undertaking to the Company for such Term and in consideration of such gross or periodical Payments, Rents, or Reservations, with such Powers and Privileges, and under and subject to such Covenants, Conditions, Provisions, Regulations, and Restrictions as the Parties to any such Lease shall think proper, and the Company may accept such Lease accordingly.

Effect of Leases.

11. Any such Lease shall entitle the Company to the free Use and Enjoyment of the Undertaking thereby demised, and during any such Lease all the Powers, Privileges, Rights, and Authorities granted to, or which at the Time of the making of such Lease might be held, used, exercised or enjoyed by the Lessors, their Directors, Officers, Agents, or Servants, (except such of the same Powers, Privileges, Rights, and Authorities (if any) as are by such Lease expressly reserved to the Lessors,) shall in like Manner and to the same Extent in all respects apply to and be held, exercised, used, and enjoyed by the Company, and their Directors, Officers, Agents, and Servants, under the same Restrictions and Regulations as those to which the Lessors, their Directors, Officers, Agents, and Servants respectively would be liable in the Exercise of such Powers, Privileges, and Authorities if such Lease were not made.

Application of Rents on Leases.

12. The Directors of the *Leominster* Company shall stand possessed of the Rents or Reservations coming to their Hands from any Lease made under this Act, upon trust to pay and apply the same in like Manner as the net Income arising from their Undertaking would be applicable if they were in possession thereof.

Lease of the Railway not to affect Third Parties.

13. No Lease of the Railway of the *Leominster* Company shall take away, alter, or in anywise affect any of the Duties, Obligations, Restrictions, or Liabilities to which that Company but for the making of such Lease might be subject; but all Persons and Corporations (other than the

the Lessees of the Railway) shall have the same Rights, Privileges, Powers, and Remedies against the *Leominster* Company, after the making of and notwithstanding such Lease as they might have had if such Lease had not been made.

As to the Transfer of Undertaking of the Leominster Company to Company.

14. The *Leominster* Company may, notwithstanding any Lease thereof may have been previously granted, or any Contract or Arrangement for working the same may have been previously made under this Act (but subject as between the Companies and other Parties to any Bonds, Mortgages, Contracts, or Liabilities affecting the same), sell and transfer their Undertaking, together with all or any of their respective Powers, Rights, Privileges, and Authorities to the Company upon such Terms and Conditions, and for such Consideration, either in a gross Sum or by way of Rentcharge, or partly of one Kind and partly of another, as may be mutually agreed on, and the Company may accept and take such Transfer thereof.

Evidence and Effect of Transfer.

15. At the Time agreed on for any such Transfer taking effect, or if no Time be specified for that Purpose then upon and from the Transfer, the Undertaking agreed to be transferred shall be and hereby is vested in the Company, as the Case may be, and thenceforth the Company may have and hold such Undertaking, and may use, exercise, and enjoy all the Powers, Rights, Privileges, and Authorities vested in the *Leominster* Company immediately before the Transfer, or which but for the Transfer might accrue to them, or such of the same Powers, Rights, and Privileges as are not agreed to be excepted out of such Transfer: Provided always, that every such Transfer shall be evidenced by a Deed of Transfer duly stamped, and in which the Consideration shall be fully and truly set forth.

Provision for Debts and Credits of selling Company.

16. From and after any such Transfer of the Undertaking of the *Leominster* Company all Debts then due on Mortgage or Bond by them, or charged or secured on the Undertaking transferred, shall, as between the said Companies and the other Parties, be payable and paid by the Company, and until paid shall continue charged or secured exclusively on such Undertaking, and separate Accounts shall be kept of such Debts; and all other Debts then due, and all Rates, Tolls, Duties, and other Monies which immediately before the Transfer were due or payable, or which but for the Transfer might thereafter become due or payable, from or to the *Leominster* Company, shall then and thenceforth be due or payable from or to the Company, and shall and may be recovered from or by the Company by the same Ways and Means, and subject to the same Restrictions and Regulations as, in case the Transfer were not made, the same might be recovered from or by the *Leominster* Company.

Contracts, &c. to remain in force.

17. From and after any such Transfer of the Undertaking of the *Leominster* Company all Contracts, Agreements, Conveyances, Covenants Bonds, Obligations, Mortgages, Liabilities, and Securities theretofore made or entered into with, by, or on behalf of or in reference to the *Leominster* Company, shall, subject to the Provisions of this Act, be and remain as good, valid, and effectual in favour of, against, or with reference to the Company, and may be enforced, sued, and recovered upon, against, and by the Company, as fully and effectually to all Intents and Purposes as if they, instead of the *Leominster* Company, had originally been party to and executed the same, or had been named or referred to therein or privy thereto.

Actions, &c. not to abate.

18. Any Action, Suit, Prosecution, Indictment, or other Proceeding whatsoever commenced or instituted by, in favour of, or against the *Leominster* Company previously to any such Transfer shall not abate or be discontinued or prejudicially affected by the Transfer, but all such Actions, Suits, Prosecutions, Indictments, and Proceedings shall continue and take effect, and may be prosecuted and carried on by, in favour of, or against the Company, as fully and effectually, and in the same Manner in all respects as if the same had been originally instituted or commenced by or against the Company and the Company had been named or referred to therein throughout instead of the *Leominster* Company.

Present and future Rights and Liabilities under other Acts saved.

19. Provided always, That, except as in this Act otherwise provided, everything before any such Transfer done and suffered respectively shall be as valid and effectual as if this Act were not passed and such Transfer had not been made, and every such Transfer and this Act respectively shall accordingly be subject and without Prejudice to everything so done and suffered respectively, and to all Rights, Liabilities, Claims, and Demands, both present and future, which if such Transfer had not been made and this Act were not passed would be incident to and consequent on any and every thing so done and suffered respectively, and with respect to all such Things so done and suffered respectively, and all such Rights, Liabilities, Claims, and Demands the Company shall to all Intents and Purposes represent the *Leominster* Company: Provided also, that the Generality of this Enactment shall not be confined or restricted by any other of the Clauses and Provisions of this Act.

Power to Company to apply their Capital.

20. It shall be lawful for the Company, with the Consent of Three Fifths of the Votes of the Shareholders voting, in person or by proxy, at any Meeting of the Company convened specially for the Purpose, and not otherwise, to apply for the Purpose of any such Transfer any Sums of Money which the Company may have raised or may be authorized to raise

raise under the Powers of this Act or any other Act relating to their Undertaking, and which may not be required for the Purposes for which the same were authorized to be raised.

Power to raise additional Capital to effect Purchase of Railways.

21. For the Purpose of any such Transfer it shall be lawful for the Company, with the Consent of Three Fifths of the Votes of the Shareholders voting, in person or by proxy, at any Meeting of the Company specially convened for the Purpose, to raise by the Creation of new Shares in their Undertaking, and in addition to any other Sums of Money which such Company may by any other Acts be then authorized to raise, any Sum of Money not exceeding in the whole the Price or Sum which the Company shall have agreed to pay as a Consideration of any such Transfer: Provided always, that such Sum so to be raised shall in no event exceed the total Amount of the Monies which the *Leominster* Company may have been authorized to raise by Shares.

Power to Company to borrow to pay off Mortgages and Bonds of Vendors.

22. For the Purpose of paying off any Mortgages or Bonds for the Time being charged exclusively on the Undertaking transferred to the Company under the Authority of this Act, the Company may from Time to Time borrow on Mortgage on the Security of the Undertaking of the Company, including the Undertaking so transferred, the Amount so to be paid off, and thenceforth the general Powers of reborrowing of the Company shall extend and be applicable to the Amount so borrowed: Provided always, that all Mortgages and Bonds of the Undertaking of the Company in force at the Time of such Transfer shall have Priority over all Mortgages granted by virtue of this Enactment; provided also, that the Amount so borrowed shall not exceed the Sum which the *Leominster* Company are by virtue of the Acts relating to that Company authorized to borrow.

Certain Provisions of 8 & 9 Vict. c. 16. incorporated.

23. The Clauses and Provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the Distribution of the Capital of the Company into Shares, with respect to the Transfer or Transmission of Shares, with respect to the Payment of Subscriptions and the Means of enforcing the Payment of Calls, with respect to the Forfeiture of Shares for Nonpayment of Calls, with respect to the borrowing of Money by the Company on Mortgage or Bond, with respect to the Conversion of the borrowed Money into Capital, with respect to the Consolidation of the Shares into Stock, with respect to the making of Dividends, with respect to the Remedies of Creditors of the Company against the Shareholders, and with respect to the Provision to be made for affording Access to the Special Act by all Parties interested, are incorporated with this Act.

24. The

Application of Compensation for Transfer and other Monies by Company.

24. The Directors of the *Leominster* Company shall stand possessed of any Money received in respect of any such Transfer, whether in gross or by way of Rentcharge, and of all other Monies which at the Time of the Payment of such Money are in their Hands or Power, or under their Control, and also of all other Monies thereafter coming to their Hands on account of or for the Benefit of the *Leominster* Company upon trust (after paying or providing for all the Debts, Liabilities, and Engagements, if any, of that Company then outstanding, and to which as between the *Leominster* Company and the Company the Company shall not be liable) to divide all such Monies between or among the several Persons who at the Time of the Payment of such Monies respectively shall be the Shareholders of the *Leominster* Company, and their respective Executors, Administrators, and Assigns, in proportion to the Amount of their respective Shares therein.

For Recovery of Rents, &c.

25. If and as often as any Rent or other Payment reserved and made payable by any such Lease, or any Rentcharge payable in respect of any such Transfer, be not paid within Twenty-one Days after it becomes payable, and after Demand thereof in Writing by the Secretary of the *Leominster* Company, they may either recover the same from the Company with Costs of Suit in any Court of competent Jurisdiction, or may levy the same by Distress and Sale of the Goods and Chattels, Estates and Effects of the Company.

Receipt to be sufficient Discharge.

26. A Receipt in Writing under the Hands of any Three of the Directors for the Time being, or under the Common Seal of the *Leominster* Company for any Monies payable to that Company in respect of any such Transfer or Lease, shall be an effectual Discharge to the Company making the Payment for the Money therein expressed to be received, and from all Liability, Claims, or Demands in respect thereto.

Proof of Proprietorship of Company.

27. The several Persons whose Names appear in the Books of the *Leominster* Company as the Holders of Shares therein at the Time of any such Transfer or Lease shall, until the Directors of that Company receive Notice to the contrary, be considered to be the Persons entitled to participate in the Distribution of the Monies to be divided among the Shareholders in that Company in the event of a Purchase of that Undertaking under this Act.

Sanction of Shareholders to Transfers, &c.

28. No such Transfer or Lease shall be of any Effect unless previously to the making thereof the same shall have been sanctioned by Three Fifths at least of the Votes of the Shareholders of each Company being a Party thereto present, either personally or by proxy, at an Extraordinary Meeting of such Company, convened with Notice that such Transfer or Lease will be submitted for the Sanction of such Meeting,

Meeting, and the Seal of any Company fixed to any such Deed of Transfer or Lease shall, as between the Companies being Parties thereto, be conclusive, and as between all or both or either of those Companies and any other Person be *primâ facie* Evidence that the required Sanction of the Shareholders of the Company to whom such Seal originally belonged has been duly given.

Power to enter into Contracts with Leominster Company.

29. The Directors of the *Leominster* Company and the Directors of the Company may, with such Sanction as aforesaid, enter into any Contracts or Agreements for effecting all or any of the Purposes of this Act, or any Objects incidental to the Execution thereof, and every such Contract or Agreement may contain such Covenants, Clauses, Powers, Provisions, and Conditions as are mutually agreed upon between the Parties thereto.

No Interest or Dividend to be paid on Calls paid up.

30. The Two Companies shall not, out of any Money by this Act or any Act relating to the Two Companies, or either of them, authorized 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 the Shares held by him in the Capital by this Act authorized to be created: Provided always, that the Two Companies or either of them 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 Act, 1845," in that Behalf contained.

Deposits for future Bills not to be paid out of Company's Capital.

31. The Two Companies respectively shall not, out of any Money by any Act relating to the Two Companies respectively authorized to be raised for the Purpose 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 authorizing such Companies or any of them to construct any Railway, or to execute any other Work or Undertaking.

Railways not exempt from Provisions of present and future General Acts.

32. Nothing herein contained shall be deemed or construed to exempt the Railways by this Act or the said recited Acts authorized from the Provisions of any General Act relating to Railways, or to the better and more impartial Audit of the Accounts of Railway Companies now in force or which may hereafter pass during 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 authorized by this or the recited Acts.

Expenses of Act.

33. The Expenses, Costs, and Charges of preparing and passing this Act, and incidental thereto, shall be paid by the Two Companies in equal Shares.

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