CHAPTER cxxxvii.

An Act to confer powers on the West Highland Railway Company. A.D. 1895.

[6th July 1895.]

WHEREAS it is expedient that the West Highland Railway Company (in this Act called "the Company") should be authorised to make and maintain the railway herein-after described:

And whereas the authorised capital of the Company has proved inadequate to meet the cost of their existing railways and works and it is expedient that provision be made for the raising by the Company of additional capital to the amount and subject to the conditions in this Act prescribed:

And whereas it is expedient that the Company should be authorised to convert their existing share and loan capital in manner herein-after provided:

And whereas plans and sections showing the lines and levels of the railway by this Act authorised and also a book of reference containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands required or which may be taken for the purposes or under the powers of this Act were duly deposited with the principal sheriff clerk for the county of Perth and are herein-after respectively referred to as the deposited plans sections and book of reference:

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

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

Short title.

1. This Act may be cited as the West Highland Railway Act 1895.

Incorporation of Acts.

2. The Lands Clauses Acts the Railways Clauses Consolidation (Scotland) Act 1845 and Part I. (relating to construction of a

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railway) and Part III. (relating to working agreements) of the Railways Clauses Act 1863 are except where expressly varied by this Act incorporated with and form part of this Act.

Interpretation.

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 and the expressions "the railway" "the undertaking" mean respectively the railway by this Act authorised and the undertaking of the Company as the case may be.

Power to make a railway.

4. Subject to the provisions of this Act the Company may make and maintain in the lines and according to the levels shown on the deposited plans and sections the railway herein-after described with all proper stations junctions sidings roads approaches bridges viaducts walls embankments sheds and other buildings works and conveniences connected therewith respectively and the supply of water thereto and may enter upon take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as may be required for those purposes The railway herein-before referred to and authorised by this Act is—

A railway (marked on the deposited plans as Railway No. 9) 3 miles 4 furlongs 2·75 chains in length being a deviation of a portion of the Railway No. 2 authorised by the West Highland Railway Act 1889 (herein-after called "the Act of 1889") wholly situate in the parish of Fortingal and county of Perth commencing at a distance of 26 miles 7 furlongs and 6 chains or thereabouts from the commencement of that railway at a point 720 yards or thereabouts southwards from the centre of the viaduct carrying the West Highland Railway over the River Gaur and terminating on that railway at a distance of 30 miles 3 furlongs or thereabouts from the commencement thereof at a point 600 yards or thereabouts south-eastwards from the centre of the bridge carrying the West Highland Railway over the stream Alt-an-Ime.

Power to take easements &c. by agreement.

5. Persons empowered by the Lands Clauses Acts to sell and convey or release lands may if they think fit subject to the provisions of those Acts and of this Act grant to the Company any easement servitude right or privilege (not being an easement servitude right or privilege of water in which other than parties to the agreement have an interest) required for the purposes of this Act in over or affecting any such lands and the provisions of the said Acts with respect to lands and feu duties and ground annuals so far as the same are applicable in this behalf shall extend and

apply to such grants and to such easements servitudes rights and privileges as aforesaid respectively.

Lands for extraordinary purposes.

6. The quantity of land to be taken by the Company by agreement for the extraordinary purposes mentioned in the Railways Clauses Consolidation (Scotland) Act 1845 for the purposes of this Act shall not exceed three acres but nothing in that Act or in this Act shall exempt the Company from any indictment action or other proceeding for nuisance in the event of any nuisance being caused by them upon any land so taken.

Period for compulsory purchase of lands.

7. The powers of the Company for the compulsory purchase of lands for the purposes of this Act shall cease after the expiration of three years from the passing of this Act.

Restriction on taking houses of labouring class.

8. The Company shall not under the powers of this Act purchase or acquire in any district within the meaning of the Public Health (Scotland) Act 1867 ten or more houses which on the fifteenth day of December last were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers or except with the consent of the Secretary for Scotland ten or more houses which were not so occupied on the said fifteenth day of December but have been or shall be subsequently so occupied.

For the purposes of this section the expression "labouring class" means and includes mechanics artisans labourers and others working for wages hawkers costermongers persons not working for wages but working at some trade or handicraft without employing others except members of their own family and persons other than domestic servants whose income does not exceed an average of thirty shillings a week and the families of any such persons who may be residing with them.

Company may abandon portion of authorised line.

9. The Company shall abandon the construction of so much of the Railway No. 2 authorised by the Act of 1889 as lies between the commencement and termination of the railway by this Act authorised.

Compensation for damage to land by entry &c. for purposes of railway abandoned.

10. The abandonment by the Company under the authority of this Act of any portion of railway or works shall not prejudice or affect the right of the owner or occupier of any land to receive compensation for any damage occasioned by the entry of the Company on such land for the purpose of surveying and taking levels or probing or boring to ascertain the nature of the soil or setting out of the line of railway and shall not prejudice or affect the right of the owner or occupier of any land which has been temporarily occupied by the Company to receive compensation for

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such temporary occupation or for any loss damage or injury which has been sustained by such owner or occupier by reason thereof or of the exercise as regards such land of any of the powers contained in the Railways Clauses Consolidation (Scotland) Act 1845 or the Act of 1889.

Compensation to be made in respect of portion of railway abandoned.

11. Where before the passing of this Act any contract has been entered into or notice given by the Company for the purchasing of any land for the purposes of or in relation to any portions of the railway or works authorised to be abandoned by this Act the Company shall be released from all liability to purchase or to complete the purchase of any such land but notwithstanding full compensation shall be made by the Company to the owners and occupiers or other persons interested in such land for all injury or damage sustained by them respectively by reason of the purchase not being completed pursuant to the contract or notice and the amount and the application of the compensation shall be determined in manner provided by the Lands Clauses Acts for determining the amount and application of compensation paid for lands taken under the provisions thereof.

Deposit.

12. Whereas pursuant to the Standing Orders of both Houses of Parliament and the Parliamentary Deposits Act 1846 a sum of thirty-three thousand nine hundred and eighty-one pounds seventeen shillings and fourpence being five per centum upon the amount of the estimate in respect of the railways proposed to be authorised by the Bill for this Act (herein-after referred to as "the original deposit fund") and also a sum of forty-four pounds being four per centum upon the amount of the estimate in respect of the pier proposed to be authorised by the Bill for this Act (herein-after referred to as "the pier deposit fund") have been deposited with the Queen's and Lord Treasurer's Remembrancer on behalf of the Court of Exchequer in Scotland in respect of the application to Parliament for this Act And whereas certain of such railways and the pier were withdrawn from the Bill during its progress through Parliament and the estimate for the railway authorised by this Act amounts to fifty-one thousand pounds Be it enacted that notwithstanding anything contained in the said Act out of the original deposit fund a sum of two thousand five hundred and fifty pounds being five per centum upon the amount of the estimate in respect of the railway by this Act authorised (which last-mentioned sum is in this Act referred to as "the deposit fund") shall not be paid or transferred to or on the application of the person or persons or the majority of the persons named in the warrant or order issued in pursuance of the said Act or the survivors or survivor of them

(which persons survivors or survivor are or is in this Act referred to as "the depositors") unless the Company shall previously to the expiration of the period limited by this Act for completion of the railway open the same for the public conveyance of passengers and if the Company shall make default in so opening the railway the deposit fund shall be applicable and shall be applied as provided by the next following section Provided that if within such period as aforesaid the Company open any portion of the railway for the public conveyance of passengers then on the production of a certificate of the Board of Trade specifying the length of the portion of the railway opened as aforesaid and the portion of the deposit fund which bears to the whole of the deposit fund the same proportion as the length of the railway so opened bears to the entire length of the railway the Court shall on the application of the depositors or the majority of them order the portion of the deposit fund specified in the certificate to be paid or transferred to them or as they shall direct and the certificate of the Board of Trade shall be sufficient evidence of the facts therein certified and it shall not be necessary to produce any certificate of this Act having passed anything in the above mentioned Act to the contrary notwithstanding.

Application of deposit.

13. If the Company do not previously to the expiration of the period limited for the completion of the railway complete and open the same for the public conveyance of passengers then and in every such case the deposit fund or so much thereof as shall not have been paid to the depositors shall be applicable and after due notice in the Edinburgh Gazette shall be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement construction or abandonment of the railway or any portion thereof or who have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the Company by this Act and for which injury or loss no compensation or inadequate compensation has been paid and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the Court of Exchequer in Scotland may seem fit and if no such compensation is payable or if a portion of the deposit fund has been found sufficient to satisfy all just claims in respect of such compensation then the deposit fund or such portion thereof as may not be required as aforesaid shall if a judicial factor has been appointed or the Company is insolvent or the railway has been abandoned be paid or transferred wholly or in part to such judicial factor or be applied in the discretion of the

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Court as part of the assets of the Company for the benefit of the creditors thereof and subject to such application shall be repaid or re-transferred to the depositors Provided that until the deposit fund has been repaid to the depositors or has become otherwise applicable as herein-before mentioned any interest or dividends accruing thereon shall from time to time and as often as the same shall become payable be paid to or on the application of the depositors.

Repayment of balance of original and pier deposit funds.

14. On the application of the depositors or of the majority of them or of the executors or administrators of the last survivor of them at any time after the passing of this Act the Court of Exchequer in Scotland or in time of vacation the Lord Ordinary officiating on the Bills in the Court of Session in Scotland may order that the sum of forty-four pounds being the pier deposit fund and the interest and dividends thereon and the sum of thirty-one thousand four hundred and thirty-one pounds seventeen shillings and fourpence being the balance of the original deposit fund and the interest and dividends thereon shall be paid to them or him or to any person or persons whom they or he may appoint in that behalf.

Period for completion of railway.

15. If the railway is not completed within five years from the passing of this Act then on the expiration of that period the powers by this Act granted to the Company for making and completing the railway or otherwise in relation thereto shall cease except as to so much thereof as is then completed.

Railway to be part of Company's undertaking.

16. Subject to the provisions of this Act the railway shall for the purposes of tolls rates and charges form part of the authorised railways of the Company and shall be and be deemed to be for all other purposes part of the railways and works of the Company.

Extending working agreement with North British Railway Company.

17. Sections forty-one and forty-three of the North British Railway Act 1893 and the agreement set forth in the Third Schedule to that Act except Article Seventh thereof shall be held to extend to and include the railway by this Act authorised.

Power to apply corporate funds to purposes of Act.

18. The Company may apply to the purposes of this Act to which capital is properly applicable any moneys which they now have in their hands or which they have power to raise by shares or mortgage or debenture stock by virtue of any Acts relating to the Company and which may not be required for the purposes to which they are by any such Acts made specially applicable.

Power to the Company

19. The Company may from time to time raise any additional capital not exceeding in the whole six hundred and fifty thousand

two hundred and fifty pounds by the issue at their option of new ordinary shares or new preference shares or wholly or partially by either or both of those modes and the clauses and provisions of the Companies Clauses Consolidation (Scotland) Act 1845 with respect to the following matters (that is to say) :— to raise additional capital.

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 non-payment of calls ;

The remedies of creditors of the Company against the shareholders ;

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

The conversion of borrowed money into capital ;

The consolidation of the shares into stock ;

The general meetings of the Company and the exercise of the right of voting by the shareholders ;

The making of dividends ;

The giving of notices ; and

The provision to be made for affording access to the special Act by all parties interested :

Part I (relating to the cancellation and surrender of shares) and Part II (relating to additional capital) of the Companies Clauses Act 1863 shall extend and apply to the Company and to the additional capital which they are by this Act authorised to raise The powers conferred on the Company by this section shall not be exercised unless and until Article Seventh of the agreement set forth in the Third Schedule to the North British Railway Act 1893 as modified by section thirty-three of this Act shall have been extended and applied to such additional capital.

20. The Company shall not issue any share created under the authority of this Act of less nominal value than ten pounds nor shall any share vest in the person 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. Shares not to be issued till one-fifth part thereof shall have been paid.

21. If any money is payable to a shareholder or mortgagee or debenture stock holder being a minor idiot or lunatic the receipt of his tutor or curator or curator bonis shall be a sufficient discharge to the Company. Receipt in case of persons not sui juris.

22. The provisions of section eight and of sections ten to seventeen of the Act of 1889 shall extend and apply to and in the case of any ordinary shares created by the Company under the powers of this Act. Certain sections of Act of 1889 to apply to new shares.

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

23. Except as by this Act otherwise provided the capital in new shares created by the Company under this Act and the new shares therein and the holders thereof respectively shall be subject and entitled to the same powers provisions liabilities rights privileges and incidents whatsoever in all respects as if that capital were part of the now existing capital of the Company of the same class or description and the new shares were shares in that capital The capital in new shares so created shall form part of the capital of the Company.

Dividends on shares.

24. Every person who becomes entitled to new shares shall in respect of the same be a holder of shares in the Company and shall be entitled to a dividend with the other holders of shares of the same class or description proportioned to the whole amount from time to time called and paid on such new shares.

Restriction as to votes in respect of preferential shares.

25. Except as otherwise expressly provided by the resolution creating the same no person shall be entitled to vote in respect of any new shares to which a preferential dividend shall be assigned.

Power to borrow.

26. The Company may in respect of the additional capital of six hundred and fifty thousand two hundred and fifty pounds which they are by this Act authorised to raise from time to time borrow on mortgage of the undertaking any sum not exceeding in the whole two hundred and sixteen thousand seven hundred and fifty pounds but no part thereof shall be borrowed until the whole of the additional capital of six hundred and fifty thousand two hundred and fifty pounds is issued and accepted and one-half thereof is paid up and the Company have proved to the sheriff who is to certify under the forty-second section of the Companies Clauses Consolidation (Scotland) Act 1845 before he so certifies that the whole of such capital has been issued and accepted and that one-half thereof has been paid up and that not less than one-fifth part of the amount of each separate share in such capital has been paid on account thereof before or at the time of the issue or acceptance thereof and that such shares were issued bonâ fide and are held by the persons or corporations to whom the same were issued or their executors administrators successors or assignees and that such persons or corporations their executors administrators successors or assignees are legally liable for the same and upon production to such sheriff 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.

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For appointment of a judicial factor.

27. Every provision in any Act passed before the present session of Parliament whereby the Company is authorised to raise money by borrowing for the purposes of their undertaking with respect to the appointment of a judicial factor for enforcing payment by the Company of arrears of principal or interest or principal and interest shall be and the same is hereby repealed but without prejudice to any appointment which has been made or to the continuance of any proceedings which have been commenced prior to the passing of this Act under such provision The mortgagees of the undertaking may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a judicial factor In order to authorise the appointment of a judicial factor in respect of arrears of principal the amount owing to the mortgagees by whom the application for a judicial factor is made shall not be less than ten thousand pounds in the whole.

Debenture stock.

28. The Company may raise all or any part of the money which they are by this Act authorised to raise on mortgage by the creation and issue of debenture stock subject to the provisions of section twenty of the Act of 1889 Notice of the effect of that enactment shall be endorsed on all mortgages and certificates of debenture stock.

Priority of principal moneys secured by existing mortgages.

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

Application of moneys.

30. All moneys raised under this Act whether by shares debenture stock or borrowing shall be applied for the purposes of this Act and for the general purposes of the undertaking of the Company being in all cases purposes to which capital is properly applicable.

Conversion of existing debenture stock.

31.—(1.) As on and from the first day of January one thousand eight hundred and ninety-six or such other date as the directors shall appoint the existing three and a half per centum debenture stock of the Company amounting to one hundred and ninety-seven thousand pounds shall be by virtue of this Act cancelled and extinguished and on that day there shall be by virtue of this Act without further or other authority created new debenture stock of the Company amounting to two hundred and twenty-nine

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thousand eight hundred and thirty-three pounds six shillings and eight pence and bearing interest at the rate of three pounds per centum per annum in lieu of and in substitution for the said existing debenture stock so cancelled and extinguished as aforesaid.

(2) Each holder of the said existing debenture stock shall be entitled to and there shall vest in him new debenture stock in the proportion of one hundred and sixteen pounds thirteen shillings and four pence of new debenture stock for every one hundred pounds of the said existing debenture stock and proportionately for any less amount.

Conversion of existing share capital.

32. (1) As on and from the first day of January one thousand eight hundred and ninety-six or such other date as the directors shall appoint the existing ordinary stock and fully paid up share capital of the Company amounting to five hundred and ninety-one thousand pounds on which a dividend at the rate of three and a half pounds per centum per annum has been guaranteed by the North British Railway Company shall be by virtue of this Act converted into new ordinary stock of the Company amounting to six hundred and eighty-nine thousand five hundred pounds.

(2) The said new ordinary stock shall be entitled to dividend at the rate of three pounds per centum per annum and no more.

(3) Each holder of the said existing ordinary stock and fully paid up share capital shall be entitled to and there shall vest in him new ordinary stock in the proportion of eleven pounds thirteen shillings and four pence for each existing fully paid up share or each existing ten pounds of ordinary stock and so in proportion for any less amount of ordinary stock.

Amendment of agreement confirmed by North British Railway Act 1893.

33. On and after the first day of January one thousand eight hundred and ninety-six or such other date as aforesaid Article Seventh of the agreement between the North British Railway Company and the Company set forth in the Third Schedule to the North British Railway Act 1893 shall be read and have effect as if the words "at the rate of three per centum per annum" had been substituted for the words "at the rate of three and one half per centum per annum" in the said article and the said agreement as so altered shall extend and apply to the new debenture stock and new ordinary stock by this Act substituted for the existing debenture or ordinary stock and share capital of the Company.

New stock to be subject to same

34. New debenture stock or new ordinary stock which shall under the provisions of this Act vest in the holders of existing debenture stock or shares shall be subject to the same trusts powers

provisions declarations agreements charges liens and incumbrances as immediately before the conversion affected the existing debenture or ordinary stock or shares for which the same is substituted and any deed will or other instrument and any testamentary or other disposition of or affecting the existing debenture or ordinary stock or shares and made before the conversion shall take effect with reference to the whole or a proportionate amount as the case may be of the new debenture stock or new ordinary stock substituted therefor.

trusts liens &c. as the old stock.

35. As soon as reasonably may be after the vesting of the new debenture stock and new ordinary stock by this Act created in the holders of existing debenture or ordinary stock and shares each of such holders shall deliver up to the Company to be cancelled his existing certificate of debenture or ordinary stock or shares as the case may be or prove to the reasonable satisfaction of the directors the loss or destruction thereof and thereupon the Company shall issue to the holder free of charge a certificate of the new debenture stock or new ordinary stock as the case may be to which he is entitled under this Act.

Old certificates to be cancelled and new ones issued.

36. No interest or dividend shall be paid out of any share or loan capital which the Company are by this Act authorised to raise to any shareholder on the amount of the calls made in respect of the shares held by him but nothing in this Act shall prevent the Company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with the Companies Clauses Consolidation (Scotland) Act 1845.

Interest not to be paid on calls paid up

37. The Company shall not out of any money which they are by this Act authorised to raise 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.

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

38. Nothing in this Act contained shall exempt the Company or the North British Railway Company or the railways of either 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

Provision as to general Railway Acts.

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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.

39. 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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