



CHAPTER lxxxv.

An Act to incorporate the Gifford and Garvald Railway Company and to empower them to construct a railway in the county of Haddington and for other purposes. A.D. 1891.

[3rd July 1891.]

WHEREAS the construction of the line of railway from Ormiston to Gifford and Garvald in the county of Haddington herein-after described would be of public and local advantage :

And whereas the several persons herein-after named with others are willing to carry the undertaking into execution on being incorporated into a company (in this Act called "the Company") for the purpose :

And whereas it is expedient that the Company and the North British Railway Company be empowered to enter into and carry into effect working and other agreements as herein-after provided :

And whereas plans and sections showing the lines and levels of the railway authorised by this Act and also a book of reference to such plans 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 Haddington and are herein-after referred to respectively 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 :—

1. This Act may be cited as the Gifford and Garvald Railway Act 1891. Short title.

[Ch. lxxxv.] *Gifford and Garvald Railway* [54 & 55 VICT.]
Act, 1891.

A.D. 1891.
Incorporation of
general Acts.

2. The Companies Clauses Consolidation (Scotland) Act 1845 Part I (relating to cancellation and surrender of shares) and Part III (relating to debenture stock) of the Companies Clauses Act 1863 as amended by the Companies Clauses Act 1869 the Lands Clauses Acts the Railways Clauses Consolidation (Scotland) Act 1845 and Part I (relating to the construction of a 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 in this Act and for the purposes of this Act in the Acts wholly or partially incorporated with this Act the expression "the Company" means the Company incorporated by this Act the expressions "the railway" and "the undertaking" mean respectively the railway and works connected therewith and the undertaking authorised by this Act and the word "schoolmasters" means session clerks.

Company incorporated.

4. The Most Honourable William Montagu Hay Marquess of Tweeddale John Fletcher of Saltoun Walter Wingate Gray of Nunraw William Arthur Black Trevelyan of Tyneholm and all other persons and corporations who have already subscribed to or shall hereafter become proprietors in the undertaking and their executors administrators successors and assigns respectively shall be and are hereby united into a company for the purpose of making and maintaining the railway and for other the purposes of this Act and for those purposes shall be and are hereby incorporated by the name of "the Gifford and Garvald Railway Company" and by that name shall be a body corporate with perpetual succession and a common seal and with power to purchase take hold and dispose of lands and other property for the purposes of this Act.

Power to
make
railway.

5. 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 together with all proper stations junctions sidings roads approaches bridges buildings works and conveniences connected therewith and may enter upon take and use such of the lands delineated on the said plans and described in the deposited book of reference as may be required for that purpose The railway herein-before referred to

and authorised by this Act will be wholly situate in the county of Haddington and is— A.D. 1891.

A railway twelve miles and two hundred yards or thereabouts in length commencing in the parish of Ormiston by a junction with the Macmerry branch of the North British Railway Company at a point thereon forty-four yards or thereabouts measured in an easterly direction from the centre of the bridge which carries the public road from Ormiston to Tranent over that railway and terminating in the parish of Garvald and Bara at a point in a field three hundred and forty-seven yards or thereabouts measured in a south-westerly direction from the south-west corner of the dwelling house at Tanderlane Farm.

6. The capital of the Company shall be one hundred and eleven thousand pounds in eleven thousand one hundred shares of ten pounds each. Capital.

7. The Company shall not issue any share created under the authority of this Act nor shall any such share vest in the person or corporation accepting the same unless and until a sum not being less than one-fifth of the amount of such share is paid in respect thereof. Shares not to be issued until one-fifth paid.

8. One-fifth of the amount of a share shall be the greatest amount of a call and three months at least shall be the interval between successive calls and three-fifths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share. Calls.

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

10. 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 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 Power to divide shares.

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A.D. 1891. payable thereon) and the residue to the credit of the preferred half share.

Dividends on half shares.

11. 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 six pounds 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 been payable on the entire share if the same had not been divided.

Dividends on preferred shares to be paid out of profits of the year only.

12. 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.

Half shares to be registered and certificates issued.

13. 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 on certificates.

14. 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 half shares.

15. The provisions of the Companies Clauses Consolidation (Scotland) Act 1845 with respect to the forfeiture of shares for non-payment 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. A.D. 1891.

16. No preferred half share created under the authority of this Act shall be cancelled or be surrendered to the Company. Preferred half shares not to be cancelled or surrendered.

17. 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. Half shares to be half shares in capital.

18. The Company may from time to time borrow on mortgage of the undertaking any sum not exceeding in the whole thirty thousand pounds but no part thereof shall be borrowed until the whole capital of one hundred and eleven thousand 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 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 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 shall be sufficient evidence thereof. Power to borrow.

19. 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 six thousand pounds in the whole. For appointment of a judicial factor.

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Debenture
stock.

20. 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 and of all mortgages at any time created and issued or granted by the Company under this or any subsequent Act shall subject to the provisions of any subsequent Act rank *pari passu* (without respect to the dates of the securities or of the Acts of Parliament or resolutions by which the stock and mortgages were authorised) and shall have priority over all principal moneys secured by such mortgages and notice of the effect of this enactment shall be endorsed on all mortgages and certificates of debenture stock issued by the Company.

Application
of moneys.

21. All moneys raised under this Act whether by shares debenture stock or borrowing shall be applied only to the purposes of this Act to which capital is properly applicable.

Ordinary
meetings.

22. The first ordinary meeting of the Company shall be held within six months after the passing of this Act and the subsequent ordinary meetings in the month of March or April in each year or in such other month as may from time to time be appointed for that purpose by order of an extraordinary general meeting and all meetings of the Company whether ordinary or extraordinary shall be held in Edinburgh or in such other place as the directors may from time to time appoint.

Number of
directors.

23. The number of directors shall be eight but the Company may from time to time alter the number provided the number be not less than three nor more than eight.

Qualification
of directors.

24. The qualification of a director shall be the possession in his own right of not less than thirty shares.

Quorum.

25. The quorum of a meeting of directors shall be three.

First
directors.

26. The Most Honourable William Montagu Hay Marquess of Tweeddale John Fletcher of Saltoun Walter Wingate Gray of Nunraw William Arthur Black Trevelyan of Tyneholm and four persons to be nominated by them or the majority of them and consenting to such nomination shall be the first directors of the Company and shall continue in office until the ordinary meeting held after the passing of this Act At that meeting the shareholders present in person or by proxy may either continue in office the directors appointed by this Act or nominated as aforesaid or any of them or may elect a new body of directors or directors to supply the place of those not continued in office the directors appointed by this Act or nominated as aforesaid being (if they continue qualified) eligible for re-election and at the ordinary meeting to be held in every year

after the first ordinary meeting the shareholders present in person or by proxy shall (subject to the power herein-before contained for altering the number of directors) elect persons to supply the places of the directors then retiring from office agreeably to the provisions of the Companies Clauses Consolidation (Scotland) Act 1845 and the several persons elected at any such meeting being neither removed nor disqualified nor having died or resigned shall continue to be directors until others are elected in their stead in manner provided by the same Act. A.D. 1891.

27. The Company may take by agreement for the extraordinary purposes mentioned in the Railways Clauses Consolidation (Scotland) Act 1845 any quantity of land not exceeding five 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 taken under the powers of this section. Lands for extraordinary purposes.

28. 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. Period for compulsory purchase of lands.

29. For the protection of Mary Georgiana Constance Nisbet Hamilton Ogilvy of Winton and Pencaitland and her successors in the said lands and estates (who are herein-after in this section called "the owner") the following provisions shall have effect and shall be carried into execution subject to any alterations thereof which may hereafter be agreed upon between the Company and the owner (that is to say) :— For the protection of the Winton and Pencaitland Estates.

(1.) The Company shall before commencing the construction of the works hereby authorised purchase and acquire from the owner the whole of those fields in the parish of Pencaitland and county of Haddington marked numbers 17 22 and 25 on the deposited plans and lying on the south side of the public road leading westwards from Pencaitland Village to Ormiston.

(2.) The amount of the purchase-money and compensation payable to the owner for the lands so to be purchased and taken shall failing agreement between the owner and the Company be determined by arbitration in manner provided by the Lands Clauses Consolidation (Scotland) Act 1845 subject to the qualification contained in the immediately succeeding subsection.

(3.) For the purpose of ascertaining the amount of purchase-money or compensation to be paid to the owner in terms of the above-mentioned Act the Company and the owner shall unite in executing a minute of reference and submission to Thomas

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Buchan Land Valuator Dundee as sole arbiter in the premises who shall have and possess all the powers exercised by arbiters under the Act above mentioned Failing the said Thomas Buchan by death incapacity or refusal to act the said compensation or purchase-money shall be ascertained by James Inglis Davidson Saughton Mains Edinburgh whom failing then the said compensation or purchase-money shall be ascertained in manner provided by the said Act.

- (4.) The Company shall make and maintain in all time coming a station for passengers animals and goods in or as near as conveniently may be to the field numbered 40 on the deposited plans in the parish of Pencaitland to the east of the public road leading southwards from Pencaitland Village to Fountain Hall to be called Pencaitland Station.

For the protection of the Saltoun Estate.

30. For the protection of John Fletcher of Saltoun and his successors in the said lands and estate (who are herein-after in this section called "the owner") the following provisions shall have effect and shall be carried into execution subject to any alterations thereof which may hereafter be agreed upon between the Company and the owner (that is to say) :—

- (1.) The Company shall make and maintain in all time coming the following works viz. :—

(a.) A suitable siding at a point to be fixed by the owner in or as near as conveniently may be to the field numbered 60 on the deposited plans in the parish of Pencaitland :

(b.) A station for passengers animals and goods in or as near as conveniently may be to the field numbered 18 on the deposited plans in the parish of Saltoun to be called Saltoun Station :

(c.) A good serviceable road from that station to the public road :

(d.) A suitable siding at a point to be fixed by the owner in or as near as conveniently may be to the field numbered 24 on the deposited plans in the parish of Saltoun :

(e.) A suitable siding for the service of the limekilns on the estate of Saltoun at a point to be fixed by the owner in or as near as conveniently may be to the field numbered 45 on the deposited plans in the parish of Saltoun.

- (2.) The Company shall not in any way alter or vary without the consent of the owner the provisions of sub-section (4) of the next preceding section.

For the protection of Lord Blantyre.

31. Nothing in this Act contained shall authorise the Company to take use or in any manner interfere with the land and property

belonging or reputed to belong to the Right Honourable Charles Stuart Baron Blantyre shown on the deposited plans and numbered 7 8 and 10 in the parish of Bolton and county of Haddington or any part thereof without the previous consent in writing of the said Baron Blantyre or his successors in estate and the centre line of the railway between the points shown on the deposited plans as indicating the distances from the commencement of the railway of six miles four furlongs and seven miles four furlongs shall not without the like consent be carried further north than one hundred and ten yards from the southern limit of deviation delineated on the said plans.

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32. In altering for the purposes of this Act the roads next herein-after mentioned the Company may make the same of any inclinations not steeper than the inclinations herein-after mentioned in connexion therewith respectively (that is to say) :—

Inclination
of roads.

Number on Deposited Plans.	Parish.	Description of Road.	Intended Inclination.
16	Salton - -	Public road -	1 in 20 on one side.
23	Salton - -	Public road -	1 in 20 on one side and 1 in 30 on the other.
30	Salton - -	Public road -	1 in 16 on one side.
46	Salton - -	Public road -	1 in 20 on one side.
11	Yester - -	Public road -	1 in 18 on one side.
13	Yester - -	Public road -	1 in 18 on one side.

33. The Company may divert the public highways referred to in the next following table in the manner shown upon the deposited plans and sections and when and as in each case the new portion of any road is made to the satisfaction of the justices and is open for public use may stop up and cause to be discontinued as a road so much of the existing road as will be rendered unnecessary by the new portion of road (that is to say) :—

Power to
divert roads
as shown on
deposited
plans.

Parish.	No. of road on plan.
Pencaitland - -	45
Pencaitland - -	59
Yester - -	11

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A.D. 1891. And when and so soon as each of the said roads is so stopped up all rights of way over the same shall cease and the Company may subject to the provisions of the Railways Clauses Consolidation (Scotland) Act 1845 with respect to mines lying under or near to the railway appropriate and use for the purposes of their undertaking the site of the road stopped up as far as the same is bounded on both sides by lands of the Company.

New portions of road to be subject to same provisions as existing roads.

34. All new portions of road authorised by the provisions of the Railways Clauses Consolidation (Scotland) Act 1845 incorporated with this Act to be formed in lieu of roads altered or diverted shall subject to the provisions of section thirty-nine of that Act be held as respects management and maintenance and in all other respects as parts of and be subject to the same provisions as the existing roads altered or diverted as aforesaid respectively.

Powers of lateral and vertical deviation and of altering gradients and curves of railway.

35. The Company notwithstanding the provisions of the Railways Clauses Consolidation (Scotland) Act 1845 incorporated with this Act may deviate from the lines of the railway authorised by this Act as delineated on the deposited plans thereof to any extent within the limits of deviation shown on those plans and may between the points shown on the deposited plans as indicating the distances measured from the commencement of the railway of three miles and three miles fifty-five chains of four miles fifty-five chains and five miles twenty chains of six miles forty chains and seven miles forty chains and of ten miles sixty chains and the termination of the railway deviate from the levels thereof as delineated on the deposited sections thereof to any extent upwards or downwards as may be agreed upon in writing with the owners of any lands through which and with the owners lessees and occupiers of any house affected by or through the curtilage of which such deviations are intended to be made and may increase any inclination or gradient of the railway shown on the deposited sections thereof as not steeper than one in fifty to such an extent as they may see fit provided that such inclinations or gradients where so increased be not steeper than one in fifty and they may diminish the radius of any curve described on the deposited plans of the railway to any extent which shall leave a radius of not less than one furlong.

Power to take easements &c. by agreement.

36. 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 of water

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 rentcharges ground-annuals or feu-duties 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. A.D. 1891.

37. The Company shall not under the powers of this Act without the consent of the Secretary for Scotland purchase or acquire in any district within the meaning of the Public Health (Scotland) Act 1867 ten or more houses which after the passing of this Act have been or on the fifteenth day of December last were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers: Restriction on taking houses of labouring class.

For the purposes of this section the expression "labouring class" 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.

38. Subject to the provisions herein-after contained it shall be lawful for any limited owner named in the First Schedule to this Act of any lands shown on the deposited plans and described in the deposited book of reference required by the Company for the purposes of any part of their undertaking to agree with the Company that the consideration to be paid for the same and the compensation (if any) to be paid for any permanent damage or injury to any such lands shall be wholly or in part the allotment to such limited owner of such number of shares in the capital of the Company as shall be agreed upon between such owner and the Company: Power to limited owners to take shares for land.

(1.) For the purposes of this section the expression "limited owner" includes any person named in the said First Schedule and empowered under the seventh section of the Lands Clauses Consolidation (Scotland) Act 1845 to sell and convey or release lands or any estate or interest therein to the promoters of the undertaking:

(2.) All shares issued pursuant to this section to any limited owner shall be deemed to be fully paid up shares in the capital of the Company and the names of the holders thereof shall be inserted as such in the register of shareholders:

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(3.) All shares issued pursuant to this section to any limited owner shall be held upon the like uses and trusts and for the same purposes and in the same manner as the lands in consideration for which such shares are issued stood settled immediately before the conveyance of such lands to the Company :

(4.) The Company shall make an entry in their register of shareholders of the uses trusts and purposes aforesaid and subject to the uses trusts and purposes affecting such shares such limited owner in respect thereof shall have all the other rights and powers of a shareholder of the Company :

(5.) The Company shall not be bound to see to the application of any dividend payable to a limited owner or be in any way responsible with respect to the application thereof.

Power to limited owners to convey lands free of charge in certain cases.

39. It shall be lawful for any limited owner named in the First Schedule to this Act whose land the Company are authorised to take for the purposes of their undertaking to grant convey dispoise or dispose of the same or any portion thereof to the Company free of cost to the Company.

Deposit.

40. 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 four thousand two hundred and forty pounds fifteen shillings being equal to five per centum upon the amount of the estimate in respect of the railway has 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 which sum is referred to in this Act as the deposit fund Be it enacted that notwithstanding anything contained in the said Act 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 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 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.

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41. 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 and has been ordered to be wound up or the undertaking has been abandoned be paid or transferred wholly or in part to such judicial factor or to the liquidator or liquidators of the Company or be applied in the discretion of the 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 retransferred 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.

Application
of deposit.

42. 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.

Period for
completion
of railway.

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Tolls.

43. The Company may demand and take in respect of the use of the railway or any part thereof and of carriages and engines thereon and for the conveyance of traffic thereon and in respect of accommodation and services provided by the Company in connexion therewith or otherwise any tolls rates and charges not exceeding the tolls rates and charges authorised to be taken by the North British Railway Company on the Border Union Line of the North British Railway under the Border Union (North British) Railways Act 1859 as modified by the second and third sections of the Schedule (B) to the North British and Edinburgh and Glasgow Railway Companies Amalgamation Act 1865.

Application of provisions of Railway and Canal Traffic Act 1888 as to revision of rates.

44. Section twenty-four of the Railway and Canal Traffic Act 1888 and any enactment which may be passed in the present or any future session of Parliament extending or modifying that enactment shall with any necessary modifications apply to the Company in all respects as if it were one of the companies to which the provisions of the said enactment in terms applied. Provided that the time within which the revised schedule of maximum rates and charges prescribed by the said section shall be submitted to the Board of Trade shall be three years from the date of the passing of this Act or such further time as the Board of Trade may permit.

Confirmation of scheduled agreement with the North British Railway Company.

45. The agreement between the North British Railway Company of the first part and the Most Honourable William Montagu Hay Marquess of Tweeddale and Walter Wingate Gray of Nunraw on behalf of the Company of the second part set forth in the Second Schedule to this Act is hereby confirmed and made binding on the North British Railway Company and the Company respectively.

Power to enter into traffic arrangements.

46. The Company on the one hand and the North British Railway Company on the other hand may subject to the provisions of Part III of the Railways Clauses Act 1863 as amended or varied by the Railway and Canal Traffic Acts 1873 and 1888 from time to time enter into alter or rescind agreements with respect to the following purposes or any of them (that is to say):—

The working use management and maintenance by the North British Railway Company of the railway and works or any part or parts thereof:

The management regulation interchange collection transmission and delivery of traffic upon or coming from or destined for the railways of the contracting Companies or either of them or any part thereof respectively:

The mode of construction of the railway and works or any part or parts thereof for the purposes of any working agreement made under the powers of this section and the supply and

maintenance during the continuance of any such agreement of engines rolling stock and machinery necessary for the purposes of such agreement and the employment of officers and servants for the conduct of traffic : A.D. 1891.

The fixing collection payment appropriation apportionment and distribution of the tolls rates charges receipts and revenues levied taken or arising in respect of such traffic.

47. Any joint committee which may be appointed by the Company and the North British Railway Company for carrying into effect the purposes of any agreement that may be entered into under the powers contained in the next preceding section shall be composed of such equal number of their directors respectively as they may think proper and in the event of any difference arising between the members appointed by and for the said companies composing the said joint committee the same shall be determined by an arbitrator to be appointed by such committee or on the application of either of the companies by the Board of Trade. Joint committees.

48. During the continuance of any agreement to be entered into under the provisions of this Act for the working or use of the railway or any part thereof by the North British Railway Company the railway of the Company and of the North British Railway Company shall for the purposes of short distance tolls and charges be considered as one railway and in estimating the amount of tolls and charges in respect of traffic conveyed partly on the railway of the Company and partly on the railways of the North British Railway Company for a less distance than three miles tolls and charges may be charged as for three miles only and in respect of passengers for every mile or fraction of a mile beyond three miles tolls and charges as for one mile only and in respect of animals and goods for every quarter of a mile or fraction of a quarter of a mile beyond three miles tolls and charges as for a quarter of a mile only and no other short distance charge shall be made for the conveyance of passengers animals or goods partly on the railway of the Company and partly on the railways of the North British Railway Company. Tolls on traffic conveyed partly on the railway and partly on the North British Railway.

49. The several facilities powers privileges and provisions by the North British and Edinburgh and Glasgow Railway Companies Amalgamation Act 1865 granted secured and provided as regards East Coast Traffic as defined by that Act shall if and so long and so often as the railway is worked by the North British Railway Company extend and apply to the railway in all respects as if it had been a railway in extension of or connected with the North British Railway belonging to or leased by that Company but the running powers by that Act granted shall not extend to the railway. Facilities as regards East Coast Traffic.

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Saving for
Postmaster-
General.

50. Nothing in this Act or in the agreement set forth in the Second Schedule to this Act or in any agreement made under the authority of this Act shall affect the rights of Her Majesty's Postmaster-General under the Telegraph Act 1878 to place and maintain telegraphic lines in under upon along over or across the railway and works comprised in the undertaking of the Company and from time to time to alter such telegraphic lines and to enter upon the land and works comprised in such undertaking for the purposes in the Telegraph Act 1878 specified and the Postmaster-General shall be at liberty to exercise all the rights aforesaid notwithstanding that the undertaking of the Company is worked by the North British Railway Company.

Interest not
to be paid on
calls paid up.

51. No interest or dividend shall be paid out of any share or loan capital which the Company are by this or any other 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.

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

52. 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.

Provision as
to general
railway Acts.

53. 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.

Costs of Act.

54. 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.

SCHEDULES.

A.D. 1891.

The **FIRST SCHEDULE** referred to in the foregoing Act.

NAMES OF LIMITED OWNERS.

The Marquess of Tweeddale.
John Fletcher of Saltoun.

The **SECOND SCHEDULE** referred to in the foregoing Act.

AGREEMENT between THE NORTH BRITISH RAILWAY COMPANY incorporated by Act of Parliament of the first part and the Most Honourable WILLIAM MONTAGU HAY MARQUESS OF TWEEDDALE and WALTER WINGATE GRAY of Nunraw being two of the Promoters of and named in the Bill herein-after mentioned specially authorised on this behalf by the whole Promoters of the second part.

WHEREAS the second parties are promoting with others a Bill in Parliament for the purpose of forming themselves and others into a company to be called the Gifford and Garvald Railway Company and for authority to construct a line of railway to be called the Gifford and Garvald Railway from Ormiston to Gifford and Garvald in the county of Haddington And whereas the Promoters have agreed to enter into the agreement herein contained for the working of the said line of railway by the first parties in connexion with their system of railways in manner herein-after provided Therefore the parties mutually agree with each other in manner following (that is to say) :—

Article First—The line of railway to which these presents shall apply (herein-after referred to as “the railway”) shall embrace and include the railway which the second parties may be authorised to construct.

Article Second—In the event of an Act being obtained and the capital being subscribed the second parties shall as soon as convenient thereafter purchase at their expense the necessary land and shall make construct and complete the railway as a single line with rails weighing at least seventy five pounds per yard and all stations (and provide the necessary furnishings) station-

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Act, 1891.

A.D. 1891. — masters' houses gatekeepers' houses engine-sheds sidings signal cabins signals cranes turntables water-tanks with water supply wires speaking telegraphic apparatus and Tyer's train tablet system of working (unless otherwise agreed) and other works and conveniences necessary for working the traffic of the railway all in a good sufficient and substantial manner and to the satisfaction of the chief engineer of the first parties for the time being or in case of any difference of opinion between him and the engineer of the second parties respecting the same to the satisfaction of the Board of Trade on the application of either of the parties.

Article Third— Upon the construction completion and opening by the sanction of the Board of Trade of the railway the first parties shall in perpetuity but subject to the provisions in Article Tenth hereof work and manage the traffic upon and maintain the same and shall provide the locomotive power rolling stock and plant of every kind (except the furnishing and conveniences to be provided by the second parties mentioned in Article Second hereof) necessary for the working of the traffic from the date of the opening thereof for passenger traffic by authority of the Board of Trade as regards the working and management and from twelve months thereafter as regards the maintenance. The first parties shall work and manage the railway in a proper safe and efficient manner and so as fully and fairly to develop the traffic to and from and on the same. The first parties shall except as herein-after provided fix the tolls rates and charges for and in respect of all traffic using the railway or any part thereof but the second parties shall have the right from time to time to object to the tolls rates and charges or any of them and in the event of any difference arising between the parties thereanent the same shall be determined by arbitration in manner herein-after provided.

Article Fourth The first parties shall have the power save as herein-after mentioned in this article of selecting appointing suspending and dismissing all officers agents book-keepers booking and other clerks servants enginemen guards signalmen porters carters surfacemen and all others employed on and connected with the railway or required for keeping in their general office the accounts connected with the traffic of the same or employed in superintending or directing or actually engaged in conducting the said traffic and the said officers agents servants and others above mentioned shall be paid by the first parties and shall be exclusively under their control and the second parties shall have the selection appointment and control of and shall pay the secretary treasurer or other officers actually engaged and required by them in the management of the capital financial and directorial departments of their undertaking.

Article Fifth—The gross revenues of the second parties shall be held to consist of and include—

- (1.) All receipts in respect of local traffic including mails (that is to say traffic which shall both arise and terminate on the railway) subject only to deduction of the actual expense of cartage where incurred :
- (2.) A mileage proportion of all receipts arising from through traffic including mails (that is to say traffic which passes over the railway or any part thereof and which likewise passes over the railways of the first parties or of any other company or any part thereof) corresponding to the distance for which such traffic is carried over the said several railways respectively after deduction from such receipts of the terminals on such traffic which shall belong and be

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paid to the companies other than the second parties respectively entitled thereto and also subject to deduction of the actual expense of cartage where incurred when included in the through rate : A.D. 1891.

- (3.) The terminals belonging to the second parties in respect of such through traffic subject to deduction of the actual expense of the cartage of goods where incurred when included in the terminal charge :
- (4.) Rents for the use of any property belonging to the second parties (including refreshment rooms bookstalls advertising and depôt ground) and all other revenues of the second parties (except the rents of surplus lands held by the second parties and transfer fees) but under deduction of all feu duties ground annuals rents and other periodical or annual payments as well as rates taxes and public and local burdens effeiring to such property :
- (5.) The first parties shall collect the said gross revenues and shall be entitled to retain fifty per centum thereof as their remuneration for maintaining the railway and working and managing the traffic thereon and collecting the said revenues and shall pay over the balance of fifty per centum to or for behoof of the second parties in manner herein-after provided.

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Article Sixth—Out of the said balance the second parties shall pay—

- (1.) Government duty thereon :
- (2.) All feu duties ground annuals rents and other periodical or annual payments if any payable in respect of any lands acquired and held on lease by them :
- (3.) All compensation to tenants if any in respect of any lands acquired or injuriously affected by them so far as not chargeable against the capital of the second parties :
- (4.) All rates taxes and public and local burdens of every kind payable in respect of the ownership of the railway :
- (5.) All interest upon money borrowed by the second parties whether upon mortgage debenture stock or otherwise : and
- (6.) The reasonable expense of the directorial and financial management of the business of the second parties including salaries of secretary treasurer and other officers who may be employed by them in these departments and such other charges and expenses as may be reasonably incurred on behalf of the second parties.

Article Seventh—If the net revenue accruing to the second parties after deducting payments made by them under the next preceding Article and all other charges payable by them is not sufficient to pay a dividend of four per centum per annum on the paid up share capital of the second parties then the first parties shall out of the mileage receipts accruing to them from traffic including mails passing over their system to or from the railway or any part thereof contribute such sum as may be necessary to make up that dividend so far as the proportion of the mileage receipts accruing in each half-year to the first parties from traffic passing over the North British Railway or any part thereof from or to the railway or any part thereof after deduction of fifty per centum of such mileage receipts for working expenses shall suffice to pay such deficiency In the event of the first parties having to make good any deficiency of revenue under this Article the same shall be repaid to them with interest at the rate of four per centum per annum out of such future surplus revenues after payment of such dividend of

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Act, 1891.

A.D. 1891. four per centum as may accrue to the second parties and subject thereto such surplus revenues shall be divided equally between the first and second parties.

Article Eighth—Returns of all traffic falling within this Agreement in so far as the second parties are interested therein shall be rendered by the first parties to the second parties monthly and the second parties may at their own expense employ officials to check the same and see that the traffic is duly accounted for And for this purpose the first parties will keep proper and sufficient accounts and vouchers which shall be open at all reasonable times for examination and transcription by such officials The revenues due to the second parties shall be paid over monthly to them or their treasurer or secretary or to such banker or other person as they shall direct and appoint.

Article Ninth—The tolls rates and charges for local traffic shall if desired by the second parties be fixed and regulated from time to time by a joint committee composed of three directors of the first parties and an equal number of directors of the second parties The chairman of the committee to be appointed by the board of directors of the second parties but not to have a casting vote and in the event of any difference arising between the said sections of the committee the same shall be determined by arbitration as herein-after provided and such tolls rates and charges shall be so fixed as best to develop the traffic.

Article Tenth—This Agreement shall be in perpetuity subject nevertheless to the unconditional determination thereof by the second parties at the end of ten years from the passing of the Act confirming this Agreement upon six months' previous notice in writing by the second parties to the first parties and on such determination the second parties shall repay to the first parties any advances under Article Seventh hereof.

Article Eleventh—This Agreement is made subject to such alterations as Parliament may see fit to make thereon and shall be scheduled to and confirmed by the said Bill Should any alterations be made on this Agreement by Parliament which in the opinion of Samuel Pope one of Her Majesty's Counsel whom failing Charles Alfred Cripps also one of Her Majesty's Counsel is material thereto either of the parties may withdraw therefrom.

Article Twelfth—All questions which may arise between the parties hereto in relation to this Agreement or to the import or meaning thereof or to the carrying out of the same shall be referred to arbitration under and in terms of the Railway Companies Arbitration Act 1859.

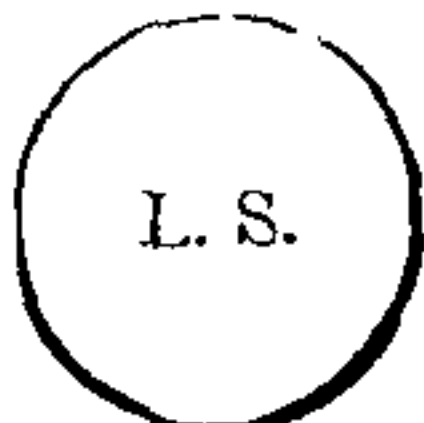
Article Thirteenth—Upon the passing of the said Bill confirming this Agreement all personal liability in reference thereto on the part of the individual Promoters shall be at an end and the Company thereby incorporated shall thereupon become and be the second parties to this Agreement in their place.

In witness whereof these presents consisting of this and the five preceding pages together with the marginal addition on page fifth hereof and in so far as not printed written as follows the marginal addition on page fifth by John Kennedy writer to the signet number thirty-eight Parliament Street Westminster and the other parts by Richard Lindsay clerk to the said John Kennedy all for Messieurs Reid and Guild writers to the signet Edinburgh are under the declaration that the words "three and a half per centum" in line four of page five hereof counting from the top are deleted before subscription executed in

[54 & 55 VICT.] *Gifford and Garvald Railway* [Ch. lxxxv.]
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duplicate as follows videlicet They are subscribed by the parties of the second part as follows By the said the Most Honourable William Montagu Hay Marquess of Tweeddale and Walter Wingate Gray both at Westminster on the sixteenth day of March in the year eighteen hundred and ninety-one before these witnesses the said John Kennedy and Alexander Guild solicitor in the Supreme Courts of Scotland Edinburgh and by the North British Railway Company being the parties of the first part as follows They are subscribed by James George Alexander Baird and Randolph Gordon Erskine Wemyss two of the directors of the said Company and sealed with the common or corporate seal thereof at Westminster on the eighteenth day of said month and year last mentioned before these witnesses the said John Kennedy and George Lindsay his clerk.

A.D. 1891.



TWEEDDALE.
WALTER WINGATE GRAY.
J. G. A. BAIRD Director.
R. E. WEMYSS Director.

JOHN KENNEDY Witness.
ALEX. GUILD Witness.
JOHN KENNEDY Witness.
GEORGE LINDSAY Witness.

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