

ANNO TRICESIMO & TRICESIMO PRIMO

VICTORIÆ REGINÆ.

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C A P. CXXVII.

An Act to amend the Law relating to Railway Companies. [20th *August* 1867.]

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:

Preliminary.

1. This Act may be cited as The Railway Companies Act, 1867. Short Title.

2. Except as in this Act expressly otherwise provided, this Act shall not extend to *Scotland*. Extent of Act.

3. In this Act— Interpretation of Terms.

The Term "Company" means a Railway Company; that is to say, a Company constituted by Act of Parliament, or by Certificate under Act of Parliament, for the Purpose of constructing, maintaining, or working a Railway (either alone or in conjunction with any other Purpose):

The Term "Action" includes Suit or other Proceeding:

The Term "Judgment" includes Decree, Order, or Rule:

The Term "Share" includes Stock:

The Term "Person" includes Corporation:

The Term "Court of Chancery" or "Court" means the Court of Chancery in *England* or *Ireland*, as the Case requires:

The Term "Gazette" means, with respect to *England*, the *London Gazette*, and with respect to *Ireland* the *Dublin Gazette*.

Protection of Rolling Stock and Plant.

Restriction on Execution against Personal Property of Company.

4. The Engines, Tenders, Carriages, Trucks, Machinery, Tools, Fittings, Materials, and Effects, constituting the Rolling Stock and Plant used or provided by a Company for the Purposes of the Traffic on their Railway, or of their Stations or Workshops, shall not, after their Railway or any Part thereof is open for Public Traffic, be liable to be taken in Execution at Law or in Equity at any Time after the passing of this Act, and before the First Day of *September* One thousand eight hundred and sixty-eight, where the Judgment on which Execution issues is recovered in an Action on a Contract entered into after the passing of this Act, or in an Action not on a Contract commenced after the passing of this Act; but the Person who has recovered any such Judgment may obtain the Appointment of a Receiver, and, if necessary, of a Manager, of the Undertaking of the Company, on Application by Petition in a summary Way to the Court of Chancery in *England* or in *Ireland*, according to the Situation of the Railway of the Company; and all Money received by such Receiver or Manager shall, after due Provision for the Working Expenses of the Railway and other proper Outgoings in respect of the Undertaking, be applied and distributed under the Direction of the Court in Payment of the Debts of the Company and otherwise according to the Rights and Priorities of the Persons for the Time being interested therein; and on Payment of the Amount due to every such Judgment Creditor as aforesaid the Court may, if it think fit, discharge such Receiver or such Receiver and Manager.

Determination of Questions respecting Executions.

5. If in any Case where Property of a Company has been taken in Execution a Question arises whether or not it is liable to be so taken notwithstanding this Act, the same may be heard and determined on an Application by either Party by Summons in a summary Way to the Court out of which the Execution issued, or if the Court is One of the Superior Courts of Law, then to a Judge of any One of those Courts, and such Determination shall be final and binding.

Arrangements.

Preparation and filing of Scheme of Arrangement.

6. Where a Company are unable to meet their Engagements with their Creditors the Directors may prepare a Scheme of Arrangement

Arrangement between the Company and their Creditors (with or without Provisions for settling and defining any Rights of Shareholders of the Company as among themselves, and for raising, if necessary, additional Share and Loan Capital, or either of them), and may file the same in the Court of Chancery in *England* or in *Ireland*, according to the Situation of the principal Office of the Company, with a Declaration in Writing under the Common Seal of the Company to the Effect that the Company are unable to meet their Engagements with their Creditors, and with an Affidavit of the Truth of such Declaration made by the Chairman of the Board of Directors and by the other Directors, or the major Part in Number of them, to the best of their respective Judgment and Belief.

Stay of Actions.

7. After the filing of the Scheme, the Court may, on the Application of the Company on Summons or Motion in a summary Way, restrain any Action against the Company on such Terms as the Court thinks fit.

Notice in Gazette.

8. Notice of the filing of the Scheme shall be published in the Gazette.

Stay of Executions, &c.

9. After such Publication of Notice no Execution, Attachment, or other Process against the Property of the Company shall be available without Leave of the Court, to be obtained on Summons or Motion in a summary Way.

Assent by Mortgagees, &c.

10. The Scheme shall be deemed to be assented to by the Holders of Mortgages or Bonds issued under the Authority of the Company's Special Acts when it is assented to in Writing by Three Fourths in Value of the Holders of such Mortgages or Bonds, and shall be deemed to be assented to by the Holders of Debenture Stock of the Company when it is assented to in Writing by Three Fourths in Value of the Holders of such Stock.

Assent by Holders of Rentcharge, &c.

11. Where any Rentcharge or other Payment is charged on Receipts of or is payable by the Company in consideration of the Purchase of the Undertaking of another Company, the Scheme shall be deemed to be assented to by the Holders of such Rentcharge or other Payment when it is assented to in Writing by Three Fourths in Value of such Holders.

Assent by Preference Shareholders.

12. The Scheme shall be deemed to be assented to by the Guaranteed or Preference Shareholders of the Company when it is assented to in Writing as follows:—If there is only One Class of Guaranteed or Preference Shareholders, then by Three Fourths in

in Value of that Class, and if there are more Classes of Guaranteed or Preference Shareholders than One, then by Three Fourths in Value of each such Class.

Assent by Ordinary Shareholders.

13. The Scheme shall be deemed to be assented to by the Ordinary Shareholders of the Company when it is assented to at an Extraordinary General Meeting of the Company specially called for that Purpose.

Assent by Leasing Company.

14. Where the Company are Lessees of a Railway the Scheme shall be deemed to be assented to by the Leasing Company when it is assented to as follows:

In Writing by Three Fourths in Value of the Holders of Mortgages, Bonds, and Debenture Stock of the Leasing Company:

If there is only One Class of Guaranteed or Preference Shareholders of the Leasing Company, then in Writing by Three Fourths in Value of that Class, and if there are more Classes of Guaranteed or Preference Shareholders in the Leasing Company than One, then in Writing by Three Fourths in Value of each such Class:

By the Ordinary Shareholders of the Leasing Company at an Extraordinary General Meeting of that Company specially called for that Purpose.

Assent of Creditors, &c. not affected, unnecessary.

15. Provided that the Assent to the Scheme of any Class of Holders of Mortgages, Bonds, or Debenture Stock, or of any Class of Holders of a Rentcharge or other Payment as aforesaid, or of any Class of Guaranteed or Preference Shareholders, or of a Leasing Company, shall not be requisite in case the Scheme does not prejudicially affect any Right or Interest of such Class or Company.

Application for Confirmation of Scheme.

16. If at any Time within Three Months after the filing of the Scheme, or within such extended Time as the Court from Time to Time thinks fit to allow, the Directors of the Company consider the Scheme to be assented to as by this Act required, they may apply to the Court by Petition in a summary Way for Confirmation of the Scheme.

Notice of any such Application, when intended, shall be published in the Gazette.

Confirmation of Scheme.

17. After hearing the Directors, and any Creditors, Shareholders, or other Parties whom the Court thinks entitled to be heard on the Application, the Court, if satisfied that the Scheme has been within Three

Three Months after the filing of it, or such extended Time (if any) as the Court has allowed, assented to as required by this Act, and that no sufficient Objection to the Scheme has been established, may confirm the Scheme.

Enrolment and Effect of Scheme.

18. The Scheme when confirmed shall be enrolled in the Court, and thenceforth the same shall be binding and effectual to all Intents, and the Provisions thereof shall, against and in favour of the Company and all Parties assenting thereto or bound thereby, have the like Effect as if they had been enacted by Parliament.

Notice of Confirmation of Scheme.

19. Notice of the Confirmation and Enrolment of the Scheme shall be published in the Gazette.

Company to keep printed Copies of Scheme for Sale.

20. The Company shall at all Times keep at their principal Office printed Copies of the Scheme, when confirmed and enrolled, and shall sell such Copies to all Persons desiring to buy the same at a reasonable Price, not exceeding Sixpence for each Copy.

Penalty for Neglect.

If the Company fail to comply with this Provision they shall be liable to a Penalty not exceeding Twenty Pounds, and to a further Penalty not exceeding Five Pounds for every Day during which such Failure continues after the First Penalty is incurred, which Penalties shall be recovered and applied as Penalties under The Railways Clauses Consolidation Act, 1845, are recoverable and applicable.

Provision for Cases where Railways or Part in Scotland.

21. Where a Company whose principal Office is situate in *England* have a Railway or Part of a Railway in *Scotland* the following Provisions shall have Effect:

(1.) Any Scheme under this Act shall be filed in the Court of Chancery in *England:*

(2.) Where, after the filing of the Scheme, any Person who is not amenable to the Jurisdiction of the Court of Chancery in *England* brings any Action against the Company in *Scotland*, the Court of Session may, on the Application of the Company by Petition in a summary Way, sist, stay, or interdict the same on such Terms as the Court thinks fit:

(3.) Notice of the filing of the Scheme shall be published in the *Edinburgh Gazette*, and after such Publication no Diligence against the Property of the Company in *Scotland* shall be available for any Person who is not amenable to the Jurisdiction of the Court of Chancery in *England* without the Leave of the Court of Session, to be obtained on Petition in a summary Way:

Railway Companies.

In this Section the Term "Court of Session" means either Division of the Court of Session, or in Time of Vacation the Lord Ordinary officiating on the Bills.

General Orders for Regulation of Practice in Court of Chancery.

22. The Lord Chancellor of *Great Britain*, with the Advice and Assistance of the Lords Justices of the Court of Appeal in Chancery, the Master of the Rolls, and the Vice-Chancellors, or any Two of those Judges, and the Lord Chancellor of *Ireland*, with the Advice and Assistance of the Lord Justice of Appeal in Chancery and the Master of the Rolls, or One of them, may from Time to Time make General Orders for the Regulation of the Practice of the Courts of Chancery in *England* and *Ireland* respectively under this Act.

Loan Capital.

Priority of Mortgages.

23. All Money borrowed or to be borrowed by a Company on Mortgage or Bond or Debenture Stock under the Provisions of any Act authorizing the borrowing thereof shall have Priority against the Company and the Property from Time to Time of the Company over all other Claims on account of any Debts incurred or Engagements entered into by them after the passing of this Act: Provided always, that this Priority shall not affect any Claim against the Company in respect of any Rentcharge granted or to be granted by them in pursuance of The Lands Clauses Consolidation Act, 1845, or The Lands Clauses Consolidation Acts Amendment Act, 1860, or in respect of any Rent or Sum reserved by or payable under any Lease granted or made to the Company by any Person in pursuance of any Act relating to the Company which is entitled to rank in priority to, or *pari passu* with, the Interest or Dividends on the Mortgages, Bonds, and Debenture Stock; nor shall anything herein-before contained affect any Claim for Land taken, used, or occupied by the Company for the Purposes of the Railway, or injuriously affected by the Construction thereof, or by the Exercise of any Powers conferred on the Company.

Power to issue Debenture Stock, subject to Part III. of 26 & 27 Vict. c. 118.

24. Any Company may create and issue Debenture Stock, subject to the Provisions of Part III. of The Companies Clauses Act, 1863, (relating to Debenture Stock,) and the said Part III. shall, with respect to any Special Act of a Company incorporating that Part, whether passed or to be passed, be read and have Effect as if the following Words, that is to say, "not exceeding the Rate pre-"scribed in the Special Act, and if no Rate is prescribed then not "exceeding the Rate of Four Pounds *per Centum per Annum*," had not been inserted in Section Twenty-two of that Act; and for the Purposes of the present Section this Act shall be deemed a Special

a Special Act passed incorporating that Part; and any Special Act of a Company passed before the passing of this Act prescribing any Rate shall be read and have Effect as if no Rate had been prescribed therein.

Restriction on Rate of Interest on Debenture Stock already authorized.

25. Provided that any Debenture Stock the Creation whereof has been authorized by a Company, but which has not been issued, before the passing of this Act, shall not be issued on any Terms other than those whereon it might have been issued if this Act had not been passed, unless and until the Issue thereof on Terms other than as aforesaid is after the passing of this Act authorized by the Company in manner provided in Section Twenty-two of The Companies Clauses Act, 1863.

Advances to meet Debentures falling due.

26. Money borrowed by a Company for the Purpose of paying off, and duly applied in paying off, Bonds or Mortgages of the Company given or made under the statutory Powers of the Company, shall, so far as the same is so applied, be deemed Money borrowed within and not in excess of such statutory Powers.

Share Capital.

Power to issue Shares or Stock at Discount.

27. Section Twenty-one of The Companies Clauses Act, 1863, shall, with respect to any Special Act of a Company incorporating Part II. of that Act, whether passed or to be passed, be read and have Effect as if the following Words, that is to say, "but so that "not less than the full nominal Amount of any Share or Portion "of Stock be payable or paid in respect thereof," had not been inserted in that Section.

Power to issue Residue of original or other Capital at Discount.

28. Any Shares forming Part of the Capital (whether original or additional) authorized to be raised by any Special Act of a Company passed before the present Session, which have not been disposed of, may be disposed of in manner provided by Part II. of The Companies Clauses Act, 1863, as amended by this Act, and that Part, as so amended, shall be deemed incorporated with such Special Act accordingly.

Restriction on issuing at Discount of Shares or Stock already authorized.

29. Provided that any Shares the Creation whereof has been authorized by a Company, but which have not been issued, before the passing of this Act, shall not be issued on any Terms other than those whereon the same might have been issued if this Act had not been passed, unless and until the Issue thereof on Terms other than as aforesaid is after the passing of this Act authorized by the Company in manner provided by Part II. of The Companies Clauses Act, 1863.

30. No

Audit of Railway Accounts.

30. No Dividend shall be declared by a Company until the Auditors have certified that the Half-yearly Accounts proposed to be issued contain a full and true Statement of the financial Condition of the Company, and that the Dividend proposed to be declared on any Shares is *bonâ fide* due thereon after charging the Revenue of the Half Year with all Expenses which ought to be paid thereout in the Judgment of the Auditors; but if the Directors differ from the Judgment of the Auditors with respect to the Payment of any such Expenses out of the Revenue of the Half Year, such Difference shall, if the Directors desire it, be stated in the Report to the Shareholders, and the Company in General Meeting may decide thereon, subject to all the Provisions of the Law then existing, and such Decision shall for the Purposes of the Dividend be final and binding; but if no such Difference is stated, or if no Decision is given on any such Difference, the Judgment of the Auditors shall be final and binding; and the Auditors may examine the Books of the Company at all reasonable Times, and may call for such further Accounts, and such Vouchers, Papers, and Information, as they think fit, and the Directors and Officers of the Company shall produce and give the same as far as they can, and the Auditors may refuse to certify as aforesaid until they have received the same; and the Auditors may at any Time add to their Certificate, or issue to the Shareholders independently at the Cost of the Company, any Statement respecting the financial Condition and Prospects of the Company which they think material for the Information of the Shareholders.

Abandonment.

Provisions of 13 & 14 Vict. c. 83. as to Abandonment of Railways to apply to all Companies authorized to make Railways before this Session.

31. The Abandonment of Railways Act, 1850, shall extend and apply to all Companies authorized to make Railways by Act of Parliament passed before the present Session, subject and according to the following Provisions:

(1.) Section Thirty-one of that Act shall be read and have Effect as if The Companies Act, 1862, were referred to therein instead of The Joint Stock Companies Winding-up Act, 1848, or any Act amending the same:

(2.) Section Thirty-five of the said Act of 1850 shall be read and have Effect as if the Date of the Twenty-first Day of *May* One thousand eight hundred and sixty-seven were therein substituted for the Date of the Eleventh Day of *February* One thousand eight hundred and fifty:

(3.) Nothing in the said Act of 1850 or this Act shall be deemed to make it obligatory on the Board of Trade to authorize the Abandonment of a Railway or Part of a Railway on any Application in that Behalf, and the Board of Trade shall

shall not authorize such Abandonment in any Case unless it appears to them just and expedient so to do, and the Board of Trade may, if they think fit, refuse in any Case to authorize such Abandonment, except on Condition of the Money deposited as Security for the Completion of the Railway, or the Stocks, Funds, or Securities on which the same is invested, or the Money secured by any Bond conditioned for Completion of the Railway, or for Payment of Money in default thereof, being applied as Part of the Assets of the Company.

Abandonment where Three Fifths of Capital not subscribed.

32. Where it is shown to the Satisfaction of the Board of Trade, with respect to a Company authorized to make a Railway by Act of Parliament passed before the present Session, that no Part, or a Part less than Three Fifths, of the Share Capital of the Company, has been subscribed, the Board of Trade may, if they think fit, proceed under the said Act of 1850, as extended by this Act, on the Application of any Person named in the Special Act incorporating the Company as a Member or Director thereof, or of any Person named in the Warrant or Order directing Payment of any Deposit under any Standing Order of either House of Parliament, or of any Person who has lent the Amount of such Deposit, or any Part thereof, or has entered into any Bond conditioned for the Completion of the Railway, or for Payment of any Money in default thereof, and without the preliminary Consent of a Meeting of Shareholders of the Company.

Compensation for Damage to Land by Entry, &c.

33. The Authority given under this Act for the Abandonment by a Company of any Railway or Part of a Railway shall not affect the Right of the Owner or Occupier of any Lands that have been temporarily occupied by the Company to receive Compensation, in accordance with the Provisions of The Railways Clauses Consolidation Act, 1845, for such temporary Occupation, or for any Loss, Damage, or Injury that has been sustained by him by reason thereof, or of the Exercise as regards such Lands of any of the Company's Powers.

Cancellation of Bonds for Completion of Railways, and Release of Deposit.

34. Where a Warrant for Abandonment is granted under The Abandonment of Railways Act, 1850, as extended by this Act, the Commissioners of Her Majesty's Treasury may cancel and deliver up any Bond entered into by or on behalf of a Railway Company for securing the Completion of a Railway, or, in case the Abandonment be of Part of the Railway only, may cancel and deliver up such Bond on receiving another Bond in lieu thereof conditioned for Payment of a due proportionate Part of the Amount secured

by such former Bond; and any Money remaining deposited as Security for the Completion of the Railway, or the Stocks, Funds, or Securities in which the same is invested, or any Bank Annuities, Stocks, Funds, Securities, or Exchequer Bills remaining deposited as such Security, or in case the Abandonment authorized is of Part only of a Railway then such proportionate Part as the Board of Trade thinks fit of such Money, Stocks, Funds, Securities, Annuities, or Exchequer Bills, shall be paid, transferred, or delivered out to the Persons who would be entitled to receive the same if the Railway had been completed and opened for Public Traffic; and the Court of Chancery shall, on the Application of those Persons, order Payment, Transfer, or Delivery out thereof accordingly, on a Certificate of the Board of Trade certifying that such a Warrant for Abandonment has been granted.

Protection for Board of Trade in case of Error.

35. The issuing in any Case of any Warrant or Certificate relating to Deposit, or to any Money, Stocks, Funds, Securities, Bank Annuities, or Exchequer Bills deposited, or any Error in any such Warrant or Certificate, or in relation thereto, shall not make the Board of Trade, or the Person signing the Warrant or Certificate on their Behalf, in any Manner liable for or in respect of the Money, Stocks, Funds, Securities, Bank Annuities, or Exchequer Bills deposited, or the Interest of or Dividends on the same, or any Part thereof respectively.

Purchase of Lands.

Amendment (as to Railway Companies) of Section 85. of 8 & 9 Vict. c. 18.

36. Where after the passing of this Act a Company exercise the Powers conferred on the Promoters of the Undertaking by Section Eighty-five of The Lands Clauses Consolidation Act, 1845, the following Provisions shall have Effect:

(1.) The Surveyor to be appointed as in that Section provided shall be appointed by the Board of Trade instead of by Two Justices, and all the Provisions of that Act relative to a Surveyor appointed by Two Justices shall apply to a Surveyor so appointed by the Board of Trade:

(2.) The Company shall give not less than Seven Days Notice of their Intention to apply to the Board of Trade for the Appointment of a Surveyor to any Party interested in or entitled to sell and convey the Lands in question, and not consenting to the Entry of the Company:

(3.) The Valuation to be made by the Surveyor so appointed shall include the Amount of Compensation for all Damage and Injury to be sustained by reason of the Exercise of the Powers conferred by the said Section, as far as such Damage and Injury are capable of Estimation;

(4.) The

(4.) The Sureties to the Bond to be given by the Company under that Section shall, in case the Parties differ, instead of being approved of by Two Justices, be approved of by the Board of Trade, after hearing the Parties.

Costs of Arbitrations as to Lands.

37. Where, in *England*, under The Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, a Question of disputed Compensation relating to Lands required to be purchased or taken by a Company is determined by Arbitration, the Costs of and incidental to the Arbitration and Award shall, if either Party so requires, be settled, as between the Parties, by One of the Masters of the Court of Queen's Bench.

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