CHAPTER xciii.

An Act to confer further powers upon the Liverpool and Birkenhead Subway Company; and for other purposes. A.D. 1889.

[26th July 1889.]

WHEREAS the Liverpool and Birkenhead Subway Company (herein-after called "the Company") were incorporated by the Liverpool and Birkenhead Subway Act 1880 with powers to make and maintain tunnels subways and roadways for the purpose of establishing an uninterrupted means of transit for passengers and carriages under the River Mersey between the city of Liverpool and the borough of Birkenhead and the Company were authorised to raise five hundred thousand pounds by shares and one hundred and sixty-five thousand pounds by borrowing:

And whereas further powers were granted to the Company by the Liverpool and Birkenhead Subway (Extension of Time) Act 1885 and the Liverpool and Birkenhead Subway Act 1888:

And whereas the Company have expended considerable sums of money in relation to the undertaking and have proceeded with the execution of the works at Birkenhead required for carrying out the same:

And whereas the Company have not created or issued any debenture stock or mortgages:

And whereas it is expedient that the Company should be authorised to raise additional capital as 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):—

1. This Act may be cited as the Liverpool and Birkenhead Subway Act 1889. **Short title.**

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Interpretation.

2. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith have the same respective meanings unless there be something in the subject or context repugnant to such construction the expression "the Company" means the Company incorporated by the Liverpool and Birkenhead Subway Act 1880 and the expression "superior courts" or "court of competent jurisdiction" or any other like expression in this Act or any Act wholly or partially incorporated herewith shall be read and have effect as if the debt or demand with respect to which the expression is used were a simple contract debt and not a debt or demand created by statute.

Power for the Company to raise additional capital &c.

Shares not to be issued till one-fifth part thereof shall have been paid.

3. The Company may subject to the provisions of Part II. (relating to additional capital) of the Companies Clauses Act 1863 raise any additional capital not exceeding in the whole one hundred thousand pounds by the issue at their option of new ordinary shares or stock or subject to the conditions herein-after prescribed new preference shares or stock or wholly or partially by any one or more of those modes respectively but the Company shall not issue any share of less nominal value than ten pounds nor shall any share vest in the person or corporation accepting the same unless and until a sum not being less than one fifth of the amount of such share shall have been paid in respect thereof and the clauses and provisions of the Companies Clauses Consolidation 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 non-payment of calls;
The remedies of creditors of the Company against the shareholders;
The consolidation of the shares into stock;
The general meetings of the Company and the exercise of the right of voting by the shareholders;
The borrowing of money;
The conversion of borrowed money into capital;
The making of dividends;
The giving of notices; and
The provision to be made for affording access to the special Act by all parties interested:

Part I. (relating to cancellation and surrender of shares) Part II. (relating to additional capital) and Part III. (relating to debenture stock) 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:

Provided always that the Company shall not raise such sum of one hundred thousand pounds or any part thereof by the issue of preference shares or stock unless and until shares for the whole of the original capital of five hundred thousand pounds are issued and accepted and one half of such capital is paid up and the Company have proved to the Board of Trade that the whole of such capital has been issued and accepted and that one half thereof has been paid up and that not less than one fifth part of the amount of each separate share in such capital has been paid on account thereof before or at the time of the issue or acceptance thereof and until stock for one half of such capital as is to be raised by means of stock is fully paid up and the Company have proved to the Board of Trade that such shares or stock as the case may be were issued and accepted and to the extent aforesaid paid up bonâ fide and are held by the persons or corporations to whom the same were issued or their executors administrators successors or assigns and also so far as the said capital is raised by shares that such persons or corporations or their executors administrators successors or assigns are legally liable for the same and upon production to the Board of Trade of the books of the Company and of such other evidence as they shall think sufficient they shall grant a certificate that the proof aforesaid has been given which certificate shall be sufficient evidence thereof.

New shares or stock to be subject to the same incidents as other shares or stock.

4. The capital in new shares or stock created by the Company under this Act and the new shares or stock therein and the holders thereof respectively shall be subject and entitled to the same powers provisions liabilities rights privileges and incidents whatsoever in all respects as if that capital were part of the now existing capital of the Company of the same class or description and the new shares or stock were shares or stock in that capital The capital in new shares or stock so created shall form part of the capital of the Company.

Dividends on new shares or stock.

5. Every person who becomes entitled to new shares or stock shall in respect of the same be a holder of shares or stock in the Company and shall be entitled to a dividend with the other holders of shares or stock of the same class or description proportioned to the whole amount from time to time called and paid on such new shares or to the whole amount of such stock as the case may be.

Receipt clause in case of persons not sui juris.

6. If any money is payable to a shareholder or debenture or debenture stock holder being a minor idiot or lunatic the receipt of

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the guardian or committee of his estate shall be a sufficient discharge to the Company.

Power to borrow.

7. The Company may in respect of the additional capital of one hundred thousand pounds which they are by this Act authorised to raise from time to time borrow on mortgage of the undertaking any sum not exceeding in the whole thirty-three thousand pounds and of that sum they may borrow not exceeding sixteen thousand five hundred pounds in respect of each fifty thousand pounds of such additional capital but no part of any such several sums of sixteen thousand five hundred pounds shall be borrowed until shares for so much of the portion of additional capital in respect of which the borrowing powers are to be exercised as is to be raised by means of shares are issued and accepted and one half of such portion of capital is paid up and the Company 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 the whole of that portion of the additional capital in respect of which the borrowing power is proposed to be exercised has been issued and accepted and that one half thereof has been paid up and that not less than one fifth part of the amount of each separate share in such portion of additional capital has been paid on account thereof before or at the time of the issue or acceptance thereof and until stock for one half of so much of such portion of additional capital as is to be raised by means of stock is fully paid up and the Company have proved to such justice as aforesaid before he so certifies that such shares or stock as the case may be were issued and accepted and to the extent aforesaid paid up bonâ fide and are held by the persons or corporations to whom the same were issued or their executors administrators successors or assigns and also so far as the said capital is raised by shares that such persons or corporations or their executors administrators successors or assigns are legally liable for the same and upon 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.

For appointment of a receiver.

8. Every provision in any Act passed before the present session of Parliament whereby the Company is authorised to raise by borrowing money for the purposes of their undertaking with respect to the appointment of a receiver for enforcing payment by the Company of arrears of principal or interest or principal and interest shall be and the same is hereby repealed but without prejudice to any appointment which may have been made or to the continuance of any proceedings which may have been commenced prior to the

passing of this Act under any such provision The mortgagees of the undertaking may enforce payment of arrears of principal or interest or principal and interest due on their mortgages by the appointment of a receiver In order to authorise the appointment of a receiver in respect of arrears of principal the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than ten thousand pounds in the whole.

Debenture stock.

9. The Company may create and issue debenture stock subject to the provisions of Part III. of the Companies Clauses Act 1863 but notwithstanding anything therein contained the interest of all debenture stock and of all mortgages at any time created and issued or granted by the Company under this or any subsequent Act shall subject to the provisions of any subsequent Act rank pari passu without respect to the dates of the securities or of the Acts of Parliament or resolutions by which the stock and mortgages were authorised and shall have priority over all principal moneys secured by such mortgages Notice of the effect of this enactment shall be endorsed on all mortgages and certificates of debenture stock.

Application of additional capital.

10. All moneys raised under this Act by the Company whether by shares stock debenture stock or borrowing shall be applied only for the purposes of this Act and for the general purposes of the undertaking of the Company to which capital is properly applicable.

Power to divide shares.

11. Subject to the provisions of this Act the Company with the authority of three fourths of the votes of the shareholders present in person or by proxy at a general meeting of the Company specially convened for the purpose may from time to time divide any ordinary share in the capital by the Act of 1880 authorised to be raised into half shares of which one shall be called "preferred half share" and the other shall be called "deferred half share" but the Company shall not so divide any share under the authority of this Act unless and until not less than sixty per centum upon such share has been paid up and upon every such division fifty per centum upon the entire share shall be carried to the credit of the deferred half share (being the whole amount payable thereon) and the residue to the credit of the preferred half share.

Dividends on half shares.

12. The dividend which would from time to time be payable on any divided share if the same had continued an entire share shall be applied in payment of dividends on the two half shares in manner following (that is to say) first in payment of dividend after such rate not exceeding six pounds per centum per annum as shall be determined once for all at a general meeting of the Company specially convened for the purpose on the amount for the time being paid up

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on the preferred half share and the remainder (if any) in payment of dividend on the deferred half share and the Company shall not pay any greater amount of dividend on the two half shares than would have from time to time been payable on the entire share if the same had not been divided.

Dividend on preferred shares to be paid out of profits of the year only.

13. Each preferred half share shall be entitled out of the profits of each year to the dividend which may have been attached to it by the Company as aforesaid in priority to the deferred half share bearing the same number but if in any year ending the thirty-first day of December there shall not be profits available for the payment of the full amount of dividend on any preferred half share for that year no part of the deficiency shall be made good out of the profits of any subsequent year or out of any other funds of the Company.

Half shares to be registered and certificates issued.

14. Forthwith after the creation of any half shares the same shall be registered by the directors and each half share shall bear the same number as the number of the entire share certificate in respect of which it was issued and the directors shall issue certificates of the half shares accordingly and shall cause an entry to be made in the register of the entire shares of the conversion thereof but the directors shall not be bound to issue a certificate of any half share until the certificate of the existing entire share be delivered to them to be cancelled unless it be shown to their satisfaction that such certificate is destroyed or lost and on any certificate being so delivered up the directors shall cancel it.

Terms of issue to be stated on certificates.

15. The terms and conditions on which any preferred half share or deferred half share created under this Act is issued shall be stated on the certificate of each such half share.

Forfeiture of preferred shares.

16. The provisions of the Companies Clauses Consolidation Act 1845 with respect to the forfeiture of shares for non-payment of calls shall apply to all preferred half shares created under the authority of this Act and every such preferred half share shall for that purpose be considered an entire share distinct from the corresponding deferred half share and until any forfeited preferred half share shall be sold by the directors all dividends which would be payable thereon if the same had not been forfeited shall be applied in or towards payment of any expenses attending the declaration of forfeiture thereof and of the arrears of calls for the time being due thereon with interest.

Preferred shares not to be cancelled or surrendered.

17. No preferred half share created under the authority of this Act shall be cancelled or be surrendered to the Company.

Half shares to be half

18. The several half shares under this Act shall be half shares in the capital of the Company and every two half shares whether

preferred or deferred or one of each held by the same person shall confer such right of voting at meetings of the Company and (subject to the provisions herein-before contained) shall confer and have all such other rights qualifications privileges liabilities and incidents as attach and are incident to an entire share. shares in capital.

19. The Company may close the subway to the public for certain hours of the night for purposes of certain traffic or for cleansing and repairing but not until the scheme for such closing has been submitted to and approved by the Board of Trade in writing under the hand of one of their secretaries or assistant secretaries as the case may be which approval the Board of Trade may give and the Company may make rules byelaws and regulations with respect to such closing. Subway may be closed for certain hours of the night.

20. No interest or dividend shall be paid out of any share or loan capital which the Company are by this or any other Act authorised to raise to any shareholder on the amount of the calls made in respect of the shares held by him but nothing in this Act shall prevent the Company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with the Companies Clauses Consolidation Act 1845. Interest not to be paid on calls paid up.

21. The Company shall not out of any moneys by this Act authorised to be raised pay or deposit any sum of money which by any standing order of either House of Parliament now or hereafter in force may be required to be deposited in respect of any application to Parliament for the purpose of obtaining an Act authorising the Company to construct or execute any other work or undertaking. Deposits for future Bills not to be paid out of Company's capital.

22. Nothing in this Act contained shall exempt the Company or the tunnels or subways from the provisions of any general Act relating to tunnels or subways or the better and more impartial audit of the accounts of tunnel or subway 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 maximum rates of fares and charges or the rates of fares and charges authorised to be taken by the Company. Provision as to general Acts.

23. All the costs charges and expenses of and incident to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company. Expenses of Act.

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