

[36 & 37 VICT.] *The Birmingham West Suburban Railway Act, 1873.* [Ch. xcvi.]



CHAPTER xcvi.

An Act for amending and extending the Birmingham West Suburban Railway Act, 1871 ; and for other purposes. A.D. 1873.
[7th July 1873.]

WHEREAS the Birmingham West Suburban Railway Company (in this Act called the Company) are by the Birmingham West Suburban Railway Act, 1871, (in this Act called the Company's Act of 1871,) incorporated and empowered to make a railway from the Albion Wharf, Bridge Street, in Birmingham, to King's Norton in the county of Worcester : 34 & 35 Vict. c. clxxv.

And whereas it is expedient that the Company be empowered to abandon parts of and to make some alterations and diversions of their authorised works :

And whereas the objects aforesaid cannot be attained without the authority of Parliament :

And whereas plans and sections describing the lines, situations, and levels of the intended works, and a book of reference to those plans containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of lands in the line of the intended works, or within the limits of deviation as defined on the plans, and describing those lands, have been deposited with the respective clerks of the peace for the borough of Birmingham and the counties of Warwick and Worcester (which are in this Act referred to as the deposited plans, sections, and book of reference) :

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,)

1. This Act may be cited as The Birmingham West Suburban Railway Act, 1873, and the Company's Act of 1871 and this Act may be cited together as the Birmingham West Suburban Railway Acts, 1871 and 1873. Short titles.

[Ch. xcvi.] *The Birmingham West Suburban* [36 & 37 VICT.]
Railway Act, 1873.

A.D. 1873.

Provisions of
general Acts
herein
named incor-
porated.

2. The following enactments (as far as they are applicable for the purposes of and not varied by or inconsistent with this Act) are hereby incorporated with this Act; (namely,)

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 remedies of creditors of the Company against the shareholders;
- The borrowing of money by the Company on mortgage or bond;
- The conversion of the borrowed money into capital;
- The consolidation of the shares into stock;
- 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:

The Companies Clauses Act, 1863 (except Part IV. thereof relating to change of name):

The Railways Clauses Consolidation Act, 1845:

Parts I. and III. (relating respectively to the construction of a railway and to working agreements) of the Railways Clauses Act, 1863:

The Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (in this Act called the Lands Clauses Acts).

Interpreta-
tion of terms.

3. With respect to the interpretation of terms in and for the purposes of this Act, the following provisions shall have effect; (namely,)

In this Act the term "the Worcester and Birmingham Canal Company" or "the Canal Company" means the company of proprietors of the Worcester and Birmingham Canal Navigation, and the term "the Worcester and Birmingham Canal" or "the canal" means the canal of that company:

In this Act, and for the purposes thereof in any enactments incorporated therewith, the term "court of competent jurisdiction" shall have effect as if the debt or demand with respect to which it is used was a common simple contract debt, and not a debt or demand created by statute, and the term "superior court" shall include courts of competent jurisdiction within this Act:

In this Act terms have the same meaning as in the enactments incorporated therewith. A.D. 1873.

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 and the alterations and diversions in this section described, with all proper stations, sidings, approaches, works, and conveniences connected therewith, and may enter upon, take, and use such of the lands delineated on the deposited plans and described in the deposited books of reference as may be required for that purpose or for other purposes connected with their undertaking. Power to make railway and works according to deposited plans.

The railway, alterations, and diversions before in this section referred to and authorised by this Act are—

- (1.) A railway two furlongs five chains and five yards in length, commencing by a junction with the railway authorised by the Company's Act of 1871, and therein called Railway No. 1, at Granville Street in the borough of Birmingham, and terminating at a point on the west side of Suffolk Street in the parish of Birmingham, eight yards or thereabouts north of the junction of that street with Wharf Street, measured from the northern side of Wharf Street :
- (2.) An alteration or diversion of so much of the said Railway No. 1 as lies between a point in the parish of Edgbaston one thousand nine hundred and forty-seven yards or thereabouts north of the north face of Fielding's Lane Bridge in the parish of Northfield, measured along the said Railway No. 1, and another point in the said parish of Northfield thereon two hundred and twenty yards or thereabouts north of the north face of the same bridge, measured along the said Railway No. 1, between which points the altered or diverted railway will pass over the Worcester and Birmingham Canal and the Birmingham and Bromsgrove Road at or near to Selly Oak, and will be seven furlongs seven chains and nine yards in length :
- (3.) An alteration or diversion of the railway authorised by the Company's Act of 1871, and therein called Railway No. 2, commencing at the authorised commencement of that railway, and terminating by a junction with the Midland Railway at a point thereon two hundred and twenty yards or thereabouts south-west of the centre of the bridge carrying the Midland Railway over the Worcester and Birmingham Canal, and which alteration or diversion of railway will be one furlong two chains and six yards in length :

[Ch. xcvi.] *The Birmingham West Suburban* [36 & 37 VICT.]
Railway Act, 1873.

A.D. 1873.

(4.) An alteration of the Worcester and Birmingham Canal by the narrowing thereof, and of the towing-path thereof, at or near to Selly Oak aforesaid, at the respective points where the first described diversion and the said Railway No. 1 will cross the canal, but so that there be left a waterway of at least nine feet and a towing-path of at least four feet six inches wide at each of those points :

(5.) An alteration of the Worcester and Birmingham Canal by the narrowing and straightening thereof between the north side of Breedon Cross Bridge in the parish of King's Norton in the county of Worcester, and a point one hundred and eighty yards or thereabouts north of that bridge on the west side of the canal, and one hundred and forty yards or thereabouts north of the same bridge on the east side of the canal :

(6.) An alteration of Wharf Street in the borough of Birmingham, by the diversion and straightening thereof, so as to make the centre line of that street at its junction with Suffolk Street eighteen yards or thereabouts south of its centre line at its present junction with that street.

Alteration of Wharf Street to be done at cost of Company and to satisfaction of borough surveyor.

5. With respect to the alteration of Wharf Street aforesaid, the works necessary for the diversion and straightening thereof, and the forming, fencing, levelling, paving, channelling, sewerage, metalling, and making good the diverted portion of the said street, and the rounding of the junction thereof with Suffolk Street (at the northern corner) shall be done by and at the sole cost of the Company, under the superintendence and to the reasonable satisfaction of and with such materials as shall be approved by the surveyor of the said borough, and in case of default the said works may be executed by the council of the said borough, and the expenses incurred by them in the execution thereof shall become a debt due from the Company to the council, and be recoverable in an action at the suit of the town clerk.

Restricting interference with the lands of the gas companies.

6. The Company shall not, without in every case the previous consent of the Birmingham Gaslight and Coke Company, and of the Birmingham and Staffordshire Gaslight Company respectively (herein-after called the gas companies), in writing under their common seal, take, use, enter upon, or interfere with any of the lands from time to time belonging to, or in the possession or under the power of, the gas companies, or either of them.

Alteration of gas mains.

7. All alterations in the position or otherwise of the mains or pipes of either of the gas companies which may be required for the

[36 & 37 VICT.] *The Birmingham West Suburban Railway Act, 1873.* [Ch. xcvi.]

purpose of any works by this Act authorised shall be made and executed by and at the cost of the Company, but under the superintendence and to the reasonable satisfaction of the respective engineers for the time being of the gas companies, and no such alteration shall be commenced until after three days notice in writing shall have been given to the gas companies respectively; and any difference as to the manner of carrying out this enactment, or any matter or thing arising thereunder, shall be settled by an engineer to be appointed by the Board of Trade.

A.D. 1873.

8. Except as is expressly enacted by this Act, nothing in this Act contained shall extend to prejudice, diminish, alter, or take away any of the rights, privileges, or powers of the gas companies, or either of them.

Saving rights of the gas companies.

9. Notwithstanding anything in the Company's Act of 1871, or in the first schedule thereto, the Company may from time to time, with the consent of the canal company in writing under their common seal, narrow any part of the canal, but so as to leave a waterway of at least twenty feet, and may from time to time, with the like consent, narrow the towing-path of the canal to any breadth not less than six feet, and pull down and rebuild or alter bridges, part of the works of the canal company, and for the purposes of executing works authorised by this section may from time to time stop temporarily the traffic on the canal, and the Company and the canal company may from time to time enter into and carry into effect such agreements for or relating to the objects of this section as they think fit.

Further alterations of canal by agreement.

10. In narrowing the canal in accordance with the powers conferred by this Act, the Company shall construct retaining walls so that there shall be the prescribed width of waterway to the full depth of the canal.

Construction of retaining walls of canal.

11. The quantity of land to be taken by the Company under this Act by agreement for the extraordinary purposes mentioned in the Railways Clauses Consolidation Act, 1845, shall not exceed one acre.

Lands for extraordinary purposes.

12. The powers of the Company for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of two years from the passing of this Act.

Powers for compulsory purchases limited.

13. The Company shall, not less than eight weeks before they take in any parish fifteen houses or more occupied either wholly or partially by persons belonging to the labouring classes as tenants or lodgers, make known their intention to take the same by placards,

Notice to be given of taking houses of labouring classes.

[Ch. xcvi.] *The Birmingham West Suburban* [36 & 37 VICT.]
Railway Act, 1873.

A.D. 1873.

handbills, or other general notice placed in public view upon or within a reasonable distance from such houses, and the Company shall not take any such houses until they have obtained the certificate of a justice that it has been proved to his satisfaction that they have so made known their intention.

Power to take easements, &c. by agreement.

14. 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, right, or privilege required for the purposes of this Act in, over, or affecting any such lands, and the provisions of the same Acts with respect to lands and rentcharges, as far as the same are applicable in this behalf, shall extend and apply to such grants, easements, rights, and privileges as aforesaid respectively.

Railway, alterations, and diversions to be part of authorised railways.

15. For the purposes of the sections of the Company's Act of 1871, described in the schedule to this Act, and for the purposes of the agreement with the Midland Railway Company, set forth in the second schedule to the Company's Act of 1871, the railway, alterations, and diversions authorised by this Act shall be deemed part of the railways authorised by the Company's Act of 1871, and for the purposes of tolls, rates, and charges, and all other purposes, the railway, alterations, and diversions authorised by this Act shall be part of the undertaking of the Company.

Abandonment of portions of authorised lines.

16. The Company shall abandon the construction of the following parts of railway and railway authorised by their Act of 1871; (namely,)

- (1.) So much of the railway therein called Railway No. 1 as lies between Granville Street and Bridge Street, both in the borough of Birmingham :
- (2.) So much of the same railway as lies between a point in the parish of Edgbaston one thousand nine hundred and forty-seven yards or thereabouts north of the north face of Fielding's Lane Bridge in the parish of Northfield, measured along the said Railway No. 1, and a point in the said parish of Northfield, thereon two hundred and twenty yards or thereabouts north of the north face of the same bridge, measured along the same railway :
- (3.) The whole of the railway therein called Railway No. 2.

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

17. The abandonment by the Company, under the authority of this Act, of any portion of any 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

[36 & 37 VICT.] *The Birmingham West Suburban* [Ch. xcvi.]
Railway Act, 1873.

setting out of the line of railway, and shall not prejudice or affect the right of the owner or occupier of any land which may have been temporarily occupied by the Company to receive compensation for such temporary occupation, or for any loss, damage, or injury which may have 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 Act, 1845, or the Company's Act of 1871.

A.D. 1873.

18. 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 railways 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 lands, but notwithstanding full compensation shall be made by the Company to the owners and occupiers or other persons interested in such lands 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 application of the compensation shall be determined in manner provided by the Lands Clauses Acts as amended by any other Act for determining the amount and application of compensation paid for lands taken under the provisions thereof.

Compensation to be made in respect of portions of railways abandoned.

19. If the railway and works authorised by this Act are not completed within three 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 and works, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as is then completed.

Period for completion of works.

20. Whereas pursuant to the standing orders of both Houses of Parliament, and to an Act of the ninth year of the reign of Her present Majesty, chapter twenty, a sum of five thousand four hundred pounds, being five per cent. on the amount of the estimate in respect of the railway and works by this Act authorised, has been deposited with the Court of Chancery in England in respect of the application to Parliament for this Act (which is in this section called the deposit money): Be it therefore enacted as follows:

Retainer of deposit money.

(1.) Notwithstanding the said Act, the deposit money shall not be paid out in pursuance thereof unless the Company, before the expiration of the period limited by this Act for completion of works, prove to the satisfaction of the Board of Trade that they have paid up one half of the share capital by this Act and the Act of 1871 authorised, and have expended for the purposes of

[Ch. xcvi.] *The Birmingham West Suburban* [36 & 37 VICT.]
Railway Act, 1873.

A.D. 1873.

this Act a sum equal in amount to such one half, and if the said period expires before the Company have given such proof as aforesaid the deposit money shall be applied in the manner in this section specified, and the certificate of the Board of Trade that such proof has been given as aforesaid shall be sufficient evidence of the fact so certified, and it shall not be necessary to produce any certificate of this Act having been passed:

- (2.) The deposit money if not so paid out shall be applicable and, after due notice in the "London Gazette," shall be applied towards compensating any landowners or other persons whose property is interfered with or otherwise made less valuable by the commencement, construction, or abandonment of any work of the Company, or who are subjected to injury or loss in consequence of the Company's compulsory powers of taking land, and for which injury or loss no compensation or an inadequate compensation shall have been paid, and shall be distributed in compensating such persons as aforesaid, in such manner and in such proportions as the Court of Chancery in England thinks fit; and if no compensation is so payable, or if a portion of the deposit money is found sufficient for such compensation, then the deposit money, or the residue thereof (as the case may be), shall either be forfeited to Her Majesty, and accordingly be paid or transferred to or for the account of Her Majesty's Exchequer in such manner as the Court of Chancery in England thinks fit to order, on the application of the solicitor of Her Majesty's Treasury, and shall be carried to and form part of the Consolidated Fund of the United Kingdom, or in the discretion of the Court, if the Company is insolvent and has been ordered to be wound up, or a receiver has been appointed, shall wholly or in part be paid or transferred to the liquidator or receiver, or be otherwise applied as part of the Company's assets:
- (3.) Until the deposit money has been paid out or become applicable as aforesaid any interest or dividends accruing on the investment thereof shall from time to time be paid to the parties entitled to the same under the last-mentioned Act.

Power to raise additional share capital.

21. The Company may, subject to the provisions of Part II. of the Companies Clauses Act, 1863, raise any additional sum or sums, not exceeding in the whole sixty-five thousand pounds, by the issue at their option of new ordinary shares or stock, or new preference shares or stock, or wholly or partially by any one or more of those modes respectively.

Shares not to issue until one fifth paid up.

22. The Company shall not issue any share created under the authority of this Act of less nominal amount than ten pounds, nor

[36 & 37 VICT.] *The Birmingham West Suburban* [Ch. xcvi.]
Railway Act, 1873.

shall any such 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. A.D. 1873.

23. 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. Calls.

24. The Company may attach to any shares or stock issued under this Act such conditions with respect to voting qualification and other things as they from time to time think fit to declare before issuing the same. Conditions of new stock and shares.

25. Subject to the provisions of this Act, the Company, with the authority of three fourths of the votes of the shareholders present, in person or by proxy, at a general meeting of the Company specially convened for the purpose, may from time to time divide any share in their capital into half shares, of which one shall be called preferred half share, and the other shall be called deferred half share, but the Company shall not so divide any share under the authority of this Act unless and until not less than sixty per centum upon such share has been paid up, and upon every such division fifty per centum upon the entire share shall be carried to the credit of the deferred half share (being the whole amount payable thereon), and the residue to the credit of the preferred half share. Power to divide shares.

26. The dividend which would from time to time be payable on any divided share, if the same had continued an entire share, shall be applied in payment of dividends on the two half shares in manner following; (that is to say,) first, in payment of dividend after such rate, not exceeding five per centum per annum, as shall be determined once for all at a general meeting of the Company specially convened for the purpose on the amount for the time being paid up on the preferred half share, and the remainder, if any, in payment of dividend on the deferred half share, and the Company shall not pay any greater amount of dividend on the two half shares than would have from time to time have been payable on the entire share if the same had not been divided. Dividends on half shares.

27. Each preferred half share shall be entitled out of the profits of each year to the dividend which may have been attached to it by the Company as aforesaid, in priority to the deferred half share bearing the same number; but if in any year ending the thirty-first day of December there shall not be profits available for the payment of the full amount of dividend on any preferred half share for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the Company. Dividend on preferred shares to be paid out of the profits of the year only.

A.D. 1873.

Half shares to be registered and certificates issued.

28. Forthwith after the creation of any half shares the same shall be registered by the directors, and each half share shall bear the same number as the number of the entire share certificate in respect of which it was issued, and the directors shall issue certificates of the half shares accordingly, and shall cause an entry to be made in the register of the entire shares of the conversion thereof, but the directors shall not be bound to issue a certificate of any half share until the certificate of the existing entire share be delivered to them to be cancelled, unless it be shown to their satisfaction that such certificate is destroyed or lost, and on any certificate being so delivered up the directors shall cancel it.

Terms of issue to be stated in certificates.

29. The terms and conditions on which any preferred half share or deferred half share created under this Act is issued shall be stated on the certificate of each such half share.

Forfeiture of preferred shares.

30. The provisions of the Companies Clauses Consolidation Act, 1845, with respect to the forfeiture of shares for nonpayment of calls shall apply to all preferred half shares created under the authority of this Act, and every such preferred half share shall for that purpose be considered an entire share, distinct from the corresponding deferred half share; and until any forfeited preferred half share shall be sold by the directors, all dividends which would be payable thereon, if the same had not been forfeited, shall be applied in or towards payment of any expenses attending the declaration of forfeiture thereof, and of the arrears of calls for the time being due thereon with interest.

Preferred shares not to be cancelled or surrendered.

31. No preferred half share created under the authority of this Act shall be cancelled or be surrendered to the Company.

Half shares to be half shares in capital.

32. The several half shares under this Act shall be half shares in the capital of the Company, and every two half shares (whether preferred or deferred, or one of each) held by the same person shall confer such right of voting at meetings of the Company, and (subject to the provisions herein-before contained) shall confer and have all such other rights, qualifications, privileges, liabilities, and incidents as attach and are incident to an entire share.

Receipt clause in case of persons not sui juris.

33. 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.

34. The Company may from time to time by virtue of this Act borrow on mortgage any sum not exceeding in the whole twenty-one thousand pounds, but no part thereof shall be borrowed until the whole share capital of sixty-five thousand pounds authorised

[36 & 37 VICT.] *The Birmingham West Suburban* [Ch. xcvi.]
Railway Act, 1873.

by this Act 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 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 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 of 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.

A.D. 1873.

35. The mortgagees of the Company under this Act 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 under this Act by whom the application for a receiver is made shall not be less than two thousand pounds in the whole.

Arrears may be enforced by appointment of a receiver.

36. Inasmuch as the Company have not created any debenture stock, or borrowed any money on mortgage, they shall not under their Act of 1871, but may under this Act 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 created and issued by the Company shall rank pari passu with the interest of all mortgages at any time granted by the Company, and shall have priority over all principal moneys secured by such mortgages.

Debenture stock.

37. All money raised under this Act, whether by shares, debenture stock, or borrowing, shall be applied for the purposes of the Company's undertaking only.

Application of moneys.

38. 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.

Interest not to be paid on calls paid up.

[Ch. xcvi.] *The Birmingham West Suburban* [36 & 37 VICT.]
Railway Act, 1873.

A.D. 1873.

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

39. 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
Acts.

40. Nothing in this Act contained shall exempt the Company's railways from the provisions of any general Act relating to railways, or the better and more impartial audit of the accounts of railway companies, now in force or which may hereafter pass during this or any future session of Parliament, or from any future revision or alteration, under the authority of Parliament, of the maximum rates of fares and charges, or of the rates for small parcels, authorised by the Company's Act of 1871.

Expenses of
Act.

41. The costs, charges, and expenses preliminary to and of and incidental to the preparing of and applying for and the obtaining and passing of this Act shall be paid by the Company.

THE SCHEDULE.

*Sections of Company's Act of 1871 applied to substituted
Railways.*

Section twenty-two, relating to the mode of rating the railway.

Sections forty-six, forty-seven, and forty-eight, relating to agreements with the Midland Railway Company.