CHAPTER clxxiii.

An Act to confer further powers on the Lostwithiel and Fowey Railway Company and on other Companies and for other purposes. A.D. 1891.

[28th July 1891.]

WHEREAS by the Lostwithiel and Fowey Railway Act 1862 (hereinafter called the Act of 1862) the Lostwithiel and Fowey Railway Company (hereinafter called the Company) were incorporated with power to raise thirty thousand pounds by shares and to borrow ten thousand pounds on mortgage and were authorised to make and maintain a railway from the Cornwall Railway near Lostwithiel to Fowey in the county of Cornwall:

And whereas further powers were conferred on the Company by the Lostwithiel and Fowey Railway Act 1865:

And whereas by the Great Western Railway Act 1886 certain powers were conferred on the Company in regard to the conversion of their railways into railways on a mixed gauge and to raise fifteen thousand pounds of additional capital for that purpose but such powers have not been exercised:

And whereas the Company issued part of the capital and exercised the borrowing powers by the Act of 1862 authorised and constructed the railway by that Act authorised from Lostwithiel to Carne Point near Fowey and the same was opened for goods traffic:

And whereas the Company were unable to pay out of their revenue the interest due on the debentures or mortgages of the Company and by an order made by his Honour Vice-Chancellor Malins on the twenty-second day of December one thousand eight hundred and sixty-eight in a suit in which Thomas Simon Bolitho and Richard Foster on behalf of themselves and all the other holders of the debentures of the Company were plaintiffs and the Company were defendants a receiver was appointed to receive the tolls and sums of money arising under and by virtue of the Act of

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1862 and by a further order in the said suit made by the Honourable Mr. Justice North on the twenty-ninth day of June one thousand eight hundred and eighty-eight reciting that the said judge was of opinion that the receiver was justified in expending money on account of construction and permanent way labour salaries and fees rates taxes working and travelling expenses printing advertising and other charges and law costs and that he was entitled to borrow money for those purposes and that the amount expended and interest in respect of money borrowed formed a charge on the receiver's receipts from the undertaking in priority to the debenture holders and ought to be allowed in his accounts it was ordered that the payments set out in the schedule thereto be allowed and that money be borrowed at interest not exceeding five pounds per centum per annum to pay off the debt therein mentioned and that any further moneys advanced or borrowed should bear interest at a rate not exceeding five pounds per centum per annum:

And whereas the share and loan capital of the Company now stands as follows viz.:—

Debentures ten thousand pounds;

Fully paid up preference shares thirteen thousand two hundred pounds;

Fully paid up ordinary shares fifteen thousand two hundred pounds under deduction of calls in arrear to the amount of one hundred and eighteen pounds twelve shillings and elevenpence;

and the arrears of interest on the debentures will it is estimated amount on the thirty-first day of December one thousand eight hundred and ninety-one to thirteen thousand pounds or thereabouts and the Company are in addition indebted in the sum of four thousand pounds or thereabouts for moneys borrowed by the receiver and interest thereon having a charge on the receipts of the Company's undertaking in priority to the debenture holders (hereinafter referred to as the priority debts) and they are further indebted to other creditors in various sums of money:

And whereas the railway of the Company has been closed for some years:

And whereas it would be of public and local advantage and would add to the value of the undertaking of the Company if they were enabled to make a junction between their existing railway and the Cornwall Minerals Railway and to raise money for the construction thereof and for placing their existing railway in working order so that the same may be again opened for traffic:

And whereas it is expedient that provision be made by the creation of debenture stock of two classes and of ordinary stock of such amounts and with such incidents as are by this Act provided for the extinguishment of the existing debentures and preference and ordinary shares of the Company and for satisfying the debts due to the ordinary creditors of the Company and for the raising of further moneys by the Company whereby the Company may be able to satisfy the priority debts and obtain the discharge of the receiver appointed as aforesaid and carry into effect the purposes of this Act:

And whereas the Bill for this Act has been approved in writing by more than three-fourths in value of the existing debenture holders and preference shareholders in the Company respectively:

And whereas by an agreement dated the twenty-fifth day of August one thousand eight hundred and sixty-five and made between the Cornwall Railway Company (hereinafter called "the Cornwall Company") and the Company a copy whereof is set forth in the schedule to this Act it was agreed that the Cornwall Company should work the railways of the Company on the terms therein mentioned and in pursuance of that agreement certain sidings and junctions were made at Lostwithiel by the Company and these have been used by the Cornwall Company and are now used by the Great Western Railway Company (hereinafter referred to as "the Great Western Company"):

And whereas the Cornwall Company has since the date of such agreement become amalgamated with the Great Western Company and it is expedient that such agreement should be confirmed and extended to the railway by this Act authorised:

And whereas by an agreement dated the twentieth day of April one thousand eight hundred and seventy-seven and made between the trustees of the Treffry Estate in the county of Cornwall therein described of the first part the persons therein described of the second part and the Cornwall Minerals Railway Company (hereinafter called "the Minerals Company") of the third part which agreement was confirmed by the Cornwall Minerals Railway Act 1877 It was agreed (clause 5) amongst other things that there should be granted and reserved to the Company a free and uninterrupted right in perpetuity of running their trains engines and carriages over the rails of the Minerals Company then or thereafter to be placed on the lands therein mentioned and that the Company should be at liberty to lay on such lands such additional lines of rails and apparatus as in their judgment might be necessary for conveniently working their railway between the points therein mentioned as

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provided in the agreement and certain other advantages were given to the Company but not to the exclusion of the Minerals Company's traffic and subject to the terms and conditions therein mentioned:

And whereas by certain heads of agreement dated the ninth day of May one thousand eight hundred and seventy-seven and made between the Minerals Company on the one hand and the Company on the other hand it was for the considerations therein expressed agreed that the Minerals Company should give to the Company the running and other powers as expressed and on the terms set out in the agreement of the twentieth day of April one thousand eight hundred and seventy-seven before mentioned but the Company did not thereby waive their rights (if any) to any lands required for the user of such running powers and the Minerals Company also agreed to carry out at their own expense when called upon by the Company and on being put in possession by the Company of the necessary land the necessary earthwork and masonry and permanent way for efficiently connecting the Cornwall Minerals Railway and the Fowey Railway at Upper Carne Point by one continuous line of narrow gauge rails subject to the conditions therein contained:

And whereas by deed dated the twenty-ninth day of September eighteen hundred and seventy-nine the Minerals Company in pursuance of the recited agreement of the twentieth day of April one thousand eight hundred and seventy-seven granted and reserved to the Company for ever all such rights powers and liberties as were by the said agreement agreed to be granted and reserved to the Company:

And whereas by an agreement dated the twenty-ninth day of January one thousand eight hundred and eighty-four and made between the Minerals Company and the Company for certain valuable considerations the Company agreed (Article 2) to accept certain stock therein defined in full satisfaction of their claim to certain works agreed to be done by the Minerals Company and of certain other claims under a portion of the heads of agreement of the ninth day of May one thousand eight hundred and seventy-seven reserving (subject to the conditions therein contained) the right to the Company themselves to construct execute and do all such works matters and things as were agreed to be done by the Minerals Company under the said heads of agreement and it was provided that nothing in that agreement should deprive the Company of the full benefit of the said agreement of the ninth day of May one thousand eight hundred and seventy-seven and of the said deed of the twenty-ninth day of September one thousand eight

hundred and seventy-nine other than the portion thereinbefore referred to of the said last-mentioned deed and the Company (Article 3) agreed to convey to the Minerals Company all such estate and rights (if any) as the Company had in the pieces of foreshore and lands which were therein described free from all claim of the Company except in respect of the rights (if any) affecting the same pieces of foreshore and lands expressed to be so granted and confirmed by the Minerals Company in Article 2 thereof the Company nevertheless reserving to themselves out of such conveyance all such rights powers and liberties as were agreed to be granted and reserved to the Company by the fifth clause of the said agreement dated the twentieth day of April one thousand eight hundred and seventy-seven:

And whereas pursuant to the said agreement of the twenty-ninth day of January one thousand eight hundred and eighty-four by conveyance dated the sixteenth day of September one thousand eight hundred and eighty-five the Company granted and released unto the Minerals Company all the estate and rights (if any) which the Company had at the date of the said agreement of the twenty-fourth day of January one thousand eight hundred and eighty-four in the lands coloured pink on the plan drawn in the margin thereof (being part of the lands included in the before-recited agreement of the twentieth day of April one thousand eight hundred and seventy-seven and the deed of grant of the twenty-ninth day of September one thousand eight hundred and seventy-nine hereinbefore mentioned) subject to the reservations terms and conditions in favour of the Company contained in the said agreement and deed And whereas the Company has not hitherto sought to exercise the powers rights and liberties secured to them by the before-mentioned agreements and deeds and the construction of the railway by this Act authorised will be in part exercise thereof:

And whereas it is expedient that such arrangements should be authorised and such powers conferred on the Company with reference to other undertakings and companies as are hereinafter provided:

And whereas plans and sections showing the lines and levels of the railway and works authorised by this Act and also a book of reference containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands required or which may be taken for the purposes or under the powers of this Act were duly deposited with the clerk of the peace for the county

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of Cornwall and are hereinafter respectively referred to as the deposited plans sections and book of reference:

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

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

Short title.

1. This Act may be cited as the Lostwithiel and Fowey Railway Act 1891.

Incorporation of general Acts.

2. The following Acts and parts of Acts are except where expressly varied by or inconsistent with this Act incorporated with and form part of this Act (that is to say):—

The provisions of the Companies Clauses Consolidation Act 1845 with respect to the following matters (namely):—

The distribution of the capital of the Company into shares;

The transfer or transmission of shares;

The consolidation of shares into stock; and

The provision to be made for affording access to the special Act by all parties interested:

The Lands Clauses Acts the Railways Clauses Consolidation Act 1845 Part I. (relating to construction of a railway) of the Railways Clauses Act 1863 and Parts I. and III. (relating respectively to the cancellation and surrender of shares and to debenture stock) of the Companies Clauses Act 1863 except section 22 of that Act.

Interpretation.

3. 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 Company" means the Lostwithiel and Fowey Railway Company:

"The railway" means the railway by this Act authorised:

"The Great Western Company" means the Great Western Railway Company:

"The Minerals Company" means the Cornwall Minerals Railway Company:

"The Cornwall Company" means the Cornwall Railway Company:

"The existing debentures" means all the debentures or mortgages of the Company:

"The existing preference shares" means all the preference shares of the Company:

"The existing ordinary shares" means all the ordinary shares of the Company:

"The priority debts" means all debts having priority over the existing debentures of the Company:

"The ordinary creditors" means all creditors of the Company to whom debts other than the priority debts are due:

"The net revenue of the Company" means the revenue of the Company after payment of all expenses of managing administering working and maintaining the undertaking of the Company including due and proper maintenance of the permanent way stations and other buildings so far as such expenses are not to be borne by the Great Western Company under the provisions of the agreement of the twenty-fifth day of August one thousand eight hundred and sixty-five as modified by this Act and after payment of all rates taxes and tithes and of all rentcharges granted or to be granted in respect of the purchase of lands by the Company and for the time being subsisting:

"The directors" means the directors of the Company:

"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 construed as if the debt or demand with respect to which the expression is used were a common simple contract debt and not a debt or demand created by statute.

Power to make railway.

4. Subject to the provisions of this Act the Company may make and maintain in the lines and according to the levels shown on the deposited plans and sections the railway and works hereinafter described with all proper stations sidings 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 deposited book of reference as may be required for that purpose The railway and works hereinbefore referred to and authorised by this Act are—

A railway three furlongs five chains in length wholly situate in the parish of Fowey in the county of Cornwall commencing by a junction with the main line of the Company and terminating by a junction with the railway of the Minerals Company.

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New railway and existing railway may be on mixed gauge.

5. The railway may be constructed on the mixed gauge of seven feet and of four feet eight and a half inches or on either of those gauges and the Company may also lay down an additional rail or additional rails on their existing railway or some part or parts thereof respectively so as to convert the same into a similar mixed gauge or they may convert it into a railway of the gauge of four feet eight and a half inches.

Railway not to be opened till existing railway put in proper order.

6. The railway by this Act authorised shall not be opened for traffic until the Company have constructed and put into proper working order to the reasonable satisfaction of the Great Western Company the railway authorised by the Act of 1862 between the point of junction with the Cornwall Railway at Lostwithiel and the junction with the railway by this Act authorised.

Lands for extra-ordinary purposes.

7. The Company may take by agreement for the extraordinary purposes mentioned in the Railways Clauses Consolidation Act 1845 any quantity of land not exceeding five acres but nothing in that Act or this Act shall exempt the Company from any indictment action or other proceeding for nuisance in the event of any nuisance being caused by them upon any land taken under the powers of this section.

Period for compulsory purchase of lands.

8. The powers of the Company for the compulsory purchase of lands for the purposes of this Act shall cease after the expiration of three years from the passing of this Act.

For protection of Cornwall Minerals Company and Great Western Company.

9. Unless the position of the railway be agreed between the Company and the Minerals Company and the Great Western Company it shall be constructed in such position as shall be determined by an arbitrator to be appointed by the Board of Trade on the application of any one of the Companies and the railway from the termination thereof to the north-eastern boundary of the lands delineated and coloured pink on the plan mentioned in the fifth clause of the recited agreement of the twentieth day of April one thousand eight hundred and seventy-seven or such further point as the said arbitrator shall determine shall be deemed to be included in the lines of rails which it was agreed that the Company should be at liberty to lay under the provisions of the said agreement and any difference which shall arise between the Company and the Minerals Company as to the mode of or terms for using the said lines of rails or otherwise under the provisions of the said agreement shall be referred to arbitration in like manner.

Deposit money not to be repaid

10. Whereas pursuant to the standing orders of both Houses of Parliament and to an Act of the ninth year of the reign of Her

present Majesty chapter twenty a sum being equal to five per cent. upon the amount of the estimate in respect of the railway has been deposited with the Paymaster General for and on behalf of the Supreme Court in respect of the application to Parliament for this Act which sum is referred to in this Act as the deposit fund Be it enacted that notwithstanding anything contained in the said Act the deposit fund shall not be paid or transferred to or on the application of the person or persons or the majority of the persons named in the warrant or order issued in pursuance of the said Act or the survivors or survivor of them (which persons survivors or survivor are or is in this Act referred to as the depositors) unless the Company shall previously to the expiration of the period limited by this Act for completion of the railway open the same for public traffic and if the Company shall make default in so opening the railway the deposit fund shall be applicable and shall be applied in the manner provided by the next following section and the certificate of the Board of Trade that the railway has been opened shall be sufficient evidence of the fact and it shall not be necessary to produce any certificate of this Act having passed anything in the said Act to the contrary notwithstanding.

except so far as railway is opened.

11. If the Company do not previously to the expiration of the period limited for the completion of the railway complete and open the same for public traffic then and in every such case the deposit fund shall be applicable and after due notice in the London Gazette shall be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement construction or abandonment of the railway or any portion thereof or who have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the Company by this Act and for which injury or loss no compensation or inadequate compensation has been paid and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the High Court may seem fit and if no such compensation is payable or if a portion of the deposit fund has been found sufficient to satisfy all just claims in respect of such compensation then the deposit fund or such portion thereof as may not be required as aforesaid shall if a receiver has been appointed or the Company is insolvent and has been ordered to be wound up or the railway has been abandoned be paid or transferred to such receiver or to the liquidator or liquidators of the Company or be applied in the

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discretion of the Court as part of the assets of the Company for the benefit of the creditors thereof and subject to such application shall be repaid to the depositors Provided that until the deposit fund has been repaid to the depositors or has become otherwise applicable as hereinbefore mentioned any interest or dividends accruing thereon shall from time to time and as often as the same shall become payable be paid to or on the application of the depositors.

Power to take easements by agreement.

12. Persons empowered by the Lands Clauses Acts to sell and convey or release lands may if they think fit subject to the provisions of those Acts and of this Act grant to the Company any easement right or privilege not being an easement of water required for the purposes of this Act in over or affecting any such lands and the provisions of the said Acts with respect to lands and rent-charges so far as the same are applicable in this behalf shall extend and apply to such grants and to such easements rights and privileges as aforesaid respectively.

Period for completion of works.

13. If the railway is not completed within five years from the passing of this Act then on the expiration of that period the powers by this Act granted to the Company for making and completing the railway or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

Restriction on taking houses of labouring class.

14. The Company shall not under the powers of this Act without the consent of the Local Government Board take ten or more houses which after the passing of this Act have been or on the fifteenth day of December last were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers.

For the purposes of this section the expression "labouring class" means and includes mechanics artizans labourers and others working for wages hawkers costermongers persons not working for wages but working at some trade or handicraft without employing others except members of their own family and persons other than domestic servants whose income does not exceed an average of thirty shillings a week and the families of any such persons who may be residing with them.

Railway to be part of the Company's undertaking.

15. Subject to the provisions of this Act for the protection of the Minerals Company the railway shall be and be deemed to be for the purpose of tolls rates and charges in all respects and for all other purposes part of the undertaking of the Company.

Existing debentures and shares to be cancelled.

16. On and from the thirty-first day of December one thousand eight hundred and ninety-one the existing debentures and all arrears of interest or dividend due thereon and the existing preference shares and ordinary shares of the Company shall be and the same are hereby cancelled and extinguished.

Creation of debenture stock.

17. There is by this Act created debenture stock of the Company of two classes hereinafter in this Act referred to as A debenture stock and B debenture stock respectively A debenture stock shall be of the nominal amount of thirty thousand pounds B debenture stock shall be of the nominal amount of ten thousand pounds.

Interest and ranking of A debenture stock.

18. A debenture stock shall bear interest at the rate of four pounds per centum per annum and such interest shall be the first charge upon the net revenue of the Company.

Interest and ranking of B debenture stock.

19. B debenture stock shall bear interest at the rate of four pounds per centum per annum and such interest shall be a charge upon the net revenue of the Company next after the interest on A debenture stock Provided that if in any half-year the net revenue of the Company for that half-year is not sufficient (after payment of the interest on A debenture stock) for the payment of the full amount of the interest for that half-year on B debenture stock the deficiency shall only be made good out of any excess of net revenue in any of the seven next succeeding half-years over what is sufficient to pay the interest on A and B debenture stocks respectively for each such half-year and shall not be made good out of any other revenue or funds of the Company.

Application of A debenture stock.

20. A debenture stock may from time to time be issued at such price as the directors of the Company shall from time to time determine and the proceeds thereof shall be applied to the purposes and according to the priorities following (that is to say) :—

First In payment of the costs charges and expenses of and incident to the preparing for obtaining and passing of this Act or otherwise in relation thereto :

Second In payment of the priority debts and the costs charges and expenses of the receiver including any costs charges and expenses covered by the recited order of Mr. Justice North of the twenty-ninth day of June one thousand eight hundred and eighty-eight and any costs charges and expenses of the recited suit of Bolitho and another against the Company properly payable by the receiver in priority to the existing debentures :

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Third In or towards the construction of the railway and works by this Act authorised and of any repairs renewals or other works necessary to place the existing railways and works of the Company in good working order and repair :

Fourth In or towards any other purposes of the Company to which capital is properly applicable.

Vesting of B debenture stock.

21. Each holder of existing debentures shall be entitled to and there shall vest in him on the thirty-first day of December one thousand eight hundred and ninety-one B debenture stock created by this Act equal in nominal amount to the nominal amount of the existing debentures held by him and B debenture stock shall bear interest as and from that date.

Scale of voting of holders of B debenture stock.

22. At all general meetings of the Company every holder of B debenture stock shall have one vote for every twenty pounds of the debenture stock held by him up to two hundred pounds and he shall have an additional vote for every one hundred pounds of stock so held by him beyond the first two hundred pounds up to two thousand pounds and an additional vote for every two hundred pounds of stock so held by him beyond the first two thousand pounds.

Subject to the foregoing provisions of this section sections 75 to 79 of the Companies Clauses Consolidation Act 1845 shall apply to B debenture stock holders as if they were shareholders of the Company.

Creation and vesting of ordinary stock.

23. There is by this Act created ordinary stock of the Company of the nominal amount of ninety thousand pounds Such ordinary stock shall to the extent and in the proportions in this section mentioned vest in the respective holders of ordinary and preference shares and debentures and the creditors of the Company (as follows) :—

(1) Each holder of existing ordinary shares shall be entitled to and there shall vest in him ordinary stock in the proportion of sixteen pounds of ordinary stock for and in lieu of each existing ordinary share held by him :

(2) Each holder of existing preference shares shall be entitled to and there shall vest in him ordinary stock in the proportion of twenty-four pounds of ordinary stock for and in lieu of each existing preference share held by him :

(3) Each holder of existing debentures shall be entitled to and there shall vest in him in respect and in lieu of the arrears of interest or dividend on such debentures ordinary stock in the proportion of one hundred and fifty pounds of ordinary stock

for every hundred pounds of such arrears due to him and proportionately for any less amount and such arrears shall be calculated up to the thirty-first day of December one thousand eight hundred and ninety-one:

(4) Each ordinary creditor of the Company shall be entitled to and there shall vest in him on the thirty-first day of December one thousand eight hundred and ninety-one in satisfaction of his debt ordinary stock in the proportion of one hundred and twenty pounds of ordinary stock for every one hundred pounds of such debt and proportionately for any less amount and all debts due by the Company to such ordinary creditors shall on such vesting be cancelled:

Provided that in calculating the stock to be issued in satisfaction of arrears of interest or dividend mentioned in sub-section 3 hereof and in satisfaction of the debts mentioned in sub-section 4 hereof fractions of one pound amounting to ten shillings or upwards shall be treated as one pound and fractions less than ten shillings shall be cancelled:

Ordinary stock vesting under this section in the existing shareholders debenture holders or creditors of the Company shall be deemed to be fully paid up:

The balance of such ordinary stock shall be issued by the Company at such times and on such terms and conditions as the directors may think fit and the moneys received therefor shall be applied towards any purpose of the Company to which capital is properly applicable.

New stock to be subject to same trusts liens &c. as the old stock.

24. Debenture stock or ordinary stock which shall under the provisions of this Act vest in the holders of existing debentures or preference or ordinary shares shall be subject to the same trusts powers provisions declarations agreements charges liens and incumbrances as immediately before the passing of this Act affected the existing debentures or shares for which the same is substituted and any deed will or other instrument and any testamentary or other disposition of or affecting the existing debentures or shares shall take effect with reference to the whole or a proportionate amount as the case may be of the debenture stock or ordinary stock substituted therefor.

Old certificates to be cancelled and new ones issued.

25. As soon as reasonably may be after the vesting of B debenture stock and ordinary stock by this Act created in the holders of existing debentures and preference and ordinary shares each of such holders shall deliver up to the Company to be cancelled his existing debenture or certificate of preference or ordinary shares as the case may be or prove to the satisfaction of the directors the loss or

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destruction thereof and thereupon such existing debentures and preference and ordinary shares shall be cancelled accordingly and the Company shall if required issue to the holder certificates of B debenture stock or ordinary stock as the case may be to which he is entitled under this Act.

Cancelling powers to Company in Great Western Railway Act 1886.

26. All powers conferred upon the Company by the Great Western Railway Act 1886 of creating and issuing shares or stock or of borrowing are hereby cancelled and repealed.

Confirming agreement with Cornwall Railway Company now Great Western Company.

27. The agreement of the twenty-fifth day of August one thousand eight hundred and sixty-five made between the Company and the Cornwall Company now amalgamated with the Great Western Company as set forth in the schedule to this Act is hereby confirmed and full effect may and shall be given thereto as if the Great Western Company had been party thereto instead of the Cornwall Company and such agreement shall extend and apply not only to the existing railways of the Company but also subject to the provisions of this Act for the protection of the Minerals Company to the railway by this Act authorised so soon as the same is constructed and opened for public traffic.

Tolls on traffic conveyed partly on the railway and partly on railways of Great Western Company.

28. During the continuance of the scheduled agreement of the twenty-fifth day of August one thousand eight hundred and sixty-five the railways of the Company and of the Great Western Company shall for the purposes of short distance tolls and charges be considered as one railway and in estimating the amount of tolls and charges in respect of traffic conveyed partly on the railways of the Company and partly on the railways of the Great Western Company for a less distance than three miles tolls and charges may only be charged as for three miles and in respect of passengers for every mile or fraction of a mile beyond three miles tolls and charges as for one mile only and in respect of animals minerals and goods for every quarter of a mile or fraction of a quarter of a mile beyond three miles tolls and charges as for a quarter of a mile only and no other short distance charge shall be made for the conveyance of passengers animals minerals or goods partly on the railways of the Company and partly on the railways of the Great Western Company.

Saving rights of Post-master-General.

29. Nothing in this Act or in the agreement set forth in the schedule to this Act shall affect the rights of the Postmaster-General under the Telegraph Act 1878 to place and maintain telegraphic lines in under upon along over or across the railway by this Act authorised and from time to time to alter such telegraphic lines and to enter upon the land and works comprised in the undertaking of the Company for the purposes in the Telegraph Act

1878 specified and the Postmaster-General shall after the passing of this Act be at liberty to exercise all the rights aforesaid notwithstanding that the undertaking of the Company or any part thereof is worked by the Great Western Company.

Saving rights under certain agreements &c.

30. Except as in this Act expressly provided nothing in this Act shall take away lessen or prejudicially affect the rights powers liberties privileges or advantages of the Company or the Minerals Company under the recited agreement of the twentieth day of April one thousand eight hundred and seventy-seven or under the recited grant of the twenty-ninth day of September one thousand eight hundred and seventy-nine made by the Minerals Company to the Company in pursuance of the first-mentioned agreement or under the recited heads of agreement of the ninth day of May one thousand eight hundred and seventy-seven or the agreement of the twenty-ninth day of January one thousand eight hundred and eighty-four or the deed of conveyance of the sixteenth day of September one thousand eight hundred and eighty-five.

Interest not to be paid on calls paid up.

31. 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.

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

32. 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 railway or to execute any other work or undertaking.

Provision as to general Railway Acts.

33. Nothing in this Act contained shall exempt the Company or their railway from the provisions of any general Act relating to railways or the better and more impartial audit of the accounts of railway companies now in force or which may hereafter pass during this or any future session of Parliament or from any future revision or alteration under the authority of Parliament of the maximum rates of fares and charges or of the rates for small parcels.

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SCHEDULE referred to in the foregoing Act.

Articles of Agreement made the twenty-fifth day of August in the year of our Lord one thousand eight hundred and sixty-five between the Lostwithiel and Fowey Railway Company (herein called the Fowey Company) of the one part and the Cornwall Railway Company (herein called the Cornwall Company) of the other part.

Whereas by the Lostwithiel and Fowey Railway Act 1862 the Fowey Company were incorporated and were authorised to make and maintain the Lostwithiel and Fowey Railway being a railway to commence by a junction with the Cornwall Railway near to the bridge which carries that railway over the river Fowey and to terminate at or near to Caffamill Pill in the borough and parish of Fowey with approaches stations wharfs works and conveniences connected therewith and provision was thereby made (section 23) with respect to the widening of that bridge and (section 24) with respect to the junction of the railway with the Cornwall Railway and (section 25) with respect to the maintenance and repair of works for preventing danger inconvenience or interruption to the traffic on the Cornwall Railway and the maintenance and payment of servants for the safe working of the junction And it was enacted (section 47) that the Fowey Company and the Cornwall Company from time to time might make all such contracts and arrangements as they might think fit with respect to the maintenance user and working of the railway or any part thereof by the Cornwall Company and with respect to the conduct and regulation of the traffic on the railway or any part thereof and on the Cornwall Railway or any part thereof and with respect to the user by the Fowey Company of so much of the Cornwall Railway as is situate between the junction therewith of the railway and the station of the Cornwall Company at Lostwithiel and also of that station and the works and conveniences connected therewith respectively and with respect to the fixing collection division apportionment and application of the tolls rates and charges to be demanded and taken for such traffic or any part thereof respectively or for such user as aforesaid and with respect to the compensation to be made by either of the two companies to the other of them for those purposes or any of them and with respect to any other matters in connection with such working as the two companies should mutually agree on And (section 48) that any contract or arrangement which under the authority of that Act might be entered into between the Fowey Company and the Cornwall Company should be and continue for such a term or period as should be mutually agreed upon between the two companies But no such contract or arrangement save only so far as it might be entered into under the provisions of the Railways Clauses Consolidation Act 1845 incorporated with that Act or any other general statute or law from time to time in force and applicable to the Fowey Company and the Cornwall Company respectively should have any operation until the same should have been approved by the Board of Trade and no such contract or arrangement should in any manner alter affect increase or diminish any of the tolls rates or charges which the two companies should for the time being be respectively authorised and entitled to demand and receive from any person or

from any other company but all other persons and companies should notwithstanding any such contract or arrangement be entitled to the use and benefit of the railway to which the same might relate upon the same terms and conditions and on payment of the same tolls rates and charges as they would have been in case no such contract and arrangement had been entered into Provided that the Board of Trade should not approve such contract or arrangement without being satisfied that the same had been duly assented to by the shareholders of the Fowey Company and the Cornwall Company respectively in special meeting assembled for that purpose as by that Act directed Provided also that if at the expiration of ten years after the making of any such contract or arrangement and so from ten years to ten years the Board of Trade were of opinion that the public interests were injuriously affected by any of the terms or conditions thereof the Board of Trade might require the parties thereto to modify the terms and conditions of such contract or arrangement in such manner as the Board of Trade might think necessary for removing the public injury and such contract or arrangement should be modified accordingly And (section 50) that no such contract or arrangement should have any operation or effect unless and until it had been duly assented to by three-fifths of the votes of the shareholders of the Fowey Company and the Cornwall Company present in person or by proxy at a general meeting of the respective companies specially convened for that purpose And (section 52) that when and so long as the railway should be worked by the Cornwall Company the tolls rates and charges to be demanded and received for the conveyance of passengers horses cattle carriages and goods thereon should not exceed the tolls rates and charges for the time being authorised to be demanded and received for the conveyance of similar traffic upon the Cornwall Railway And (section 53) that when and so long as the Cornwall Company should work the railway or any part thereof under any contract or arrangement which might be entered into under the authority of that Act the railway of the Fowey Company and the railways of the Cornwall Company should for the purposes of tolls and charges be considered as one railway and in estimating the amount of tolls and charges in respect of traffic conveyed partly on the railway of the Fowey Company and partly on the railways of the Cornwall Company for a less distance than three miles tolls and charges might only be charged as for three miles and in respect of passengers for each mile or fraction of a mile beyond three miles tolls and charges as for one mile only and in respect of animals minerals and goods for every quarter of a mile or fraction of a quarter of a mile beyond three miles tolls and charges as for a quarter of a mile only and no other short distance charge should be made for the conveyance of passengers animals and goods or other matters partly on the railway of the Fowey Company and partly on the railways of the Cornwall Company And whereas the Fowey Company have proceeded to put the recited Act in execution and have nearly completed the construction from Lostwithiel to Carne Point of the railway thereby authorised And whereas by an indenture or deed of covenant dated the twenty-seventh day of April one thousand eight hundred and sixty-five between the Fowey Company of the one part and the Cornwall Company of the other part the two companies have mutually covenanted with each other with respect to the widening of the bridge which carries the Cornwall Railway over the River Fowey and the laying down making and maintaining on and in connection with that bridge and the junction of the two railways of lines of rails and other incidental works and buildings and with respect to the

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payment to be made by the Fowey Company to the Cornwall Company for the user by the Fowey Company of those lines of rails works and buildings And whereas the two companies have determined to enter into and execute these presents by way of a contract and arrangement under section 47 of the recited Act And whereas these presents have been duly assented to by three-fifths of the votes of the shareholders of the two companies respectively present in person or by proxy at general meetings of the two companies respectively specially convened for the purpose the special general meeting of the Fowey Company having been held on the twenty-fourth day of August one thousand eight hundred and sixty-five and the special general meeting of the Cornwall Company having been held on the twenty-fifth day of August one thousand eight hundred and sixty-five And whereas it is intended that these presents shall be forthwith submitted to the Board of Trade for their approval Now therefore these presents witness that for the considerations herein appearing It is hereby mutually agreed by and between the Fowey Company for themselves and their assigns and the Cornwall Company for themselves and their assigns as follows (that is to say):—

Article 1. In these articles where the context permits the expression "the railway" means and includes the Lostwithiel and Fowey Railway as authorised by the recited Act and the sidings stations approaches works and conveniences from time to time connected therewith including when the same are made the several lines of rails works and buildings of which in accordance with the recited agreement in that behalf the Fowey Company are to have the user and the word "traffic" means and includes all passenger small parcel animal mineral goods and other traffic whatsoever whether local or through and mails troops and police to be respectively conveyed by the Cornwall Company on the railway or any part thereof.

Article 2. The Fowey Company will proceed with the execution of the railway and will to the reasonable satisfaction of the Cornwall Company complete the same as a single line of railway on the broad gauge with proper and sufficient sidings and turn out and passing places and with proper and sufficient approaches yards stations station-houses station fixtures furniture and fittings station accommodation sheds cranes water tanks water supply electric telegraph signals and other works and conveniences including if required by the Board of Trade an engine turn-table at Fowey and so that the railway shall at the latest by the time limited by Parliament be approved by the Government Inspector of Railways as being in all respects fit to be opened and used for public traffic.

Article 3. Before the opening of the railway for public traffic it shall be inspected by the Cornwall Company's engineer and the Fowey Company will to his reasonable satisfaction make and provide all such works and conveniences in connection with the railway and make all such arrangements as shall respectively be proper and sufficient for enabling the Cornwall Company on and after the opening of the railway for public traffic to work and use the railway in accordance with these presents.

Article 4. The Fowey Company by themselves or their contractors will to the reasonable satisfaction of the Cornwall Company properly and sufficiently maintain the railway and keep it in thorough repair and in good working order and condition for a twelvemonth after the railway or as the case shall be any part thereof is first worked for public or other traffic by the Cornwall Company and after as well as

during the twelvemonth will make good all damage occasioned to any sea wall or sea defence of the railway at Fowey occasioned by storm or otherwise than by ordinary wear and tear or natural decay. A.D. 1891.

On and for ever after the opening of the railway for public traffic the following articles 6 to 41 both inclusive shall have effect and if part of the railway be opened for public traffic before the completion of the whole of the railway then those articles shall apply to so much of the railway as from time to time is opened for public traffic. Article 5.

If and whenever any additional sidings station accommodation or other works or conveniences in connection with the railway or required for the due reception accommodation conveyance or delivery of traffic are found requisite the Fowey Company on being thereunto requested by the Cornwall Company will forthwith make or provide the same to the reasonable satisfaction of the Cornwall Company's engineer and all works and conveniences so made or provided shall thereupon and thenceforth be part of the railway. Article 6.

Provided that nothing in these presents shall render it obligatory on the Fowey Company to make any outlay or incur any expense or liability which they from time to time cannot make or defray by means of the moneys which they from time to time can raise by shares or by borrowing or partly by shares and partly by borrowing. Article 7.

As between the two companies the Cornwall Company from time to time so far as they lawfully can and at their own expense may make all such alterations and improvements of and works and conveniences in connection with the railway as the Cornwall Company think requisite for the due reception accommodation conveyance and delivery of traffic so as the same respectively be such as the Fowey Company might lawfully make and be made to the reasonable satisfaction of the Fowey Company's engineer and all alterations improvements works and conveniences so made shall thereupon and thenceforth be part of the railway. Article 8.

Except only as is otherwise provided by Article 4 the Cornwall Company will maintain the railway and keep the railway in thorough repair and in good working order and condition making all such renewals and restorations and amendments as are from time to time proper and sufficient in that behalf and will perform this article to the reasonable satisfaction of the Fowey Company's engineer. Article 9.

The Fowey Company's engineer shall at all times have full and free access to and inspection of the railway and every part thereof in order to ascertain the state of repair and condition thereof. Article 10.

The Fowey Company from time to time may give to the Cornwall Company notice of any want of repair restoration renewal or amendment of the railway or any part thereof. Article 11.

Forthwith after the receipt by the Cornwall Company of any notice under Article 11 they so far as their obligations under Article 9 extend will make to the reasonable satisfaction of the Fowey Company's engineer the repairs restorations renewals or amendments specified in the notice. Article 12.

If and whenever the Cornwall Company fail in the due performance of Article 12 the Fowey Company may make every repair restoration renewal or amendment as to which the Cornwall Company so make default and the Article 13.

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Cornwall Company will repay to the Fowey Company all their expenses in that behalf.

Article 14. The Cornwall Company will work and use the railway and receive accommodate convey and deliver traffic thereon in a proper manner and so as fairly to develop the traffic of the district to be served by the railway and as if the railway were part of the Cornwall Railway and on every working day will run not less than three trains with passenger carriages each way between Lostwithiel and Fowey and will run all the trains on the railway in convenient connection with trains on the Cornwall Railway.

Article 15. The Cornwall Company will provide all locomotive power engines carriages waggons and other rolling stock plant stores materials and labour proper and sufficient for the working and user of the railway by the Cornwall Company and the reception accommodation conveyance and delivery by them of traffic thereon.

Article 16. The Cornwall Company will provide and employ all superintendents station-masters inspectors booking clerks porters engine drivers guards watchmen workmen and other officers and servants proper and sufficient for the working and user of the railway and for the traffic thereon provided that the Fowey Company shall appoint and employ their own secretary and engineer.

Article 17. The Fowey Company will not at any time directly or indirectly except by the agency of the Cornwall Company act as carriers on the railway or any part thereof.

Article 18. With respect to the conveyance of mails troops or police or any other traffic if any which the Fowey Company are from time to time lawfully called on to convey on the railway or any part thereof the Cornwall Company so far as they from time to time lawfully can will act as the agents of the Fowey Company in conveying the same and will duly perform the duties in that behalf of the Fowey Company.

Article 19. The Cornwall Company will establish and maintain between all stations on the railway and all stations on the Cornwall Railway a complete system of through fares and rates and through booking for all through traffic on the railway with such modifications if any from time to time of the system as circumstances require.

Article 20. The Cornwall Company so far as they from time to time lawfully can will also establish and maintain for all through traffic on the railway a like system between the station on the railway at Fowey and all other stations between which and the station at Lostwithiel on the Cornwall Railway there is from time to time a system of through fares and rates and through booking for through traffic on the Cornwall Railway.

Article 21. The Cornwall Company will bear and pay all outgoings expenses and liabilities of and relating to the maintenance working and user by them of the railway and the reception accommodation conveyance and delivery by them of traffic thereon.

Article 22. The several expenses provided for by section 25 of the recited Act with respect to the maintenance and repair of works and the maintenance and payment of servants shall be part of the expenses relating to the working and user of the railway which are to be borne and paid by the Cornwall Company.

Article 23. The several payments which in pursuance of the recited indenture are to be made by the Fowey Company to the Cornwall Company shall subject to the

provisions of this agreement be made as is provided for by that indenture The payments for officers and servants at the Lostwithiel Station of the Cornwall Railway being covered by the division of terminals. A.D. 1891.

The Cornwall Company will bear and pay and indemnify the Fowey Company against all Government duty in respect of passenger traffic and all other taxes and all poors rates and other rates assessments salaries wages and other outgoings respectively in relation to the maintenance working and user of the railway and to the traffic thereon except the salaries of the Fowey Company's secretary accountant clerks and engineer. Article 24.

The Fowey Company will bear and pay and will indemnify the Cornwall Company against all tithe and other rentcharges and other fixed charges on the railway and all land tax and other taxes rates and assessments on and in respect of the railway other than the taxes rates and assessments to be paid by the Cornwall Company as provided for by article 24. Article 25.

The Cornwall Company may and will from time to time fix within the lawful limits and collect recover and receive all the tolls fares rates and charges payable in respect of the railway and the traffic thereon including all tolls if any from time to time payable to the Fowey Company for the user of the railway by any companies and persons other than the Cornwall Company. Article 26.

The gross amount of all the tolls fares rates and charges from time to time receivable by the Cornwall Company in accordance with Article 26 (herein called the gross receipts) shall from time to time be divided between and belong to the two companies as follows (that is to say):— Article 27.

First the Cornwall Company shall retain one-half of the gross receipts and the same shall belong to them as their remuneration to cover all their expenses and liabilities of and incident to the maintenance working and user by them of the railway and relating to the traffic thereon and their other expenditure and liabilities under these presents:

Secondly the Fowey Company shall have the other half of the gross receipts and the same shall be paid and belong to them as the owners of the railway.

The gross receipts shall include a due mileage proportion in respect of the railway of all through fares rates and charges that mileage proportion to include all terminals in respect of the station at Fowey on the railway and to include a due proportion in accordance with the regulations in that behalf from time to time in force of the railways clearing house of all terminals at the Lostwithiel Station on the Cornwall Railway for traffic on the railway but not to include any terminals in respect of any other railway. Article 28.

The payments to be made to the Fowey Company under Article 27 shall fall due to them half-yearly on the thirtieth day of June and the thirty-first day of December in every year and every half-yearly payment shall be made within three calendar months after the expiration of the respective half-year. Article 29.

The Cornwall Company will keep all such accounts and vouchers as shall be proper and sufficient for the purposes of these presents which accounts and vouchers shall be open at all reasonable times to the inspection and transcription of the directors and agents of the Fowey Company and the Cornwall Company will afford to them all proper and sufficient facilities for the inspection and transcription (including free passes in first-class carriages for not exceeding three persons on any one day and for not exceeding three days for every Article 30.

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half-yearly account to and fro on the railway and the Cornwall Railway respectively) and rooms stationery fire and lights and the assistance of clerks.

Article 31. With respect to all through traffic on the railway and the Cornwall Railway and whether or not conveyed also on any other railway or railways the accounts of the tolls fares rates and charges for the same shall be so kept as that the due mileage proportion thereof provided for by Article 28 and the fairness of the apportionment thereof shall be clearly shown.

Article 32. The Cornwall Company will within forty-two days next after the thirtieth day of June and the thirty-first day of December respectively in every year transmit to the Fowey Company an accurate abstract of the accounts for the then last half-year.

Article 33. Every half-yearly abstract of accounts shall contain all particulars proper and sufficient for the fair explanation and understanding thereof and for showing clearly the gross receipts for the respective half-year and shall be in writing under the hand of the secretary or accountant of the Cornwall Company who shall at the foot thereof certify the accuracy thereof.

Article 34. If and whenever the Fowey Company within fourteen days after the transmission to them of any half-yearly abstract of accounts require the Cornwall Company to verify the same or any of the items thereof they will do so and the abstract of accounts shall if necessary be made correct and shall thenceforth be deemed a settled account Or if the fourteen days elapse without the Fowey Company requiring any verification of the abstract of accounts then the same shall thenceforth be deemed a settled account and no account once settled shall be re-opened except for an error of fifty pounds or upwards discovered therein on or before the settlement of the then next half-yearly abstract of accounts.

Article 35. If and whenever the Cornwall Company fail in duly keeping or producing any account or voucher by these presents required to be kept or produced by them or in duly transmitting half-yearly to the Fowey Company any abstract of accounts by these presents required to be so transmitted or in duly verifying any such account or half-yearly abstract of accounts every reasonable presumption which the case will admit shall be made against the Cornwall Company so in default and in favour of the Fowey Company the fact and extent of the failure and the reasonableness of the presumption to be in case of difference determined by arbitration.

Article 36. Every notice request account or other writing to be given by either of the two companies to the other of them for any of the purposes of this agreement shall be sufficient if it be signed by the secretary of the company giving it and be delivered to the secretary of the other company or be left for them at their principal office.

Article 37. Any such notice or other writing so signed may be sent by post as a registered letter to the secretary to whom it might be so delivered and every such letter so sent by post shall be deemed to be delivered to the person to whom it is addressed on the day on which it ought in the ordinary course of the post to be delivered at the place to which it is addressed.

Article 38. So far as from time to time lawfully may be the Cornwall Company shall for the purposes of the maintenance working and user by them of the railway and the reception accommodation conveyance and delivery of traffic thereon and other

the purposes of these presents have exercise and enjoy all the rights powers privileges and authorities whatsoever in that behalf of the Fowey Company and as fully and effectually as if the railway were part of the Cornwall Railway.

Article 39. The Cornwall Company in the exercise of their rights powers privileges and authorities under these presents will in all respects duly perform and observe the several provisions with respect to the maintenance working and user of the railway and to the traffic thereon contained in the Act or Acts from time to time in force with respect to the railway.

Article 40. The Cornwall Company will at all times fully and freely indemnify and save harmless the Fowey Company from and against all penalties forfeitures losses damages cost charges and expenses claims and demands whatsoever in any way occasioned or incurred by or by reason of any act or default of the Cornwall Company or any of their directors agents officers or servants in relation to the maintenance working and user by the Cornwall Company of the railway or any part thereof or to any traffic thereon.

Article 41. The Fowey Company so far as they from time to time lawfully can will abstain from acting as a common carrier on the railway and from doing or concurring in anything which might directly or indirectly interrupt hinder interfere with or in any way disturb the user or quiet enjoyment by the Cornwall Company of any of the rights powers privileges and authorities intended to be secured to them by these presents.

Article 42. All the superfluous lands if any of the Fowey Company and the rents issues profits and proceeds thereof shall belong to them as their exclusive property and shall not be brought into account for any of the purposes of these presents but shall be dealt with and disposed of by them as they shall think fit.

Article 43. If and whenever any difference arises between the Fowey Company or their assigns and the Cornwall Company or their assigns touching the true intent or construction of these presents or touching anything to be done suffered or omitted in pursuance of these presents or touching any of the incidents or consequences of these presents or touching any breach or non-fulfilment or alleged breach or alleged non-fulfilment of any of the terms and conditions of these presents or touching any liability damages losses costs or expenses by reason of any such breach or non-fulfilment or touching any claim or demand relating to any such liability damages losses costs or expenses or otherwise relating to any of the subject matters of these presents every such difference shall be referred to and determined by the arbitration of a single arbitrator in accordance with the provisions of the Railway Companies Arbitration Act 1859 and these presents shall accordingly be read and have effect as an agreement to refer and a reference to arbitration under that Act of every such difference.

Article 44. The single arbitrator shall be a person from time to time appointed in that behalf by the respective chairmen of the two companies by writing under their respective hands or if and whenever they fail so to appoint a single arbitrator then shall be a competent and impartial person from time to time on the application of the two companies or either of them nominated in that behalf by the Board of Trade.

Article 45. If and whenever the arbitrator awards that there has been any failure by each or either of the two companies in the due performance or observance of any of the terms and conditions of these presents he may if he think fit award that

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any lawful sum or sums in gross or otherwise shall be paid by the respective company in default to the other company as liquidated damages for the failure and either with or without awarding any such payment as liquidated damages for any or every continuance or recurrence of the failure.

Article 46. If at any time hereafter Parliamentary authority be obtained for the performance and observance of this agreement by the lessees of the Cornwall Railway instead of or as representing the Cornwall Company then the Fowey Company will consent to the substitution accordingly of those lessees during the continuance of the lease of the Cornwall Railway for the Cornwall Company and if and whenever application is made to Parliament by the Cornwall Company and their lessees or any of them for the requisite authority in that behalf then the Fowey Company at the request and expense of the company or companies making the application will assent thereto.

Article 47. These presents are subject to the several provisions of sections 48 and 50 and 52 and 53 respectively of the recited Act.

In witness whereof the parties hereto have hereunto affixed their respective common seals the day and year first above written.

The seal of the Cornwall Company

W. H. Bond
Secretary.

Seal.

The common seal of the Lostwithiel and Fowey Railway Company affixed in the presence of

R. T. Head
Chairman.

L. S.

Wm. Polkinghorne
Secretary.

The Board of Trade approve of the foregoing agreement pursuant to the Lostwithiel and Fowey Railway Act 1862.

Signed by order of the Board of Trade the twentieth day of September one thousand eight hundred and sixty-five.

W. D. Fane
An Assistant Secretary of the said Board.

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