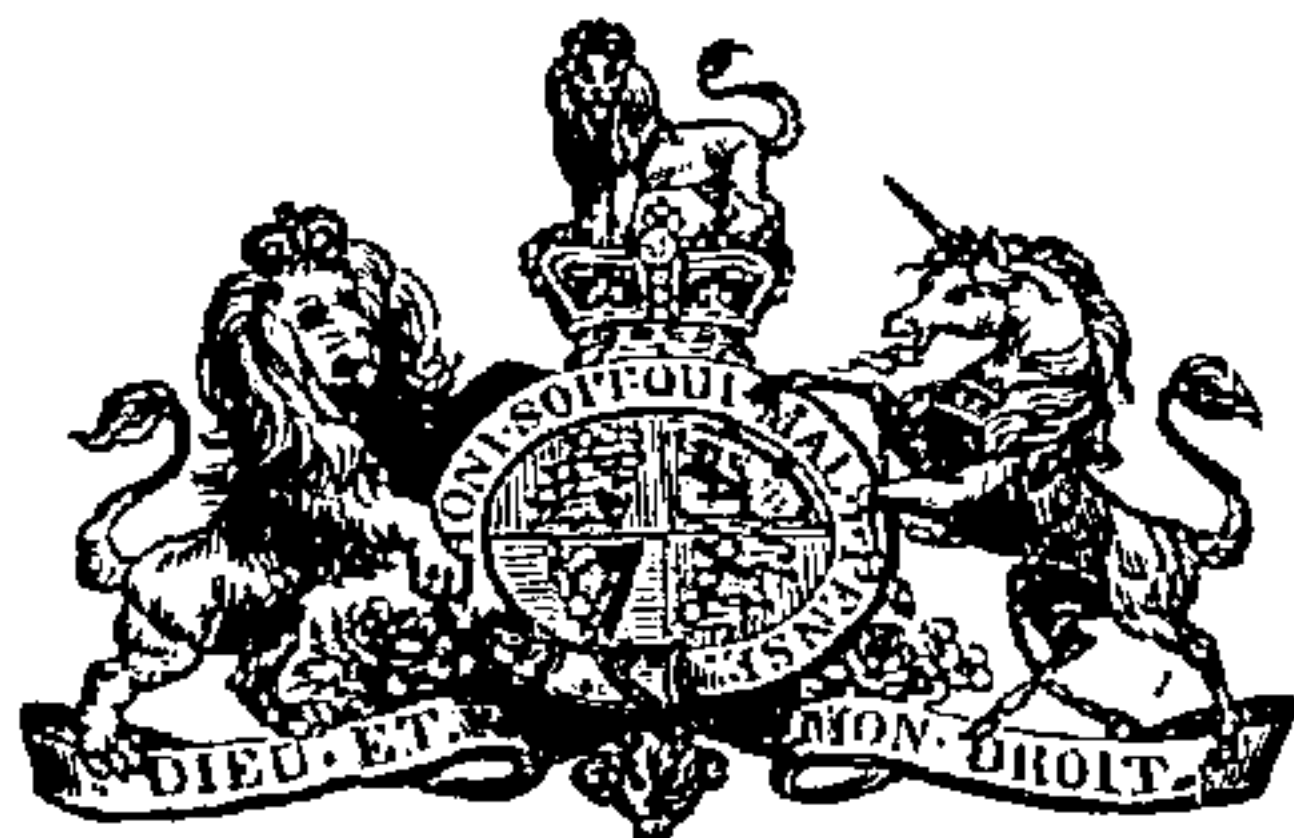


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CHAPTER ccxxxix.

An Act to authorise the Hoylake and Birkenhead Rail and Tramway Company to extend their railways ; and for other purposes. A.D. 1873.
[5th August 1873.]

WHEREAS the Hoylake and Birkenhead Rail and Tramway Company (in this Act called "the Company") were incorporated by "The Hoylake and Birkenhead Rail and Tramways Act, 1872" (in this Act called the Act of 1872), with (amongst other powers) power to purchase in certain events which have happened the undertaking of the Hoylake Railway Company, and the Company have accordingly purchased the said undertaking, and the undertaking, powers, rights, and privileges of the Hoylake Railway Company are now vested in the Company : 35 & 36 Vict.
c. cxxvii.

And whereas the railways by this Act authorised would be of great local and public advantage, and it is expedient that the Company be authorised to make and maintain the same, and to raise further moneys for that purpose :

And whereas plans and sections showing the lines and levels of the railways 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 in the month of November 1872 with the clerk of the peace for the county of Chester, and are herein-after respectively referred to as the deposited plans, sections, and books 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 :

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Short title.

Provisions of
general Acts
herein
named incor-
porated.

1. This Act may be cited as "The Hoylake and Birkenhead Rail and Tramway Act, 1873."

2. The provisions following of "The Companies Clauses Consolidation Act, 1845,"

With respect to the distribution of the capital of the Company into shares ;

With respect to the transfer and transmission of shares ;

With respect to the payment of subscriptions, and the means of enforcing the payment of calls ;

With respect to the forfeiture of shares upon nonpayment of calls ;

With respect to the remedies of creditors of the Company against the shareholders ;

With respect to the borrowing of money upon mortgage ;

With respect to the conversion of the borrowed money into capital ;

With respect to the consolidation of the shares into stock ;

With respect to 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), Part II. (relating to additional capital), and Part III. (relating to debenture stock) of "The Companies Clauses Act, 1863," as amended by "The Companies Clauses Act, 1869," and "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869," and "The Railways Clauses Consolidation 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 are part of this Act.

Interpreta-
tion of terms.

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 ; the expression "the railway" shall mean the railways hereby authorised, or any of them ; and 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 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.

Power to
make rail-
ways accord-

4. Subject to the provisions of this Act, the Company may make and maintain in the line and according to the levels shown

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on the deposited plans and sections the railways herein-after described, with all proper stations, sidings, approaches, works, and conveniences connected therewith, and may enter upon, take, and use such of the lands delineated on the said plans and described in the deposited books of reference to those plans as may be required for that purpose. The railways herein-before referred to and authorised by this Act will be wholly situate in the county of Chester, and are as follows:

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ing to deposited plans.

A railway (No. 1) (1 mile, 1 furlong, and 8 chains in length), commencing in the township of Little Meols, in the parish of West Kirby, by a junction with the Hoylake Railway at or near its terminus at Hoylake, and terminating in the township and parish of West Kirby, in a garden numbered 72 on the tithe commutation map of that township:

A railway (No. 9) (1 furlong and 5 chains in length), commencing in the township and parish of Bidston by a junction with the Hoylake Railway at its terminus at the Dock Station, and terminating in the extra-parochial chapelry of Birkenhead by a junction with the dock line of railway of the Mersey Docks and Harbour Board.

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

Power to raise additional capital.

6. The provisions of sections 20 and 21 of the Act of 1872 shall extend and apply to the additional capital to be raised under the authority of this Act.

Sections 20 and 21 of Act of 1872 to apply to additional capital.

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

Power to divide shares.

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Dividends on
half shares.

8. 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 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.

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

9. 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 regis-
tered and
certificates
issued.

10. 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.

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

Forfeiture of
preferred
shares.

12. The provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the forfeiture of shares for nonpayment of calls shall apply to all preferred half shares created under the authority of this Act, and every such preferred half share shall for that purpose be considered an entire share, distinct from the corresponding deferred half share, and until any forfeited preferred half share shall be sold by the directors all dividends which would

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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.

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

Preferred shares not to be cancelled, &c.

14. 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.

15. The Company may from time to time apply towards any of the purposes of this Act any money which they are now authorised to raise under the Act of 1872, and which may not be required for the purposes to which by that Act such moneys are made applicable.

Power to apply authorised capital to purposes of Act.

16. The Company may from time to time borrow on mortgage (in addition to any sums which they are now authorised to borrow) any sum not exceeding in the whole eight thousand pounds, but no part of such sum shall be borrowed until the whole additional capital by this Act authorised is issued and accepted, and one half thereof is paid up, and the Company have proved to the justice who is to certify under the fortieth section of "The Companies Clauses Consolidation Act, 1845," (before he so certifies) that the whole of such additional capital has been issued and accepted, and that one half thereof has been paid up, and that not less than one fifth part of the amount of each separate share in such capital has been paid on account thereof before or at the time of the issue or acceptance thereof, and that such capital was issued bonâ fide, and is held by the persons or corporations to whom the same was issued, or their executors, administrators, successors, or assigns, and that such persons or corporations, their executors, administrators, successors, or assigns, are legally liable for the same; and upon production to such justice of the books of the Company, and of such other evidence as he shall think sufficient, he shall grant a certificate that the proof aforesaid has been given, which shall be sufficient evidence thereof.

Power to borrow on mortgage.

17. All mortgages granted by the Company in pursuance of the powers of any Act of Parliament before the passing of this Act, and

Existing mortgages to have priority.

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Repeal of section 27 of Act of 1872.

18. The provisions of section 27 (for appointment of receiver) of the Act of 1872 are by this Act repealed, but without prejudice to any appointment heretofore made, or proceedings now pending under those provisions or any of them.

Arrears may be enforced by appointment of receiver.

19. 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. In order to authorise the appointment of a receiver in respect of the arrears of principal, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than two thousand pounds in the whole.

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 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.

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

Lands for extraordinary purposes.

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

Powers for compulsory purchases limited.

23. 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.

Provisions as to diversion of road No. 105 in the parish of West Kirby.

24. The road numbered on the deposited plans 105 in the parish of West Kirby shall be diverted in the manner shown on a plan signed by William Henry Churton, on behalf of the highway board for the district of the hundred of Wirral, in the county of Chester, and by George Hopkins, on behalf of the Company, and dated 16th May 1873, one part of which plan is in the custody of the said highway board, and the other part thereof in the custody of the Company. The said road shall be carried over the railway by

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means of a bridge, and the inclination of the approaches to the bridge on both sides thereof shall not be steeper than one foot in twenty-five feet.

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25. The Company shall not, without the previous consent in writing of the Birkenhead Improvement Commissioners, in this Act called the Commissioners, be entitled to purchase, take, or use any part of Beaufort Road in Birkenhead, or any portion of the land No. 4 on the deposited plan, belonging or reputed to belong to the Commissioners; and forming the site of or intended for a continuation of Ilchester Road to the Commissioners Wharf on the Great Float.

Company not to acquire Beaufort Road or Ilchester Road.

26. In constructing the railways and works by this Act authorised within the limits of the Birkenhead Improvement Acts, and also within the limits of the Birkenhead Commissioners Gas and Water Acts, 1858, so far as such provisions relate to gas and water mains and pipes, the Company shall conform to and observe the following provisions, regulations, and restrictions; that is to say,

As to construction of railway and works in Birkenhead.

1. Before interfering with, obstructing, or breaking up any street, road, passage, or place, or any sewer or drain, or removing any water or gas mains or pipes, the Company shall give to the Commissioners seven days previous notice in writing, and the work shall be done under the direction of the Commissioners:
2. Whenever any street, road, passage, or place shall have to be temporarily diverted by the Company in the execution of the works by this Act authorised, proper accommodation for the traffic and access to property shall be provided, maintained, fenced, watched, and lighted by the Company to the satisfaction of the Commissioners:
3. Whenever it may be necessary to interrupt or interfere with any existing sewer or drain, the Company shall, so far as can be practically done, before interrupting or interfering with such existing sewer or drain, construct, according to a plan to be approved of by the Commissioners, another sewer or drain in lieu of and of equal capacity with the sewer or drain so proposed to be interrupted or interfered with, and such new or substituted sewer or drain shall be connected by and at the expense of the Company with any existing sewers or drains which were connected with the sewer or drain so interrupted or interfered with, and in such manner as shall be reasonably approved of by the Commissioners, and the work shall be done under the direction of the surveyor to the Commissioners:

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4. If by reason of the construction of the railways and works connected therewith by this Act authorised, the Commissioners shall at any time necessarily incur any cost in altering any existing sewer or drain, or water or gas main or pipe, the Company shall repay to the Commissioners such additional cost, and the same may be recovered, in default of payment, in any court of competent jurisdiction :
5. When any existing sewer or drain, new or substituted sewer, drain, or altered sewer or drain, shall be so situated that convenient access thereto may be obtained through the property or works of the Company, the Company shall, when required by the Commissioners, make and maintain such access, and the Commissioners shall by their officers, workmen, and servants be at liberty at all times to use the same for any purpose for which it may be necessary, but so as not in any manner to prejudice or interfere with or affect the traffic on and working of the railway or railways (as the case may be) :
6. The provisions contained in sections 18 to 23, inclusive, of the Railways Clauses Consolidation Act, 1845, shall apply to the water and gas mains and pipes of the Commissioners, and whenever in those sections the word "company" or "society" is used the same shall for all the purposes of this Act be held to extend to and include the Commissioners :
7. If by reason of the execution of any of the powers of this Act any increased length of mains or pipes shall become necessary, the same shall be laid down by the Commissioners, at the expense of the Company, upon such plan and in such manner as shall be approved by the Commissioners :
8. Whenever by the appropriation or destruction of property by this Act any mains or pipes laid for the supply of such property with water or gas shall be rendered unnecessary, the Company shall pay to the Commissioners the cost of laying an equivalent length of main or pipe, and the cost of the works required for discontinuing and removing the mains or pipes rendered unnecessary to such amount as shall be estimated by the water or gas engineer, and the mains and pipes so rendered unnecessary shall be the property of the Company :
9. The Commissioners may from time to time make or cause to be made sewers and drains, or lay down gas and water mains, along the line of railway in such position, in such manner, and subject to such terms and conditions as may from time

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to time be agreed upon between the surveyor or engineer to the Commissioners and the principal engineer for the time being to the Company, or in case of difference shall be settled by an engineer to be mutually appointed, and the Commissioners, their officers, servants, and workmen, shall at all times have free access to such sewers and drains and gas and water mains for the purpose of inspecting, maintaining, repairing, renewing, or cleansing the same, but not in any manner to prejudice or interfere with or affect the traffic on or working of the railway (as the case may be).

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27. Notwithstanding anything contained in this Act to the contrary, it shall not be lawful for the Company to use any locomotive engine on any of the dock lines of railway of the Mersey Docks and Harbour Board which are laid upon or across any street or site of intended street in Birkenhead without the consent in writing of the Commissioners, and except under such conditions and regulations as to the crossing of any street as the Board of Trade may require.

Locomotive not to be used on streets in Birkenhead.

28. The Company shall not, without the previous consent in writing of the Mersey Docks and Harbour Board under their common seal, enter upon, take, or use, either temporarily or permanently, any part of the land in the extra-parochial chapelry of Birkenhead numbered 4 on the plans deposited in respect of the railway No. 9 by this Act authorised.

Not to take certain lands without consent of Mersey Docks and Harbour Board.

29. Subject to the provisions in "The Railways Clauses Consolidation Act, 1845," and in Part I. (relating to the construction of a railway) of "The Railways Clauses Act, 1863," contained in reference to the crossing of roads on the level, the Company may in the construction of railway No. 9 carry the same with a single line only, whilst the railway shall consist of a single line, and afterwards with a double line only, across and on the level of the public carriage road numbered on the deposited plans 2 in the parish of Bidston.

Power to cross a certain road on the level.

30. 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 20, certain Exchequer Bills of the aggregate nominal value of one thousand seven hundred pounds (being equal at the price at which the same were purchased to more than one thousand six hundred and seventy-four pounds one shilling, being five per cent. on thirty-three thousand four hundred and eighty-one pounds, the amount of the estimate in respect of the railways proposed to be authorised by the Bill for this Act as

Deposit money not to be repaid until line opened, or half the capital paid up and expended.

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A.D. 1873. originally introduced into Parliament) have been deposited with the Paymaster General on behalf of the Court of Chancery in England in respect of the application to Parliament for this Act: And whereas the deposited estimate for the railways by this Act authorised amounts to the sum of fourteen thousand four hundred and twenty pounds, and Exchequer Bills of the nominal value of eight hundred pounds represent more than the amount required by the standing orders to be deposited in respect of that estimate: Be it enacted, that, notwithstanding anything contained in the said Act, Exchequer Bills of the nominal value of eight hundred pounds, being part of the said Exchequer Bills so deposited as aforesaid in respect of the application for this Act, 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, unless the Company shall, previously to the expiration of the period limited by this Act for completion of the railway, either open the railway for the public conveyance of passengers, or prove to the satisfaction of the Board of Trade that the Company have paid up one half of the amount of the capital by this Act authorised to be raised by means of shares, and have expended for the purposes of this Act a sum equal in amount to such one half of the said capital; and if the said period shall expire before the Company shall either have opened the railway for the public conveyance of passengers, or have given such proof as aforesaid to the satisfaction of the Board of Trade, the Exchequer Bills of the said nominal value of eight hundred pounds shall be applied in the manner herein-after specified; and the certificate of the Board of Trade that such proof has been given to their satisfaction as aforesaid shall be sufficient evidence of the fact so certified, and it shall not be necessary to produce any certificate of this Act having passed, anything in the above-mentioned Act to the contrary notwithstanding.

Application
of deposit.

31. The said Exchequer Bills of the nominal value of eight hundred pounds shall be applicable, and after due notice in the London Gazette shall be applied, towards compensating any land-owners or other persons whose property may have 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

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manner and in such proportions as to the Court of Chancery in England may seem fit; and if no such compensation shall be payable, or if a portion of the said Exchequer Bills shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said Exchequer Bills, or such portion thereof as may not be required as aforesaid, shall either be forfeited to Her Majesty, and accordingly be paid or transferred to or for the account of Her Majesty's Exchequer in such manner as the Court of Chancery in England thinks fit to order, on the application of the Solicitor of Her Majesty's Treasury, and shall be carried to and form part of the Consolidated Fund of the United Kingdom, or, in the discretion of the Court, if the Company is insolvent and has been ordered to be wound up, or a receiver has been appointed, shall wholly or in part be paid or transferred to 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; provided that until the said Exchequer Bills have been repaid to the depositors, or have 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 person or persons, or the majority of the persons, named in such warrant or order as aforesaid, or the survivors or survivor of them.

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32. On the application of the persons named in the warrant or order issued as aforesaid in pursuance of the said Act of the 9th year of Her present Majesty, chapter twenty, or of the survivors or survivor of them, or of the majority of such persons or survivors, or of the executors or administrators of the last survivor, by petition in a summary way at any time after the passing of this Act, the High Court of Chancery may and shall order that Exchequer Bills of the aggregate nominal value of nine hundred pounds (being the remainder of the Exchequer Bills so deposited as aforesaid), and the interest and dividends thereof, shall be transferred and paid to the persons or person so applying or to any other person or persons whom they or he may appoint in that behalf.

Release of
balance of
deposit.

33. 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.

Period for
completion
of works.

34. The Company may from time to time demand and take, in respect of the railways by this Act authorised, for all passengers,

Tolls.

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A.D. 1873. — animals, and things conveyed by them thereon, and for carriages, waggons, and trucks conveying the same respectively and provided by them, and for locomotive engines or other power provided by them for the conveyance thereof, and for all services performed by them thereon or in respect thereof, a like amount of tolls, fares, rates, and charges as by the "Hoylake Railway Act, 1863," are authorised to be demanded and taken for like traffic, services, and matters on or with respect to the railways by that Act authorised, and in like manner and with and subject to the like powers and provisions in all respects as if the railways by this Act authorised were part of those railways.

Interest not to be paid on calls paid up.

35. 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."

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

36. 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.

Railway not exempt from provisions of present and future general Acts.

37. Nothing in this Act contained shall exempt the railway from the provisions of any general Act relating to railways, or the better or 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.

38. 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.