CHAPTER cxl.

An Act to empower the Plymouth Devonport and South-Western Junction Railway Company to attach a preference to part of their authorised Capital and to vary their borrowing powers and for other purposes. A.D. 1887.

[19th July 1887.]

WHEREAS by the Plymouth Devonport and South-Western Junction Railway Act 1883 (in this Act called "the Act of 1883") the Plymouth Devonport and South-Western Junction Railway Company (in this Act called "the Company") were incorporated and were empowered to make and maintain certain railways therein described in the counties of Devon and Cornwall and were authorised to raise seven hundred and fifty thousand pounds by shares of ten pounds each and to borrow on mortgage not exceeding two hundred and forty-nine thousand pounds of which last-mentioned sum they might borrow not exceeding one hundred and sixty-six thousand pounds in respect of the first five hundred thousand pounds of their share capital and eighty-three thousand pounds in respect of the remaining two hundred and fifty thousand pounds of their capital:

And whereas by section 57 of the Act of 1883 the Company and the London and South-Western Railway Company (in this Act called "the South-Western Company") were empowered to enter into and carry into effect agreements with reference amongst other things to the management use working and maintenance by the South-Western Company of the Company's Railway and matters incidental thereto:

And whereas by the Devon and Cornwall Central Railway Act 1882 (in this Act called "the Act of 1882") the Devon and Cornwall Central Railway Company (in this Act called "the Devon Company") were incorporated with power to make certain railways in the counties of Devon and Cornwall and by section 61 of the Act of 1882 the Devon Company and the South-Western Company were

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empowered to enter into working and other agreements as therein mentioned:

And whereas by the Plymouth Devonport and South-Western Junction Railway Act 1884 (in this Act called "the Act of 1884") all the rights powers privileges authorities and obligations of the Devon Company under or by virtue of the Act of 1882 except the powers of raising share and loan capital were transferred to and vested in the Company and certain portions of the railways of the Devon Company were authorised to be abandoned:

And whereas by section 51 of the Act of 1882 certain heads of agreement (a copy whereof is set forth in the schedule to that Act) between the East Cornwall Mineral Railway Company (therein and hereinafter referred to as "the East Cornwall Company") and the Promoters of the Bill for the Act of 1882 were confirmed and made binding on the East Cornwall Company and the Devon Company and were directed to be carried into effect and by the said heads of agreement it was provided that the East Cornwall Company should sell and the Devon Company should purchase the undertaking therein defined of the East Cornwall Company at the sum of sixty-two thousand five hundred pounds provided the rentcharges of that undertaking amounting to two hundred and fifty pounds per annum had been paid off and cancelled by the East Cornwall Company or failing such payment off or cancellation at the sum of fifty-seven thousand five hundred pounds:

And whereas the sale and purchase of the East Cornwall Company's undertaking provided for by the said heads of agreement have not yet been carried into effect and the Company and the East Cornwall Company have agreed that in lieu of the sum of sixty-two thousand five hundred pounds in cash the consideration for the sale and purchase should be the sum of sixty-nine thousand seven hundred and fifty pounds subject to the rentcharges amounting to two hundred and fifty pounds per annum which still remain outstanding the said sum of sixty-nine thousand seven hundred and fifty pounds to be paid as to forty-eight thousand two hundred and fifty pounds in ordinary shares of the Company and as to twenty-one thousand five hundred pounds in cash and the two Companies have accordingly entered into the heads of agreement a copy whereof is set forth in the schedule to this Act and it is expedient that such heads of agreement (hereinafter referred to as "the scheduled agreement") should be confirmed and substituted for the heads of agreement scheduled to and confirmed by the Act of 1882:

And whereas by the Plymouth Devonport and South-Western Junction Railway Act 1885 (in this Act called "the Act of 1885")

the periods then limited for the compulsory purchase of lands for and for the completion of certain of the railways and works originally of the Devon Company the powers in relation to which were transferred to the Company as aforesaid by the Act of 1884 were extended:

And whereas under the powers contained in the Acts of 1883 and 1882 as aforesaid the Company and the Devon Company and the South-Western Company entered into an agreement dated the twenty-fourth day of October 1883 for the working and maintenance by the South-Western Company of the railways of the Company and of the portions of the railways of the Devon Company the powers in reference to which were subsequently transferred to the Company by the Act of 1884 as aforesaid upon terms (amongst others) of the South-Western Company paying to the Company one-half of the gross receipts of the South-Western Company from traffic of all kinds passing over the railways of the Company and the unabandoned portions of the railways of the Devon Company together with a rebate of ten per centum (with a maximum of fifteen thousand six hundred and fifty pounds in any one year) of the receipts from certain traffic mentioned in the said agreement towards securing interest at four per centum per annum on two hundred and twenty thousand pounds loan capital of the Company and a dividend of four-and-a-half per centum per annum upon six hundred and sixty thousand pounds of the share capital of the Company:

And whereas the authorised railways of the Company form an inland means of communication between the narrow gauge railway system on the one hand and Plymouth and Devonport on the other hand and are of national importance:

And whereas the Company have hitherto been unable to raise any part of their authorised capital but if they are authorised to raise part of their share capital as preference capital and to exercise their borrowing powers in the manner by this Act provided they would be able to raise the funds required for the execution of their undertaking and a sum of three hundred thousand pounds or thereabouts of ordinary capital has in fact been provisionally subscribed for:

And whereas under the circumstances aforesaid it is expedient that the powers hereinafter contained should be conferred upon them:

And whereas the objects of this Act cannot be obtained 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

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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 Plymouth Devonport and South-Western Junction Railway Act 1887.

Incorporation of Part V. of Railways Clauses Act 1863.

2. The provisions of Part V. (relating to amalgamation) of the Railways Clauses Act 1863 as amended by the Regulation of Railways Act 1873 are (except where expressly varied by this Act and subject to the provisions of this Act and of the scheduled agreement) incorporated with and form part of this Act.

Incorporating Part II. of Companies Clauses Act 1863.

3. The provisions of Part II. (relating to additional capital) of the Companies Clauses Act 1863 are so far as applicable and not expressly varied by this Act incorporated with and form part of this Act and for the purposes of this Act shall be read and have effect as if the sum which the Company are by this Act authorised to raise by preference shares were an additional sum which by this Act the Company were authorised to raise by the issue of new preference shares.

Confirming scheduled agreements &c.

4. The scheduled agreement is hereby confirmed and made binding on the East Cornwall Company and the Company and shall be carried into full effect according to the true intent and meaning thereof and shall be in substitution for the heads of agreement scheduled to and confirmed by the Act of 1882 and the last-mentioned heads of agreement are hereby cancelled and sections 51 to 56 (both numbers inclusive) of the Act of 1882 are hereby repealed.

Transfer of East Cornwall undertaking.

5. From and after the completion of the purchase as provided in the scheduled agreement the East Cornwall Company shall continue to exist only for the purpose of winding up the affairs of that Company as provided by this Act and of otherwise carrying into effect the provisions of this Act and of the scheduled agreement and the East Cornwall undertaking shall subject to the provisions of this Act and of the scheduled agreement be transferred to and vested in the Company but subject (except as between the East Cornwall Company and the Company) to all contracts debts obligations and liabilities affecting the East Cornwall undertaking. For the purposes of Article 3 of the scheduled agreement this section shall be deemed to be in substitution for section 52 of the Act of 1882.

Deed of conveyance.

6. The transfer shall be evidenced by a deed of conveyance duly stamped and wherein the consideration for the transfer shall

be fully set forth. Within three months from the date of the transfer the Company shall produce to the Commissioners of Inland Revenue such deed of conveyance duly stamped as aforesaid and in default of such production the stamp duty with interest thereon at the rate of five pounds per centum per annum from the date of the transfer to the date of payment shall be recoverable from the Company with full costs of suit and all costs and charges attending the same.

Issue to East Cornwall Company of 48,250*l.* ordinary shares of Company.

7. Within three months after the passing of this Act the Company shall create and issue to the East Cornwall Company ordinary shares in the capital of the Company to the nominal amount of forty-eight thousand two hundred and fifty pounds.

East Cornwall Company may sell such shares.

8. The East Cornwall Company may sell and dispose of the whole or any part of the shares of the Company mentioned in the last preceding section to such persons and for such consideration as they think fit.

East Cornwall Company to wind up their affairs.

9. Forthwith after the transfer the East Cornwall Company shall proceed to wind up their affairs and subject to the payment satisfaction or discharge of all the debenture and other debts liabilities and engagements (if any) of the East Cornwall Company the East Cornwall Company shall distribute and pay the proceeds of the sale of the shares of the Company mentioned in the foregoing sections of this Act and the sum of twenty-one thousand five hundred pounds payable in cash by the Company to them to and among the several persons or the representatives of the persons who at the time of the transfer are the registered holders of shares or stock of the East Cornwall Company in proportion to their respective shares of the capital of the East Cornwall Company and according to their several priorities.

Payments into Court by the East Cornwall Company.

10. Where the East Cornwall Company are for twelve months after the period for the distribution of their net moneys unable after diligent enquiry to ascertain the person to whom any part thereof ought to be paid or who can give an effectual receipt for the same the East Cornwall Company may pay the same into the Chancery Division of the High Court of Justice under any Act from time to time in force for the relief of trustees and every such payment into Court shall conclusively discharge the East Cornwall Company from all further liability with respect to the net moneys so paid and for the purposes of this Act shall be deemed payment thereof to a person absolutely entitled thereto and any person afterwards showing to the satisfaction of the Court that

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he is entitled thereto may obtain payment thereof out of Court accordingly.

Dissolution of East Cornwall Company.

11. When all the debts liabilities and engagements of the East Cornwall Company are paid satisfied or discharged and their net moneys are distributed in accordance with this Act and the scheduled agreement and their affairs are wound up the East Cornwall Company shall be dissolved and wholly cease to exist.

Power to raise part of authorised capital by preference shares.

12. Subject to the provisions incorporated with this Act of Part II. of the Companies Clauses Act 1863 the Company may raise any sum or sums not exceeding three hundred thousand pounds of the seven hundred and fifty thousand pounds which by the Act of 1883 the Company were authorised to raise by shares by the creation and issue of preference shares with a preferential dividend or interest at a rate not exceeding four-and-a-half per centum per annum: Provided always that notwithstanding anything contained in the Act of 1883 or in this Act the holders for the time being of preference shares created under this Act shall not be entitled to participate in any profits of the Company except in respect of the preferential dividend or interest which may be attached to such shares unless the Company at the time of the creation of such shares shall otherwise determine and then only to the extent determined.

As to borrowing powers.

13. Section 18 of the Act of 1883 is hereby repealed and in lieu thereof be it enacted as follows:—

(A.) The Company may borrow on mortgage of their undertaking any sum or sums not exceeding in the whole twenty thousand pounds to be applicable and to be applied only for or towards payment of the sum of twenty-one thousand five hundred pounds payable in cash in accordance with the scheduled agreement to the East Cornwall Company:

(B.) The Company may also from time to time borrow on mortgage of their undertaking any further sum or sums not exceeding in the whole two hundred and twenty-nine thousand pounds that is to say in respect of each one hundred and fifty thousand pounds of their share capital up to six hundred thousand pounds the Company may borrow not exceeding fifty thousand pounds and in respect of the one hundred and one thousand seven hundred and fifty pounds of their capital which will remain after the issue to the East Cornwall Company in accordance with the scheduled agreement of ordinary shares of the Company of the nominal value of forty-eight thousand two hundred and fifty pounds they may borrow not exceeding twenty-nine thousand pounds but no part of any such

sum of fifty thousand pounds or of the said sum of twenty-nine thousand pounds shall be borrowed until the whole capital in respect of which the borrowing power is exercised is issued and accepted and one-half thereof is paid up and the Company have proved to the justice who is to certify under the 40th section of the Companies Clauses Consolidation Act 1845 (before he so certifies) that the whole of such capital has been issued and accepted and that one-half thereof has been paid up and that not less than one-fifth part of the amount of each separate share in such capital has been paid on account thereof before or at the time of the issue or acceptance thereof and that such capital was issued bonâ fide and is held by the persons or corporations to whom the same was issued or their executors administrators successors or assigns and that such persons or corporations their executors administrators successors or assigns are legally liable for the same and upon production to such justice of the books of the Company and of such other evidence as he shall think sufficient he shall grant a certificate that the proof aforesaid has been given which shall be sufficient evidence thereof.

Provisions of certain Acts as to consents &c. to continue applicable to working agreements.

14. Nothing in this Act shall repeal or affect the provisions (incorporated with the Acts of 1883 and 1882 respectively) of Part. III. of the Railways Clauses Act 1863 as amended or varied by the Regulation of Railways Act 1873 whereby the working agreements authorised by section 57 of the Act of 1883 and by section 61 of the Act of 1882 respectively are required to be sanctioned by shareholders and stockholders of the Companies parties to the respective agreements and to be approved by the Railway Commissioners before the respective agreements are to have any operation.

Saving for Postmaster-General.

15. Nothing in any Act relating to the Company or in the agreement dated the 24th October 1883 recited in the preamble 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 railways and works comprised in the respective undertakings of the Company and the Devon Company and from time to time to alter such telegraphic lines and to enter upon the lands and works comprised in such undertakings 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 undertakings of the Company and the Devon Company or the undertaking of either of them are or is owned leased or worked by the South-Western Company or amalgamated with the undertaking thereof.

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Costs of Act.

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

The SCHEDULE referred to in the foregoing Act.

HEADS OF AGREEMENT between THE EAST CORNWALL MINERAL RAILWAY COMPANY (hereinafter called "the East Cornwall Company") of the one part and THE PLYMOUTH DEVONPORT AND SOUTH-WESTERN JUNCTION RAILWAY COMPANY (hereinafter called "the Company") of the other part.

1. The East Cornwall Company to sell and the Company to purchase the undertaking as hereinafter defined of the East Cornwall Company at the sum of sixty-nine thousand seven hundred and fifty pounds subject to the rentcharges of that undertaking amounting to two hundred and fifty pounds per annum.

2. The said sum of sixty-nine thousand seven hundred and fifty pounds shall be paid and satisfied in manner following that is to say forty-eight thousand two hundred and fifty pounds in ordinary shares of the Company to be issued to the East Cornwall Company forthwith and twenty-one thousand five hundred pounds in cash to be paid within one year of the completion and opening for public traffic of the Company's line between Lidford and Devonport in accordance with the Devon and Cornwall Central Railway Act 1882 as amended or varied by the Plymouth Devonport and South-Western Junction Railway Act 1884.

3. Upon the issue or delivery to the East Cornwall Company of the said ordinary shares and the payment of the said sum of twenty-one thousand five hundred pounds and the taking over of the said rentcharge of two hundred and fifty pounds per annum the purchase shall be deemed to be completed within the meaning of the 52nd section of the Devon and Cornwall Central Railway Act 1882.

4. The undertaking in these heads referred to includes the railway and works of every description as existing at the date of execution of these heads together with all lands surplus or otherwise engines rolling stock and all other the real and personal property of the East Cornwall Company (except money) together with their powers rights authorities privileges exemptions and all other interests of the East Cornwall Company.

5. Up to the time when the purchase is completed the East Cornwall Company shall continue to work the undertaking take receipts and pay all outgoings and shall pay and discharge all debts and liabilities incurred or to be incurred up to such date of completion but shall account to the Company out of any surplus of receipts over expenditure of a sum equal to any interest or dividend paid upon the said shares or bonds prior to completion.

6. The East Cornwall Company to deliver to the Company before completion of the purchase a full and accurate plan of their undertaking and to produce deeds of conveyance to them in fee simple of all lands comprised in the undertaking free from land tax and all rates (except the said rentcharges) and other incidents to the tenure and incumbrances.

7. The East Cornwall Company to pay off or satisfy all Lloyd's bonds of that Company and all arrears of interest thereon and all debts and other liabilities and to reasonably satisfy the Company that the same have been so paid off or satisfied on or before the date of completion. Should any such Lloyd's bonds arrears of interest debts or other liabilities or any debentures granted by the East Cornwall Company on the security of the undertaking or any interest due thereon be still unpaid at such date the East Cornwall Company to make an equivalent reduction from the purchase-money aforesaid.

8. The Company prior to the completion of the purchase to have a full opportunity of investigating the books of the East Cornwall Company for the purpose of ascertaining the state of liabilities of that Company and verifying the same.

9. The East Cornwall Company not to do or consent to anything between the date of the passing of the Plymouth Devonport and South-Western Junction Railway Bill 1887 into an Act and the completion of sale which will injuriously affect the value of the undertaking to the Company (but no unreasonable exception shall be taken) and to maintain the same subject to the reasonable inspection and satisfaction of the Company up to the date of the completion of the purchase and then to deliver the same to the Company in as good a condition as it at present is.

10. The East Cornwall Company to hold a special meeting to approve of the sale of their undertaking to the Company on the terms of this agreement in accordance with the Standing Orders.

11. This agreement and everything herein contained other than the last preceding clause is subject to the necessary powers being obtained from Parliament which the East Cornwall Company and the Company respectively undertake to use their best efforts to obtain failing which this agreement shall ipso facto determine.

12. The costs of the East Cornwall Company of and incidental to the transfer of their undertaking to be borne and paid by the Company.

13. These heads or an agreement in extension thereof to be scheduled to and confirmed by the Bill now pending in Parliament promoted by the Company and if confirmed to be and be deemed as substituted for all purposes for an agreement dated the 8th day of May 1882 scheduled to the Devon and Cornwall Central Railway Act 1884 which last-mentioned agreement shall thereupon be void.

14. These heads are made subject to such alteration as Parliament may think fit to make therein. In witness whereof the East Cornwall Minerals

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Railway Company and the Plymouth Devonport and South-Western Junction Railway Company have hereunto affixed their respective common seals.

Dated the 16th day of March 1887.

The seal of the East Cornwall Mineral Railway Company affixed in the presence of

WALMISLEY STANLEY,
Director.
DAVID AMEY,
Secretary.

The East Cornwall Mineral Railway Company.

Sealed with the common seal of the Plymouth Devonport and South-Western Junction Railway Company in the presence of

MOUNT EDGCUMBE,
Chairman.
JAMES WARD BURCHELL,
Secretary.

The seal of the Plymouth Devonport and South-Western Junction Railway Company.

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