CHAP. clxxxvi.

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An Act to enable the Leominster and Kington Railway Company to make a Branch Railway to Presteign, and for other purposes. [31st July 1871.]

WHEREAS by "The Leominster and Kington Railway Act, 1854," the Leominster and Kington Railway Company, in this Act called "the Company," were incorporated, and were authorised to make a railway from the Shrewsbury and Hereford Railway at Leominster to Kington: 17 & 18 Vict. c. cxliv.

And whereas the capital which the Company were authorised to raise by the said Act was eighty thousand pounds by shares and twenty-six thousand pounds by borrowing:

And whereas by "The Leominster and Kington Railway Act, 1859," the Company were authorised to cross a certain road on the level, and to issue shares which had not been issued with a preferential dividend attached thereto: 22 Vict. c. xxxiv.

And whereas by "The Leominster and Kington Railway Act, 1863," in this Act called "the Act of 1863," the Company were authorised among other things to sell or lease their railway to the West Midland Railway Company: 26 & 27 Vict. c. cxxvii.

And whereas under the provisions of the Act of 1863 the railway of the Company was leased to the West Midland Railway Company:

And whereas by "The Great Western Railway West Midland Amalgamation Act, 1863," the West Midland Railway Company became amalgamated with the Great Western Railway Company, and the railway of the Company so leased as aforesaid was thereby placed under the management and control of the Great Western Railway Company: 26 & 27 Vict. c. cxiii.

And whereas it is expedient that the Company should be authorised to make and maintain a branch railway in extension of their railway to Presteign:

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And whereas plans and sections of the said railway, and books of reference to the said plans, have been deposited with the clerk of the peace for the county of Hereford and with the clerk of the peace for the county of Radnor, which plans, sections, and books of reference are in this Act referred to as the deposited plans, sections, and books of reference respectively:

And whereas it is expedient that the said railway, when constructed, should be leased to the Great Western Railway Company, and that the provisions of the Act of 1863 should be extended so as to include the said railway:

And whereas it is expedient that the Company should be authorised to raise further sums for the purposes of this Act:

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,

Short title.

1. This Act may be cited for any purpose as "The Leominster and Kington Railway Act, 1871."

Interpretation of terms.

2. In this Act the following expressions have the several meanings hereby attached to them respectively; (that is to say,) the expression "the Company" means the Leominster and Kington Railway Company; the expression "the Great Western Company" means the Great Western Railway Company; the expression "the Act of 1863" means the "Leominster and Kington Railway Act, 1863;" and the expressions "superior court" or "court of competent jurisdiction," or any other like expression in this Act or in the Acts incorporated herewith, shall be read and have effect as if the debt or demand in respect of which the expression is used were a simple contract debt, and not a debt or demand created by statute.

Provisions of general Acts herein named incorporated.

3. "The Lands Clauses Consolidation Act, 1845," "The Lands Clauses Consolidation Acts Amendment Act, 1860," "The Railways Clauses Consolidation Act, 1845," Part I. of "The Railways Clauses Act, 1863," the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the following matters; (that is to say,)

With respect to the distribution of the capital of the Company into shares;

With respect to the transfer and 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 remedies of creditors of the Company against the shareholders;

With respect to the consolidation of shares into stock;

With respect to the making of dividends;

With respect to the borrowing of money on mortgage or bond;

With respect to the conversion of the borrowed money into capital;

And with respect to the provisions to be made for affording access to the special Act;

and Part II. of "The Companies Clauses Act, 1863," shall be incorporated with and form part of this Act.

Power to make railways.

4. 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 herein-after described, with all proper stations, approaches, works, and conveniences connected therewith, and may enter upon, take, and use such of the lands delineated on the said plans and described in the said books of reference as may be required for that purpose. The railway hereinbefore referred to and authorised by this Act is a railway five miles two furlongs two chains and thirty links in length, commencing by a junction with the Company's railway in the parish of Lyonshall in the county of Hereford, and terminating at Presteign in the county of Radnor.

As to junction with railway of Company.

5. The junction of the railway by this Act authorised with the railway of the Company shall be made only at such point in or near to the Titley station as shall be agreed upon between the engineer for the time being of the Great Western Company and the engineer for the time being of the railway by this Act authorised.

Power to cross certain roads on the level.

6. Subject to the provisions in "The Railway Clauses Consolidation Act, 1845," and in Part I. (relating to the construction of a railway) of the Railway Clauses Act, 1863," contained in reference to the crossing of roads on the level, the Company may in the construction of the railway carry the same with a single line of railway only so long as the railway consists of a single line, and afterwards

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with a double line of railway only, across and on the level of the road next herein-after mentioned; (that is to say,)

No. on deposited plan.	Parish.	Description of road.
9	Pembridge -	Public.

Spans of arches of bridges over road.

7. It shall be lawful for the Company to construct and maintain the bridge or arch for carrying the railway over the road numbered as herein-after mentioned on the deposited plans of such dimensions as they think fit, not being less than the following; (that is to say,)

No. on plan.	Parish.	Description of road.	Height.	Span.
31	Stanton-upon-Arrow	Turnpike - -	16 feet	25 feet.

Span of arches of bridges under road.

8. It shall be lawful for the Company to construct and maintain the bridge or arch for carrying the railway under the road numbered as herein-after mentioned on the deposited plans of such dimensions as they think fit, not being less than the following; (that is to say,)

No. on plan.	Parish.	Description of road.	Span.
11	Stanton-upon-Arrow -	Public - -	15 feet.

Powers for compulsory purchases limited.

9. 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 after the passing of this Act.

Period for completion of railway.

10. The railway shall be completed within four years from the passing of this Act, and on the expiration of such period the powers by this Act granted to the Company for executing the railways shall cease.

Railway to form part of the undertaking of the Company.

11. The railway shall be and be deemed for the purposes of tolls and charges, and for all purposes whatsoever, part of the undertaking of the Company, in the same manner and to the same extent as if the same had been authorised to be made by the first-recited Act.

Imposing penalty unless railway opened.

12. If the Company fail within the period limited by this Act to complete the railway by this Act authorised and herein-before

described, 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 said railway is completed and opened for public traffic, or until the sum received in respect of such penalty shall amount to five per centum on forty thousand three hundred and eighty-four pounds fourteen shillings and eightpence, the estimated cost of the railway, 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, and in the same manner as the penalty provided in the third section of the Act seventeen and eighteen Victoria, chapter thirty-one, known as 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 the said third section of the Act seventeen and eighteen Victoria, chapter thirty-one, to an account to be opened in the name and with the privity of the Accountant General of the Court of Chancery in England in the bank named in such 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 the railway by 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 injured by non-completion of railways.

13. Every sum of money so recovered by way of penalty as aforesaid shall be applicable, and after due notice in the London Gazette shall be applied, towards compensating any landowners or other persons whose property may have been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the railway, or who may have been subjected to injury or loss in consequence of the compulsory powers conferred upon the Company by this Act of taking property for the purposes of such railway, and for which injury or loss no compensation or inadequate compensation shall have been paid, and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the Court of Chancery in England may seem fit; and if no such compensation shall be payable, or if a portion of the sum or sums of money so recovered by way of penalty as aforesaid shall have 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 be paid to the Company.

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On expiration of time limited for completion of railway, powers to cease.

14. If the railway authorised by this Act and herein-before described 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 railway, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall then be completed.

Land for extraordinary purposes.

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

Power to raise additional capital.

16. The Company from time to time, with the consent of an extraordinary general meeting, may create and issue additional capital, not exceeding in the whole the sum of forty thousand pounds, by the creation and issue of new ordinary or preference shares or stock.

One fifth part of the shares to be paid on issue.

17. It shall not be lawful for the Company to issue any share to be created under the powers of this Act, nor shall any such share vest in the person accepting the same, unless and until a sum not being less than one fifth part of the amount of such share shall have been paid up in respect thereof.

Power to borrow on mortgage.

18. The Company may from time to time borrow on mortgage, in addition to the sums which the Company have already been authorised to borrow, a sum not exceeding thirteen thousand pounds in the whole, but no part thereof shall be borrowed until shares for the whole of the sum by this Act authorised to be raised by shares shall have been issued and taken up, and one half of such sum shall have been paid up, and the Company shall have proved to the justice who is to certify under the fortieth section of "The Companies Clauses Consolidation Act, 1845," before he so certifies, that shares for all the capital which the Company are by this Act authorised to raise by the creation of new shares are issued, and that one half of such capital has been paid up, and that not less than one fifth of the amount of each separate share has been paid on account thereof, and that all such shares are bonâ fide held by subscribers or their assigns, and for which such subscribers or their assigns are legally liable; and upon the production to such justice of the books of the Company, and of such other evidence as he shall think sufficient, he shall grant a certificate that the proof aforesaid has been given, which certificate shall be sufficient evidence thereof.

Priority of existing mortgages.

19. All mortgages or bonds granted by the Company before the passing of this Act, and which may be still in force at the time of the passing of this Act, shall during their continuance, and until they

shall have been paid off or renewed, have priority over all mortgages granted under the authority of this Act.

For appointment of a receiver.

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

Application of money.

21. All and every part of the money raised under the authority of this Act shall be applied only to purposes authorised by this Act.

Certain sections of the Act of 1863 incorporated with this Act.

22. The sections of the Act of 1863 with respect to traffic arrangements, leasing, and transfer, which sections are in the Act of 1863 numbered from 4 to 29, inclusive of both numbers, shall form part of this Act, and shall, if the Company and the Great Western Company so agree, apply to the railway by this Act authorised to be made in the same manner and to the same extent as if the same had formed part of the undertaking of the Company before and at the time of the passing of the Act of 1863, and the word "Company" in those clauses shall when they are so applied be read and construed as if the words "Great Western Company" had been inserted therein instead of the word "Company."

Arrangements as to working with the Great Western Railway Company.

23. The Company and the Great Western Company may alter and vary the terms and conditions of the existing lease of the railway of the Company to the Great Western Company, dated the 1st day of August 1865, in the following particulars:

(*a.*) Subject to the provisions contained in the said lease, the minimum annual rent of forty per cent. on the surplus remaining of eight thousand five hundred pounds, after deducting from such sum of eight thousand five hundred pounds the interests and dividends payable on the Company's debenture debt and preferential paid-up capital for the time being, and now payable to the Company by the Great Western Company, shall continue to be paid to the Company, and be applicable to their present capital, but without prejudice to the Great Western Company retaining, whenever any sum shall be paid under the said indenture in respect of the half year ending the thirtieth day of June in any year in excess of forty per cent. of the actual gross earnings, after deducting interest on debenture debts

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and dividends on preferential capital, the excess so paid by them out of any surplus payable to the Leominster and Kington Company in respect of the half year ending the thirty-first December of the same year, beyond the minimum forty per cent. of the sum of four thousand two hundred and fifty pounds, after such deduction as aforesaid, and without prejudice also to the rights of the Leominster and Kington Company to forty per cent. of the balance, after such deductions as aforesaid, of all the gross receipts beyond the said minimum annual rent, subject nevertheless to the following provisions:

(*b.*) That until interest or dividend at the rate of five per cent. per annum is paid or received on the capital created and issued for the purposes of the railway by this Act authorised, not exceeding the sum of forty thousand pounds, the whole gross receipts in respect of traffic carried over or to and from the railway by this Act authorised, notwithstanding such receipts shall accrue as well in respect of the passage of such traffic on or over the railway of the Company and on or over the railway of the Great Western Company, or either of them, as also on or over the railway by this Act authorised, and which would but for this agreement belong to the Company and the Great Western Company respectively in respect of the present Leominster and Kington Railway, and to the Great Western Company in respect of their system of railways, shall be formed into a special fund and applied towards the payment of interest or dividend on the said capital:

(*c.*) Subject to the payment in manner aforesaid of interest or dividend at the rate of five per cent. per annum on the ordinary and preferential capital created and issued for the purposes of the railway by this Act authorised, and interest on the debentures created under the authority of this Act, such debentures and capital not exceeding the aforesaid sum of forty thousand pounds, the Great Western Company shall receive out of the gross receipts of the traffic earned on the railway by this Act authorised sixty per cent. of such gross receipts for working expenses:

(*d.*) After such interest and working expenses have been paid or received as aforesaid the Company and the Great Western Company respectively shall receive or be credited with their respective proportions, according to the mileage conveyed

over their respective systems, including the ordinary terminals where terminal services and accommodation have been provided, of the surplus of the gross amount of all the receipts received from any traffic carried on or over the railway of the Company and the railway of the Great Western Company, or either of them, to or from the railway by this Act authorised, and also with a similar proportion of the receipts arising from traffic carried on or over the railway by this Act authorised:

(*e.*) Separate accounts shall be kept of the receipts arising from the traffic carried on the railway by this Act authorised and of those received in respect of traffic passing to or from the said railway over the railway of the Company and over the railway of the Great Western Company:

And the Company and the Great Western Company may from time to time enter into such arrangements or agreements as may be necessary to carry out the objects aforesaid, and also with respect to the moneys authorised to be borrowed under the provisions of this Act, and for guaranteeing the payment of interest thereon.

Interest on calls not to be paid out of capital.

24. The Company shall not, out of any money by this Act or any other 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 to any shareholder interest or dividend on the amount of calls made in respect of the shares held by him: Provided always, that the Company may pay to any shareholders any such interest on money advanced by him beyond the amount of the calls actually made as may be in conformity with the provisions of "The Companies Clauses Consolidation Act, 1845."

Deposit for future Bills not to be paid out of Company's capital.

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

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

26. Nothing in this Act contained shall be deemed or construed to exempt the Leominster and Kington Railway 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 and alteration, under the authority

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of Parliament, of rates for small parcels and the maximum rates of fares and charges authorised by the recited Acts.

Expenses of Act.

27. All the cost, charges, and expenses of and incidental to the passing of this Act shall be paid by the Company.

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