CHAPTER xlvi.

A.D. 1872.

An Act to authorise the North British, Arbroath, and Montrose Railway Company to make and maintain certain new railways; and for other purposes. [27th June 1872.]

34 & 35 Vict. c. cxxiii.

WHEREAS by the North British, Arbroath, and Montrose Railway Act, 1871, (herein-after called the recited Act,) the North British, Arbroath, and Montrose Railway Company (herein-after called the Company) was incorporated, and were authorised to make and maintain certain railways in the county of Forfar from the railway of the Caledonian Railway Company at Arbroath:

And whereas by the recited Act certain provisions were inserted for the protection and benefit of the Caledonian Railway Company, the North-eastern Railway Company, and the Great Northern Railway Company (herein-after called the three Companies):

And whereas an agreement (herein-after called the recited agreement) between the promoters of the North British, Arbroath, and Montrose Railway of the first part, and the North British Railway Company of the second part, with reference to the working, management, and maintenance of the railways thereby authorised in perpetuity by the North British Railway Company, and which agreement is scheduled to the recited Act, was by the recited Act confirmed and made binding on the Company and the North British Railway Company:

And whereas by the recited Act (section 6) the Company became bound to apply to Parliament in the present session thereof for and to use their best endeavours to obtain an Act to enable them to make a branch railway to connect the railway No. 1 thereby authorised with the Montrose and Bervie Railway near to the Broomfield station on that railway:

And whereas it is expedient that the Company should be authorised to construct the said branch railway and the other railways herein-after mentioned, and for these purposes should be authorised to raise a further sum of money, and that further powers should be conferred upon them:

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And whereas it is expedient that the provisions contained in the recited Act for the protection of the three Companies over and with reference to the railways thereby authorised should be extended and made applicable to the railways hereby authorised, and also that the recited agreement should be made applicable to the railways hereby authorised as well as to the railways authorised by the recited Act:

And whereas it is expedient that the Company should be authorised to advance money to the Montrose Bridge Commissioners as herein-after provided:

And whereas plans and sections describing the lines and levels of the intended new railways, and the lands to be taken for the purposes thereof, and a book of reference to such plans containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of such lands, have been deposited with the principal sheriff clerk of the county of Forfar, and which are herein-after referred to as the deposited plans and sections and the deposited book of reference:

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; (that is to say,)

Short title.

1. This Act may be cited for all purposes as the North British, Arbroath, and Montrose Railway Act, 1872.

Provisions of general Acts herein named incorporated.

2. The Lands Clauses Consolidation (Scotland) Act, 1845, the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Clauses Consolidation (Scotland) Act, 1845, and also Part I. of the Railways Clauses Act, 1863, relating to construction of a railway, are (except where expressly varied by this Act) incorporated with and form part of this Act.

Provisions of Companies Clauses Acts herein named incorporated.

3. The clauses and provisions of the Companies Clauses Consolidation (Scotland) Act, 1845, with respect to the distribution of the capital of the Company into shares, with respect to the transfer or transmission of shares, with respect to the payment of subscriptions and the means of enforcing the payment of calls, with respect to the forfeiture of shares for nonpayment of calls, with respect to the remedies of creditors of the Company against the shareholders, with respect to the borrowing of money by the Company on mortgage or bond, with respect to the conversion of the borrowed money into capital, with respect to the consolidation of the shares into stock, with respect to the general meetings of the

Company and the exercise of the right of voting by the shareholders, with respect to the giving of notices, and with respect to the provision to be made for affording access to the special Act by all parties interested, and Parts I., II., and III. of the Companies Clauses Act, 1863, relating respectively to cancellation and surrender of shares, to additional capital, and to debenture stock, are (except where expressly varied by this Act) incorporated with and form part of this Act.

Interpretation of terms.

4. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith shall have the same respective meanings, unless there be something in the subject or context repugnant to such construction; and the expression "the railways" shall mean the railways by this Act authorised or any part thereof.

Power to make variations and railways.

5. 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 railways herein-after described, with all proper stations, approaches, works, and conveniences connected therewith, and may enter upon, take, and use such of the lands delineated on the said plans and described in the deposited books of reference as may be required for that purpose.

The railways herein-before referred to and authorised by this Act are:—

First. A railway No. 1, four furlongs one chain or thereabouts in length, wholly situate in the parish of Montrose and county of Forfar, commencing by a junction with the authorised North British, Arbroath, and Montrose Railway at a point on the foreshore of the estuary known as Montrose Basin, and terminating near the Rosehill Cemetery Ground, Montrose:

Second. A railway No. 2, four furlongs, two chains, forty-five links or thereabouts in length, wholly situate in the parish of Montrose and county of Forfar, commencing at the point herein-before described as the termination of railway No. 1, and terminating by a junction with the Montrose and Bervie Railway:

Third. A railway No. 3, one furlong, five chains, forty links or thereabouts in length, wholly situate in the parish of Montrose and county of Forfar, commencing at the point herein-before described as the termination of railway No. 1, and terminating by a junction with the Montrose branch of the Caledonian Railway.

Protecting works and lands of

6. Nothing contained in this Act shall authorise the Company in the construction or maintenance of the railways by this Act

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authorised to use, enter upon, or interfere with any of the lands or works of the Caledonian Railway Company, except so far as may be necessary for the purpose of effecting the junction between railway No. 3 and that Company's Montrose branch by this Act authorised, and that only in the manner and subject to the provisions of sections 9, 10, 11, and 12 of "The Railways Clauses Act, 1863," incorporated as aforesaid with this Act, and except also so far as may be necessary for the purpose of carrying railway No. 2 over the said Montrose branch by a bridge in manner following; (that is to say,)

First. The bridge shall have a span of not less than twenty-eight feet, and it shall have a clear headway throughout of not less than fourteen feet above the level of the rails of the said Montrose branch at the point of crossing, and it shall be so placed as to admit of the formation in the most convenient manner of a double line of rails on that branch:

Second. The bridge and works connected therewith shall be constructed, and when necessary repaired, under the superintendence and to the reasonable satisfaction of the engineer for the time being of the Caledonian Railway Company, and according to plans and specifications which previously to the commencement of the bridge and works connected therewith shall be submitted to such engineer and approved by him, or in the event of difference by an engineer to be appointed by the Board of Trade:

Third. The Company shall not in the construction or maintenance of the said bridge and works connected therewith, enter upon, take, or use any of the works of the Caledonian Railway Company, nor any of the lands of that Company, except such of the said lands as shall be necessary for the bridge and works connected therewith.

Power to raise additional capital.

7. The Company may from time to time raise any sum not exceeding fifteen thousand pounds by the creation and issue of new ordinary shares or stock.

Shares not to be issued until one fifth paid up.

8. The Company shall not issue any share created under the authority of this Act, nor shall any share vest in the person accepting the same, unless and until a sum not being less than one fifth part of the amount of such share shall have been paid in respect thereof.

Calls.

9. One fifth of the amount of a share shall be the greatest amount of a call upon any share created under the authority of this Act, and three months at least shall be the interval between

successive calls, and three fourths of the amount of the share shall be the utmost aggregate amount of the calls made in any year upon any share.

Scale of voting in respect of new shares or stock.

10. At all general meetings of the Company every holder of shares or stock created under the authority of this Act shall have the right of voting in respect thereof on the principle of having one vote for every sum of ten pounds of nominal amount for the time being held by him up to one hundred pounds, and an additional vote for every sum of fifty pounds of nominal amount beyond the first one hundred pounds up to one thousand pounds, and an additional vote for every sum of one hundred pounds of nominal amount beyond the first one thousand pounds, and that no person shall be entitled to vote in respect of any less amount than ten pounds.

Power to borrow.

11. The Company may from time to time borrow on mortgage any sum not exceeding in the whole five thousand pounds, but no part thereof shall be borrowed until the whole of the said additional capital of fifteen thousand pounds is subscribed for, issued, and accepted, and one half thereof is paid up, and the Company have proved to the sheriff who is to certify under the forty-second section of the Companies Clauses Consolidation (Scotland) Act, 1845, before he so certifies, that the whole of the capital has been issued and accepted, and that one half thereof has been paid up, and that not less than one fifth part of the amount of each separate share or portion of stock has been paid on account thereof before or at the time of the issue or acceptance thereof, and that such capital was issued bonâ fide, and is held by the subscribers or their assignees, and that such subscribers or their assignees are legally liable for the same, of which proof having been given, the certificate of such sheriff that satisfactory proof to that effect has been given to him shall be sufficient evidence.

Debenture stock.

12. The Company may create and issue debenture stock.

Former mortgages to have priority.

13. All mortgages granted by the Company under the authority of the recited Act before the passing of this Act, and which shall be subsisting at the time of the passing of this Act, shall during the continuance of such mortgages have priority over any mortgages granted under the authority of this Act.

For appointment of a judicial factor.

14. The mortgagees of the Company may enforce payment of the arrears of interest or principal, or principal and interest, due on their mortgages by the appointment of a judicial factor; in order to authorise the appointment of a judicial factor in respect of

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arrears of principal the amount owing to the mortgagees by whom the application for a judicial factor shall be made shall not be less than one thousand pounds in the whole.

Interest on debenture stock and debentures to rank equally.

15. Notwithstanding anything in Part III. of "The Companies Clauses Act, 1863," contained, the interest of all debenture stock at any time created and issued by the Company shall rank pari passu with the interest of all mortgages at any time granted by the Company, and shall have priority over all principal moneys secured by such mortgages.

Making certain provisions of recited Act applicable to this Act.

16. The following sections of the recited Act shall apply to the railways, and confer the same rights over and in respect to the same to and in favour of the respective companies therein named, in the same manner and to the same effect as if the railways hereby authorised had been authorised by the recited Act and formed part of the undertaking of the Company, and the recited Act and this Act shall in respect of these sections be read as one Act; that is to say,

Section 30 (running powers and facilities in favour of the Caledonian Railway Company):

Section 33 (saving East Coast traffic):

Section 34 (restricting the conveyances of certain traffic):

Section 35 (as to traffic between Dundee and Arbroath):

Section 36 (meaning of expression North British Railway).

Section 31 of recited Act (and agreement thereby confirmed) made applicable to railways hereby authorised.

17. Section 31 of the recited Act, and the agreement thereby confirmed and set forth in the First Schedule to the recited Act, shall extend and apply to the railways, and be read and have effect as if the railways had been authorised by the recited Act.

Company may lend to Montrose Bridge Commissioners or contribute to debt on that bridge.

18. The Company may advance in loan to the Commissioners of the bridge over the river South Esk near the town of Montrose, or may contribute towards paying off and discharging or reducing the debt on the bridge, any sum not exceeding the sum of two thousand pounds.

Application of moneys.

19. All moneys raised under this Act, whether by shares, stock, debenture stock, or borrowing, shall be applied to the purposes of this Act only.

Period for compulsory purchase of lands.

20. The powers of the Company for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of two years from the passing of this Act.

Period for completion of railways.

21. The railways shall be completed within four years from the passing of this Act, and on the expiration of that period the

powers by this Act granted to the Company for executing the railways or otherwise in relation thereto shall cease to be exercised, except as to so much thereof respectively as shall then be completed.

Power to deviate.

22. Notwithstanding anything in "The Railways Clauses Consolidation (Scotland) Act, 1845," contained, the Company in constructing the railways may make lateral deviations from the lines described on the deposited plans to any extent not exceeding the limits of deviation marked thereon, and may make vertical deviations from the levels shown on the deposited sections to any extent not exceeding five feet.

Power to cross roads on the level.

23. Subject to the provisions in the Railways Clauses Consolidation (Scotland) Act, 1845, and in Part I. (relating to the construction of a railway) of the Railways Clauses Act, 1863, contained in reference to the crossing of roads on the level, the Company may in the construction of the railways carry the same with a single line only whilst the railways shall respectively consist of a single line, and afterwards with a double line of railway only, across and on the level of the roads herein-after mentioned; (that is to say,)

No. on deposited Plan.	Parish.	Description of Road.
	Railway No. 1.	
8	Montrose.	Public road.
	Railway No. 3.	
79	Montrose.	Public road.
80	Montrose.	Public road.

Deposit money not to be repaid until line opened or half the capital paid up and expended.

24. Whereas pursuant to the standing orders of both Houses of Parliament, and to an Act of the ninth and tenth years of Her present Majesty, chapter twenty, a sum of seven hundred and fifty pounds, being five per centum upon fifteen thousand pounds, the amount of the estimate in respect of the railways, has been deposited with the Court of Exchequer of Scotland in respect of application to Parliament for this Act: Be it enacted, that, notwithstanding anything contained in the said recited Act, the said sum of seven hundred and fifty pounds so deposited as aforesaid in respect of the application for this Act 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, unless the Company shall previously to the expiration of the period limited by this Act for completion of the railways either open the said railways for the public conveyance of passengers, or prove to the satisfaction of the

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Board of Trade that the Company have paid up one half of the amount of the capital by this Act authorised to be raised by means of shares or stock, and have expended for the purposes of this Act a sum equal in amount to such one half of the said capital; and if the said period shall expire before the Company shall either have opened the railways for traffic or have given such proof as aforesaid to the satisfaction of the Board of Trade, the said sum of money deposited as aforesaid shall be applied in the manner herein-after specified, and the certificate of the Board of Trade that such proof has been given to their satisfaction as aforesaid shall be sufficient evidence of the fact so certified, and it shall not be necessary to produce any certificate of this Act having passed, anything in the said recited Act to the contrary notwithstanding.

Application of deposit.

25. The said sum of money deposited as aforesaid shall be applicable, and after due notice in the Edinburgh Gazette shall be applied, towards compensating any landowners or other persons whose property may have been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the railways or any of them or any portion thereof, or who may 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 shall have been paid, and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the Court of Exchequer in Scotland may seem fit; and if no such compensation shall be payable, or if a portion of the said sum of money shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said sum of money, or such portion thereof as may not be required as aforesaid, shall be paid to or on the application of the person or persons or the majority of the persons named in such warrant or order as aforesaid, or the survivors or survivor of them; provided that until the said sum of money shall have been repaid to the depositors or shall have become otherwise applicable as herein-before 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 person or persons or the majority of the persons named in such warrant or order as aforesaid, or the survivors or survivor of them.

Railways to form part of undertaking of Company.

26. The railways shall for the purpose of tolls, rates, and charges, and for all other purposes whatsoever, form part of the undertaking of the Company.

Interest not to be paid on calls paid up.

27. It shall not be lawful for the Company, out of any money by this Act authorised to be raised by shares or stock or by debenture

stock, or by the exercise of any power of borrowing, to pay interest or dividend to any shareholder on the amount of calls made in respect of the shares held by him: Provided 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 (Scotland) Act, 1845.

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

28. It shall not be lawful for the Company out of any money by this Act authorised to be raised to pay or deposit any sum of money which, by any standing order of either House of Parliament now or hereafter in force, may be required to be deposited in respect of any application to Parliament for the purpose of obtaining an Act authorising the Company to construct any other railway or to execute any other work or undertaking.

Saving rights of the Crown in the foreshore.

29. Nothing contained in this Act or in any of the Acts herein referred to shall authorise the Company to take, use, or in any manner interfere with any portion of the shore or bed of the sea, or of any river, channel, creek, bay, or estuary, or any right in respect thereof, belonging to the Queen's most Excellent Majesty in right of her Crown, and under the management of the Board of Trade, without the previous consent in writing of the Board of Trade on behalf of Her Majesty (which consent the Board of Trade may give), neither shall anything in the said Act or Acts contained extend to take away, prejudice, diminish, or alter any of the estates, rights, privileges, powers, or authorities vested in or enjoyed or exerciseable by the Queen's Majesty, her heirs or successors.

Railways not to be exempt from provisions of present and future general Acts.

30. Nothing herein contained shall be deemed or construed to exempt the railways from the provisions of any general Act relating to railways, and 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 authorised by this Act.

Expenses of Act.

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

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