ANNO VICESIMO SEPTIMO & VICESIMO OCTAVO

VICTORIÆ REGINÆ.

****

Cap. lxxix.

An Act to enable the *Tendring Hundred* Railway Company to alter their Line to *Walton* in *Essex*, and for other Purposes. [23d *June* 1864.]

WHEREAS by "The *Tendring Hundred* Railway Act, 1859," (herein referred to as the Act of 1859,) the *Tendring Hundred* Railway Company (who are herein referred to as the Company) were incorporated for the making of a Railway from the *Hythe* in the Neighbourhood of *Colchester* to *Wivenhoe* in *Essex*, and that Railway has been made and opened to the Public: And whereas by "The *Tendring Hundred* Railway Act, 1862," the Company were empowered to extend their Railway in *Colchester*, and such Extension is being made: And whereas by "The *Tendring Hundred* Railway Extension Act, 1863," (herein referred to as the Act of 1863,) the Company are authorized to extend their Railway to *Weeley* and *Walton* in *Essex*, and such Extension does not commence by a Junction with the Company's own Undertaking, but with the *Wivenhoe and Brightlingsea* Railway, which was authorized by "The *Wivenhoe and Brightlingsea* Railway Act, 1861," to be made from the Company's Line at *Wivenhoe* to *Brightlingsea*, and the said Act of 1863 confers upon the Company the Right to run over

22 & 23 Vict. c. cxix.

25 & 26 Vict. c. xxxiv.

26 & 27 Vict. c. cxliii.

24 & 25 Vict c. cxix.

and use so much of the *Wivenhoe and Brightlingsea* Railway as will lie between the *Tendring Hundred* Railway and the Point where the Extension to *Weeley* by that Act authorized will join the said *Wivenhoe and Brightlingsea* Railway: And whereas the said *Wivenhoe and Brightlingsea* Railway Act directs that the *Wivenhoe and Brightlingsea* Railway Company shall, within Six Months from their being so required by the Company, construct the *Wivenhoe and Brightlingsea* Railway for the First Quarter of a Mile from its Commencement at *Wivenhoe* with a double Line of Rails: And whereas the Company gave such Notice, and the said Portion of Railway ought to have been made with a double Line of Rails by the Fifth Day of *July* last, but by Agreement between the Two Companies such Time was extended until the Twenty-fifth Day of *March* One thousand eight hundred and sixty-four, but nevertheless no Part of the said Portion of the *Wivenhoe and Brightlingsea* Railway has been as yet commenced, and the Time under the said Act of 1861 for making it will expire on the Eleventh Day of *July* One thousand eight hundred and sixty-five, and it is expedient that if the said *Wivenhoe and Brightlingsea* Railway Company shall not on the passing of this Act be *bonâ fide* proceeding with the Construction of the said Portion of Railway, the Company should be empowered to make it at the Cost of the said *Wivenhoe and Brightlingsea* Railway Company: And whereas the Act of 1863 enacts that the Company "shall in the next Session of Parliament apply for and use their "best Endeavours to obtain an Act authorizing them to abandon so "much of the Railway secondly therein-before described as is situate "between a Field in the Parish of *Kirby-le-Soken*, numbered 39 on "the deposited Plans, and the Termination of the said Railway in "the Parish of *Walton-le-Soken*, and instead thereof to make the "Railway in such Line and Direction as has been or may be agreed "upon between the Engineer of the Company and the Engineer of "the *Great Eastern* Railway Company:" And whereas a substituted Line has been so agreed upon, and it is expedient that the Company should be authorized to make it instead of the Portion of Railway authorized by the Act of 1863, and before referred to: And whereas Plans and Sections of such new Line of Railway and of the before-mentioned Portion of the *Wivenhoe and Brightlingsea* Railway, and also Books of Reference to the Plans containing the Names of the Owners or reputed Owners, Lessees or reputed Lessees, and of the Occupiers of the Lands through which the said new Line and Portion of the *Wivenhoe and Brightlingsea* Railway will respectively pass, have been deposited with the Clerk of the Peace for the said County of *Essex:* And whereas by an Act passed in 1847, intituled *An Act to amend an Act for improving the Navigation from the* Hythe *at* Colchester *to* Wivenhoe *in the County of* Essex, *and for better paving, lighting, and improving the*

10 & 11 Vict. c. cclxxxi.

the Town of Colchester, *and for making a new Channel and deepening the River* Colne *from* Wivenhoe *to* Ram's Hard *leading towards the Sea*, the Commissioners for the Time being elected or appointed under that Act are empowered to levy a Toll or Tax upon all Coals, Culm, or Cinders landed at *Wivenhoe* or at the *Hythe* at *Colchester*, or any Place or Places between *Wivenhoe* and the Sea, provided they come to or pass through the Town of *Colchester* or the Liberties thereof, and the Commissioners have no Power under the said Act to allow a Remission or Drawback of the said Toll or Tax in favour of Coals, Culm, or Cinders which shall be conveyed upon any of the Railways of the Company, and shall only pass through the said Town or Liberties, and it is expedient that the Commissioners should have such Power: And whereas the said Commissioners are by the said Act also authorized to demand and receive from the Owners or Masters of all Ships and Vessels coming into or going out of the River *Colne*, between the Ship-yard of *Wivenhoe* and the *Hythe Bridge*, such Rates and Duties as the Commissioners from Time to Time think reasonable and direct, not exceeding in any Case the Amount set forth in Schedule (A.) to the said Act: And whereas the Company have constructed a Wharf upon the said River at *Wivenhoe* abutting upon but above the said Ship-yard, and all Ships and Vessels using the said Wharf are therefore liable to the said Rates and Duties without deriving any further Benefit from anything that is done by the Commissioners towards maintaining and improving the Navigation of the said River than the Wharfs and other Water-side Premises situate below the said Ship-yard, and it is expedient therefore that the Commissioners should be empowered to remit partially, and in a certain Event wholly, the Rates and Duties which would otherwise be payable in respect of all Ships and Vessels frequenting the Company's said Wharf: And whereas the Purposes aforesaid cannot be accomplished 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:

1. Where in this Act the Words "the Railway" occur the same shall mean the new or substituted Line of Railway and the Works connected therewith by this Act authorized to be constructed. "The Railway."

2. "The Lands Clauses Consolidation Act, 1845," "The Railways Clauses Consolidation Act, 1845," and "The Lands Clauses Consolidation Acts Amendment Act, 1860," and Part I. (relating to Construction of a Railway) of "The Railways Clauses Act, 1863," shall be incorporated with and form Part of this Act. 8 & 9 Vict. cc. 18. & 20., 23 & 24 Vict. c. 106., and 26 & 27 Vict. c. 92. incorporated.

3. It

Power to make Railway according to deposited Plans.

3. It shall be lawful for the Company, subject to the Provisions in this and the incorporated Acts contained, to make and maintain the Railway herein-after described, with all proper Works, Sidings, Approaches, Conveniences, and Stations connected therewith, in the Line and upon the Lands delineated on the said Plans and described in the said Book of Reference, and according to the Levels described on the said Sections, and the Company may enter upon, take, and use such of the said Lands as shall be necessary for such Purposes.

Describing Railway.

4. The Railway (which will be wholly situate in the County of *Essex*) will commence by a Junction with the Extension of the *Tendring Hundred* Railway, authorized by the Act of 1863, in a Field in the Parish of *Kirby-le-Soken*, numbered 39 on the deposited Plans referred to in the said Act, and terminate in the Parish of *Walton-le-Soken* at or near *Church Road*.

Railway, as to Tolls, &c., to be the same as in 26 & 27 Vict. c. cxliii.

5. The Railway Company may demand and receive for and in respect of the Railway the same Tolls and Charges as they are by the Act of 1863 authorized to receive in respect of the Railways by that Act authorized, and the Railway shall, for the Purposes of Tolls and in all other respects, be deemed Part of those Railways, and as if made under that Act.

Level Crossing.

6. It shall be lawful for the Company in the Construction of the Railway to carry the same across and upon the Level of the public Road numbered on the said Plans 25 in the Parish of *Kirby-le-Soken*, and 8 in the Parish of *Frinton*, but no more than a single Line of Railway shall be laid down at such level Crossing so long as the Railway consists of a single Line of Railway, and in no Case shall more than a double Line of Railway be laid down on such level Crossing.

Powers for compulsory Purchases limited.

7. The Powers by this Act conferred for the compulsory Purchase of Lands for the Purposes of the Railway shall not be exercised after the Expiration of Two Years from the passing of this Act.

Period for Completion of Railway.

8. The Railway shall be completed within Four Years from the passing of this Act, and on the Expiration of such Period the Powers by this Act granted to the Company for executing the Railway, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall then be completed.

Penalty if Line not completed

9. If the Railway be not completed and opened for public Traffic within the Period of Four Years from the passing of this Act, the Company

Company shall be liable to a Penalty at the Rate of Fifty Pounds for every Day after the said Period until the Railway shall be so completed and opened, and the said Penalty shall be deemed a Debt due to Her Majesty in right of the Crown, and may be recovered accordingly: Provided always, that if the Company has been prevented from completing or opening the Railway by unforeseen Accident, or by Circumstances beyond their Control, (of which Fact a Certificate under the Hand of the Secretary of the Board of Trade shall be the sole and conclusive Evidence,) the Company shall not be liable to the Payment of the said Penalty in respect of the Period during which it shall be certified that they have been so prevented as aforesaid, but the Want of sufficient Funds shall not be held to be a Circumstance beyond their Control.

within a certain Time.

10. The Company shall abandon the Formation of so much of the Railway "secondly" referred to in the Fourth Section of the Act of 1863 as is by that Act authorized to be made between the before-mentioned Field in the Parish of *Kirby-le-Soken* and the Termination of the said Railway in the Parish of *Walton-le-Soken*; and all the Powers, Authorities, and Privileges by the said Act granted to the Company for the Construction, Maintenance, or Use of the Portion of Railway by this Act required to be abandoned shall, from and after the passing of this Act, cease and determine.

Company to abandon certain Portion of authorized Railway.

11. In any Case where before the passing of this Act any Contract has been entered into or Notice given by the Company for purchasing or using any Lands which the Company were empowered to purchase for the Purpose of constructing the Portion of Railway so required to be abandoned as aforesaid, the Company shall make to the Owners and Occupiers of and other Parties interested in such Lands full Compensation for all Injury or Damage sustained by such Owners, Occupiers, and other Parties by reason of such Purchase not being completed pursuant to such Contract or such Notice; and the Amount and Application of such Compensation shall be determined in the Manner provided by "The Lands Clauses Consolidation Act, 1845," for determining the Amount and Application of the Compensation to be paid for Lands taken under the Provisions thereof: Provided that the Authority hereby given for abandoning the said Portion of Railway shall not prejudice or affect the Right of the Owner or Occupier of any Lands which the Company were so empowered to purchase as aforesaid to receive from the Company Compensation for any Damage that may have been occasioned by the Entry of the Company upon such Lands for the Purpose of surveying and taking Levels, and of probing or boring to ascertain the Nature of the Soil, or of setting out the Line of the Railway pursuant to the

Compensation to be made where Contracts have been entered into or Notice given.

Provisions for that Purpose in "The Lands Clauses Consolidation Act, 1845," contained.

Power to Company to apply their Funds towards Purposes of Acts.

12. It shall be lawful for the Company to apply towards the Purposes of this Act any of the Monies which they are by the Act of 1863 authorized to raise, and which may not be required by them for the Purposes of that Act.

Power to Company in a certain Event to make Part of Wivenhoe and Brightlingsea Railway.

13. If the *Wivenhoe and Brightlingsea* Railway Company shall not by the First Day of *November* next have completed so much of their Railway as is authorized from the *Tendring Hundred* Railway at *Wivenhoe* to the Point where the Extension of the *Tendring Hundred* Railway to *Weeley* is authorized to join the said *Wivenhoe and Brightlingsea* Railway, then it shall be lawful for the Company to exercise in respect of the said Portion of the said *Wivenhoe and Brightlingsea* Railway the following Powers:

They may make or, as the Case may be, complete the said Portion of Railway in the Line and upon the Lands delineated on the before-mentioned deposited Plans relating to the said Portion of Railway, and described in the Book of Reference thereto, and according to the Levels described upon the Sections to the said Plans:

They may enter upon, take, and use such of the said Lands as shall be necessary for such Purposes.

Extending to Company Powers of 24 & 25 Vict. c. cxix.

14. For the Purposes aforesaid all the Powers of "The *Wivenhoe and Brightlingsea* Railway Act, 1861," shall extend to and may be exercised by the Company as though they, instead of the *Wivenhoe and Brightlingsea* Railway Company, had been originally authorized to make the said Portion of Railway.

Power to Company to apply existing Funds for such Purpose.

15. For the Purposes aforesaid the Company may apply any of the Monies which they are by the Act of 1863 authorized to raise, and which may not be required for the Purposes of that Act.

Company not bound to purchase Interest of such Company in any Lands on Portion of Railway.

16. Provided always, That it shall not be necessary for the Company to purchase from the *Wivenhoe and Brightlingsea* Railway Company any Right or Interest which that Company may have acquired in or over any of the said Lands; the Intent and Meaning of this Act, so far as the said Portion of Railway is concerned, being, in the event before referred to, to confer upon the Company all the Powers to construct or, as the Case may be, to complete the said Portion of the *Wivenhoe and Brightlingsea* Railway which are now vested in the *Wivenhoe and Brightlingsea* Railway Company, and that the said Portion of Railway when made shall nevertheless belong to the *Wivenhoe and Bright-*

Brightlingsea Railway Company when they shall have paid to the Company all the Expenses which they may have incurred in the Construction or Completion of and otherwise with respect to the said Portion of Railway under the Powers of this Act.

Extending Time for taking Lands and constructing Portion of such Railway.

17. The Time limited by "The *Wivenhoe and Brightlingsea* Railway Act, 1861," for the compulsory Purchase of Lands, and for making the said Portion of Railway, shall be respectively extended until the Eleventh Day of *July* One thousand eight hundred and sixty-five as regards the Purchase of Lands, and until the Eleventh Day of *July* One thousand eight hundred and sixty-six as regards the Completion of the Railway, beyond the respective Periods limited by the said Act, so far as such Extension of Time may be needed by the Company for carrying into execution the Powers by this Act conferred upon them with reference to the said Portion of Railway, and Part Two of "The Railways Clauses Act, 1863," shall extend to such Extensions of Time: Provided always, that no such Extension of Time shall relieve the *Wivenhoe and Brightlingsea* Railway Company from the Penalty to which under the Thirty-sixth Section of their Act they may become liable for not having opened their Railway, or given the Proof mentioned in such Section, before the Eleventh Day of *July* One thousand eight hundred and sixty-five.

Wivenhoe and Brightlingsea Railway Company to repay to Company their Outlay on Portion of such Railway.

18. Within One Month after the Completion of the said Portion of Railway by the Company they shall render to the *Wivenhoe and Brightlingsea* Railway Company an Account of all Monies expended and Expenses incurred in and about the making or Completion of the said Portion of Railway, including Interest upon all such Outlay and Expenses at the Rate of Five Pounds *per Centum per Annum*, and the *Wivenhoe and Brightlingsea* Railway Company shall forthwith (except they demur to any of the Items in the said Account within One Month after its Delivery, and in that Case so soon as the Question in dispute shall be determined by an Arbitrator in manner herein-after mentioned,) repay to the Company the Amount as rendered by them as aforesaid, or as in case of Dispute shall be settled by the said Arbitrator, and such Amount shall be a Debt due to the Company, and shall be recoverable by them, with full Costs of Suit, in any Court of competent Jurisdiction.

Any Questions between the Two Companies to be referred to an Arbitrator.

19. Any Question which may at any Time arise between the Company and the *Wivenhoe and Brightlingsea* Railway Company under this Act, or with respect to any of the Enactments therein contained with respect to the said Portion of the *Wivenhoe and Brightlingsea* Railway, or as to the Exercise of any of the Powers of this Act, or the Outlay and Expenses incurred by the Company with reference

reference to the said Portion of Railway, shall be referred to an Arbitrator to be agreed upon by the Two Companies, or, failing this, by an Arbitrator to be appointed, on the Application of either Company, by the Board of Trade, and the Decision of any such Arbitrator shall be final and conclusive, and his Costs shall be paid by the Companies in such Proportions or by such One of the Companies as he shall direct.

Portion of Wivenhoe and Brightlingsea Railway to vest in Wivenhoe and Brightlingsea Company on their paying for same.

20. Upon Payment to the Company of such a Sum as may be agreed upon between the Company and the *Wivenhoe and Brightlingsea* Railway Company, or be determined as aforesaid, and not before, the said Portion of Railway shall become the Property of and shall vest in the said *Wivenhoe and Brightlingsea* Railway Company, but without Prejudice to the Rights which are by the Act of 1863 secured to the Company over the said Portion of Railway, and until such Payment be made the Company shall be entitled to exercise and enjoy in and over the said Portion of Railway all the same Rights and Powers as though they were Mortgagees in possession of the said Portion of Railway.

Power to the Colchester Improvement Commissioners to allow a Drawback on Coal, &c. conveyed by Railway.

21. From and after the passing of this Act it shall be lawful for the Commissioners acting in execution of the Powers of the beforementioned Act of the Tenth and Eleventh *Victoria*, Chapter Two hundred and eighty-one, to allow from and out of all Rates and Duties payable to them on Coals, Culm, and Cinders landed between the Flood Gates at *East Mill* and the Sea, and which shall be conveyed by the Railway or any of the Railways of the Company through the Town of *Colchester* or the Liberties thereof, and not be consumed therein, such Drawbacks or Deductions as they the said Commissioners shall at any of their Meetings from Time to Time direct, with full Power for the said Commissioners to alter, vary, increase, and reduce the same from Time to Time as they may determine, not exceeding as to Increase at any Time the maximum Amount allowed by the said last-mentioned Act.

Partial Exemption of Vessels using Company's Wharf at Wivenhoe from Rates under 10 & 11 Vict. c. cclxxxi.

22. From and after the passing of this Act, and until Payment of the present Debt of Three thousand two hundred and fifty Pounds due and owing by the said Commissioners under the said Act of the Tenth and Eleventh *Victoria*, Chapter Two hundred and eighty-one, in respect of the Channel between *Wivenhoe* and the *Hythe Bridge*, and the Interest from Time to Time to grow due thereon, there shall from Time to Time be paid to the said Commissioners, in lieu of the Tonnage Dues that would otherwise be payable under Schedule (A.) to the said last-mentioned Act by all Owners and Masters of Vessels loading or discharging at the Wharf and Premises of the Company at *Wivenhoe*

Wivenhoe aforesaid, such Proportion not exceeding One Half of the Amount of the Rates and Duties from Time to Time payable under the said Schedule (A.) as the said Commissioners shall from Time to Time determine: Provided, nevertheless, that such Proportion or Reduction of Rates and Duties shall only be allowed on Vessels which shall load or discharge their Cargoes, or the major Part of their Cargoes, at such Wharf and Premises of the said Company; and from and after Payment of the said Debt of Three thousand two hundred and fifty Pounds, and the Interest to grow due thereon, the Owners and Masters of Vessels loading or discharging their Cargoes, or the major Part of their Cargoes, at the said Wharf and Premises of the said Company, shall not be subject or liable to any of the Rates and Duties specified in the said Schedule (A.) to the said last-mentioned Act.

When Debt of Commissioners paid they may remit Payment of Rates.

23. After the said Debt of Three thousand two hundred and fifty Pounds and the Interest thereon shall be paid off, the Commissioners shall have Power at any Time or Times and from Time to Time, as they may think fit, to remit Payment of the whole or any Part of the Rates and Duties payable under the aforesaid Schedule (A.) on any Vessels loading or discharging in any Part of the aforesaid River or Channel, and from Time to Time to reimpose the same or any Part thereof, nevertheless without Prejudice to the Provisions of Clause 22. for the Exemption of the Masters and Owners of all Vessels loading or discharging their Cargoes, or the major Part of their Cargoes, at the said Wharf and Premises of the said Company.

Deposits for future Bills not to be paid out of Company's Capital.

24. It shall not be lawful for the Company, out of any Money which they are authorized to raise for the Purposes of any existing Act, to pay or deposit any Sum of Money which, by any Standing Order of either House of Parliament now in force or hereafter to be 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.

Railway, &c. not exempt from Provisions of present and future General Acts.

25. Nothing herein contained shall be deemed or construed to exempt the Railway or the Company from the Provisions of any General Act relative to Railways, or to the better or 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 and Alteration, under the Authority of Parliament, of the maximum Rates of Fares and Charges authorized to be taken by the Company, or of the Rates for small Parcels.

The Tendring Hundred Railway Acts Amendment Act, 1864.

Short Title. Expenses of Act.

26. This Act may be cited as "The *Tendring Hundred* Railway Acts Amendment Act, 1864;" and all the Costs, Charges, and Expenses of applying for, obtaining, and passing this Act, or preparatory or incident thereto, shall be paid by the Company.

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