CHAPTER xxxii.

An Act conferring further Powers on the Torbay and Brixham Railway Company. [28th May 1875.]

A.D. 1875.

WHEREAS by "The Torbay and Brixham Railway Act, 1864," the Torbay and Brixham Railway Company (in this Act called "the Company") were incorporated, with power to make a railway from the Dartmouth and Torbay Railway at Brixham Road Station to Brixham, in the county of Devon, and a tramway in connexion therewith: 27 & 28 Vict. c. ccxlvii.

And whereas it was provided by the said Act that the Company should lay down and maintain on their railway and tramway the broad gauge, and in a certain event they were authorised to add the narrow gauge, and the Company have accordingly constructed the same on the broad gauge, and it is expedient that they should have power to convert their railway and tramway to the narrow gauge only as soon as the narrow or mixed gauge is laid down on the adjoining railways, or on that part thereof which communicates with the Company's railway:

And whereas the Company were authorised by the said Act to raise by shares a capital of eighteen thousand pounds, and to borrow on mortgage any sums not exceeding in the whole six thousand pounds, the whole of which was expended in constructing the Company's railway and tramway:

And whereas the earnings of the railway have hitherto been insufficient, after paying working expenses, to discharge the interest from time to time accruing on the mortgages, and a considerable arrear of interest has accumulated and is still accumulating thereon, and it is desirable that the said arrears should, with the consent of the mortgagees, be paid by the issue to them of a portion not exceeding two thirds of the shares to be created under the authority of this Act:

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And whereas the Company have no available capital for providing rolling stock, or for altering the gauge of their undertaking, or for paying the said arrears, and it is expedient they should have power to raise further capital:

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, 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 Torbay and Brixham Railway Act, 1875."

Provisions of certain general Acts incorporated.

2. The clauses and provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the following matters; that is to say,

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 consolidation of the shares into stock;

The giving notices; and

The provisions 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 wholly or partially incorporated herewith have the same respective meanings, unless there be something in the subject or context repugnant to such construction; the expression "the railway" or "the undertaking" means the railway, tramway, and undertaking of the Company.

Provision for narrow gauge.

4. When the mixed gauge or the narrow gauge is laid down on the Dartmouth and Torbay Railway, and on the South Devon Railway, or on that portion thereof which communicates with the Company's railway, the Company shall be relieved of the obligation contained in the sixteenth section of the recited Act, and may

remove the broad gauge from their railway, and lay down and thenceforth maintain the narrow gauge exclusively thereon.

Power to raise additional share capital.

5. In addition to the capital which the Company are authorised to raise by the recited Act, the Company may raise such further sums as they from time to time think requisite, not exceeding in the whole nine thousand pounds.

Mode of raising same.

6. The said additional capital may be raised by the creation and issue of new shares, ordinary or preference, or partly ordinary and partly preference, at the option of the Company, but no preference shares created or issued under the authority of this Act shall bear a higher rate of dividend or interest than six pounds per centum per annum.

Company not to issue shares unless one fifth paid up.

7. 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.

8. 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 fourths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.

As to votes of proprietors of such shares.

9. The proprietors of any shares to be issued under the authority of this Act shall be entitled to such number of votes in respect thereof as the nominal amount represented by such shares or stock would have entitled them to if the same had been original shares of the Company.

Receipts in the case of persons not sui juris.

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

Power to borrow on mortgage.

11. The Company may from time to time borrow on mortgage, in addition to any moneys which they are by the recited Act authorised to borrow, any sum or sums of money not exceeding in the whole one thousand pounds, but no part thereof shall be borrowed until three thousand pounds, part of the said additional capital of nine thousand pounds by this Act authorised to be raised, is issued and accepted, and one half thereof is paid up, and the Company have proved to the justice who is to certify under the fortieth section of "The Companies Clauses Consolidation Act, 1845," before he so certifies, that the said capital of three thousand pounds has been issued and accepted, and that not less than one

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fifth of the amount of each separate share has been paid on account thereof before or at the time of the issue or acceptance thereof, and that such additional capital was issued bonâ fide, and is held by the persons or corporations to whom the same was issued, or their executors, administrators, successors, or assigns, and that such persons or corporations, their executors, administrators, successors, or assigns, are legally liable for the same; and upon production to such justice of the books of the Company, and such other evidence as he shall think sufficient, he shall grant a certificate that the proof aforesaid has been given, which shall be sufficient evidence thereof.

Existing mortgages to have priority.

12. 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 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.

Appointment of a receiver.

13. Section seven of the recited Act, relating to the appointment of a receiver, is hereby repealed, without prejudice to any appointment heretofore made or proceedings now pending, and 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 hundred pounds in the whole.

Power to create and issue debenture stock.

14. 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.

New shares may be issued in payment of arrears of interest on mortgages.

15. The Company may issue to such of their mortgagees as may be willing to accept the same so many of the new shares authorised to be created under the authority of this Act as shall not exceed in amount the arrears of interest due on their mortgages at the time of the passing of this Act: Provided that the acceptance by any mortgagee of any new share shall discharge an equal amount of interest in

arrear due to such mortgagee, and that all persons who shall accept any of the new shares in substitution for arrears of interest as aforesaid shall stand possessed of the new shares upon the same trusts, and subject to the same powers, provisions, declarations, agreements, liabilities, charges, and incumbrances as such arrears of interest were subject and liable to immediately before the conversion of such arrears into new shares, and so as to give effect to and not to revoke any will or other testamentary instrument disposing of or affecting such arrears: Provided also, that not more than two thirds of the said new shares shall be issued in substitution for arrears of interest.

Application of moneys.

16. All moneys raised under this Act shall be applied only to the purposes of the recited Act and this Act.

Interest or dividends not to be paid on calls.

17. 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 calls made in respect of the shares held by him, but nothing herein contained shall prevent the Company from paying to any shareholder such interest on money advanced by him beyond the amount of calls actually made as is in conformity with "The Companies Clauses Consolidation Act, 1845."

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

18. The Company shall not, out of any money by this Act authorised to be raised, 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 authorising the construction of any railway or the execution of any other work or undertaking.

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

19. Nothing in this Act contained shall exempt the railway of the Company from the provisions of any general Act relating to railways, or to 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.

Expenses of Act.

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

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