CHAPTER cxlvi.

A.D. 1874.

An Act to authorise the construction of a Railway in the county of Cumberland from Rowrah, on the Whitehaven, Cleator, and Egremont Railway, to Kelton Fell; and for other purposes. [16th July 1874.]

WHEREAS the making of a railway in the county of Cumberland from Rowrah, on the Whitehaven, Cleator, and Egremont Railway, to Kelton Fell, would be of local and public advantage:

And whereas the persons herein-after named, with others, are willing at their expense to carry the proposed undertaking into execution:

And whereas it is expedient that the Company incorporated by this Act should have certain facilities as regards traffic on the railway of the Whitehaven, Cleator, and Egremont Railway Company, herein-after referred to as "the Cleator Company":

And whereas plans and sections showing the lines and levels of the railway authorised by this Act, and also books of reference containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of the lands required or which may be taken for the purposes of this Act, were duly deposited with the clerk of the peace for the county of Cumberland, and are herein-after respectively referred to as the deposited plans, sections, and books 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:

Short title.

1. This Act may be cited as "The Rowrah and Kelton Fell (Mineral) Railway Act, 1874."

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Provisions of certain general Acts incorporated.

2. "The Companies Clauses Consolidation Act, 1845," and Part I. (relating to cancellation and surrender of shares) and Part III. (relating to debenture stock) of "The Companies Clauses Act, 1863," "The Companies Clauses Act, 1869," "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869," "The Railways Clauses Consolidation Act, 1845," and Part I. (relating to construction of a railway) of "The Railways Clauses Act, 1863," are (except where expressly varied by this Act) incorporated with and form part of this Act.

Interpretation of terms.

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith have the same respective meanings, unless there be something in the subject or context repugnant to such construction; the expression "the Company" means the Company incorporated by this Act; the expressions "the railway" and "the undertaking" mean respectively the railway and the undertaking by this Act authorised; and for the purposes of this Act the expression "superior courts" or "court of competent jurisdiction," or any other like expression in this Act or any Act wholly or partially incorporated herewith, shall be read and have effect as if the debt or demand with respect to which the expression is used were a simple contract debt, and not a debt or demand created by statute.

Company incorporated.

4. Robert Alleyne Robinson, Alexander Brogden, James Baird, Alexander Whitelaw, David Wallace, Martin Boundy, and all other persons and corporations who have already subscribed to or shall hereafter become proprietors in the undertaking, and their executors, administrators, successors, and assigns respectively, shall be and are hereby united into a Company for the purpose of making and maintaining the railway, and for other the purposes of this Act, and for those purposes shall be and are hereby incorporated by the name of "The Rowrah and Kelton Fell (Mineral) Railway Company," and by that name shall be a body corporate, with perpetual succession and a common seal, and with power to purchase, take, hold, and dispose of lands and other property for the purposes of this Act.

Power to make railway according to deposited plans.

5. Subject to the provisions of this Act, the Company may make and maintain, in the line and according to the levels shown on the deposited plans and sections, the railway herein-after described, with all proper stations, sidings, approaches, works, and conveniences connected therewith, and may enter upon, take, and use such of the lands delineated on the said plans and described in the deposited

books of reference as may be required for that purpose. The railway herein-before referred to and authorised by this Act is,—

A railway three miles and four chains in length or thereabouts, commencing in the parish of Arlecdon in the county of Cumberland by a junction with the Whitehaven, Cleator, and Egremont (Extension) Railway, at a point on the said railway 360 yards or thereabouts, measured in a westerly direction, from the centre of the bridge which carries the public road over the said Whitehaven, Cleator, and Egremont (Extension) Railway, at or near to the Rowrah station thereof, and terminating at a point 20 yards or thereabouts, measured in a north-easterly direction, from the south-west corner of a close of land numbered 246 on the Ordnance map of the parish of Lamplugh.

For the protection of John Musgrave and his lessees.

6. For the protection of John Musgrave or the owner or owners for the time being, and the lessees of the Rowrah Head estate, the following provisions shall have effect; that is to say,

(1.) The Company shall construct and maintain, and shall for ever thereafter drain and repair an arch under their railway in the field numbered 6 on the deposited plans, in the parish of Lamplugh and county of Cumberland, with a clear headway of not less than fourteen feet six inches, and a width of roadway of not less than fifteen feet, as a bridge under the railway for all purposes, and as a means of communication by private railway or tramway to and from the limestone quarry and land of the said John Musgrave, or other the owners or lessees aforesaid, from and to the railway of the Cleator Company:

(2.) Before the Company interfere with the occupation road numbered 7 in the said last-mentioned deposited plans, they shall provide a substituted occupation road alongside of the railway on the south and south-westerly side thereof, for the whole length that they interfere with such occupation road, and such road shall be carried by a bridge over the said private railway or tramway, but shall be of such height and width as not to impede or interfere with the use of the said private railway or tramway.

Capital.

7. The capital of the Company shall be thirty thousand pounds in three thousand shares of ten pounds each.

Shares not to issue until one fifth paid up.

8. The Company shall not issue any share created under the authority of this Act, nor shall any such share vest in the person or Corporation accepting the same, unless and until a sum not being

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less than one fifth of the amount of such share is paid in respect thereof.

Calls.

9. One fifth of the amount of a share shall be the greatest amount of a call, and three months at least shall be the interval between successive calls, and three fifths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.

Receipt clause in case of persons not sui juris.

10. If any money is payable to a shareholder being a minor, idiot, or lunatic, the receipt of the guardian or committee of his estate shall be a sufficient discharge to the Company.

Power to borrow.

11. The Company may from time to time borrow on mortgage any sum not exceeding in the whole ten thousand pounds, but no part thereof shall be borrowed until the whole capital of thirty thousand pounds 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 fortieth 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.

Arrears may be enforced by appointment of a receiver.

12. The mortgagees of the Company may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages by the appointment of a receiver. In order to authorise the appointment of a receiver in respect of arrears of principal, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than two thousand pounds in the whole.

Debenture stock.

13. The Company may create and issue debenture stock, subject to the provisions of Part III. of the Companies Clauses Act, 1863; but, notwithstanding anything therein 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. A.D. 1874.

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

15. The first ordinary meeting of the Company shall be held within four months after the passing of this Act. First ordinary meeting.

16. The number of directors shall be six, but the Company may from time to time reduce the number, provided that the number be not less than three. Number of directors.

17. The qualification of a director shall be the possession in his own right of not less than thirty shares. Qualification of directors.

18. The quorum of a meeting of directors shall be three when the number of directors is more than three, and shall be two if the number of directors shall be reduced to three. Quorum.

19. Robert Alleyne Robinson, Alexander Brogden, James Baird, Alexander Whitelaw, David Wallace, and Martin Boundy shall be the first directors of the Company, and shall continue in office until the first ordinary meeting held after the passing of this Act. At that meeting the shareholders present in person or by proxy may either continue in office the directors appointed by this Act, or any of them, or may elect a new body of directors, or directors to supply the place of those not continued in office, the directors appointed by this Act being, if qualified, eligible for re-election; and at the first ordinary meeting to be held in every year after the first ordinary meeting, the shareholders present in person or by proxy shall (subject to the power herein-before contained for reducing the number of directors) elect persons to supply the places of the directors then retiring from office, agreeably to the provisions of the Companies Clauses Consolidation Act, 1845; and the several persons elected at any such meeting, being neither removed nor disqualified, nor having died or resigned, shall continue to be directors until others are elected in their stead in manner provided by the same Act. First directors. Election of directors.

20. The quantity of land to be taken by the Company by agreement for the extraordinary purposes mentioned in the Railways Clauses Consolidation Act, 1845, shall not exceed two acres. Lands for extraordinary purposes.

21. 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 three years from the passing of this Act. Powers for compulsory purchases limited.

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Inclination of road.

22. In altering for the purposes of this Act the road next herein-after mentioned, the Company may make the same of any inclination not steeper than the inclination herein-after mentioned in connexion therewith; (that is to say,)

No. on deposited Plan.	Parish.	Description of Road.	Intended Inclination.
53	Lamplugh - -	Public highway -	1 in 10

Height and span of bridges.

23. The Company may make the arches of the bridges for carrying the railway over the roads next herein-after mentioned of any heights and spans not less than the heights and spans herein-after mentioned in connexion therewith respectively; (that is to say,)

No. on deposited Plan.	Parish.	Description of Road.	Height.	Span.
38	Lamplugh - -	Public highway -	15	20
53	Lamplugh - -	Public highway -	15	20
101	Lamplugh - -	Public highway -	15	20

Width of certain roadway.

24. The Company may make the roadway over the bridge by which the following road will be carried over the railway of such width between the fences thereof as the Company think fit, not being less than the width herein-after mentioned in connexion therewith; (that is to say,)

No. on Plan.	Parish.	Description of Roadway.	Width of Roadway.
27 5	Lamplugh - - Salter and Eskett -	Public highway -	20 feet.

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

25. Whereas, pursuant to the standing orders of both Houses of Parliament, and to an Act of the ninth year of the reign of Her present Majesty, chapter twenty, a sum of one thousand four hundred and eighteen pounds eleven shillings, being five per cent. upon the amount of the estimate in respect of the railway, has been deposited with the Court of Chancery in England in respect of the application to Parliament for this Act: Be it enacted, that, notwithstanding anything contained in the said Act, the said sum 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 railway, either open the railway for public traffic, or prove to the satisfaction of the 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, 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 railway for public 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 above-mentioned Act to the contrary notwithstanding.

Application of deposit.

26. The said sum of money deposited as aforesaid shall be applicable, and after due notice in the London 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 railway, 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 Chancery in England 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 either be forfeited to Her Majesty, and accordingly be paid or transferred to or for the account of Her Majesty's Exchequer in such manner as the Court of Chancery in England thinks fit to order on the application of the Solicitor of Her Majesty's Treasury, and shall be carried to and form part of the Consolidated Fund of the United Kingdom, or, in the discretion of the Court, if the Company is insolvent, and has been ordered to be wound up, or a receiver has been appointed, shall wholly or in part be paid or transferred to such receiver or to the liquidator or liquidators of the

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Company, or be otherwise applied as part of the assets of the Company for the benefit of the creditors thereof: Provided that until the said sum of money has been repaid to the depositors, or has 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.

Period for completion of works.

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

Tolls.

28. The Company may demand and take, in respect of the use of the railway, any tolls not exceeding the following; (that is to say,)

Tonnage on articles of merchandise.

In respect of the tonnage of goods, minerals, and merchandise conveyed on the railway:

For all coals, iron ore, and ironstone, dung, compost, and all sorts of manure, lime and limestone, and all undressed materials for the repair of public roads or highways, per ton per mile one penny halfpenny; and if conveyed in carriages belonging to the Company, an additional sum per ton per mile of one penny;

For all coke, culm, charcoal, cinders, all stones for building, pitching, and paving, all bricks, tiles, slates, clay, sand, pig iron, bar iron, rod iron, hoop iron, and all other similar descriptions of wrought iron and iron castings not manufactured into utensils or other articles of merchandise, per ton per mile twopence; and if conveyed in carriages belonging to the Company, an additional sum per ton per mile of one penny;

For all sugar, grain, corn, flour, hides, dyewoods, earthenware, timber, staves, and deals, metals (except iron), nails, anvils, vices, and chains, per ton per mile threepence; and if conveyed in carriages belonging to the Company, an additional sum per ton per mile of one penny;

For all cotton and other wools, drugs, manufactured goods, and all other wares, merchandise, fish, articles, matters, or things, per ton per mile fourpence; and if conveyed in carriages belonging to the Company, an additional sum per ton per mile of one penny halfpenny;

And for every carriage of whatever description, not being a carriage adapted and used for travelling on a railway, and not weighing more than one ton, carried or conveyed on a truck or platform belonging to the Company, per ton per mile sixpence;

And a sum of one penny halfpenny per mile for every additional quarter of a ton, or fractional part of a quarter of a ton, which any such carriage may weigh.

Tolls for propelling power.

29. The toll which the Company may demand for the use of engines for propelling carriages on the railway shall not exceed one penny per mile for each ton of goods, in addition to the several other tolls or sums by this Act authorised to be taken.

Regulations as to tolls.

30. The following provisions and regulations shall apply to the fixing of all tolls and charges payable under this Act; (that is to say,)

For all goods conveyed on the railway for a less distance than the entire length of the railway, the Company may demand tolls and charges as for four miles:

For a fraction of a ton the Company may demand tolls according to the number of quarters of a ton in such fraction; and if there be a fraction of a quarter of a ton, such fraction shall be deemed a quarter of a ton:

With respect to all articles, except stone and timber, the weight shall be determined according to the usual avoirdupois weight:

With respect to stone and timber, fourteen cubic feet of stone, forty cubic feet of oak, mahogany, teak, beech, or ash, and fifty cubic feet of any other timber, shall be deemed one ton weight, and so in proportion for any smaller quantity.

Tolls for small parcels and single articles of great weight.

31. With respect to small parcels not exceeding five hundred pounds in weight, and single articles of great weight, notwithstanding anything in this Act, the Company may demand and take any tolls not exceeding the following; (that is to say,)

For the carriage of small parcels on the railway:

For any parcel not exceeding seven pounds in weight, threepence:

For any parcel exceeding seven pounds in weight, but not exceeding fourteen pounds in weight, fivepence:

For any parcel exceeding fourteen pounds in weight, but not exceeding twenty-eight pounds in weight, sevenpence:

For any parcel exceeding twenty-eight pounds in weight, but not exceeding fifty-six pounds in weight, ninepence:

For any parcel exceeding fifty-six pounds in weight, but not exceeding five hundred pounds in weight, the Company may demand any sum they think fit:

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Provided always, that articles sent in large aggregate quantities, although made up in separate parcels, such as bags of sugar, coffee, meal, and the like, shall not be deemed small parcels, but that term shall apply only to single parcels in separate packages.

For the carriage of single articles of great weight on the railway:

For the carriage of any one boiler, cylinder, bob, or single piece of machinery, or single piece of timber or stone, or any other single article, the weight of which, including the carriage, shall exceed four tons, but shall not exceed eight tons, the Company may demand such sum as they from time to time may think fit, not exceeding one shilling per ton per mile:

For the carriage of any single piece of timber, stone, machinery, or other single article, the weight of which, with the carriage, shall exceed eight tons, or which on account of the length thereof may require more than one carriage, the Company may demand such sum as they think fit.

Maximum rates for goods.

32. The maximum rate of charge to be made by the Company for the conveyance of goods (except such small parcels and single articles of great weight as aforesaid) on the railway, including the tolls for the use of the railway, and for waggons or trucks and locomotive power, and for every other expense incidental to the conveyance (except a reasonable charge for loading and unloading goods at any terminal station in respect of such goods, and for delivery and collection, and any other service incidental to the business or duty of a carrier, where any such service is performed by the Company), shall not exceed the following sums; (that is to say,)

For all coals, dung, compost, and all sorts of manure, lime and limestone, and all undressed materials for the repair of public roads or highways, per ton per mile one penny halfpenny;

For all coke, culm, charcoal, cinders, all stones for building, pitching, and paving, all bricks, tiles, slates, clay, sand, pig iron, bar iron, rod iron, hoop iron, and all other similar description of wrought iron and iron castings not manufactured into utensils or other articles of merchandise, per ton per mile twopence;

For all iron ore, per ton per mile threepence;

For all sugar, grain, corn, flour, hides, dyewoods, earthenware, timber, staves, sand, deals, metals (except iron), nails, anvils, vices, and chains, per ton per mile threepence halfpenny;

For all cotton and other wools, drugs, manufactured goods, and all other wares, merchandise, fish, articles, matters or things, per ton per mile fourpence halfpenny;

And for every carriage of whatever description, not being a carriage adapted and used for travelling on a railway, and not weighing more than one ton, carried or conveyed on a truck or platform belonging to or provided by the Company, per mile eightpence, and twopence for every additional quarter of a ton which such carriage may weigh.

Terminal station.

33. No station shall be considered a terminal station in regard to any goods conveyed on the railway unless such goods have been received thereat direct from the consignor, or are directed to be delivered thereat to the consignee.

Company may take increased charges by agreement.

34. Nothing in this Act shall prevent the Company from taking any increased charges, over and above the charges by this Act limited, for the conveyance of goods of any description, by agreement with the owners or persons in charge thereof, by reason of any special service performed by the Company in relation thereto.

Cleator Company to afford facilities for the Company's traffic.

35. The Cleator Company shall from time to time afford all proper and sufficient facilities for the reception, accommodation, forwarding, interchange, and delivery of all traffic of whatever description passing or intended to pass to or from the railway of the Company from or to any railway of the Cleator Company, and that Company shall from time to time duly receive, and transmit on their own railway, and deliver accordingly all such traffic, and in all respects on an equality with their own proper traffic.

Nature and extent of traffic facilities.

36. The traffic facilities to be so afforded by the Cleator Company shall include through booking, through invoicing, through waggons, trucks, and other arrangements and facilities as the Cleator Company and the Company may agree on, or failing such agreement as shall be determined by arbitration in manner provided by "The Regulation of Railways Act, 1873."

Terms, &c. on which facilities shall be given.

37. The terms and conditions, pecuniary and otherwise, on which the Cleator Company shall afford to the Company, and the Company shall enjoy, the traffic facilities by this Act prescribed, and the through rates for the traffic for which the facilities are afforded, shall be such terms and conditions and such lawful through rates respectively as the Company and the Cleator Company from time to time agree on, or failing such agreement as shall be from time to time determined by arbitration in manner provided by "The Regulation of Railways Act, 1873."

Saving rights of Cleator Company.

38. Nothing in this Act contained shall extend to prejudice, diminish, alter, or take away any of the rights, privileges, or powers of the Cleator Company, otherwise than is herein expressly provided.

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Interest not to be paid on calls paid up.

39. The Company shall not, out of any money by this Act authorised to be raised, pay interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him; but nothing in this Act shall prevent the Company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with the Companies Clauses Consolidation Act, 1845.

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

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

Railway not exempt from provisions of present and future general Acts.

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

Expenses of Act.

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

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