CHAPTER xlviii.

A.D. 1875.

An Act for confirming and giving effect to an Agreement between the Liverpool Tramways Company and the Mayor, Aldermen, and Burgesses of the Borough of Liverpool with reference to certain Tramways of the Company within the said Borough; and for other purposes. [14th June 1875.]

WHEREAS the undertaking of the Liverpool Tramways Company (herein-after called the Company) consists in part of tramways within the borough of Liverpool constructed under the authority of the Liverpool Tramways Act, 1868 (herein-after called the Act of 1868), and therein respectively referred to by the numbers 1, 3, 3A, 7, and 7A, and of a tramway constructed under the authority of the Liverpool Tramways Act, 1871 (herein-after called the Act of 1871), and therein referred to as the Whitechapel route:

And whereas by section seventy-two of the Act of 1868 and section twenty-nine of the Act of 1871 respectively certain powers were given to the mayor, aldermen, and burgesses of the borough of Liverpool (therein and herein-after called the corporation) to require the removal by the Company of the tramways herein-before referred to and authorised by the said Acts respectively within five years from the completion of the said tramways respectively, and in pursuance of a resolution of the town council of the said borough passed on the twenty-fourth day of June one thousand eight hundred and seventy-four, notice was given to the Company requiring them to remove the same:

And whereas upon the receipt of the said notice the Company filed a bill in Chancery praying for an injunction to restrain the corporation from proceeding to enforce the said notice or otherwise put in force the provisions of the said sections, but the proceedings in the said suit have by consent been suspended:

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And whereas the corporation are not desirous of enforcing the said notice if provision be made for securing the reconstruction of the said tramways and the subsequent maintenance thereof in a manner satisfactory to them; and the Company are willing that provision should be made accordingly on the terms herein-after appearing:

And whereas an agreement has been made between the Company and the corporation embodying the terms upon which and prescribing the manner in which the said tramways are to be reconstructed as aforesaid, which agreement is expressed in the agreement a copy of which is set forth in the schedule to this Act; and it is expedient that the same should be confirmed and that provision should be made for giving effect thereto:

And whereas the Company have raised and expended the whole of the capital which they are by the Act of 1868 authorised to raise by shares, but they have not borrowed any part of the sum of forty thousand pounds which they are by the same Act authorised to raise by borrowing; and it is expedient that the Company should be empowered to borrow the said sum, and should also be empowered to raise further capital 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:

Short title.

1. This Act may be cited for all purposes as "The Liverpool Tramways Act, 1875."

Provisions of certain general Acts incorporated.

2. The 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 nonpayment of calls;

The remedies of creditors of the Company against the shareholders;

The borrowing of money by the Company on mortgage or bond;

The conversion of borrowed money into capital;

The consolidation of shares into stock;

The general meetings of the Company and the exercise of the right of voting by the shareholders;
The making of dividends;
The giving of notices; and
The provision to be made for affording access to the special Act;

and Part I. (relating to cancellation and surrender of shares) and Part II. (relating to additional capital) of the Companies Clauses Act, 1863, are, except where expressly varied by this Act, incorporated with and form part of this Act.

Interpretation of terms.

3. In this Act the several words and expressions to which meanings are assigned by the Acts partially incorporated with this Act shall have the same respective meanings, unless there be something in the subject or context repugnant to such construction; and the expression "superior courts" or "court of competent jurisdiction," or any other like expression in any such incorporated Act, shall for the purposes of this Act 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.

Confirming scheduled agreement.

4. The agreement between the Company and the corporation which is set forth in the schedule to this Act is hereby confirmed and made binding upon the Company and the corporation respectively, and upon their respective successors and assigns, and full effect may and shall be given thereto accordingly.

As to purchase of the tramways.

5. If the corporation purchase the tramways in pursuance of the scheduled agreement, the whole of the provisions of the Liverpool Tramways (Purchase) Act, 1872, except so much thereof as fixes a time for purchasing and giving notice of intention to purchase the tramways, shall apply and have effect as if the purchase were made in pursuance of the said Act.

Application of part of Lands Clauses Acts.

6. Sections twenty-nine, thirty-two, thirty-seven, and one hundred and forty-nine of the "Lands Clauses Consolidation Act, 1845," and section one of the "Lands Clauses Consolidation Act, 1869," shall apply to any arbitration under the provisions of the scheduled agreement; and any award of the arbitrator shall be final and conclusive for all purposes, and may be made a rule of any superior court of law on the application of either of the parties.

Power to borrow amount authorised by Act of 1868.

7. The Company may from time to time and at any time after the passing of this Act borrow on mortgage for the purposes of their undertaking, including the purposes of the scheduled agreement, the whole or any part of the sum of forty thousand pounds

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which they are by the Act of 1868 authorised to borrow; and, notwithstanding anything in the said Act contained, it shall not be necessary for the Company to obtain the certificate of a justice under section forty of the Companies Clauses Consolidation Act, 1845, before exercising the power of borrowing on mortgage hereby conferred upon them.

Company may raise additional capital.

8. The Company may from time to time raise, by the creation and issue of new shares, such additional capital as they shall think necessary, not exceeding in the whole forty thousand pounds, and such new shares may be wholly or partly ordinary shares, or wholly or partly preference shares, as the Company may think fit.

Extending sections of Act of 1870 to capital authorised by this Act.

9. Sections eight to nineteen, both inclusive, of the Liverpool Tramways Act, 1870, are hereby incorporated with and form part of this Act, and shall extend and apply to the capital by this Act authorised to be raised by shares as fully and effectually to all intents and purposes as if the same had been re-enacted in this Act with reference thereto.

Power to borrow in respect of additional capital.

10. The Company may from time to time borrow on mortgage, in addition to any other sums which they are authorised to borrow, any sums not exceeding in the whole ten thousand pounds in respect of the additional capital of forty thousand pounds which they are by this Act authorised to raise by shares, and of that sum they may borrow from time to time not exceeding two thousand five hundred pounds in respect of every ten thousand pounds of the capital by this Act authorised to be raised by shares, but no part of any such sum of two thousand five hundred pounds shall be borrowed until the whole of the sum of ten thousand pounds of capital in respect of which it is to be borrowed is subscribed for, issued, and accepted, and one half thereof 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 shares for the whole of the respective sum of ten thousand pounds of capital had been issued and accepted, and that one half of such capital 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 that such shares were issued and accepted and paid up bonâ fide, and are held by the persons or corporations to whom the same were issued, and 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.

Priority of mortgages.

11. All mortgages granted by the Company in pursuance of their former Acts, and subsisting at the passing of this Act, shall, during their continuance, and subject to the provisions of the Acts under which such mortgages were respectively granted, have priority over any mortgages to be granted in pursuance of this Act, and section twenty-seven of the Act of 1868 shall apply to mortgages granted under this Act as if the said section were repeated herein.

For appointment of a receiver.

12. 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. 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 one thousand pounds in the whole.

Company not to create debenture stock.

13. The Company shall not create debenture stock.

Application of moneys.

14. All moneys raised under this Act, whether by shares or borrowing, shall be applied only to purposes authorised by the Act of 1868 and this Act.

Interest not to be paid on calls paid up.

15. The Company shall not, out of any money by this Act authorised to be raised by calls or by borrowing, pay interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him: Provided always, that this Act shall not 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.

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

16. The Company shall not, out of any money by this Act authorised to be raised, pay or deposit any sum 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 any other tramway or to execute any other work or undertaking.

Tramways not exempt from provisions of genera. Acts.

17. Nothing herein contained shall be deemed or construed to exempt the tramways of the Company from the provisions of any general Act relating to tramways 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

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the maximum rates of tolls or charges authorised to be taken by the Company.

Expenses of Act.

18. All 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.

SCHEDULE referred to in the foregoing Act.

AGREEMENT between the Mayor, Aldermen, and Burgesses of the Borough of Liverpool (herein-after referred to as the "Corporation") of the one part, and the Liverpool Tramways Company (herein-after referred to as the "Company") of the other part.

1. In this agreement expressions referring to the tramways of the inner line mean the tramways numbered 1 in the Liverpool Tramways Act, 1868, and expressions referring to the tramways of the southern line mean the tramways numbered 7 and 7A in the said Act, and expressions referring to the tramways of the northern line mean the tramways numbered 3 and 3A in the said Act and the Whitechapel route as defined in the Act of 1871; and any expression referring to any tramway or tramways includes for all the purposes of this agreement the foundations, sleepers (if any), rails, and all other parts or appurtenances thereof, including the paving or other part of any street or road which the Company are now bound to maintain or make good, or for the expense of maintaining or making good the which they are now liable.

RECONSTRUCTION OF TRAMWAYS.

2. The tramways of the Company within the borough of Liverpool shall be reconstructed for and at the cost of the Company by the corporation within the periods and in the manner herein-after mentioned.

3. The reconstruction shall be completed—

(*a.*) As to the tramways of the inner line, before the twenty-sixth day of December one thousand eight hundred and seventy-seven:

(*b.*) As to the tramways of the southern and northern lines respectively, within such times as shall be determined as to such lines respectively by agreement, or, failing agreement, by arbitration, but so that the tramways of the southern line shall be reconstructed before the tramways of the northern line.

Subject to the provisions of this article, the reconstruction shall, so far as the corporation find it practicable, be carried on simultaneously with the repaving of the streets in which the tramways are respectively laid.

4. The reconstruction of the several tramways shall extend to the entire renewal thereof respectively so far as the corporation deem expedient, and in such manner as is herein-after provided; that is to say, as to the tramways of

the inner line in the most substantial manner, and as to the tramways of the southern and northern lines in a proportionally substantial manner, having regard to differences in the classes of streets, and in the probable cart and other traffic on and over such tramways, and over and along the streets in which the same are respectively laid; and where no such differences exist, then in an equally substantial manner as the inner line, and as to the whole of the tramways so as to render them thoroughly and durably sound and in good working order.

5. The reconstruction shall be carried out by the engineer for the time being of the corporation, according to specifications which shall from time to time be jointly prepared and agreed upon by and between him and Mr. Hopkins or other the engineer for the time being of the Company, and in case of difference between them shall from time to time be settled by arbitration as herein-after provided. Any dispute or difference as to whether the work or any part thereof is being done in accordance with the specifications shall be referred to arbitration in like manner.

6. The expenses of the reconstruction (including the cost of specifications) shall be paid by the Company in such manner as may from time to time be agreed between the corporation and the Company, or, failing such agreement, in any case shall be certified from time to time by the engineer of the corporation, and paid by the Company on demand. The certificates and payments shall be so made as that the corporation shall not at any time be required to furnish any money for the works in hand beyond the sum of four hundred pounds, which the corporation shall allow to the Company towards the costs of paving the inner circle.

All the old materials of the existing tramways shall belong to the Company.

If the Company object to the cost of any of the works, they may, after paying the same as certified, require the same to be referred to arbitration, and if on such arbitration it is found that the same exceeds the reasonable cost of the work and materials according to the specifications, the excess so found shall be repaid by the corporation to the Company on demand, and shall be recoverable from the corporation by action.

7. The engineer of the corporation shall be at liberty at any time and from time to time during the time limited for the reconstruction of any of the tramways, and on giving one week's notice to the Company, to lay down in such manner as to obstruct and interfere with the traffic as little as practicable, experimental pieces of tramway not exceeding fifty yards in length respectively at any place or places on the actual route of any of such tramways, and the Company shall give all reasonable facilities for laying down the same; and if the same or any of them are eventually adopted as parts of the reconstructed tramways, the costs of such as are so adopted shall be paid by the Company as expenses of reconstruction.

8. On the reconstruction of the southern line of tramways in narrow parts of Great George Street and Park Road, the existing double lines shall be brought nearer to each other where practicable and convenient, and where this is not practicable and convenient, having regard to reasonable provision for tramway traffic, a single line shall be substituted. In case of difference as to anything to be done under this article, the same shall be referred to arbitration.

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REPAIR AND MAINTENANCE.

9. The tramways respectively, and every part thereof, until such tramways and parts have respectively been reconstructed as aforesaid, shall continue to be repaired and maintained by the Company as heretofore, but from the time of the reconstruction of any tramway or of any part of any tramway, such tramway or part shall at all times be repaired and maintained by the corporation for and at the cost of the Company, and the Company shall not in any way interfere therein. And the corporation hereby covenant to keep every such tramway or part of a tramway at all times after the reconstruction of the same in a proper state of repair and maintenance.

The expenses of such repair and maintenance of any tramway or part by the corporation shall, until such tramway or part is included in a periodical estimate as herein-after mentioned, be from time to time certified, paid, and borne in like manner and subject to the like arbitration as expenses of reconstruction.

10. (i.) When the reconstruction of the inner line of tramways is completed, an estimate of the probable annual expense of the repair and maintenance of the tramways of such line, and of any other tramways or parts which have then been reconstructed by the corporation during the period to elapse before the twenty-sixth day of December one thousand eight hundred and eighty-two, shall be made by agreement between the corporation and the Company, or, failing agreement, by arbitration.

(ii.) On or so soon as conveniently may be after the said twenty-sixth day of December one thousand eight hundred and eighty-two, an estimate shall be made in like manner of the probable annual expense of the repair and maintenance during the five years next to elapse after the said day of all the tramways or parts which have then been reconstructed by the corporation, and a new estimate shall be made in like manner from time to time at the end of such and of every succeeding period of five years, and shall include all the tramways and parts of tramways which have then been reconstructed.

(iii.) Every estimate to be made as aforesaid shall be divided into three parts, the first of which shall state the sum to be paid in respect of tramways of the inner line, and the second of which shall state the sum (if any) to be paid in respect of tramways of the southern line, and the third of which shall state the sum (if any) to be paid in respect of tramways of the northern line.

(iv.) The amount ascertained by any such estimate in respect of any year or part of a year in respect of each line of tramways shall from time to time be paid by the Company to the corporation on demand, and, if no other mode of payment is fixed by agreement or arbitration, the same shall be paid from time to time by equal quarterly instalments on the twenty-fifth day of March, twenty-fourth day of June, twenty-ninth day of September, and the twenty-sixth day of December in each year, and so for any part of a quarter, and the same shall be accepted by the corporation in full discharge and satisfaction of all claims for the repair and maintenance of the tramways in respect

of which the payment is made for the period in respect of which the payment is made.

(v.) In forming any estimate for the purposes of this article for any period, regard shall be had to the probability and cost of any fresh renewal or reconstruction which may become necessary during such period, and the amount of the annual payments to be made shall include such cost, and may be graduated so as to adapt the payments in each year to the probable expenses in such year, or any probable excess of cost in any one or more years may be spread over the whole period, as may be determined by agreement or arbitration.

11. The corporation, after the reconstruction of the tramways respectively, or of any parts thereof, shall be liable to the Company for negligence in keeping in repair and maintaining the same whereby any person or the property of any person or of the Company is injured.

General Provisions.

12. Where any dispute or matter may under the provisions of this agreement be referred to arbitration, the same shall be referred to Mr. C. E. Cawley, of Manchester, and failing him, to an engineer to be appointed by agreement from time to time between the corporation and the Company, or, failing such agreement, to an engineer to be appointed from time to time for the purpose by the Board of Trade.

When an engineer has been appointed as arbitrator he shall, without any fresh appointment, continue to be arbitrator for all disputes or matters thereafter arising from time to time until either he dies or declines to act, or the corporation and the Company agree that a new arbitrator should be appointed, or the Board of Trade, for cause shown to them by either party, direct that a new arbitrator should be appointed.

In case either party refuses or neglects after request by the other party to do or concur in doing any act necessary for referring any such dispute or matter to arbitration, or for proceeding in an arbitration, the other party may do all things necessary for the arbitration (including the appointing or procuring the appointment of an arbitrator), and the arbitrator may proceed and make his award in the absence of the party so refusing or neglecting.

The fees and charges of the arbitrator in respect of any arbitration under this agreement shall be paid by the orp oration and h Company in equal shares. Any other expenses incurred by the corporation or the Company in or for the purposes of any such arbitration shall be paid and borne as the arbitrator directs, and the amount thereof may be certified by him by his award or by a separate certificate, which shall have effect as an award.

13. For securing the performance by the Company of the terms of this agreement, and without prejudice to any other remedy, the corporation shall have power to take up and permanently remove any of the three lines of tramways (namely, the inner, southern, and northern lines) in respect of which a breach of this agreement is made by the Company either by failing to supply funds for reconstruction or by failing to pay any sums payable for repair and maintenance; and if the corporation exercise such power they may sell the rails and materials removed, and shall make good the streets, and may out of the proceeds of the sale reimburse themselves the expenses of and consequent upon

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or incident to such removal and sale, and of making good the streets, rendering the overplus, if any, to the Company; and in case such proceeds are insufficient to meet such expenses the deficit shall be paid by the Company on demand, and may be recovered by action.

The power of removal under this article shall not be exercised by the corporation in respect of any default unless they have given one month's notice in writing to the Company of their intention to exercise such power, nor shall such power be exercised under any notice unless within six months from the expiration of such notice, but a new notice may be given and acted on from time to time in case of new or continued default by the Company.

If after any such notice given to the Company in respect of any default they within fourteen days make good such default, and also give security to the satisfaction of the corporation for any sums which may become payable by them to the corporation within the six months next after such notice, the power of removal under this article shall not be exercised in respect of such default.

14. In case the corporation make default in reconstructing any tramway within the time limited by this agreement, they having been supplied with funds by the Company in accordance with this agreement, any loss or damage sustained by the Company by reason of such default shall be paid to them by the corporation. Any dispute as to whether any such default has been made, or as to the loss or damage sustained by reason thereof, shall be referred to arbitration.

15. The corporation shall have power to purchase the tramways to which this agreement relates at the end of five years from the twenty-sixth day of December one thousand eight hundred and seventy-four, upon the terms and conditions (except as to time) contained in the "Liverpool Tramways Purchase "Act, 1872," upon giving not less than three calendar months notice before the said day.

16. The corporation and the Company may from time to time agree upon an extension of the time limited by this agreement for anything to be done under any of the provisions herein-before in this agreement contained, and such extension shall not prejudice or affect any right or liability of either party in any other respect than such extension of time.

17. The Company will at their own cost apply for and use their best endeavours to obtain the confirmation by Parliament of this agreement, and all such powers as may be requisite to enable the corporation and the Company respectively to carry into effect and perform the terms thereof.

18. This agreement is entered into subject to confirmation as regards both parties by Parliament, and if the Bill to confirm it shall be withdrawn or rejected on other than technical grounds in the session of 1875, or shall not be passed in the session of 1875 or 1876, the same shall upon the withdrawal or rejection of the said Bill (on other than technical grounds) in the session of 1875, or upon the withdrawal or rejection of the said Bill in the session of 1876, or upon the termination of the session of 1876, without the same having been passed, become void, and the said Company and corporation respectively shall not be in any way prejudiced thereby.

19. Except as in this agreement expressly provided, this agreement or anything therein shall not prejudice or affect the rights or liabilities of the

corporation or of the Company under any of the Acts relating to the Liverpool tramways or otherwise.

20. This agreement shall be subject to such alterations as Parliament may think fit to make therein.

In witness whereof the corporation and the Company respectively have hereunto caused their corporate and common seals to be affixed the sixteenth day of December one thousand eight hundred and seventy-four.

Richard F. Steble, Mayor.

Seal of the Corporation of Liverpool.

The common seal of the Liverpool Tramways Company was affixed hereto in the presence of

J. Weston, Secretary.

Seal of the Liverpool Tramways Company.

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