CHAPTER xcix.

An Act for empowering the Scarborough and Whitby Railway Company to raise additional capital and for other purposes. [3rd July 1884.]

A.D. 1884.

WHEREAS by the Scarborough and Whitby Railway Act 1871 (herein-after called "the Act of 1871") the Scarborough and Whitby Railway Company (herein-after called "the Company") were incorporated and empowered to make and maintain the railways therein described forming together a line of railway from Scarborough to Whitby:

And whereas by the Scarborough and Whitby Railway Act 1873 (herein-after called "the Act of 1873") the Company were empowered to extend their line to join the York and Scarborough Railway of the North-eastern Railway Company at Scarborough and the Whitby Redcar and Middlesbrough Union Railway near Whitby and to alter the levels of their authorised line near Whitby:

And whereas by the Scarborough and Whitby Railway Act 1880 (herein-after called "the Act of 1880") the powers of the Company for the compulsory purchase of land and for the construction of the said railways were revived and extended and the capital of the Company was fixed and regulated and divided into three classes called respectively A shares consisting of four thousand and twenty-six shares of ten pounds each created and issued under the Act of 1871 B stock amounting to fifty-four thousand seven hundred and forty pounds to be applied in satisfying the claims of creditors and C shares consisting of fourteen thousand five hundred shares of ten pounds each to be applied for the purpose of purchasing land and completing the works and other purposes to which capital is properly applicable not being claims enforceable against the Company at the time of the passing of the Act of 1880 and provision was thereby made for the payment of dividend upon the said several classes of shares and stock according to the rates and priorities thereby prescribed in that behalf:

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And whereas nearly the whole of the land required for the construction of the said railways has been purchased or contracted for and the works are for the most part completed or nearly so but further capital is required for completing the land purchases and the remainder of the works and for other the purposes of the said Acts and it is expedient that the Company be empowered to raise further capital for those purposes in manner herein-after provided:

And whereas it is expedient that the Company and the other companies herein-after in that behalf mentioned be empowered to enter into and carry into effect agreements as herein-after provided:

And whereas it is expedient to sanction and confirm the proceedings of the Company with respect to the construction of the bridge carrying the public highway called Wrea Lane in the parish of Scarborough over the Company's authorised line of railway:

And whereas the objects of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title.

1. This Act may be cited as the Scarborough and Whitby Railway Act 1884.

Incorporation of general Acts.

2. The provisions of the Companies Clauses Consolidation Act 1845 with respect to the several matters following that is to say:—The construction of that Act and of other Acts incorporated therewith the distribution of the capital of the Company into shares the transfer or transmission of shares the payment of subscriptions and the means of enforcing the payment of calls the forfeiture of shares for nonpayment of calls the remedies of creditors of the Company against the shareholders the borrowing of money by the Company on mortgage or bond the conversion of the borrowed money into capital the consolidation of the shares into stock and the making of dividends and also with respect to the recovery of damages not specially provided for and penalties and with respect to the provision to be made for access to the special Act by all parties interested and Part I (relating to cancellation and surrender of shares) Part II (relating to additional capital) and Part III (relating to debenture stock) of the Companies Clauses Act 1863 as amended by the Companies Clauses Act 1869 except where expressly varied by this Act are incorporated with and form part of this Act and the parts of Acts so incorporated are in this Act referred to as the incorporated Acts.

Interpretation.

3. In this Act the several words and expressions to which meanings are assigned by the incorporated Acts shall have the same respective meanings unless there is something in the subject or context repugnant to such construction The expression "the recited Acts" means the Act of 1871 the Act of 1873 and the Act of 1880 and for the purposes of this Act the expression "superior courts" or "court of competent jurisdiction" or any other like expression in the incorporated Acts 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.

Power for Company to raise further capital.

4. The Company may subject to the provisions of Part II. of the Companies Clauses Act 1863 with the sanction of three fourths of the votes of the proprietors entitled to vote in that behalf at meetings of the Company present in person or by proxy at a meeting or meetings of the Company specially convened for the purpose from time to time raise any further capital not exceeding in the whole one hundred and sixty thousand pounds by the creation and issue at their option of additional C shares or new preference shares or partly by one and partly by the other of those modes and such shares shall except as herein-after provided form part of the general capital of the Company.

One-fifth part of the new shares to be paid on issue.

5. The Company shall not issue any share to be created under the powers of this Act of less nominal value than ten pounds nor shall any such share vest in the person accepting the same unless and until a sum not being less than one-fifth part of the amount of such share shall have been paid up in respect thereof.

Calls.

6. Twenty per centum on the amount of any share to be issued by the Company under the authority of this Act shall be the largest amount of any call which may be made thereon and there shall be an interval of not less than three months between any two successive calls and the Company shall not call up more than three fourths of a share in any year.

New shares to be subject to the same incidents as other shares.

7. Subject to the provisions of this Act the further capital created by the Company under this Act and the shares therein and the holders thereof respectively shall be subject and entitled to the same powers provisions liabilities rights privileges and incidents whatsoever in all respects as if that capital were part of the now existing capital of the Company of the same class or description and the shares in such further capital were shares in the said existing capital.

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Restriction as to votes in respect of preference shares.

8. Except as otherwise expressly provided by the resolution creating the same no person shall be entitled to vote in respect of any new preference shares created by the Company under this Act.

Receipt in case of persons not sui juris.

9. If any money is payable to a holder of shares or stock in the Company who is 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 on mortgage.

10. The Company in addition to any sums which they are authorised to borrow under any other enactment may from time to time borrow on mortgage in respect of the further capital by this Act authorised any sums not exceeding in the whole fifty-three thousand three hundred and thirty-three pounds and of that sum they may borrow twenty-six thousand six hundred and sixty-six pounds when eighty thousand pounds of such further capital has been issued and one half thereof has been paid up and they may borrow the remainder namely twenty-six thousand six hundred and sixty-seven pounds when the remainder of such further capital has been issued and one half thereof has been paid up but no part of the respective sums of twenty-six thousand six hundred and sixty-six pounds and twenty-six thousand six hundred and sixty-seven pounds respectively shall be borrowed until 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 the respective portion of capital in respect of which the same is borrowed 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 respective portion of capital has been paid on account thereof before or at the time of the issue or acceptance thereof and that the same 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 certificate shall be sufficient evidence thereof.

Debenture stock.

11. 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 after the passing of this Act created and issued by the Company shall rank pari passu with the interest of all mortgages at any time after the passing of this Act granted

by the Company and shall have priority over all principal moneys secured by such mortgages.

Priority of principal moneys secured by existing mortgages.

12. The principal moneys secured by all mortgages granted by the Company in pursuance of the powers of any Act of Parliament before the passing of this Act and subsisting at the passing hereof shall during the continuance of such mortgages have priority over the principal moneys secured by any mortgages granted by virtue of this Act.

Provisions of former Act as to appointment of a receiver repealed.

13. The provisions of the Act of 1880 with respect to the appointment of a receiver for enforcing payment by the Company of arrears of interest or principal or principal and interest shall be and the same are hereby repealed but subject and without prejudice to any appointment of a receiver which may have been made or to the continuance of any proceedings which may have been commenced prior to the passing of this Act under any such provision.

For appointment of a receiver.

14. 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 seven thousand pounds in the whole.

Application of money raised under this Act.

15. All moneys raised under this Act whether by shares or debenture stock or borrowing shall be applied only for the purposes of this Act and the recited Acts to which capital is properly applicable.

Application of revenue.

16. The net revenue of the Company in any year after payment of interest or dividends upon their mortgages and debenture stock shall from and after the passing of this Act and notwithstanding anything in the recited Acts contained be applied:

First—In payment of dividend on any new preference shares created and issued under the authority of this Act;

Secondly—In payment of dividend at the rate of five pounds per centum per annum on the amount for the time being paid up on the C shares created and issued under the Act of 1880 and this Act;

Thirdly—In payment of dividend at the rate of three pounds per centum per annum on the B stock of the Company;

Fourthly—In payment of dividend at the rate of two pounds per centum per annum on the amount for the time being paid up on the A shares of the Company;

Fifthly—In payment of equal dividends to the holders of the B stock and A shares in the capital of the Company until the

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holders of B stock shall have (including the foregoing dividend) received a dividend of five pounds per centum upon the respective amounts of B stock held by them and the holders of A shares shall have in like manner received a dividend of four pounds per centum upon the amounts for the time being paid up on their respective shares;

Sixthly—Any surplus shall be divided equally among the holders of C shares.

Provided always that any deficiency in the dividend of any class of shares or stock in any year shall not be made good out of the revenue of any subsequent year.

Power to enter into agreements with other companies as to construction of junctions stations &c.

17. The Company on the one hand and the North-eastern Railway Company and the Whitby Redcar and Middlesbrough Union Railway Company or either of those companies on the other hand may from time to time enter into vary and rescind agreements with respect to all or any of the following matters (that is to say):—

The alteration enlargement reconstruction use management and maintenance of any of the stations platforms sidings works and conveniences of the said companies or any of them used or required to be used in common by the Company and the other companies or either of them.

The construction use management and maintenance of new stations platforms sidings works and conveniences upon the respective railways of the said companies or any of them used or required to be used in common by the Company and the other companies or either of them.

Confirming the mode of constructing a certain bridge.

18. The mode of constructing the bridge by which the public highway called Wrea Lane in the parish of Scarborough has been carried over the Company's Railway No. 1 authorised by the Act of 1871 and the Act of 1880 and the alteration of the levels of the same is hereby sanctioned and confirmed.

Classification table to be open to inspection and copies to be sold.

19. The book tables or other document in use for the time being containing the general classification of goods carried by goods or merchandise train on the railways of the Company shall during all reasonable hours be open to the inspection of any person without the payment of any fee at every station at which goods or merchandise are received for transmission and such book tables or other document as annually revised shall be kept on sale at the principal office of the Company at a price not exceeding one shilling.

Terminal charges (if any) to be specified on application.

The Company shall within one week after application in writing made to the secretary of the Company by any person interested in the carriage of any goods which have been or are intended to be

carried over the railway render an account to the person so applying in which the charge made or claimed by the Company for the carriage of such goods shall be divided and the charge for conveyance over the railway shall be distinguished from the terminal charges if any and if any terminal charge is included in such account the nature and detail of the terminal expenses in respect of which it is made shall be specified.

Penalty.

If the Company fail to comply with the provisions of this section they shall for each offence and in the case of a continuing offence for every day during which the offence continues be liable to a penalty not exceeding five pounds which penalty shall be recovered and applied in the same manner as penalties imposed by section 14 of the Regulation of Railways Act 1873.

Interest not to be paid on calls paid up.

20. No interest or dividend shall be paid out of any share or loan capital which the Company are by this or any other Act authorised to raise 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.

21. The Company shall not out of any money by this or any other 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.

Provision as to general Railway Acts.

22. Nothing in this Act contained shall exempt the Company or their 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 fares and charges or of the rates for small parcels authorised by this Act.

Costs of Act.

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

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