CHAP. lxxii.

An Act for the amalgamation of the Surrey and Sussex Junction Railway Company with the London, Brighton, and South Coast Railway Company; and for other purposes. A.D. 1869.

[12th July 1869.]

Recital of Acts relating to Brighton, &c. railways.

WHEREAS by the "Surrey and Sussex Junction Railway Act, 1865," (in this Act referred to as the "Surrey and Sussex Act of 1865,") the "Surrey and Sussex Junction Railway Company" (in this Act called the "Surrey and Sussex Company") were incorporated, and were empowered to make a railway communicating with the railway of the "London, Brighton, and South Coast Railway Company" (in this Act called the "Brighton Company"), which Act was in some respects altered by the "Surrey and Sussex Junction Railway Act, 1867" (in this Act referred to as the "Surrey and Sussex Act of 1867"):

And whereas by the "London, Brighton, and South Coast Railway (Capital and Powers) Act, 1866," the Brighton Company were authorized to subscribe to the capital of the Surrey and Sussex Company:

And whereas on the 10th day of December 1867 the Brighton Company filed their bill in the Court of Chancery against the Surrey and Sussex Company and divers persons, but the principal parties to that suit entered into an agreement, dated the 1st day of May 1868, for reference to arbitration of matters in difference between them:

And whereas by the London, Brighton, and South Coast Railway Act, 1868 (section 27), it was enacted to the effect that the said agreement for reference was thereby confirmed, and that the award of the arbitrator appointed by or under that agreement should from and after its publication be binding and conclusive on all companies and persons parties to that agreement as if the provisions of the award were incorporated in and formed part of that Act:

And whereas the Duke of Richmond, the arbitrator named in the said agreement, took on himself the burden of the reference,

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and made his award, dated the 22nd day of March 1869, a copy whereof, with the schedules thereto, is set forth in the schedule to this Act:

And whereas the said arbitrator by the said award determined and awarded (among other things) to the effect that the undertaking, railway, works, land, real and personal property, powers, authorities, rights of action and suit, and all other the rights and interests of the Surrey and Sussex Company, subject to the debts, liabilities, obligations, and engagements of that company, ought to be by Act of Parliament transferred to and vested in the Brighton Company, the Surrey and Sussex Company being thereby dissolved, and amalgamated with the Brighton Company, in the manner and on the terms usually provided and contained by and in an amalgamating Act, and the bond given to Her Majesty the Queen in pursuance of section 34 of "The Surrey and Sussex Act of 1865," being thereby directed to be cancelled:

And whereas the said arbitrator by the said award further determined and awarded (among other things) that the Brighton Company should, at their own expense, in the session of 1869 make an application to Parliament for and use their best endeavours to obtain an Act of Parliament for the amalgamation of the Surrey and Sussex Company with the Brighton Company, and for giving complete legal effect in all respects to that his award:

And whereas under the circumstances herein-before appearing it is expedient that the Surrey and Sussex Company be dissolved and be amalgamated with the Brighton Company, and that complete legal effect be given in all respects to the said award:

And whereas all the shares in the capital of the Surrey and Sussex Company by the said award directed to be transferred into the name of the Brighton Company have been so transferred:

And whereas the Surrey and Sussex Company have not borrowed any money:

And whereas the Brighton Company have at their disposal sufficient money to meet their liabilities under the said award and this Act without raising further share or loan capital:

And whereas the objects aforesaid cannot be attained 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,)

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Short title.

1. This Act may be cited as "The London, Brighton, and South Coast and Surrey and Sussex Junction Railway Companies Amalgamation Act, 1869.'

Part V. of 26 & 27 Vict. c. 92. incorporated.

2. Part V. (relating to amalgamation) of "The Railways Clauses Act, 1863," (as far as the same is applicable for the purposes and is not inconsistent with the provisions of this Act,) is hereby incorporated with this Act.

Confirmation of award.

3. The award set forth in the schedule to this Act shall be and the same is hereby confirmed as between all companies and persons parties to the said agreement for reference, and the same award shall have complete legal effect in all respects as between all those companies and persons as if the provisions and directions thereof were inserted in and enacted by this Act.

Amalgamation of companies.

4. The Surrey and Sussex Company is hereby dissolved, and the undertaking of that company is hereby transferred to the Brighton Company, and those companies are hereby amalgamated, subject to the provisions of this Act.

Cancellation of shares, &c.

5. The shares in the capital of the Surrey and Sussex Company shall on the passing of this Act be cancelled by the Brighton Company, and the borrowing powers of the Surrey and Sussex Company are hereby extinguished.

Tolls, rates, &c.

6. The railway authorized to be made by the Surrey and Sussex Company shall for all purposes (including the levying of tolls, rates, fares, and charges) be deemed part of the railways of the Brighton Company; and the Brighton Company may upon and in respect of that railway demand and take any tolls, rates, fares, and charges not exceeding those which, by "The London, Brighton, and South Coast Railway (Mitcham and Tooting Lines, &c.) Act, 1863," and "The London, Brighton, and South Coast Railway Act, 1868," they are authorized to demand and take upon or in respect of their railways.

Penalty for non-completion of railway.

7. If the Brighton Company fail within the period limited by the Surrey and Sussex Act of 1865 and the Surrey and Sussex Act of 1867 to complete the railway thereby authorized to be made, the Brighton Company shall be liable to a penalty of fifty pounds a day for every day after the expiration of that period until that railway is completed and opened for public traffic, or until the sum received in respect of such penalty amounts to five per centum on the estimated cost of the works, and the said penalty may be applied for by any landowner or other person claiming to be compensated in accordance

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with the provisions of the next following section of this Act, and in the same manner as the penalty provided in section 3 of "The Railway and Canal Traffic Act, 1854," and every sum of money recovered by way of such penalty shall be paid, under the warrant or order of such court or judge as is specified in the same section, to an account opened or to be opened in the name and with the privity of the Accountant General of the Court of Chancery in the Bank of England, and shall not be paid thereout except as in this Act provided, but no penalty shall accrue in respect of any time during which it shall appear by a certificate to be obtained from the Board of Trade that the Brighton Company was prevented from completing or opening such line by unforeseen accident or circumstances beyond their control; provided that the want of sufficient funds shall not be held to be a circumstance beyond their control.

Application of penalty.

8. Every sum of money so recovered by way of penalty as aforesaid shall be applicable, and after due notice in the "London Gazette" shall be applied, towards compensating any landowners or other persons whose property may have been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the said 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 by the Surrey and Sussex Acts of 1865 and 1867, or either of them, and for which injury or loss no compensation, or inadequate compensation, shall have been paid, and shall be distributed, in satisfaction of such compensation as aforesaid, in such manner and in such proportions as to the Court of Chancery may seem fit; and if no such compensation shall be payable, or if a portion of the sum or sums of money so recovered by way of penalty as aforesaid shall have been found sufficient to satisfy all just claims in respect of such compensation, then the said sum or sums of money recovered by way of penalty, or such portion thereof as may not be required as aforesaid, shall be paid to or on the application of the Brighton Company.

Cancellation of bond.

9. In consideration of the penalty imposed by this Act on the Brighton Company, the bond given to the Crown under section 34 of the Surrey and Sussex Act of 1865 shall be delivered up to be cancelled, and satisfaction shall be entered up thereon.

Application of money of Brighton Company.

10. The Brighton Company shall pay, satisfy, and discharge all the debts, liabilities, obligations, and engagements transferred to or imposed on them by the said award and this Act by and out of

such money raised or to be raised by them by shares or stock or borrowing as they have power to apply generally to works, purposes, and engagements which they are authorized to execute or liable to perform.

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

11. Nothing in this Act contained shall be deemed or construed to exempt the railway authorized to be made by the Surrey and Sussex Company 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 authorized by this Act.

Expenses of Act.

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

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SCHEDULE referred to in the foregoing Act.

In the Matter of the Arbitration.

Between

The London, Brighton, and South Coast Railway Company

and

The Surrey and Sussex Junction Railway Company and others.

To all to whom these presents shall come, I, Charles Henry, Duke of Richmond, send greeting.

Whereas the agreement set forth in the first schedule hereto for reference to arbitration of matters in difference between the London, Brighton, and South Coast Railway Company (herein-after called the Brighton Company) on the one hand, and the Surrey and Sussex Junction Railway Company (herein-after called the Surrey and Sussex Company) and Leo Schuster, James Scott, Walter Barttelot Barttelot, William Coningham, Peter Northall Laurie, John Nix, and James Whishaw (who are herein-after referred to together as the said Leo Schuster and others), and divers other persons, on the other hand, was made of the date, between the parties, and in the terms in the same schedule appearing:

And whereas the said agreement was confirmed by an Act of Parliament passed in the year 1868, that is to say, the same was scheduled to and confirmed by the London, Brighton, and South Coast Railway Act, 1868, whereof section twenty-seven referring to and confirming the same is in the words and figures set forth in the second schedule hereto:

Now know ye, that I, having taken on myself the burden of the reference, and having heard, read, and considered the evidence and documents produced, and what was alleged by the counsel and solicitors for the parties, and having by writing under my hand extended the period within which my award is to made until the thirty-first day of March one thousand eight hundred and sixty-nine, do make this my award in writing under my hand of and concerning the premises, and do by the same determine and award as follows:—

1. Within seven days after the date of this my award, or as soon thereafter as the course of the Court of Chancery will admit, the Brighton Company shall cause the bill filed by them in the Court of Chancery, as in the said agreement mentioned, to be dismissed as against the Surrey and Sussex Company with costs, and as against the said Leo Schuster and others respectively without costs, and as against William Waring, Henry Waring, and Charles Waring, and Henry Carnsew, and Robert Jacomb Hood respectively, with costs.

2. The undertaking, railway, works, lands, real and personal property, powers, authorities, rights of action and suit, and all other the rights and interests of

the Surrey and Sussex Company, subject to the debts, liabilities, obligations, and engagements of that company, ought to be by Act of Parliament transferred to and vested in the Brighton Company, the Surrey and Sussex Company being thereby dissolved, and amalgamated with the Brighton Company, in the manner and on the terms usually provided and contained by and in an amalgamating Act, and the bond given to Her Majesty the Queen, in pursuance of section 34 of "The Surrey and Sussex Junction Railway Act, 1865," being thereby directed to be cancelled.

3. All the shares in the capital of the Surrey and Sussex Company ought to be placed in the name of the Brighton Company.

4. The shares in the capital of the Surrey and Sussex Company at the date of this my award standing in the name of the Brighton Company shall so remain.

5. Within seven days after the date of this my award the said Leo Schuster and others, severally and collectively, shall transfer or procure to be transferred, at the expense of the Brighton Company, into the name of the Brighton Company the shares in the capital of the Surrey and Sussex Company at the date of this my award standing in the respective names of the said Leo Schuster and others or under their respective or collective control.

6. Within seven days after the date of this my award, the Surrey and Sussex Company and the said Leo Schuster and others, severally and collectively, shall, at the expense of the Brighton Company, deliver to the Brighton Company the seal of the Surrey and Sussex Company, and all such books, accounts, deeds, papers, and writings of or relating to the Surrey and Sussex Company, or relating to the property, liabilities, or affairs thereof, as are at the date of this my award in their respective or collective possession, custody, or power, or in the possession, custody, or power of the secretary or other officer or any clerk of the Surrey and Sussex Company, including any blank transfers of shares in the capital of the Surrey and Sussex Company being in any such possession, custody, or power.

7. As from the date of this my award the Brighton Company shall be liable to pay, satisfy, and discharge, and the Brighton Company shall accordingly, from time to time, pay, satisfy, and discharge, all the debts, liabilities, obligations, and engagements of the Surrey and Sussex Company.

8. As from the date of this my award all payments out of the capital of the Surrey and Sussex Company, and all acts and proceedings of the Surrey and Sussex Company, and of the directors thereof, as such, made, done, and taken before the date of this my award, shall (subject to the directions of this my award) be valid as against and binding on the Brighton Company.

9. As from the date of this my award the Brighton Company shall save harmless and keep indemnified the said Leo Schuster and others, and each of them, their respective executors and administrators, estates, and effects, from and against all costs, losses, damages, and expenses in respect of the pecuniary obligations undertaken or incurred by them respectively for or on behalf of or in connexion with the Surrey and Sussex Company, or relating to the capital or affairs thereof, or to any of the arrangements concerning the same, and shall save harmless and keep indemnified the sureties in the said bond, and

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each of them, their respective executors and administrators, estates, and effects, from and against all costs, losses, damages, and expenses under or in respect of that bond.

10. Within seven days after the date of this my award the said Leo Schuster and others shall severally pay to the Brighton Company the amount of the remuneration appearing from the books of the Surrey and Sussex Company to have been received by them respectively as directors of the Surrey and Sussex Company.

11. Within seven days after the date of this my award the Brighton Company shall pay to the said William Waring, Henry Waring, and Charles Waring the sum of one hundred thousand pounds as and for the amount of their claims against the Surrey and Sussex Company.

12. Within seven days after the date of this my award the Brighton Company shall pay the sum of twenty-five thousand pounds as and for the total of the claims of the said Henry Carnsew and Robert Jacomb Hood and of Francis Fuller in the said agreement named against the Surrey and Sussex Company, and the same shall be paid to the said Henry Carnsew and Robert Jacomb Hood in accordance with their guarantee in the said agreement contained.

13. The Brighton Company and the said Leo Schuster and others shall respectively bear their own costs of and attending the reference to me, and the proceedings thereon.

14. The Brighton Company shall pay to the said William Waring, Henry Waring, Charles Waring, Henry Carnsew, and Robert Jacomb Hood respectively their costs of and attending the reference to me and the proceedings thereon.

15. The Brighton Company shall bear and pay one moiety of the expenses of this my award, and the said Leo Schuster and others shall bear and pay the other moiety thereof.

16. The Brighton Company shall, at their own expense, in the session of 1869 make an application to Parliament for and use their best endeavours to obtain an Act of Parliament for the amalgamation of the Surrey and Sussex Company with the Brighton Company, and for giving complete legal effect in all respects to this my award; and if such an Act is not obtained in the session of 1869, then the Brighton Company shall, at their own expense, renew the application for and use their best endeavours to obtain such an Act in the next following session, and if necessary in successive subsequent sessions, and the said Leo Schuster and others shall not oppose any such application, and the costs of such petition and appearance (if any) relative thereto as they may be advised to present and make shall be paid by the Brighton Company.

Dated this 22nd day of March 1869.

(Signed) Richmond.

Witness,
March,
Lt. and Capt. Grenadier Guards,
Goodwood,
Chichester.

The Schedules referred to in the foregoing Award.

The First Schedule.

Agreement for reference to arbitration.

Articles of Agreement made this first day of May one thousand eight hundred and sixty-eight between the London, Brighton, and South Coast Railway Company (herein-after called the Brighton Company) of the first part, the Surrey and Sussex Junction Railway Company (herein-after called the Surrey and Sussex Company) of the second part, Leo Schuster of Roehampton, in the county of Surrey, esquire, James Scott of Cornwall Terrace, Regent's Park, in the county of Middlesex, esquire, Walter Barttelot Barttelot of Stopham, in the county of Sussex, esquire, M.P., William Coningham of Kemp Town, Brighton, in the county of Sussex, esquire, Peter Northall Laurie of Park Crescent, Regent's Park, in the county of Middlesex, esquire, John Nix of the Hall, Worth, in the county of Sussex, esquire, and James Whishaw of York Terrace, Regent's Park, in the county of Middlesex, esquire, of the third part, William Waring, Henry Waring, and Charles Waring, all of Westminster, contractors (and herein-after called Messrs. Waring Brothers), of the fourth part, Henry Carnsew of Parliament Street, Westminster, solicitor, of the fifth part, and Robert Jacomb Hood of Little George Street, Westminster, civil engineer, of the sixth part.

Whereas on the tenth day of December one thousand eight hundred and sixty-seven the Brighton Company filed their bill in the Court of Chancery against the parties to this agreement (other than the Brighton Company) and certain other persons:

Now it is hereby agreed by and between the parties hereto as follows:—

1. The claims of Messrs. Waring Brothers against the Surrey and Sussex Company shall be taken and admitted to amount to one hundred thousand pounds and no more, in addition to the contractors plant originally belonging to Messrs. Waring Brothers, and any materials supplied by them not used in temporary or permanent works, except iron girders.

2. The total of the claims of Henry Carnsew, Robert Jacomb Hood, and Francis Fuller against the Surrey and Sussex Company shall be taken and admitted to amount to twenty-five thousand pounds and no more, and the said Henry Carnsew and Robert Jacomb Hood hereby guarantee accordingly.

3. There shall be referred to the final arbitration and award of his Grace the Duke of Richmond, or, him failing, such nobleman or gentleman as shall be agreed upon by the parties hereto, (such arbitrator to take into consideration all the circumstances, moral and legal,) the matters and questions following: 1st, all matters in question in the said suit; and, secondly, what ought to be done in all respects in reference to the Surrey and Sussex Company, and in reference to the capital, property, and liabilities thereof, and by whom and in what proportions (if any) the above admitted liabilities and all other liabilities of the Surrey and Sussex Company shall be paid, and in whose names or name the shares in the Surrey and Sussex Company (being thirty-five thousand two

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hundred and fifty shares of twenty pounds each) ought to be placed, with power for the arbitrator to require the companies parties hereto, or either of them, to make such applications to Parliament as he may direct, in order to give complete legal effect to his award, but so that the arbitrator shall not have power to direct anything as to the construction of the line or works of the Surrey and Sussex Company.

4. The provisions of the "Railways Companies Arbitration Act, 1859," shall be read as part of this agreement, and every party to this agreement shall be deemed a railway company within the meaning of that Act, and the time for making the award shall be six months from the date hereof, but with the same power to the arbitrator from time to time to extend the period for making his award as is given to an umpire by the twenty-third section of the said Act.

5. So soon as the defendants to the said suit who are parties to this agreement shall have filed sufficient answers in the said suit all proceedings in the same shall be stayed as against them.

6. This agreement shall have no effect unless and until it shall be confirmed by an Act of Parliament passed in the year 1868, and if not so confirmed, or in case of failure hereafter to agree upon an arbitrator, it shall be absolutely void, and nothing herein contained shall be deemed any admission for or against any of the parties hereto.

In witness whereof the common seals of the said companies respectively have been hereto affixed, and the other parties to this agreement have hereunto set their respective hands and seals the day and year first above written.

(The Common Seal of the London, Brighton, and South Coast Railway Company.)

(The Common Seal of the Surrey and Sussex Junction Railway Company.)

Signed, sealed, and delivered by the within-named William Waring, Henry Waring, Charles Waring, Henry Carnsew, and Robert Jacomb Hood, in the presence of

JOHN BREWER,

Clerk to Messrs. Baxter, Rose, Norton, and Co., solicitors, 6, Victoria Street, Westminster.

LEO SCHUSTER. (L.S.)
JAS. SCOTT. (L.S.)
WALTER B. BARTTELOT. (L.S.)
WILLIAM CONINGHAM. (L.S.)
P. NORTHALL LAURIE. (L.S.)
JOHN NIX. (L.S.)

Signed, sealed, and delivered by the within-named Leo Schuster, James Scott, Walter Barttelot Barttelot, William Coningham, Peter Northall Laurie, John Nix, and James Whishaw, in the presence of

GEORGE FAITHFULL,

Solicitor, 3, Whitehall Gardens, Westminster.

JAMES WHISHAW. (L.S.)
WILLIAM WARING. (L.S.)
HENRY WARING. (L.S.)
CHARLES WARING. (L.S.)
HENRY CARNSEW. (L.S.)
R. JACOMB HOOD. (L.S.)

The Second Schedule.

Section 27 of the Brighton Company's Act of 1868.

Agreement in schedule confirmed.

27. And whereas the Surrey and Sussex Junction Railway Company (hereinafter called the Surrey and Sussex Company) were incorporated by the Surrey and Sussex Junction Railway Act, 1865: And whereas by the Capital Act, 1866, the company were authorized to subscribe towards the Surrey and Sussex Company's capital: And whereas by the Surrey and Sussex Junction Railway Act, 1867, some alterations were made in the Surrey and Sussex Junction Railway Act, 1865: And whereas on the tenth day of December one thousand eight hundred and sixty-seven the company filed their bill in the High Court of Chancery against the Surrey and Sussex Company and divers persons, and the said suit is still pending, but the principal parties to the said suit have entered into articles of agreement for reference to arbitration of all matters in question between them, a copy of which articles is set forth in the schedule hereto: And whereas it is expedient that the said articles of agreement be confirmed: Therefore the articles of agreement set forth in the schedule to this Act are hereby confirmed, and the award of the arbitrator appointed by or under the said articles of agreement shall from and after the publication of the said award be binding and conclusive on all companies and persons parties to the said agreement as if the provisions of the said award were incorporated in and formed part of this Act.

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