

[41 & 42 VICT.] *North-eastern Railway Company's* [Ch. ccv.]
Act, 1878.



CHAPTER ccv.

An Act for enabling the North-eastern Railway Company A.D. 1878.
to construct a railway from their Hull and Holderness
Branch to Salt End, in the East Riding of Yorkshire ;
and for other purposes. [22d July 1878]

WHEREAS it is expedient that the North-eastern Railway
Company (in this Act called the Company) should be
empowered to make the new railway by this Act authorised, and to
raise capital for that purpose, and that the Company and the Dock
Company at Kingston-upon-Hull (in this Act called the Dock
Company) should be empowered to enter into agreements as by this
Act provided :

And whereas plans and sections showing the line and levels of
the railway authorised by this Act, and also books 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 clerk of the peace for the east riding of the
county of York, which plans, sections, and books of reference are
herein-after respectively referred to as the deposited plans, sections,
and books of reference :

And whereas it is expedient that provision should be made for the
establishment of a superannuation fund for the benefit of the officers
and servants of the Company :

And whereas by virtue of the Whitby, Redcar, and Middlesborough 38 & 39 Vict.
Union Railway Act, 1875, and the agreement thereby confirmed, c. clvi.
the Company are lessees in perpetuity with the option of purchase
of the undertaking of the Whitby, Redcar, and Middlesborough
Union Railway Company (in this Act called the Whitby Company),
and by the said Act and the North-eastern Railway Company's Act, 39 & 40 Vict.
1876, all the rights, powers, and privileges of the Whitby Company c. cii.
by virtue of their Acts of Parliament or otherwise howsoever with
regard to the possession, completion, maintenance, and management

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of the Whitby Company's railway, or otherwise in connexion therewith, or for the purpose of working the traffic thereof, and the fixing, levying, receiving, and recovering of tolls, rates, and charges in respect thereof, were vested in the Company and are now exercisable by them, and they are authorised to apply moneys towards the completion and maintenance of the Whitby Company's undertaking, or for any other purposes contemplated by the said agreement:

And whereas it is expedient that provision should be made for the exercise by the Company of the powers for the borrowing of money on mortgage now exercisable by the Whitby Company, and that such further powers as are in this Act contained should be conferred on the Company with reference thereto:

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; (that is to say,)

Short title.

1. This Act may be cited for all purposes as the North-eastern Railway Company's Act, 1878.

Incorporation of general Acts.

2. The following Acts and parts of Acts are, except where expressly varied by this Act, incorporated with and form part of this Act; (that is to say,)

8 & 9 Vict. c. 18.
23 & 24 Vict. c. 106.
32 & 33 Vict. c. 18.

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

8 & 9 Vict. c. 20.

The Railways Clauses Consolidation Act, 1845:

26 & 27 Vict.
c. 92.

Part I. (relating to the construction of a railway) of the Railways Clauses Act, 1863:

8 & 9 Vict.
c. 16.

The provisions of the Companies Clauses Consolidation Act, 1845, with respect to the following matters; namely,

The construction of the Act and of other Acts to be incorporated therewith;

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;

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The powers of the directors and the powers of the Company to be exercised only in general meeting ;

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 ; and

Part I. (relating to cancellation and surrender of shares) and

Part II. (relating to additional capital) of the Companies Clauses Act, 1863.

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26 & 27 Vict.
c. 118.

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 :

Interpretation of terms.

The expression "the railway" means the railway by this Act authorised or any part thereof :

The expression "superior courts," or "court of competent jurisdiction," or any other like expression in this Act, or any Act wholly or partially incorporated herewith, shall, for the purposes of this Act, be read and have effect as if the debt or demand with respect to which the expression is used were a simple contract debt, and not a debt or demand created by statute.

4. Subject to the provisions of this Act, the Company may make and maintain, in the line and according to the levels shown on the deposited plans and sections, the railway herein-after described, with all proper stations, sidings, approaches, works, and conveniences connected therewith, and may enter upon, purchase, take, and use such of the lands delineated on the said plans and described in the deposited books of reference, as may be required for that purpose.

Power to make railway according to deposited plans.

The railway herein-before referred to and authorised by this Act is—

A railway (one mile and twenty-two yards in length) in the east riding of the county of York, commencing in the township and parish of Marfleet by a junction with the Hull and Holderness Branch of the North-eastern Railway, and terminating in the township and parish of Preston in a parcel of ground known as the Salt End of the Hay Marsh, and near to the site of an intended dock of the Dock Company

5. The railway and the works connected therewith shall for the purposes of tolls, rates, and charges, and for all other purposes whatsoever, be part of the undertaking of the Company :

Railway to form part of Company's undertaking.

Provided always, that the tolls, rates, and charges to be demanded shall not exceed the tolls, rates, and charges which by the North-eastern Railway Company's Act, 1854, the North-eastern and Stock-

17 & 1 Vict.
c. cxi.

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As to bridge for carrying railway over Old Fleet Drain.

6. The railway shall be carried over the Old Fleet Drain either by a new bridge so constructed as to leave the same extent of water area as exists under the bridge which now carries the Hull and Holderness Railway over the said drain, or by widening that bridge, and in either case so as not to cause any obstruction whatever to the waterway of the said drain. All works of the Company affecting the said Old Fleet Drain shall be executed to the reasonable satisfaction of the surveyor for the time being to the Commissioners of Sewers for the east parts of the east riding, and with reasonable notice to the said surveyor of the intention to commence the said works and of the nature thereof.

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 not be exercised after the expiration of three years from the passing of this Act.

Period for completion of railway.

8. 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 to be exercised, except as to so much thereof as is then completed.

Company liable to penalty if railway not opened within period limited.

9. If the Company fail within the period limited by this Act to complete the railway, they shall be liable to a penalty of fifty pounds a day for every day after the expiration of the period so limited until the railway is completed and opened for public traffic, or until the sum received in respect of such penalty shall amount to five per centum on the estimated cost of the railway.

The said penalty may be applied for by any landowner or other person claiming to be compensated in accordance with the provisions of the next following section of this Act, or by the Solicitor of Her Majesty's Treasury, and in the same manner as the penalty provided in the third section of the Railway and Canal Traffic Act, 1854.

17 & 18 Vict. c. 31.

Every sum of money recovered by way of such penalty as aforesaid shall be paid, under the warrant or order of such court or judge as is specified in that section, to an account opened or to be opened in the name and with the privity of Her Majesty's Paymaster General on behalf of the Chancery Division of the High Court of Justice, in the bank and to the credit specified in such warrant or order, and shall not be paid thereout except as herein-after provided

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But no penalty shall accrue in respect of any time during which it shall appear by a certificate to be obtained from the Board of Trade that the Company was prevented from completing or opening the railway by unforeseen accident or circumstances beyond their control; provided that the want of sufficient funds shall not be held to be a circumstance beyond their control.

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10. Every sum of money so recovered by way of penalty as aforesaid shall be applicable, and after due notice in the London 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 may 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 shall have been paid, and shall be distributed in satisfaction of such compensation as aforesaid in such manner and in such proportions as to the Chancery Division of the High Court of Justice may seem fit.

Providing
for appli-
cation of
penalty.

If no such compensation is payable, or if a portion of the sum or sums of money so recovered by way of penalty as aforesaid has been found sufficient to satisfy all just claims in respect of such compensation, then the said sum or sums of money recovered by way of penalty, or such portion thereof as may not be required as aforesaid, shall either be forfeited to Her Majesty and accordingly be paid to or for the account of Her Majesty's Exchequer in such manner as the said Chancery Division thinks fit to order on the application of the Solicitor to 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 said Chancery Division, 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 to such receiver or to the liquidator or liquidators of the Company, or be otherwise applied as part of the assets of the Company for the benefit of the creditors thereof.

11. The quantity of land to be taken by the Company for the extraordinary purposes mentioned in the Railways Clauses Consolidation Act, 1845, shall not exceed two acres.

Land for ex-
traordinary
purposes.
8 & 9 Vict.
c. 20.

12. 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 lands, and the provisions of the Lands Clauses 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.

Power to
grant ease-
ments, &c.

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Agreements
with Hull
Dock
Company.

13. The Company and the Dock Company may enter into and carry into effect agreements with respect to the maintenance, management, and use of any sidings, tramways, or other works in connexion with the railway and with the intended dock, and the quays, wharves, and other works of the Dock Company, and the payments to be made by each of the two companies in respect thereof, and the conveyance, transmission, or conduct of traffic thereon or therefrom respectively, and the fixing, collecting, division, and apportionment of the tolls, rates, charges, receipts, and revenue leviable or levied, taken, or arising in respect of such traffic.

Superannua-
tion fund.

14. The directors of the Company may, if they think fit, establish a fund, to be called the "Superannuation Fund," for the payment of superannuation and other retiring allowances to the officers and servants of the Company being contributors to the fund, and (if so resolved on by the Company) of allowances to the widows and children of such officers and servants; and when the establishment of such fund has been determined upon, five directors of the Company for the time being, or persons to be appointed by the board of directors, and the following officers for the time being of the Company, namely, the general manager, the secretary, the chief accountant, and the engineer-in-chief, shall constitute a committee for the purpose of preparing and shall prepare a scheme for the establishment of the superannuation fund, and such committee may by a majority of its members determine in and by such scheme the following matters and things; (that is to say,)

- (1.) What class of officers and servants of the Company shall be entitled to contribute to and to participate in the benefits of the fund, and to what extent such contribution shall be obligatory upon the officers and servants of the Company:
- (2.) What (if anything) shall disqualify any officer or servant of the Company from becoming a contributor to the fund and participating in the benefits thereof:
- (3.) Whether the persons to be benefited by the fund shall be divided into two or more classes, according to the amount of salary or according to such other conditions as the committee may determine, power being reserved by the scheme to remove any contributor from the one class to the other, but no such removal shall place the contributor in a worse position in respect of his past contributions than he would have occupied if the removal had not been made:
- (4.) Under what circumstances any person having been a contributor to the fund shall cease to be entitled to participate in the benefits thereof:

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- (5.) What proportion (if any) of his own contribution to the fund any person having been, but ceasing to be, a contributor thereto shall be entitled to receive :
- (6.) What proportion (if any) of the fund shall be payable to the representatives of any contributor to the fund in the event of his dying before he becomes entitled to a superannuation or retiring allowance :
- (7.) The age at which or other circumstances under which any person shall become entitled to a superannuation or retiring allowance :
- (8.) The scale upon which allowances shall be calculated, and under what (if any) circumstances such scale may from time to time be revised :
- (9.) Whether instead of the payment of a superannuation or retiring allowance to any person who shall become entitled thereto a gross sum may be paid to him :
- (10.) The per-centage of their salaries which the officers and servants of the Company shall contribute to the fund, not exceeding in the case of officers under forty years of age at the time of becoming contributors to the fund, the rate of two pounds and ten shillings for each one hundred pounds of their respective salaries :
- (11.) The future management and direction of the fund, and the number, qualification, and mode of appointment or election of the committee (herein-after called the managing committee) in whom such management and direction shall be vested :
- (12.) Whether the managing committee may from time to time, upon the advice of the actuary to the fund, and with the consent of the directors of the Company, modify the rules and regulations of the fund, and the conditions upon which persons may after such modification contribute thereto :
- (13.) The mode in which, the persons by whom, and the times at which the accounts of the managing committee or of their treasurer or other officer shall be audited, and the manner in which contributors to the fund and others shall have access to the accounts :
- (14.) The securities upon which the moneys received on account of the fund shall from time to time be invested :
- (15.) And, generally, all such other matters and things in relation to the fund as the committee appointed by this Act shall deem fit and proper to form part of and to be included in such scheme.

15. With the previous consent of some general meeting of the Company, the directors may, at the end of each and every half year

Company
may contri-
bute to

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tion fund.

after the establishment of the superannuation fund, contribute out of the revenues of the Company a sum not exceeding the amount which during the same half year has been contributed thereto by the officers and servants of the Company; provided that the contribution of the Company to the superannuation fund shall not affect or take away the right or power of the Company to grant out of their own proper funds superannuation or other allowances to any of their officers or servants, but the Company may, at any time within ten years from the passing of this Act, with the consent of the proprietors present at a meeting convened with notice of such object, empower the directors to grant to any of their officers or servants who may be forty years of age or upwards at the time of the establishment of the fund, and either in addition to or independent of any allowance which he may be entitled to receive from the fund, such superannuation or other allowance as they from time to time think fit.

Proceedings
and powers
of managing
committee of
superannua-
tion fund.

16. The managing committee may from time to time regulate their own procedure, and may appoint such officers and at such salaries payable out of the superannuation fund as they may think fit, and may at their discretion, where there is no legal personal representative of a deceased contributing member, pay to his widow and children, or either or any of such persons, any sum not exceeding fifty pounds, payable in respect of the claim of such member on the superannuation fund, without requiring the receipt or discharge of a legally constituted representative of such member, and the fund and the managing committee shall not be liable to any further payment to the estate or to the representative of such contributing member.

Contributors
to superan-
nuation fund
exempt from
25 & 26 Vict.
c. 89. and
30 & 31 Vict.
c. 131.

17. The contributors to and the persons to be benefited by the superannuation fund shall not be deemed to be a company, association, or partnership within the meaning of the Companies Acts, 1862 and 1867.

Company
may exercise
borrowing
powers of
Whitby
Company
and gua-
rantee
interest.

18. The Company, with the consent of the Whitby Company under their common seal, may exercise the powers of the Whitby Company with respect to the borrowing of money on mortgage, and may from time to time, in the name and under the seal of the Company, and upon the security of the undertaking of the Whitby Company, and of the rent and moneys from time to time payable by the Company as lessees of that undertaking or accruing to the Whitby Company, and upon the exclusive liability of the Whitby Company for the repayment of the principal moneys, grant and issue mortgages in renewal of or in exchange, substitution, or satisfaction for mortgages of the Whitby Company; and in lieu of

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the Whitby Company doing so, the Company may also in like manner raise the amount which the Whitby Company are now authorised to borrow, but have not borrowed; and the Company may, to the extent of the rent and moneys from time to time payable by them to the Whitby Company, guarantee the payment of the interest upon or in respect of mortgages granted and issued by them, or upon or in respect of mortgages granted and issued by the Whitby Company:

Provided always, that as between the Company and the Whitby Company the interest which may from time to time be paid by the Company shall be deemed to be a debt owing by the Whitby Company to the Company, and, with any accruing interest for the payment of which the Company may be liable, may be debited to the Whitby Company in account between the Company and them, and, notwithstanding anything in the Acts relating to the Whitby Company and the agreement confirmed by the recited Act of 1875, may be from time to time deducted and retained by the Company from and out of and prior to the payment of any rent or other moneys payable by them to the Whitby Company:

Provided also, that the amount in respect of which the powers by this section conferred upon the Company are exercised by them shall not, together with the amount from time to time owing on mortgage by the Whitby Company, at any time exceed the amount which that company are authorised to borrow on mortgage:

Provided also, that during the exercise by the Company of the powers by this section conferred upon them, it shall not be lawful for the Whitby Company to exercise the power of borrowing conferred upon them by any of their Acts.

19. The Company may appropriate and apply to the purposes of this Act any of the moneys which under and by virtue of any existing Acts they have raised or are authorised to raise, and which may not be required for the purposes to which they are by those Acts made specially applicable.

Power to apply moneys raised under existing Acts to purposes of this Act.

20. The Company may raise by the creation and issue of new shares or stock the sum of twenty thousand pounds, in addition to the moneys which they are or may be authorised to raise by any other Act or Acts of Parliament, and such new shares or stock may be created and issued either wholly or partially as ordinary or wholly or partially as preference shares or stock, and either alone or together with any other moneys or capital which the Company may be then authorised so to raise.

Power to raise additional capital.

21. The Company shall not issue any such new shares, nor shall any such new shares vest in the person accepting the same, unless

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

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Rights of voting for new shares or stock to be in proportion to the nominal amount thereof.

22. The new shares or stock by this Act authorised shall, unless otherwise provided by the prescribed terms of issue or creation thereof, confer on the respective holders or proprietors thereof rights of voting and qualifications in proportion to the aggregate nominal value of such shares or amount of such stock, and not in proportion to the number of such shares, and for such purposes every entire sum of fifty pounds of such nominal value of shares or amount of stock shall be equivalent to one share or sum of fifty pounds in the capital stocks of the Company, and no shareholder shall vote or be entitled to be present at the meetings of the Company in respect of any number of such new shares or any amount of such new stock which, with any other shares or stock held by him in the Company, shall constitute a less interest in the capital stocks of the Company than fifty pounds in nominal value.

New shares or stock to rank *pari passu* with others if so determined, and dividends to be a charge against revenue.

23. The Company may, by the resolution creating or authorising the creation of any of the new shares or stock by this Act authorised, determine that such new shares or stock shall rank *pari passu* with any other shares or stock of the Company created subsequently to the passing of that resolution, and also, if so determined, with any other shares or stock which shall have been created and issued subject to such a contingency, and the dividends thereon shall be payable accordingly, and shall be a charge upon and payable out of the net revenue of the Company.

New shares or stock may be created subject to redemption.

24. The Company may by the resolution creating or authorising the creation of any of the new shares or stock by this Act authorised attach thereto a condition that the same may be redeemed on the terms then determined, and for the purpose of such redemption, and for the redemption of any other shares or stock of the Company liable to be redeemed, the Company may from time to time create and issue new shares or stock to an amount not exceeding the aggregate amount of the shares or stock proposed to be redeemed :

Provided that the Company may, subject to the provisions of this Act, attach to the new shares or stock to be created for such redemption any rights or privileges which by this Act they may attach to the shares or stock for which such new shares or stock are to be substituted, but so that the dividend payable in respect thereof shall, in case such new shares or stock are made preferential, not exceed four pounds ten shillings per centum per annum.

Receipt in case of persons not *sui juris*.

25. If any money is payable to a holder of shares or stock in the Company being a minor, idiot, or lunatic, the receipt of the guardian or committee of his estate shall be a sufficient discharge to the Company.

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

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Upon production to such justice of the books of the Company, and of such other evidence as he shall think sufficient, he shall grant a certificate that the proof aforesaid has been given, which certificate shall be sufficient evidence thereof.

27. Every provision in any Act passed before the present session of Parliament, whereby the Company is authorised to raise by borrowing money for the purposes of their undertaking, with respect to the appointment of a receiver for enforcing payment by the Company of arrears of principal money, or principal money and interest, shall be and the same is hereby repealed, but without prejudice to any appointment which may have been made or to the continuance of any proceedings which may have been commenced prior to the passing of this Act under any such provision.

As to ap-
pointment
of a receiver.

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; and 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 ten thousand pounds in the whole.

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Existing mortgages to have priority.

28. All mortgages granted by the Company in pursuance of the powers of any Act of Parliament passed before the passing of this Act, and which shall be subsisting at the time of the passing thereof, shall, during the continuance of such mortgages, and subject to the provisions of the Acts under which such mortgages were respectively granted, have priority over any mortgages granted by virtue of this Act; and 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.

Application of moneys.

29. All moneys raised under this Act, whether by shares or stock or borrowing, shall be applied only to the purposes of this Act and to the general purposes of the Company.

Interest not to be paid on calls paid up.

30. The Company shall not, out of any money by this Act authorised to be raised, pay interest or dividend to any shareholder on the amount of the calls made in respect of the shares held by him, but nothing in this Act shall prevent the Company from paying to any shareholder such interest on money advanced by him beyond the amount of the calls actually made as is in conformity with the Companies Clauses Consolidation Act, 1845.

8 & 9 Vict. c. 16.

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

31. 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.

Company not exempt from provisions of any present or future general Railway Acts.

32. Nothing in this Act contained shall exempt the Company or the railway 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 this Act.

Expenses of Act.

33. 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.