ANNO DECIMO SEXTO & DECIMO SEPTIMO

VICTORIÆ REGINÆ.

Cap. lxxxi.

An Act to confirm certain Preference Shares created by the *North British* Railway Company, and to make better Provision for the Payment of the Debts of the said Company, and for other Purposes. [8th *July* 1853.]

WHEREAS by the Local and Personal Act Seventh of *George* the Fourth, Chapter Ninety-eight, the *Edinburgh and Dalkeith* Railway Company were incorporated, and various Powers were conferred upon such Company by the Local and Personal Acts Tenth of *George* the Fourth, Chapter One hundred and twenty-two, and Fourth and Fifth of *William* the Fourth, Chapter Seventy-one: And whereas by the Local and Personal Act Seventh and Eighth of *Victoria*, Chapter Sixty-six, the *North British* Railway Company were incorporated: And whereas by the Local and Personal Act Eighth and Ninth of *Victoria*, Chapter Eighty-two, and Ninth and Tenth of *Victoria*, Chapter Seventy-four, the Undertaking of the *Edinburgh and Dalkeith* Railway Company was purchased by and is now vested in the *North British* Railway Company: And

whereas by virtue of the Provisions of the recited Acts, as also of the Local and Personal Acts Eighth and Ninth of *Victoria*, Chapter One hundred and sixty-four, Ninth and Tenth of *Victoria*, Chapters Seventy-three and Seventy-four, and Tenth and Eleventh of *Victoria*, Chapter One hundred and thirty-six, the Share Capital of the Company amounted to Two millions and four hundred and twenty-three thousand Pounds: And whereas by the Local and Personal Act Eleventh and Twelfth of *Victoria*, Chapter Twenty-five, called "The *North British* Railway (Increase and Division of Capital) Act, 1848," the said Company were authorized, amongst other things, to raise by the Creation of new Shares an additional Capital of Six hundred thousand Pounds, to be divided into Shares of such Amount and upon such Terms as might be agreed on at any General Meeting of the Company: And whereas at a General Meeting of the said Company held on or about the Eighth Day of *March* One thousand eight hundred and forty-nine, it was, amongst other things, resolved to the Effect that the said Sum of Six hundred thousand Pounds should be raised by the Creation of Shares of Five Pounds each, to be called "Five Pounds Guaranteed Shares," which should be entitled to a minimum Dividend of Six *per Centum per Annum* for Five Years, and to a minimum Dividend of Five *per Centum per Annum* in perpetuity thereafter, in preference to the Dividends payable on the existing ordinary Shares of the Company, and that such Dividend should become due in half-yearly Portions payable as therein mentioned: And whereas the said Shares were created and issued in pursuance of such Resolutions, and the Amount thereof has been received and expended by the said Company, and the said minimum guaranteed Dividend of Six *per Centum per Annum* has since, and up to the last half-yearly General Meeting in *March* One thousand eight hundred and fifty-two, been paid thereon: And whereas Doubts have recently arisen whether the said Company were legally authorized to create such Shares in such Manner as to secure to the Holders thereof the Guarantee and Preference in respect of Amount and Payment of Dividend attached thereto by virtue of the said Resolutions; and it is expedient that such Doubts should be removed, and the Validity of the said Guarantee and Preference fully confirmed, and that the Effect thereof with respect to the Payment of Arrears of Dividends which have accrued and may from Time to Time accrue should be defined and declared: And whereas by the Local and Personal Act Fourteenth and Fifteenth of *Victoria*, Chapter Twenty-seven, called "The *North British* Railway (Stations Enlargement) Act, 1851," the said Company were authorized to construct certain Works therein mentioned, at an estimated Cost of Twenty-five thousand Pounds, and to raise such Sum, and also a Sum of Three hundred and five thousand five hundred Pounds, for discharging Liabilities incurred in making the

Railways

Railways and Works of the said Company, and for completing such Works, and for the Purchase of additional Plant, and otherwise for carrying into effect the Objects of the several Acts of Parliament relating to the said Company, (such several Sums of Twenty-five thousand Pounds and Three hundred and five thousand five hundred Pounds making together the Sum of Three hundred and thirty thousand five hundred Pounds,) by the Creation of Shares, and, with the Consent of Three Fifths of the Votes of the Shareholders present in Person or by Proxy at any General Meeting specially convened for the Purpose, to guarantee such Amount of Interest or Dividend not exceeding Five Pounds *per Centum per Annum* on the Amount for the Time being called upon the Shares to be so created, and to attach such other Privileges with respect to Preference or Priority or otherwise with respect to such Shares, or the Interest or Dividends to be payable in respect thereof, as might, with such Consent as aforesaid, be agreed upon at such Meeting or Meetings; but it was provided that no Guarantee of Interest or Dividend, or Preference or Priority in the Payment of Interest or Dividend, which might be granted under the Provisions of that Act, should prejudice or affect the Preference or Priority in the Payment of Interest or Dividends on the herein-before mentioned "Five Pounds Guaranteed Shares," which had already been issued and granted to the Extent of Six hundred thousand Pounds in Value as above set forth, or any Preference or Priority in the Payment of Interest or Dividend on any other Shares or Stock which might have been granted by the Company in pursuance of or which might have been confirmed by any previous Act of Parliament, or which might otherwise be lawfully subsisting: And whereas, in exercise of the Powers of the lastly-recited Act, and in accordance with the Provisions thereof, the said Company, at a Meeting held on the Twenty-first Day of *August* One thousand eight hundred and fifty-one, resolved to create One hundred and thirty-two thousand two hundred Shares of the nominal Value of Two Pounds Ten Shillings each, to be called "Guaranteed Stock (No. 2.)," which should rank next after the previously existing Guaranteed Stock, and be entitled to a fixed Dividend of Five Pounds *per Centum per Annum*, in preference to the Dividends which might become payable on the existing ordinary Stock of the Company; but no more than Six thousand four hundred and eighty-three of such Shares have been taken up and the Instalments paid thereon, such Instalments having been applied in constructing the Works authorized by the lastly-mentioned Act, and in or towards liquidating the herein-before mentioned Liabilities of the said Company, and amounting in the aggregate to Thirteen thousand five hundred and fifty-three Pounds Ten Shillings or thereabouts: And whereas no Guaranteed or Preference Shares, other than the said Five Pounds Guaranteed Shares, and the

Guaranteed

Guaranteed Stock No. 2., herein-after referred to as "No. 2. Shares," created under the lastly-recited Act, have ever been created by the Company: And whereas the said Company might materially improve their financial Condition, and might more readily raise the Sums required for fully liquidating the said Liabilities, and for accomplishing the other Purposes specified in the last-recited Act, if they had Power to redeem such of the said No. 2. Shares as have been taken up, and to raise Money for all such Purposes partly by Mortgage of their Undertaking, and partly by creating new Preference Shares, having a *pari passu* Preference with the existing Preference Shares of the Company called the Five Pound Guaranteed Shares: And whereas the Meetings of the Company might upon certain Occasions be more conveniently held in *London*, or elsewhere than in *Edinburgh*: 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 of the Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Interpretation of Terms.

I. In construing this Act the following Words and Expressions shall have the several Meanings hereby assigned them, unless there be something in the Subject or Context repugnant to such Construction; (that is to say,)

The Word "Company" shall mean the *North British* Railway Company:

The Word "Person" shall include Corporation, whether aggregate or sole:

The Expression "the Bank" shall mean any of the incorporated or chartered Banks in *Scotland*.

Certain Guaranteed Shares of 5*l.* confirmed.

II. The Guarantee of Dividend, and Preference or Priority in Payment thereof, attached to the said Five Pounds Guaranteed Shares by the Resolutions of the Meeting of the Company held on or about the Eighth Day of *March* One thousand eight hundred and forty-nine, shall be and are hereby declared to be as good, valid, and effectual in the Law to all Intents and Purposes from the Day of the Creation of such Shares as if the Company at the Time of attaching such Guarantee and Preference had been fully authorized and empowered so to do by the recited "*North British* Railway (Increase and Division of Capital) Act, 1848;" and there shall be payable upon every such Five Pounds Guaranteed Share, out of the Revenues and Profits of the Company available for Dividend, a preferential Dividend of Six Pounds *per Centum per Annum* for Five Years from the Creation thereof, on the Eighth Day of *April* One thousand eight hundred and forty-

forty-nine, and to a preferential Dividend of Five Pounds *per Centum per Annum* in perpetuity thereafter, in preference to the Dividends on the existing ordinary Share Capital of the Company, and such Dividends shall be payable half-yearly out of the Profits of each preceding financial Half Year, so far as the same shall be available for Dividend, and shall be declared at the Ordinary General Meetings of the Company in such Year.

Arrears of half-yearly Dividends to be made good out of subsequently accruing Profits.

III. The Arrears of such preferential Dividend arising from the Deficiency of Profits for the financial Half Year ending the Thirty-first Day of *July* One thousand eight hundred and fifty-two, shall be held a preferential Arrear, and shall be payable out of the future Profits of the Company applicable for the Payment of Dividends, and such future Profits shall be applied in the first place in discharging such Arrear, and whenever in future there shall be a Deficiency in the Profits of the Undertaking in any preceding financial Half Year, to pay in full the half-yearly preferential Dividend upon such Five Pounds Guaranteed Shares, and any Shares to be created by virtue of this Act to rank *pari passu* with such Five Pounds Guaranteed Shares, the Amount of such Dividend, or, as the Case may be, the Difference between the Amount of such Dividend and the Amount actually paid on account thereof, shall be considered a preferential Arrear, and all future Profits of the Company applicable to the Payment of Dividends on such Shares shall be applied in the first place in discharging the Arrears of Dividend for the Time being due in respect of such Shares, and afterwards in or towards Payment of the Dividend then last due.

As to voluntary Exchange or Commutation of No. 2. Shares.

IV. It shall be lawful for the Company from Time to Time to agree with the Proprietor of any No. 2. Share or Shares for the Redemption of such Share or Shares, at such Price and upon such Terms and Conditions as shall be mutually agreed upon between them, or for the Exchange or Commutation of such Share or Shares for or into a Preference Share or Shares to be created under the Provisions herein-after contained, or for or into a Mortgage or Mortgages to be granted under the Provisions of this Act, and to effect such Redemption, Exchange, or Commutation accordingly; and it shall be lawful for any Persons, Holders of any No. 2. Shares, and being possessed thereof, either in their own Right, or as Trustees, Executors, or Administrators, or for the Guardians or Committee of any such Person who shall be an Infant, Lunatic, or otherwise under legal Disability, to enter into any such Agreement as aforesaid, and to sign and give Receipts, and do all other necessary and proper Acts for carrying the same into full and complete Effect: Provided always, that no such Exchange or Commutation as aforesaid shall be

be effected by any Trustee, Executor, Administrator, Guardian, or Committee, unless the Shares or Mortgages taken in exchange shall entitle the Holders thereof to Dividends or Interest at the Rate of Five Pounds *per Centum per Annum*.

Power to raise Money by Shares or Mortgage.

V. In order to enable the Company to raise Money for the Redemption of Shares authorized to be redeemed by this Act, and also to afford greater Facilities to the Company for raising the Money required for discharging the Liabilities and accomplishing the other Purposes specified in "The *North British* Railway (Stations Enlargement) Act, 1851," it shall be lawful for the Company to raise a Sum or Sums not exceeding in the whole One hundred and fifty thousand three hundred Pounds by Mortgage of their Undertaking, and also to raise a Sum or Sums not exceeding One hundred and eighty thousand two hundred Pounds by the Creation of new Shares: Provided always, that nothing herein contained shall authorize the Company to raise or have outstanding upon Mortgage at any One Time a larger Amount than One Third of their Capital for the Time being.

As to Amount of Payment and Disposal of certain Shares.

Preference may be granted.

VI. The Shares to be created under the Provisions herein-before contained shall be of such Amount respectively, and payable at such Time or by such Instalments or Calls, and at such Periods, and shall be allotted or disposed of in such Manner, and subject to such Terms and Conditions, as the Company, with the Consent of Three Fifths of the Shareholders present in Person or by Proxy at any Special Meeting for the Purpose of considering the Terms and Conditions on which such Shares shall be issued, shall think proper; and it shall be lawful for the Company to guarantee such fixed Amount of Dividend on any such Shares not exceeding Five Pounds *per Centum per Annum* on the Amount for the Time being paid thereon, and to attach such other Privileges to any such Shares in the way of Preference or Priority in Payment of Dividend as shall give them a *pari passu* Preference with the aforesaid "Five Pounds Guaranteed Shares," both as regards Dividend and Arrears of Dividend and in all other respects, at any General Meeting or Meetings of the Company specially convened for the Purpose, with the Consent of Three Fifths at least of the Votes of the Shareholders present in Person or by Proxy at such Meeting or Meetings.

As to cancelling certain Shares.

VII. All such of the No. 2. Shares as have not been taken up shall be cancelled.

Former Mortgages to have Priority.

VIII. All Mortgages which shall have been granted by the Company prior to the passing of this Act, and shall be subsisting at the Time

Time of the passing of this Act, shall have Priority over all Mortgages which may be granted under the Provisions of this Act.

Additional Capital to be Part of the general Capital.

IX. The Capital to be raised by new Shares to be created under the Provisions of this Act shall be Part of the general Capital of the Company, and, except as otherwise provided by this Act, or by the Special General Meeting or Meetings which shall resolve to create and issue the same, such new Shares shall confer and impose on the Holders thereof all the Rights, Privileges, Liabilities, and Incidents which the original Shares in the Company conferred and imposed on the Holders thereof.

8 & 9 Vict. c. 17., as to Mortgages, incorporated with this Act.

X. The Sections of "The Companies Clauses Consolidation (*Scotland*) Act, 1845," with respect to the borrowing of Money by the Company on Mortgage or Bond, shall be incorporated with this Act, and the Mortgagees shall be empowered to enforce the Payment of the Arrears of Interest, or the Arrears of Principal and Interest due on Mortgages granted under the Provisions of this Act, by the Appointment of a Judicial Factor; and the Word "Undertaking," in the said Sections of "The Companies Clauses Consolidation (*Scotland*) Act, 1845," as incorporated with this Act, shall mean the Undertaking of the Company, by whatever Acts authorized to be executed.

Application of certain Monies.

XI. All Monies which shall be raised by means of any Shares or Mortgages to be created or granted under the Provisions hereinbefore contained, shall be applied in Payment of any such Redemption Money as aforesaid, or in discharging the Liabilities and accomplishing the other Purposes specified in "The *North British* Railway (Stations) Enlargement Act, 1851," and in or to no other Purpose whatsoever.

Meetings may be held in London or elsewhere.

XII. It shall be lawful for the Company to hold their Meetings in *London* or elsewhere as the Company shall from Time to Time appoint.

Certain Provisions of 7 & 8 Vict. c. 66., as to Contracts, &c., repealed, and Provisions of 8 & 9 Vict. c. 17. substituted.

XIII. Whereas by the Ninetieth Section of the recited Act passed in the Session of Parliament held in the Seventh and Eighth Years of the Reign of Her present Majesty, certain Provisions were enacted with respect to Contracts to be entered into by the Directors or Committees of Directors on behalf of the Company: And whereas such Provisions are found in practice to be in certain respects inapplicable to Contracts made in *Scotland*: Be it enacted, That the Nineteenth Section of the said recited Act shall be and the same is hereby repealed, but so as not to prejudice or affect any Contract already

already entered into under or in accordance with the Provisions therein contained; and the Power which may be granted to any such Committee as aforesaid to make Contracts, as well as the Power of the Directors to make Contracts on behalf of the Company, shall be such as is provided in that Behalf by the One hundredth Section of "The Companies Clauses Consolidation (*Scotland*) Act, 1845," and may lawfully be exercised as follows; (that is to say,)

With respect to any Contract which, if made between private Persons, would be by Law required to be by Deed or by Agreement in Writing, and signed by the Parties to be charged therewith, then such Committee or the Directors may make such Contract on behalf of the Company, in Writing either under the Common Seal of the Company, or signed by such Committee, or any Two of them, or any Two of the Directors, and in the same Manner may vary or discharge the same:

With respect to any Contract which, if made between private Persons, would by Law be valid, although made by Parole only, and not reduced into Writing, such Committee or the Directors may make such Contract on behalf of the Company, by Parole only, without Writing, and in the same Manner may vary or discharge the same;

And all Contracts made according to the Provisions herein contained shall be effectual in Law, and shall be binding upon the Company and their Successors, and all other Parties thereto, their Heirs, Executors, or Administrators, as the Case may be; and on any Default in the Execution of any such Contract, either by the Company or any other Party thereto, such Actions or Suits may be brought either by or against the Company as might be brought had the same Contracts been made between private Persons only.

Deposits for future Bills not to be paid out of Company's Capital.

XIV. It shall not be lawful for the Company, out of any Money by any Act relating to the Company authorized to be raised for the Purposes of such Act or Acts, to pay or deposit any Sum of Money which by any Standing Order of either House of Parliament, now in force or hereafter to be in force, may be required to be deposited in respect of any Application to Parliament for the Purpose of obtaining an Act authorizing the Company to construct any other Railway or execute any other Work or Undertaking.

Interest not to be paid on Calls paid up.

XV. It shall not be lawful for the Company, out of any Money by any Act relating to the Company authorized to be raised by Calls in respect of Shares, or by the Exercise of any Power of borrowing, to pay Interest or Dividend to any Shareholder on the Amount of the Calls made in respect of the Shares held by him in the Capital authorized

authorized to be raised by this Act: Provided always, that nothing herein-before contained shall be deemed to prevent the Company from paying to any Shareholder such Interest on Money advanced by him beyond the Amount of the Calls actually made as shall be in conformity with the Provisions in the "Companies Clauses Consolidation (*Scotland*) Act, 1845," in that Behalf contained.

Railway to be subject to Provisions of 1 & 2 Vict. c. 98., 3 & 4 Vict. c. 97., 5 & 6 Vict. c. 55., 7 & 8 Vict. c. 85, 9 & 10 Vict. c. 57., and 14 & 15 Vict. c. 64.

XVI. Whereas an Act was passed in the Second Year of the Reign of Her present Majesty, intituled *An Act to provide for the Conveyance of Mails by Railway;* and another Act was passed in the Fourth Year of the Reign of Her said Majesty, intituled *An Act for regulating Railways;* and another Act was passed in the Sixth Year of the Reign of Her said Majesty, intituled *An Act for the better Regulation of Railways, and for the Conveyance of Troops;* and another Act was passed in the Eighth Year of the Reign of Her said Majesty, intituled *An Act to attach certain Conditions to the Construction of future Railways authorized or to be authorized by any Act of the present or succeeding Sessions of Parliament, and for other Purposes in relation to Railways;* and another Act was passed in the Session of Parliament held in the Ninth and Tenth Years of the Reign of Her present Majesty, intituled *An Act for regulating the Gauge of Railways;* and another Act was passed in the Session of Parliament held in the Fourteenth and Fifteenth Years of the Reign of Her present Majesty, intituled *An Act to repeal the Act for constituting Commissioners of Railways:* Be it enacted, That nothing in this Act contained shall be held to exempt the Railways by this or the said recited Acts authorized, or the Company, from the Provisions of the said several Acts respectively, but that such Provisions shall be in force in respect of the said Railways and Company so far as the same shall be applicable thereto.

Company, &c. not exempt from Provisions of future General Acts.

XVII. Nothing herein contained shall be deemed or construed to exempt the Company from the Provisions of any General Act relating to the Railways of the Company, or of any General Act relating to Railways, or to the better or more impartial Audit of the Accounts of Railway Companies, now in force or which may hereafter pass during the present or any future Session of Parliament, or from any future Revision and Alteration, under the Authority of Parliament, of the maximum Rates of Fares and Charges authorized by this Act.

Expenses of Act.

XVIII. All the Costs, Charges, and Expenses of applying for and obtaining this Act and incidental thereto shall be paid by the Company.

Short Title.

XIX. This Act shall, for all Purposes, be sufficiently described or referred to as "The *North British* Railway (Finance) Act, 1853."

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