CHAP. xviii.

An Act to consolidate, define, and regulate the Capital of the South Devon Railway Company; and for other purposes. A.D. 1869.

[13th May 1869.]

WHEREAS by the South Devon Railway Act, 1865 (herein-after referred to as "the Act of 1865"), the South Devon Railway Company (herein-after referred to as "the company") were empowered to raise an additional share capital of three hundred and sixty thousand pounds, and to borrow the sum of one hundred and twenty thousand pounds: 28 & 29 Vict. c. cclv.

And whereas at the time of the company's application for the Act of 1865 all the locomotive stock necessary for working the traffic on their railways was supplied under a contract for a term ending on the thirtieth day of June one thousand eight hundred and sixty-six:

And whereas the said contract was of a very onerous character, and the company, being desirous to be relieved from the necessity of renewing the same, purchased such locomotive stock as was required to enable them to carry on their undertaking:

And whereas by reason of the increase of the traffic on the company's railway it became absolutely necessary for them to provide additional carriages and waggons and to double their single line of railway between Teignmouth and Newton, and to incur other expenditure in the enlargement of stations, the providing of siding accommodation and otherwise, and the company were also bound to construct the branch railway at Exeter authorized by the Act of 1865 within two years from the passing of that Act, and have constructed the same accordingly:

And whereas for the purpose of meeting the liabilities thus incurred, as well as to enable them to fulfil other obligations to which they were liable in reference to the laying down the narrow gauge upon a portion of their undertaking, and the providing of station accommodation at Plymouth for the traffic passing over the same, the company, immediately after the passing of the Act of 1865,

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created preference shares for the whole amount of three hundred and sixty thousand pounds by that Act authorized; but, in consequence of the depressed state of the money market and the general distrust which has attached to all railway undertakings, such shares have hitherto been taken to the amount only of seventy-five thousand three hundred and forty pounds, notwithstanding that the company have been and still are earning a net income sufficient to pay the interest on all their mortgage and guaranteed and preference capital, with a considerable surplus available for dividend upon their ordinary stock:

And whereas the actual expenditure of the company for the purposes before mentioned, and which they were unable to postpone, exceeded the sum of one hundred and twenty thousand pounds, and such expenditure has been met by means of temporary loans for short periods, which have to be renewed from time to time at great expense and inconvenience:

And whereas the existence of so large an amount of floating debt prevents the shares created by the company under the authority of the Act of 1865 from being taken up as they otherwise would be, but the company have at present no means of raising money for the discharge of that floating debt other than by the issue of such shares, the non-issue of which prevents them from exercising the conditional powers of borrowing conferred upon them by the Act of 1865:

And whereas the position and credit of the company would be improved, and the issue of their share capital greatly facilitated, if they were empowered to borrow at once for a limited period the amount authorized by the Act of 1865, and to apply the money so borrowed to the discharge of the aforesaid temporary loans, and it is expedient that the restrictions imposed upon them by that Act should to that end be removed, and that other provision should be made with reference thereto, as herein-after provided:

And whereas the ordinary capital of the company now consists of the sum of one million four hundred and ninety-eight thousand three hundred pounds consolidated ordinary stock:

14 & 15 Vict. c. liii.

And whereas by the South Devon Railway Act, 1851 (herein-after referred to as "the Act of 1851"), the company were empowered to create new shares in lieu of shares cancelled under the authority of that Act, and to attach thereto a fixed preferential dividend at the rate of not exceeding six pounds per centum per annum; and by the South Devon Railway Act, 1857 (herein-after referred to as "the Act of 1857"), so many of the said new shares as should be unissued at the passing of that Act were declared to be absolutely extinguished, and the company were empowered to issue, in lieu thereof, other shares of a similar aggregate amount, and to attach thereto a

fixed preferential dividend at the rate of not exceeding five pounds per centum per annum:

And whereas under the provisions of the Act of 1851 the company have created and issued new shares to the aggregate amount of eighty-five thousand pounds, bearing a fixed preferential dividend at the rate of four pounds ten shillings per centum per annum:

And whereas by the Act of 1857 the company were empowered to raise a further share capital of two hundred and twenty-five thousand pounds, and have raised the same and also the further sum of forty-five thousand one hundred and twenty pounds, which they were empowered by the said Act to raise in lieu of extinguished shares of that amount, and making altogether two hundred and seventy thousand one hundred and twenty pounds, by the creation and issue of new shares, also bearing, as authorized by the said Act, a fixed preferential dividend at the rate of four pounds ten shillings per centum per annum: 20 & 21 Vict. c. viii.

And whereas under the authority of the Act of 1865 the company have acquired certain shares in the capital of the South Devon and Tavistock Railway Company (herein-after referred to as "the Tavistock Company") of the aggregate amount of thirty-three thousand six hundred and seventy-five pounds, also bearing a fixed preferential dividend at the rate of four pounds ten shillings per centum per annum:

And whereas by the Plymouth Great Western Dock (Amendment) Act, 1848, the company were empowered to subscribe the sum of fifteen thousand pounds towards the undertaking of the Plymouth Great Western Dock Company; and under the authority and for the purposes of that Act they created and issued new shares to the amount of fifteen thousand pounds, also bearing a fixed preferential dividend at the rate of four pounds ten shillings per centum per annum: 11 & 12 Vict. c. xcv.

And whereas the preferential capital of the company now consists of the before-mentioned sums of eighty-five thousand pounds, two hundred and seventy thousand one hundred and twenty pounds, thirty-three thousand six hundred and seventy-five pounds, and fifteen thousand pounds, created respectively as herein-before stated, and amounting in the aggregate to the sum of four hundred and three thousand seven hundred and ninety-five pounds, all bearing a fixed preferential dividend at the rate of four pounds ten shillings per centum per annum, and herein-after referred to as "the existing preference shares," and of the before-mentioned sum of three hundred and sixty thousand pounds, created under the authority of the Act of 1865, and bearing a fixed preferential dividend at the rate of five pounds per centum per annum, and herein-after referred to as "the 1865 preference shares:"

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And whereas, in addition to the before-mentioned sums of four hundred and three thousand seven hundred and ninety-five pounds and three hundred and sixty thousand pounds, the company have also power, under the authority of the South Devon Railway Act, 1866 (herein-after referred to as "the Act of 1866"), to raise a further capital of one hundred and fifty thousand pounds by the creation of new shares bearing a fixed preferential dividend, but they have not yet created any of such last-mentioned shares:

And whereas prior to the passing of the Act of 1865 the borrowed capital of the company consisted of the sum of five hundred and fifty-three thousand one hundred and sixty-six pounds, of which four hundred and twenty-two thousand three hundred and six pounds was secured by mortgages (herein-after referred to as "the original mortgages"), bearing different rates of interest, and one hundred and thirty thousand eight hundred and sixty pounds consisted of debenture stock (herein-after referred to as "the original debenture stock"), now bearing a fixed perpetual dividend at the rate of four pounds per centum per annum, and also of the sum of fifty-two thousand five hundred pounds secured by guaranteed debentures (herein-after referred to as "the guaranteed debentures"), issued under the authority of the Cornwall Railway Act, 1846, and the Cornwall Railway Act, 1861, for the purpose of contribution towards the undertaking of the Cornwall Railway Company:

And whereas under the authority of the Act of 1865 the company have assumed the debenture debt of the Tavistock Company, amounting to sixty-three thousand three hundred pounds, secured by mortgages granted by that company (herein-after referred to as "the Tavistock mortgages"):

And whereas the borrowed capital of the company at present consists of the before-mentioned sums of four hundred and twenty-two thousand three hundred and six pounds, one hundred and thirty thousand eight hundred and sixty pounds, fifty-two thousand five hundred pounds, and sixty-three thousand three hundred pounds, secured respectively as herein-before stated, and amounting together to the sum of six hundred and sixty-eight thousand nine hundred and sixty-six pounds, bearing interest or dividend at various rates; and the company have also power to borrow under the Act of 1865 one hundred and twenty thousand pounds, and under the Act of 1866 thirty thousand pounds:

And whereas under the authority of the Act of 1857 the company converted the fixed preferential dividend theretofore payable on certain shares in their capital into annuities amounting in the aggregate to the sum of ten thousand one hundred and forty-one pounds and threepence per annum (herein-after referred to as "the South Devon annuities"):

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And whereas under the authority of the Act of 1865 certain shares in the capital of the Tavistock Company were commuted into South Devon (Tavistock) annuities, amounting in the aggregate to the sum of four thousand three hundred and sixteen pounds seven shillings and sixpence per annum (herein-after referred to as "the Tavistock annuities"):

And whereas the company have also granted, in payment for land acquired by them for the purposes of their undertaking, certain rentcharges amounting in the aggregate to the sum of five hundred and forty-eight pounds six shillings per annum (herein-after referred to as "the rentcharges"):

And whereas it is expedient that the preferential capital of the company as herein-before defined, including therein the sum of one hundred and fifty thousand pounds which they are empowered to raise by the Act of 1866, should be consolidated, and for that purpose should be converted into preference stock of one and the same class bearing a uniform rate of interest, and that the company should be empowered to create preference stock for that purpose:

And whereas it is also expedient that the borrowed capital of the company as herein-before defined, including therein the sums of one hundred and twenty thousand pounds and thirty thousand pounds which they are empowered to raise by the Acts of 1865 and 1866 respectively, should be consolidated, and that the company should be empowered to create debenture stock for that purpose:

And whereas it is also expedient that the annuities and rentcharges to which the company are liable as herein-before mentioned should be consolidated, and for that purpose should be converted into rentcharge stock of one and the same class, and that the company should be empowered to create and issue rentcharge stock in substitution for such annuities and rentcharges respectively:

And whereas by the Act of 1866 and the agreement between the company and the Dartmouth and Torbay Railway Company (herein-after referred to as "the Dartmouth Company") confirmed thereby, provision is made for the amalgamation of the last-named company with the company on the terms therein mentioned, and it is expedient to provide for including in and consolidating with such before-mentioned annuities or rentcharge stock any annuities or yearly payments which may become payable by the company to the Dartmouth Company or the shareholders therein on the completion of such amalgamation:

29 & 30 Vict. c. cliii.

And whereas the maintenance by the company, in connexion with their undertaking, of a certain ferry between Exmouth and the Warren, both in the county of Devon (herein-after referred to as "the Exmouth Ferry"), acquired by them under the provisions of

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an Act of the seventh year of the reign of Her present Majesty, intituled "An Act for making a Railway from Exeter to Plymouth, "to be called the South Devon Railway," has, by reason of the construction of a railway between Exeter and Exmouth, and from other causes, become unnecessary, and it is expedient that the company should be empowered to dispose of the said ferry and the rights, powers, and obligations connected therewith:

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; (that is to say,)

Short title.

1. This Act may be cited for all purposes as "The South Devon Railway Act, 1869."

8 & 9 Vict. c. 16. and 26 & 27 Vict. c. 118.

2. The provisions of the Companies Clauses Consolidation Act, 1845, with respect to the following matters; namely,

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 consolidation of shares into stock;

The remedies of creditors of the company against the shareholders;

The borrowing of money by the company on mortgage or bond;

The conversion of borrowed money into capital;

The provision to be made for affording access to the special Act;

and Part I. (relating to the cancellation and surrender of shares), Part II. (relating to additional capital), and Part III. (relating to debenture stock) of the Companies 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 partially incorporated herewith have the same respective meanings, unless there be something in the subject or context repugnant to such construction; and 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 common simple contract debt, and not a debt or demand created by statute.

Power to borrow at once to the extent authorized by the Act of 1865.

4. Notwithstanding anything in the Act of 1865 contained, the company may, from time to time and at any time after the passing of this Act, raise by borrowing the whole or any part of the sum of one hundred and twenty thousand pounds which they are by that Act authorized to raise by borrowing, and so much of section nine of that Act as imposes upon the company any restrictions on the exercise of the powers of borrowing by that Act conferred upon them is hereby repealed: Provided always, that the company shall within five years after the passing of this Act pay off, or, by the conversion of borrowed money into capital, satisfy such part (if any) of the said sum of one hundred and twenty thousand pounds as shall be requisite to reduce that sum to an amount equal to one-third part of the then amount of the share capital which they have raised under the authority of the Act of 1865; provided also, that at the expiration of such five years the powers of the company for borrowing and reborrowing under the authority of this Act shall cease, except to the extent of one-third part of the amount of the share capital from time to time raised by them under the authority of the Act of 1865, and, except to the same extent, the company shall not raise any part of the said sum of one hundred and twenty thousand pounds by the creation and issue of debenture stock, or apply the same when raised to any purpose other than the discharge of their temporary loans.

Money raised by the issue of 1865 preference shares to be applied in discharge of temporary loans and money borrowed under this Act.

5. All monies raised by the company after the passing of this Act by the issue of the 1865 preference shares shall, to the extent of one hundred and twenty thousand pounds, be applied in the first instance in the discharge of the said temporary loans, or in repayment of any money borrowed under the authority of this Act for that purpose.

Power to create South Devon 5 per cent. preference stock.

6. The company may, for the purpose of consolidating the existing preference shares and the 1865 preference shares, from time to time create such amounts of stock as they shall find requisite, not exceeding in the aggregate the sum of seven hundred and twenty-three thousand four hundred and sixteen pounds, and may attach thereto a fixed perpetual preference dividend at the rate of five pounds per centum per annum, and such stock shall be called "South Devon Five per Cent. Preference Stock," and shall entitle the holders thereof, as amongst themselves, to the same rights, privileges, and authorities, and shall confer upon such holders the same rights of voting, as are possessed by the holders of a like nominal amount of the consolidated ordinary stock of the company: Provided always, that the company shall not be bound to register any fractional part of a pound of such stock, but in every case

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where the conversion and consolidation of shares into stock under the provisions of this Act shall cause such a fractional part, the company may receive from the holder of the shares such a further sum in cash as will make up an even pound, or may pay to such holder in cash the amount of such fractional part.

Power to issue South Devon 5 per cent. preference stock in substitution for existing preference shares.

7. The company may, from time to time, with the consent of any holder for the time being of any of the existing preference shares, issue to such holder such an amount of South Devon five per cent. preference stock as shall be equal to nine tenths of the aggregate nominal amount of the shares held by him, and thereupon such shares shall be extinguished, and the certificates thereof shall be delivered up to be cancelled.

Power to issue South Devon 5 per cent. preference stock in substitution for 1865 preference shares.

8. The company may cancel any of the 1865 preference shares which shall not have been issued at the passing of this Act, and may issue South Devon five per cent. preference stock to the like amount in lieu thereof; and the company may from time to time, with the consent of any holder for the time being of any of the 1865 preference shares which shall have been issued and taken up prior to the passing of this Act, issue to such holder an amount of South Devon five per cent. preference stock equal to the aggregate nominal amount of the shares held by him, and thereupon such shares shall be extinguished, and the certificates thereof shall be delivered up to be cancelled.

Power to create South Devon 5 per cent. preference stock in lieu of shares authorized to be raised by the Act of 1866.

9. The company may also raise, by the creation and issue of South Devon five per cent. preference stock, the money which they are by the South Devon Railway Act, 1866, authorized to raise by the creation of shares, and the South Devon five per cent preference stock created for that purpose shall be in addition to and shall rank pari passu with the said amount of seven hundred and twenty-three thousand four hundred and sixteen pounds which the company are authorized to create for the other purposes of this Act.

Power to create debenture stock.

10. The company may, for the purpose of consolidating the original mortgages, the original debenture stock, the guaranteed debentures, and the Tavistock mortgages, create and issue from time to time such amounts of debenture stock, to be called "South Devon Debenture Stock," as they shall find requisite, not exceeding in the aggregate the sum of six hundred and forty-two thousand seven hundred and ninety-four pounds, and bearing interest at the rate of five pounds per centum per annum: Provided always, that the company shall not be required to register any fractional part of a pound of debenture stock, but in every case where the conversion, as herein-after provided, of original debenture stock into debenture

stock created under the authority of this Act shall cause such a fraction, the company may receive from the holder of the existing stock such further sum in cash as will make up an even pound, or may pay to such holder in cash the amount of such fraction.

Power to issue debenture stock created under this Act in lieu of original debenture stock.

11. The company may from time to time, with the consent of any holder for the time being of any portion of the original debenture stock, issue to such holder such an amount of the debenture stock to be created under the authority of this Act as shall be equal to four fifths of the aggregate nominal amount of the original debenture stock held by him, and thereupon such original debenture stock shall be extinguished, and the certificates thereof shall be delivered up to be cancelled.

Power to issue debenture stock created under this Act in substitution for original and Tavistock mortgages and guaranteed debentures.

12. The company may from time to time, with the consent of any holder of any of the original mortgages or guaranteed debentures or Tavistock mortgages respectively, issue to such holder, in exchange for or in lieu of the renewal of his mortgages or debentures, such an amount of the debenture stock to be created under the authority of this Act as shall be agreed upon, but not exceeding the aggregate amount of the mortgages or guaranteed debentures, as the case may be, held by him; and thereupon such mortgages or guaranteed debentures shall be delivered up to the company, and shall be cancelled and extinguished, and to the extent of the debenture stock so from time to time issued the powers of the company of borrowing or reborrowing on mortgage or guaranteed debentures shall be extinguished.

Money authorized to be borrowed under this Act and the Act of 1866 may be raised by debenture stock.

13. Subject to the limitation herein-before contained, the company may raise the said sum of one hundred and twenty thousand pounds which they are by this Act authorized to borrow by the creation and issue of debenture stock of one class with, and bearing the same rate of interest as, the said sum of six hundred and forty-two thousand seven hundred and ninety-four pounds of debenture stock authorized to be raised for the other purposes of this Act; and the company may also raise in like manner the said sum of thirty thousand pounds which they are by the Act of 1866 authorized to borrow: Provided always, that the company shall not raise any part of the said sum of thirty thousand pounds otherwise than in accordance with and subject to the conditions and restrictions contained in the Act of 1866.

Power to create rentcharge stock.

14. The company may, for the purposes of consolidating the South Devon annuities, the Tavistock annuities, and the rentcharges, from time to time create such amounts of rentcharge stock, to be called "South Devon Rentcharge Stock," as they shall find requisite, not exceeding in the aggregate the sum of three

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hundred thousand one hundred and fourteen pounds, and such rentcharge stock shall be entitled to a guaranteed dividend at the rate of five pounds per centum per annum, and shall entitle the holders thereof, as amongst themselves, to the same rights, privileges, and authorities: Provided always, that the company shall not be bound to register any fractional part of a pound of such rentcharge stock, but in every case where under the provisions of this Act any person shall become entitled to a fractional part of a pound of rentcharge stock the company may receive from such person such a further sum in cash as will make up an even pound, or may pay to such person in cash the amount of such fractional part.

Power to issue rentcharge stock in substitution for South Devon and Tavistock annuities and rentcharges.

15. The company may from time to time, with the consent of any holder of the South Devon annuities, the Tavistock annuities, or the rentcharges, issue to such holder such an amount of South Devon rentcharge stock as will produce the same amount of dividend, as nearly as may be, as the aggregate amount of the annuities or rentcharges held by him, and thereupon such annuities or rentcharges shall be extinguished, and the certificates of the annuities or the grants of the rentcharges shall be delivered up to be cancelled.

Power to create and issue South Devon rentcharge stock for the purposes of the Dartmouth Company.

16. The company may, in addition to the amount of South Devon rentcharge stock authorized to be raised for the purposes of the South Devon annuities, the Tavistock annuities, and the rentcharges, create and issue for the purpose of the amalgamation with the Dartmouth Company such a further amount of South Devon rentcharge stock, bearing interest at the rate of five pounds per centum per annum, as shall be sufficient to produce an amount equal to the sum which, under and by virtue of the agreement between the company and the Dartmouth Company confirmed by the Act of 1866, shall become ultimately payable to the last-named company; and such last-mentioned South Devon rentcharge stock shall, when created, rank pari passu and form one stock with the South Devon rentcharge stock authorized to be created for the purpose of the said annuities and rentcharges, and the holders of South Devon rentcharge stock shall, as amongst themselves, be entitled to the same rights, privileges, and authorities.

Register of rentcharge stock.

17. The company shall from time to time cause the names of the several parties who may be interested in any South Devon rentcharge stock, with the amount of the interest therein possessed by them respectively, to be entered in a book or books to be kept for the purpose, and to be called "The Register," or, as the case may be, "The Registers, of Holders of South Devon Rentcharge Stock."

the same rate of interest, as they may create and issue for the purpose of the amalgamation with the Dartmouth Company, and as they may, by any other Act of Parliament passed in the present or any future session, be authorized to create and issue for the purpose of completing and carrying into effect an amalgamation of the Launceston Company with the company in accordance with the provisions of any such last-mentioned Act.

Power to dispose of Exmouth Ferry.

24. The company may sell or otherwise dispose of to such company or person for such sum and on such terms and conditions as they may think fit their Exmouth Ferry and the rights and privileges thereto belonging, and thereupon the company shall be released from any obligation to maintain and work the said ferry, and all their rights, powers and privileges, authorities and liabilities in respect thereof shall absolutely cease and determine.

As to recovery of tolls on goods which have been removed from the premises of the company.

25. And whereas it is expedient to make further provision for the recovery by the company of tolls due in respect of any carriages or goods, therefore, in any case in which any carriages or goods shall have been removed from the premises of the company without the tolls due to the company in respect thereof having been first paid, the company may detain and sell any other carriages or goods within their premises belonging to the party liable to pay such tolls, and all existing provisions now in force with respect to the recovery by the company of tolls on carriages and goods shall be read and have effect as if the power hereby conferred upon the company had been conferred upon them by such existing provisions.

Extending to company's undertaking certain provisions of the Companies Clauses Consolidation Act, 1845.

26. And whereas the undertaking of the company now consists of their main line of railway constructed under the authority of their original Act of incorporation passed in the year one thousand eight hundred and forty-four, and of branches and other lines constructed under the authority of various Acts of Parliament passed since the year one thousand eight hundred and forty-five, and with which the Companies Clauses Consolidation Act, 1845, is incorporated: And whereas the provisions of the last-mentioned Act with respect to the proceedings and liabilities of the directors differ in some respects from the provisions with respect to the same matters of the said original Act of incorporation of the company, and it is expedient that such provisions should be made consistent: Therefore the provisions of the Companies Clauses Consolidation Act, 1845, with respect to the proceedings and liabilities of the directors, are incorporated herewith, and shall extend and apply to the whole undertaking of the company, and the provisions with respect to the same matters of the original Act of incorporation of the company,

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so far as they differ from or are inconsistent with the provisions hereby incorporated, shall be and the same are hereby repealed.

Interest not to be paid on calls paid up.

27. The company shall not, out of any money by this or any other Act relating to the company authorized 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: Provided always, that this Act shall not 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.

28. The company shall not, out of any money by this or any other Act relating to the company authorized 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 authorizing the company to construct any other railway, or to execute any other work or undertaking.

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

29. Nothing herein contained shall be deemed or construed to exempt the railways of the company 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 authorized by any Act or Acts relating to the company.

Expenses of Act.

30. 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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