



CHAPTER cxiii.

An Act to amalgamate the Montrose and Bervie Railway Company with the North British Railway Company ; and for other purposes. A.D. 1881.
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[18th July 1881.]

WHEREAS by the Montrose and Bervie Railway Act 1860 (in this Act called “the Act of 1860”) the Montrose and Bervie Railway Company (in this Act called “the Bervie Company”) were incorporated and authorised to raise a capital of seventy thousand pounds in ten pound shares and to borrow twenty-three thousand pounds on mortgage and to make the Montrose and Bervie Railway from a point in the parish of Bervie or Inverbervie in the county of Kincardine to the Montrose Branch of the Scottish North-eastern Railway in the parish and royal burgh of Montrose in the county of Forfar and the said Act conferred powers upon the Scottish North-eastern Railway Company to subscribe towards and work the undertaking and an agreement for ninety-nine years between the chairman and deputy chairman of that company and the promoters of the Bervie Company with respect to the use by the Bervie Company of the Montrose Station of the Scottish North-eastern Railway Company and of the Scottish North-eastern Railway between such station and the Montrose and Bervie Railway was (section thirty-three) confirmed and made binding upon the said companies :

And whereas the Scottish North-eastern Railway Company is amalgamated with the Caledonian Railway Company and the Montrose and Bervie Railway is completed and is worked by that company under an agreement which will expire on or about the thirtieth day of September 1881 :

And whereas the capital of the Bervie Company is seventy thousand pounds in ten pound shares and their mortgage debts outstanding amount to eighteen thousand pounds :

And whereas the North British Railway Company (in this Act called “the North British Company”) by amalgamation with the

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A.D. 1881 North British Arbroath and Montrose Railway Company are the owners of the undertaking of that company consisting of a railway from the Caledonian (formerly Scottish North-eastern) Railway in the parish of Saint Vigean in the county of Forfar to the same railway in the parish of Montrose with a branch railway to connect the said authorised railway with the Montrose Branch of the Caledonian Railway which is connected with the Montrose and Bervie Railway and are completing the construction of the said railways :

And whereas it is expedient that the Bervie Company should be amalgamated with the North British Company upon terms which have been agreed upon between the said two companies and that the agreement set forth in the schedule to the Act of 1860 should be determined.

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

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

Short title. 1. This Act may be cited as the North British and Montrose Railway Companies Amalgamation Act 1881.

Incorporation of general Acts. 26 & 27 Vict. c. 92. 8 & 9 Vict. c. 17. 2. Part V. of the Railways Clauses Act 1863 relating to amalgamation the provisions of the Companies Clauses Consolidation (Scotland) Act 1845 with respect to the several matters following (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 giving of notices and the provision to be made for affording access to the special Act and Parts I. II. and III. of the Companies Clauses Act 1863 relating respectively to cancellation and surrender of shares to additional capital and to debenture stock are (except where expressly varied by or inconsistent with this Act) incorporated with and form part of this Act.

Interpretation of terms. 3. In this Act—
The expression "the incorporated Acts" shall mean the Acts and parts of Acts incorporated with this Act :

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The several words and expressions to which meanings are assigned by the incorporated Acts shall have the same respective meanings : A.D. 1881.

The expression "the undertaking of the Bervie Company" shall mean the undertaking of that company as it would have existed if that company had not been amalgamated with the North British Company under the provisions of this Act.

In the incorporated Acts—

The expression "the dissolved Company" shall mean the Bervie Company :

The expression "the special Act" shall mean this Act : unless in any of the cases aforesaid there be something in the subject or context repugnant to such construction.

4. The undertaking of the Bervie Company shall subject to the contracts obligations debts and liabilities of that company be amalgamated with and form part of the undertaking of the North British Company subject nevertheless to the provisions of this Act and such amalgamation shall take effect on and from the first day of August one thousand eight hundred and eighty-one and the agreement set forth in the schedule to the Act of 1860 shall determine on that day subject nevertheless and without prejudice to any moneys which may be then due under or by virtue of the said agreement from the one company to the other company and the remedies of the companies respectively for enforcing payment thereof and the provisions contained in section thirty-three of the Act of 1860 shall as from that day be repealed. Montrose and Bervie Railway amalgamated and agreement determined.

5. The Bervie Company shall be entitled to all their revenues up to and inclusive of the thirty-first day of July one thousand eight hundred and eighty-one and shall discharge and relieve the North British Company from all their contracts obligations debts and liabilities incurred upon revenue account up to the date of the amalgamation. Bervie Company to receive rents and revenue &c. up to date of amalgamation.

6. The North British Company shall be entitled to and shall receive all the assets property and claims of the Bervie Company assignable to capital account and all books of accounts and minutes papers plans and all other documents relating to that company. North British Company entitled to assets &c. on capital account.

7. The tolls and charges which the North British Company may demand and take for traffic conveyed upon the railways of the Bervie Company shall not exceed the tolls and charges authorised to be taken upon the same railways under the Act of 1860 but for the purpose of short distance charges in respect of traffic Tolls &c. on traffic conveyed partly on amalgamated railway and

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A.D. 1881. — passing partly over any railway of the Bervie Company and partly over any railway of the North British Company the railways of the North British Company and of the Bervie Company shall be considered as one railway.

North British Company may apply corporate funds to purposes of Act. 8. The North British Company may raise and apply to the purposes of this Act any money which they are authorised to raise by any other Act and which may not be required for purposes to which by that Act it is authorised to be applied.

North British Company may raise capital by ordinary or lien stock. 9. The North British Company may subject to the provisions of Part II. of the Companies Clauses Act 1863 raise by the creation and issue of ordinary stock or at their option of lien stock (in this Act called "Bervie lien stock") any sum not exceeding in the whole forty-two thousand pounds but they shall not raise part of the said sum by ordinary stock and the remainder by Bervie lien stock.

Stock to form part of North British Company's general capital. 10. All stock to be created by the North British Company under the authority of this Act shall subject to the provisions of this Act form part of the general capital of the North British Company.

Ordinary stock to be North British ordinary stock and amount limited. 11. If the North British Company raise the said sum of forty-two thousand pounds by the creation and issue of ordinary stock the stock to be so created shall be North British ordinary stock and shall not exceed in amount the sum of seventy thousand pounds and if they raise the said sum by the creation and issue of Bervie lien stock the stock to be so created shall not exceed in amount the sum of forty-two thousand pounds.

Holders of lien stock to have lien on undertaking. 12. If the North British Company raise the said additional capital by the creation and issue of "Bervie lien stock" they may if they think fit attach to the lien stock so to be created a fixed preferential dividend not exceeding five pounds per centum per annum which shall over the gross revenues of the Bervie undertaking have a statutory lien or security preferable (except as regarding existing mortgages on the undertaking of the Bervie undertaking until the expiration of the periods for which they have been severally granted) to all mortgages debenture stocks interest or other debts or obligations of the Company for the payment of the interest and dividends due to them on the said lien stock and such lien or right in security may be rendered available in the manner herein-after mentioned.

How lien to be made effectual. 13. It shall be lawful for one or more of the proprietors of the Bervie lien stock under this Act to render effectual their lien in the event of any interest or dividend or any part thereof respectively

not having been paid within four weeks after the day on which the same shall have become due by the appointment in manner herein-after mentioned of a judicial factor upon the gross revenues by this Act made subject to the lien. A.D. 1881.

14. For the purposes of this Act the application for the appointment of a judicial factor shall be made by summary petition to the Court of Session or in time of vacation to the Lord Ordinary on the Bills in name of the proprietor or proprietors of Bervie lien stock to whom the said fixed preferential dividend ought to have been paid and the Court Session or the Lord Ordinary on the Bills as the case may be is hereby authorised and required on such application being made to appoint some person as judicial factor to the effect and with the powers herein-after mentioned and a certified copy of the interlocutor making such appointment shall be a sufficient warrant for the judicial factor thereby appointed entering upon his office. Mode of appointment of judicial factor.

15. The person appointed judicial factor with respect to arrears of interest or dividends upon the Bervie lien stock created under this Act shall be entitled to receive the whole or a competent part of the tolls or sums liable to the payment of the interest or dividends on the said lien stock in arrear until such interest or dividends and any interest or dividends which may subsequently become due during the continuance of the judicial factory together with all costs including the charges for receiving the tolls or sums aforesaid be fully paid and all such tolls and sums of money as aforesaid shall be paid to and received by or to the use of the parties to whom any interest upon mortgages already granted or created on the Bervie undertaking or to whom any such interest or dividend as aforesaid on the Bervie undertaking shall be then due according to their priorities and shall not be liable in the hands of the judicial factor to any other debts or obligations of the Company and after such interest dividends and costs as aforesaid have been so received the power of such judicial factor shall cease and he shall be bound to account to the Company for all sums received by him and to pay over to their treasurer any balance that may be in his hands. Power of judicial factor.

16. And whereas by the North British Railway (General Powers) Act 1870 provisions are enacted for facilitating the consolidation of the several classes of lien stock therein named Be it enacted that such provisions shall extend and be applicable to the lien stock created under this Act in like manner in all respects as if those provisions had specifically referred and applied to such lien stock as well as to the several classes of stock therein named. Extension to lien stock of provisions of 33 & 34 Vict. c. civ. for consolidation of lien stocks.

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Judicial
factor may
require
separate
accounts of
revenue to
be kept.

17. In the event of a judicial factor being appointed as aforesaid with respect to arrears of interest or dividends upon the Bervie lien stock it shall be lawful for him to require the directors of the Company to keep and upon the said requisition being made the directors of the Company shall keep during the continuance of the judicial factory at the expense and in the books of the Company separate detailed accounts of the gross revenues drawn from week to week from the undertaking of the Bervie Company and the judicial factor shall have right of access to the said books and to all states invoices and accounts of traffic for the purpose of checking the accuracy of the said detailed accounts of gross revenue.

Judicial
factor may
require
separate
accounts of
working
expenses to
be kept.

18. The directors of the Company shall also in the event and during the period aforesaid and upon being required as aforesaid keep in the books of the Company and at their expense separate detailed accounts of the working expenses incurred during each half year upon the undertaking of the Bervie Company and any judicial factor upon that undertaking shall be entitled at all times to examine and check as aforesaid the accounts of gross revenue as also the accounts of working expenses and all vouchers and entries connected therewith and to enforce in the most summary way compliance with the aforesaid provisions for keeping accounts of revenue and working expenses as aforesaid.

Statutory
liens not to be
a charge on
land.

19. Subject to the provisions of this Act the said statutory liens under this Act shall be without prejudice to the existing mortgages on the undertaking of the Bervie Company and no such lien shall be a charge upon land.

North
British Com-
pany to pay
six pounds
for each
Bervie share
of ten
pounds.

20. The North British Company shall pay to the shareholders of the Bervie Company six pounds sterling for every ten pounds of share capital in the Bervie Company held by such shareholders respectively and the shareholders shall deliver up to the secretary of the North British Company the certificates of the shares held by them respectively and such money shall be payable to the said shareholders on the day of amalgamation or at the expiration of one week from the passing of this Act whichever event shall last happen and the capital of the Bervie Company shall be extinguished.

Moneys paid
for shares in
Bervie Com-
pany to be
subject to
same trusts,
&c.

21. All moneys so paid for shares in the capital of the Bervie Company shall be taken by the parties entitled thereto respectively subject to the same trusts powers rights charges and liabilities as such shares in the Bervie Company were subject to immediately before the amalgamation or would have been subject to if this Act had not been passed and so as to give effect to and not revoke any will or testamentary instrument disposing of or affecting such

shares and every testamentary disposition affecting such shares shall be held to apply to the whole or a proportionate amount of the money paid for such shares as the case may be. A.D. 1881.

22. All mortgages of the Bervie Company existing at the time of the amalgamation amounting to the sum of eighteen thousand pounds shall during the continuance of such mortgages respectively be charges upon the undertaking of the Bervie Company but the North British Company shall be liable for all interest which shall accrue on such mortgages and for all feu duties of the Bervie Company falling due after the amalgamation and as such mortgages fall due they shall be paid off or may be renewed by the North British Company and all such renewed mortgages shall be charges upon the undertaking of that company but as between the North British Company and the Bervie Company all interest upon mortgages and all feu duties which shall accrue up to the time of the amalgamation shall be borne and paid by the Bervie Company. Mortgages of the Bervie Company.

23. The Company in addition to any sums which they are authorised to borrow under other Acts of Parliament may from time to time borrow on mortgage of their undertaking any sums not exceeding in the whole twenty-three thousand pounds inclusive of the eighteen thousand pounds mortgage debts of the Bervie Company and as and when any of such last-mentioned mortgages become payable they may re-borrow the amount so payable and so from time to time. Power to borrow.

24. The provisions of the North British Railway (Amalgamations &c.) Act 1880 authorising the appointment of a judicial factor for principal or interest moneys due upon any mortgages of the Company are hereby repealed but subject and without prejudice to any appointment of a judicial factor or proceedings taken under or by virtue of such provisions and in force or pending at the time of the passing of this Act. Provisions of 43 & 44 Vict. c. clxvii. as to appointment of a judicial factor repealed.

25. 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 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. Appointment of a judicial factor.

26. 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 Existing mortgages to have priority.

A.D. 1881. mortgages and as regards the undertaking comprised in and assigned by such mortgages and subject to the provisions of the Acts under which such mortgages were respectively granted have priority over all mortgages to be granted by virtue of this Act but nothing in this section contained shall affect any priority of the interest of any debenture stock at any time created and issued by the Company.

Debenture stock.

27. The Company may create and issue debenture stock subject to the provisions of Part III. of the Companies Clauses Act 1863 but notwithstanding anything therein contained the interest of all debenture stock at any time after the passing of this Act created and issued by the Company shall rank *pari passu* with the interest of all mortgages at any time after the passing of this Act granted by the Company and shall have priority over all principal moneys secured by such mortgages.

Application of moneys.

28. All moneys raised under this Act whether by stock or debenture stock or borrowing shall be applied for the purposes of this Act only.

Saving working agreement with the Caledonian Railway Company.

29. This Act shall during the continuance of the herein-before mentioned working agreement now subsisting between the Bervie Company and the Caledonian Railway Company be without prejudice to that agreement and the North British Railway shall with reference to such agreement represent the Company as fully in all respects as if they and not the Bervie Company had originally been party thereto.

Interest not to be paid on calls paid up.

30. The North British Company shall not out of any money by this or any other 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 said 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.

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

31. The North British Company shall not out of any money by this or any other 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 said Company to construct any other railway or to execute any other work or undertaking.

Provision as to general railway Acts.

32. Nothing in this Act contained shall exempt the railways of either of the companies named therein from the provisions

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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 any Act relating to the said companies or either of them. . . . A.D. 1881.

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 North British Company. Expenses of Act.

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