CHAPTER cxxiii.

An Act to amend the Acts relating to the Southern Railway Company with respect to the raising of Capital and the time for the completion of the authorised Railways and Works of the Company. [4th July 1878.]

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WHEREAS by the Southern Railway Act, 1865, (herein-after called "the Act of 1865,") the Southern Railway Company (herein-after called "the Company") were incorporated and authorised to make and maintain a railway in the county of Tipperary from Thurles to Clonmel (herein-after called "the main line"), and the share capital of the Company was declared to be one hundred and seventy-one thousand pounds, divided into seventeen thousand one hundred shares of ten pounds each (herein-after, with the further share capital of twenty thousand pounds authorised to be raised by the Southern Railway (Further Powers) Act, 1874, called "main line share capital"): 28 & 29 Vict. c. cccliii. 37 & 38 Vict. c. cxcvi.

And whereas by the Southern Railway (Deviation and Branches) Act, 1866, (herein-after called "the Act of 1866,") the Company were authorised to make and maintain deviation and branch railways (known as and herein-after called "the Colliery Extension"), and were authorised to raise further share capital not exceeding sixty thousand pounds, to be divided into six thousand shares of ten pounds each (herein-after called "Colliery Extension share capital"): 29 & 30 Vict. c. cclxxi.

And whereas by the Southern Railway (Additional Powers) Act, 1871, (herein-after called "the Act of 1871,") the powers of the Company for the compulsory purchase of lands and for the completion of their authorised railways were respectively extended: 34 & 35 Vict. c. ccvi.

And whereas by the Southern Railway (Extension and Further Powers) Act, 1873, (herein-after called "the Act of 1873,") the Company were authorised to make a branch railway to Cashel (herein-after called "the Cashel Extension"), and to raise further share capital not exceeding sixty thousand pounds, to be divided into six thousand shares of ten pounds each (herein-after called "Cashel Extension share capital"), and by the said Act the sum or 36 & 37 Vict. c. ccxlviii.

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amount required to pay the dividends on so much of the Colliery Extension share capital and of the Cashel Extension share capital as should amount to but should not exceed seventy thousand pounds, or on so much thereof as should be from time to time paid up, was charged upon and made payable by the baronies of Middlethird and Slievardagh, in the county of Tipperary, in the events, during the periods, in the proportions, and by means of the rates by the said Act prescribed:

37 & 38 Vict. c. cxcvi.

And whereas further powers were conferred on the Company by the Southern Railway (Further Powers) Act, 1874, (herein-after called "the Act of 1874,") and the Company were authorised to raise a further share capital not exceeding twenty thousand pounds, to be divided into two thousand shares of ten pounds each for the purposes of the Act of 1865, and for the general purposes of their undertaking, which capital forms a portion of the capital herein-before called "main line share capital":

39 & 40 Vict. c. ccxlii.

And whereas by the Southern Railway Act, 1876, (herein-after called "the Act of 1876,") the times limited for the completion of the main line, the Colliery Extension, and the Cashel Extension were respectively extended, and further powers were conferred upon the Company:

And whereas the main line, the greater portion of which is situate in the aforesaid baronies of Middlethird and Slievardagh, has been nearly completed:

And whereas the Company have entered into contracts for the purchase of all the land required for the purposes of the main line as well as of the Colliery Extension and the Cashel Extension, but they have not yet commenced the construction of either of the two last-named railways:

And whereas the Company have issued of the main line share capital thirteen thousand eight hundred and ten shares of the amount of ten pounds each, and there remain of the main line share capital five thousand two hundred and ninety shares of the amount of ten pounds each still unissued:

And whereas no part of the Colliery Extension share capital or of the Cashel Extension share capital has been issued:

And whereas the amount of the whole of the main line share capital will be insufficient to complete the main line, and it is, therefore, expedient that the Company be authorised to raise additional capital for that purpose:

And whereas it is expedient to provide in the first instance for the completion of the main line, and the opening of the same for public traffic, and for such purpose to facilitate the issue of the said unissued portion of the main line share capital, and of the additional capital authorised by this Act, by making applicable thereto

in manner by this Act provided the provisions of the Act of 1873, whereby the said baronies of Middlethird and Slievardagh, in the county of Tipperary, were charged with the payment of certain sums or amounts on account of seventy thousand pounds, being portion of the Colliery Extension share capital and of the Cashel Extension share capital, in manner herein-before mentioned, and by relieving the said baronies from liability in respect of the Colliery Extension share capital and the Cashel Extension share capital, and of every part of the same:

And whereas by the Act of 1876 it was provided that the powers of the Company for the completion of the main line should cease on the 5th day of August 1877, and that the period limited for the completion of the Colliery Extension and the Cashel Extension should extend to the 5th day of August 1879:

And whereas it is expedient that the said powers should be revived and renewed, and that the said periods should be further extended:

And whereas the grand jury of the south riding of the county of Tipperary, at the summer assizes 1877, have approved of this Bill, and the several presentment sessions for the said baronies and the boards of guardians of the several poor law unions affected hereby have also approved of this Bill:

And whereas the Commissioners for the Extension and Promotion of Public Works in Ireland have advanced to the Company large sums of money for the purpose of enabling the Company to construct the main line, and have taken as securities for the repayment of the said sums of money, with interest, the mortgages of the Company:

And whereas certain of the directors of the Company have also entered into their joint and several bonds to the said Commissioners of Public Works to secure the due completion of the main line within the periods in the said bonds specified, and the performance of other conditions therein set out:

And whereas some of the conditions of the said bonds have not been performed; and whereas the Company and the said directors have applied to the said Commissioners of Public Works not to oppose the passing of this Bill, and the said Commissioners have consented not to oppose the passing of the same, provided the same shall not prejudicially affect the securities aforesaid, or the rights now vested in the said Commissioners, by reason of the said conditions having been broken:

And whereas the purposes 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,

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and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Southern Railway Act, 1878.

Sections 40 to 48 of Act of 1873 repealed.

2. From and after the passing of this Act sections forty to forty-eight, both inclusive, of the Act of 1873 shall be and the same are hereby repealed.

Power to raise additional capital.
26 & 27 Vict. c. 118.

3. The Company, for the purposes of the main line, may, subject to the provisions of Part II. of the Companies Clauses Act, 1863, raise any additional capital, not exceeding in the whole ten thousand pounds, by the issue at their option of new ordinary shares or stock, or wholly or partially by either of those modes respectively, but the Company shall not issue any share of less nominal value than ten pounds.

Shares not to issue until one-fifth part paid up.

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

Calls.

5. 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-fourth parts of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.

Except as otherwise provided, new shares or stock to be subject to same incidents as other shares or stock.

6. Except as by this Act otherwise provided, the capital in new shares or stock created by the Company under this Act, and the new shares or stock 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 main line share capital of the Company, and the new shares or stock were shares or stock in that capital, and the capital in new shares or stock so created shall form part of the main line share capital of the Company.

Dividends on new shares.

7. Every person who becomes entitled to new shares or stock created under the powers of this Act shall in respect of the same be a holder of shares or stock in the main line capital of the Company, and (except as otherwise provided by this Act) shall be entitled to a dividend with the other holders of shares or stock in such capital proportioned to the whole amount from time to time called and paid on such new shares, or to the whole amount of such stock, as the case may be.

Power to borrow on mortgage.

8. The Company may, in respect of the additional capital of ten thousand pounds which they are by this Act authorised to raise, from time to time borrow on mortgage any sum not exceeding in the whole three thousand three hundred pounds, but no part thereof shall be borrowed until shares for so much of the said additional capital as is to be raised by means of shares are issued and accepted, and one half of such capital is paid up, and the Company have proved to the justice who is to certify under the 40th section of the Companies Clauses Consolidation Act, 1845, before he so certifies, that shares for the whole of such capital have been issued and accepted, and that one half of such capital 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 until stock for one half of so much of the said additional capital as is to be raised by means of stock is accepted and fully paid up, and the Company have proved to such justice as aforesaid, before he so certifies, that such shares or stock, as the case may be, were issued and accepted bonâ fide, and are held by the persons or corporations to whom the same were issued, or their executors, administrators, successors, or assigns, and also, so far as the said capital is raised by shares, that such persons or corporations, or 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.

8 & 9 Vict. c. 16.

Existing mortgages to have priority.

9. All mortgages granted by the Company in pursuance of the powers of the Act of 1865 before the passing of the Act of 1874, and subsisting at the passing hereof, shall, during the continuance of such mortgages, have priority over any mortgages granted by virtue of this Act, but nothing in this section contained shall affect any priority of the interest of any debenture stock at any time created and issued by the Company.

Priority of principal moneys secured by existing mortgages.

10. The principal moneys secured by all mortgages granted by the Company in pursuance of the powers of any Act of Parliament since the passing of the Act of 1874, and 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.

Power to create debenture stock.

26 & 27 Vict. c. 118.

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

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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.

Application of moneys.

12. All moneys by this Act authorised to be raised by shares or stock, or by borrowing, or by debenture stock, shall be applied for the purposes authorised by this Act only.

Baronial guaranteed shares.

13. The Company may designate by the name of "baronial guaranteed shares" all of the unissued shares forming part of the main line capital, amounting in the whole to the sum of fifty-two thousand nine hundred pounds, and also the shares to be issued in respect of the sum of ten thousand pounds by this Act authorised to be raised, and shall upon the issue of the same endorse upon the certificates such designation.

Baronies to contribute for one year during completion of main line.

14. After the passing of this Act, and for the period of one year during the completion of the main line, in order to pay interest at a rate not exceeding five pounds per centum per annum on so much of the said sum of fifty-two thousand nine hundred pounds the unissued portion of the main line share capital, and on the sum of ten thousand pounds the additional capital authorised by this Act, as shall have been designated and issued as baronial guaranteed shares, or on so much thereof as shall have been from time to time paid up, the baronies of Middlethird and Slievardagh, in the county of Tipperary, shall be assessed during such period to such extent as may be necessary, not exceeding fivepence in the pound, upon the respective valuations of such baronies in force for the time being for the purposes of county cess, and the engineer of the Company, ten days at least before the holding of each assizes for the south riding of the county of Tipperary, shall lodge with the secretary of the grand jury of such riding a certificate in writing stating that the completion of the said main line is properly progressing, and the secretary of the Company shall also, ten days before the holding of each such assizes, lodge with the secretary of the said grand jury a certificate in writing under the common seal of the Company stating what portion of the said sums of fifty-two thousand nine hundred pounds and ten thousand pounds, designated and issued as baronial guaranteed shares, has been paid up, and what sum is then required to pay the interest thereon not exceeding the rate aforesaid, and thereupon the grand jury at each such assizes, after they shall have received such certificates, but not otherwise, shall, subject to the limitation aforesaid, without application to presentment sessions, present such sums to be raised and levied off the said baronies, for the purpose of payment of the said

interest, rateably in proportion to their respective valuations, for the purposes aforesaid, in the manner in all respects as is herein-after provided for the presentment of sums mentioned in the certificates of the arbitrators to be appointed under this Act: Provided always, that after the said period of one year the payment by this section authorised shall cease to be made.

Baronies to contribute after opening of railway.

15. For and during the period of thirty years after the opening of the main line for public traffic, the net receipts from the same, after deducting from the gross receipts the working expenses of such line, and the moneys for the time being payable in respect of any debt or demand secured by mortgage, deed, judgment, bond, or debenture stock of or against the Company to be ascertained in the manner by this Act directed, shall be first applied to the payment of a dividend at the rate of five pounds per centum per annum on so much of the said sum of fifty-two thousand nine hundred pounds, being the unissued portion of the main line share capital, and on the sum of ten thousand pounds by this Act authorised to be raised, as shall have been designated and issued as baronial guaranteed shares, or on so much thereof as shall have been from time to time paid up, and in the event of a total failure or partial insufficiency of such receipts to pay such dividend as aforesaid, then the sums or amounts required to pay such dividend or to make up any deficiency therein shall become payable half-yearly by the baronies of Middlethird and Slievardagh, in the county of Tipperary, which baronies for that purpose shall be assessed during such period to an extent in any year not exceeding fivepence in the pound upon the respective valuations of such baronies in force for the time being for the purposes of county cess, and the sums or amounts so received from the baronies shall be applied for that purpose, and to no other purpose whatever.

Power to grand jury to nominate one director.

16. At the assizes next after the passing of this Act, it shall be lawful for the grand jury of the south riding of the county of Tipperary to appoint a person to be a director of the Company, in addition to the ordinary directors thereof; and during the liability of the said baronies to contribute under this Act, and so long as any moneys shall remain due by the Company to the said baronies, or either of them, it shall be lawful for the said grand jury from time to time, at any future assizes, to remove any director so appointed, and appoint another person in the stead of any director who shall be so removed, or who shall die, resign, or become incapable of acting; and any director appointed by the grand jury shall not be required to be a shareholder of the Company, and the clauses and provisions of the Companies Clauses Consolidation Act, 1845, with respect to the election, qualification, retirement from office, and 8 & 9 Vict. c. 16.

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rotation of directors, shall not apply to any director from time to time appointed by the said grand jury, and notice of such appointment shall from time to time be sent by the secretary of the said grand jury to the secretary of the Company, and upon receipt of such notice the person so appointed shall in all respects, except as aforesaid, have the same powers, privileges, and emoluments (if any), and be subject to the same regulations and provisions, as if he had been duly appointed by the shareholders of the Company.

For ascertaining amount to be paid by the baronies.

17. For the purpose of ascertaining the sums (if any) which the said baronies after the opening of the said main line shall respectively pay as by this Act provided to be paid by them, and for the purpose of ascertaining the net receipts from the main line, and for other the purposes in this enactment mentioned, the Board of Trade may, during such period as aforesaid, upon the request of the Company, from time to time, by warrant under the hand of their secretary for the time being, appoint as arbitrators the county surveyor acting for the time being in the south riding of the county of Tipperary, and two other persons to be selected by the Board of Trade, and may supply the place of any of such arbitrators dying, resigning, or refusing or failing or becoming incapacitated to act; and such arbitrators shall from time to time ascertain and determine the amount of the net receipts as prescribed by this Act, in respect of the said main line in each half year, and also any other matter which to them may appear necessary to inquire into and determine upon in order to ascertain the amount which may be applicable to the payment of the said dividend upon the said baronial guaranteed shares as herein-before provided, and shall thereupon assess and determine the amount of such half-yearly sums (if any) to be paid and made up by the baronies liable to pay the same, such arbitrators taking into consideration the benefit or supposed benefit, immediate or prospective, which such baronies may respectively in their opinion have derived, or be likely to derive, from the formation and opening of the main line, and the arbitrators shall set forth the several matters so ascertained and determined by them in a certificate in writing under their hands (or in case all the said arbitrators shall be unable to agree under the hands of any two of them), and every such certificate shall be in all respects final and binding on the said baronies, and from and immediately after the delivery of any such certificate to the secretary of the grand jury of the said south riding of the county of Tipperary as by this Act directed the said baronies, and all lands, hereditaments, or premises therein respectively, shall be and the same are hereby charged and made chargeable with the payment of such half-yearly sums as shall be specified and set forth in every

such certificate, and a copy of every such certificate shall be delivered to the Company, and the Company shall immediately thereafter pay to such arbitrators their costs and expenses and any remuneration for their trouble in regard thereto as the Board of Trade shall order and direct: Provided always, that the amount so charged upon either of the said baronies in any one year shall not exceed such a sum as would be raised by an assessment of fivepence in the pound upon the valuation of such barony for the purposes aforesaid.

Moneys to be paid by baronies to be a charge on the railways and income thereof.

18. All moneys which have been paid and contributed by the said baronies under the provisions of this Act, together with the costs and expenses of levying the same, shall as and from the dates of the respective payments of the same be charged upon the said main line, and the net receipts from the same (after deducting from the gross receipts the working expenses of such main line and the moneys for the time being payable in respect of any debt or demand secured by mortgage, deed, judgment, bond, or debenture stock of or against the Company, and after deducting interest at the rate of five pounds per centum per annum upon so much of the said sums of fifty-two thousand nine hundred pounds and ten thousand pounds as shall have been designated and issued as baronial guaranteed shares, or upon such portion thereof respectively as may have been paid up) shall be payable by the Company to the treasurer for the time being for the south riding of the county of Tipperary, to be applied by him in relief of the said baronies or barony which shall have contributed the same, and in such proportions as the arbitrators appointed for such purpose under the provisions of this Act shall award.

Accounts of receipts to be rendered.

19. For the purpose of ascertaining the receipts from the said main line, and the working expenses thereof, and the sums (if any) applicable to the payment of the dividends as aforesaid, the Company shall from time to time, on or before the first day of May and the first day of November in every year, make out and render to the arbitrators full, true, and distinct and separate accounts of all the receipts, of every nature and kind, for the then preceding half year ending the thirty-first day of December and the thirtieth day of June in each year, arising in any manner from the said main line, and of the expenditure thereof, which accounts the said arbitrators shall and they are hereby authorised and empowered to examine, with the documents and vouchers evidencing the same, and all books, papers, and accounts in the custody and control of the Company relating to the business of the Company, and all such accounts, documents, vouchers, books, and papers shall be kept by the Company, who shall upon the request of the said arbitrators

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from time to time produce the same to such arbitrators for examination, and such arbitrators may (if they think fit) employ an actuary or accountant to assist them in such examination from time to time at the cost and expense of the Company, and the Company shall, so long as the said barony contributions may continue, keep proper and correct books of account to show the receipts and profits on the said main line, and the expenditure thereof, to which books of account the said arbitrators shall have at all reasonable times access, and from which they may at all times take extracts; and the Company shall, during the said period, send duplicate returns to the said arbitrators of the accounts which they are bound by any Act of Parliament now in force or that may hereafter be in force to transmit to the clerks of the peace, and the said arbitrators shall adjust and balance the said accounts; and as to all matters relating to the said accounts, or what shall be considered as gross receipts from traffic or net profits from traffic, their decision shall in all respects be final and conclusive on all parties.

Sums mentioned in certificates to be presented by grand jury and paid by county treasurer.

20. The arbitrators shall from time to time deliver the certificate by this Act directed to be prepared by them to the secretary of the grand jury of the south riding of the county of Tipperary, who shall lay such certificate, or a copy thereof, before the grand jury of the said riding at the assizes next after he shall have received the same, and it shall be lawful for such grand jury, and they are hereby required from time to time, and without application to presentment sessions, to present the sum mentioned in every such certificate relating to the said baronies to be raised and levied in the like manner as any presentment made under the authority of an Act passed in the sixth and seventh years of the reign of His late Majesty King William the Fourth, chapter 116, and any Act or Acts amending the same, and the treasurer of such county, out of the first moneys collected and remaining in his hands after payment of Government advances, gaol expenses, and salaries of public officers payable by him, shall pay the sum so presented by the grand jury to the treasurer of the Company, or in such other manner as the Company shall direct, and if such grand jury of the said county shall fail to present the sum or any part thereof contained in any such certificate relating to such baronies, the treasurer of the said county shall and he is hereby required to insert such sum, or such omitted part thereof, in his warrant for raising the moneys presented at the same assizes as if such sum had been duly presented by such grand jury to be raised in manner hereinbefore mentioned off such baronies as aforesaid, and the same shall be raised and levied off such baronies accordingly as if the same had been so presented; and the said treasurer shall pay over the

amount when by him received as herein-before provided, as if such money had been presented by such grand jury.

Period when barony contributions liable to cease.

21. After the expiration of thirty years from the opening of the said main line for public traffic, or when and as soon as the Company, by deed under their common seal (which, with the consent in writing of the holders for the time being of so much of the said fifty-two thousand nine hundred pounds and ten thousand pounds as shall have been designated and issued as baronial guaranteed shares, or on such portion thereof as may have been paid up, they are hereby empowered to execute), shall have relieved the baronies respectively from all further liability (whichever shall first happen), the barony contributions shall cease, and from and after the expiration of that period or the delivery of such deed, as the case may be, the provisions of this Act with regard to the contributions of or repayment to the baronies shall for ever cease and determine, except as to the sums respectively which the said baronies shall then be liable to pay, or which may then be due to the said baronies and charged upon the said main line, in respect of which sums the said provisions shall, until the same respectively shall have been paid, remain in full force and effect.

Extension of time for completion of railways.

22. The time limited by the Act of 1866 and by the Act of 1873, as extended by the Act of 1876 to the fifth day of August one thousand eight hundred and seventy-nine, for the completion of the Colliery Extension and the Cashel Extension, and the works connected therewith, shall be extended for three years from that day; and section 32 of the Act of 1866 and section 9 of the Act of 1873 shall be read and construed as if the period by this Act limited for the construction of these railways had been the periods by those Acts limited, and nothing herein contained shall exempt the Company from their liability to construct the said extension railways.

The powers of the Company for the completion of the main line and the works connected therewith, which, under the provisions of the Act of 1876, expired on the fifth day of August one thousand eight hundred and seventy-seven, are hereby revived and renewed, and the same shall, as and from such fifth day of August one thousand eight hundred and seventy-seven, notwithstanding anything in the said Act to the contrary contained, be deemed to have continued, and shall continue to be in full force and have effect until the fifth day of August one thousand eight hundred and seventy-nine.

On the expiration of those periods respectively, the powers by those Acts and by this Act granted to the Company for making and completing the said railways and works, or otherwise in relation

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thereto, shall cease to be exercised, except as to so much thereof as shall be then completed.

Interest not to be paid on calls paid up.

23. 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.

8 & 9 Vict. c. 16.

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

24. 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.

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

25. Nothing in this Act contained shall exempt the Company or the railways from the provisions of any general Act relating to railways (save as is herein excepted), 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 rates for small parcels.

Securities vested in Commissioners of Public Works not to be affected.

26. Nothing in this Act contained shall prejudicially affect the mortgages of the Company, bonds of the directors of the Company, or other securities now vested in the Commissioners for the Extension and Promotion of Public Works in Ireland, or in any other person in trust for them, or in anywise curtail the rights, title, and powers now vested in the said Commissioners by virtue of the said securities.

Expenses of Act.

27. All costs, charges, and expenses preliminary to and of and incidental to the preparing, applying for, obtaining, and passing of this Act, or otherwise in relation thereto, shall be paid by the Company out of the first moneys coming into their possession under the provisions of this Act.

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