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BILL.

An Act to amend the Act 23rd Vict
Chapter 105, intituled "An Act relat
to the Northern Railway of Canada
far as relates to the construction of
Branch Line into the Town of Barrie
other matters therein contained.

(Private Bill.)

Received and read, first time, Tuesday,
March, 1863.

Second reading, Wednesday, 18th M^y
1863.

Mr. MORRISON

QUEBEC :

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An Act to amend the Act 23rd Victoria, Chapter 105, intituled, "An Act relating to the Northern Railway of Canada" so far as relates to the construction of the Branch Line into the Town of Barrie, and other matters therein mentioned.

WHEREAS, the Municipal Corporation of the Town of Barrie have, *Preamble.*
 by their Petition to the Legislature represented, that long before the passing of the Act of the twenty-second year of Her Majesty's reign, intituled "An Act relating to the Northern Railway of Canada," to wit :
 5 in the year 1853, the said Corporation entered into an agreement with the Railway Company now called the Northern Railway Company of Canada : but then called the Ontario, Simcoe and Lake Huron Railroad Union Company, with respect to the construction of a switch or branch Railway from the main line of Railway of the said Company to the said
 10 town of Barrie:—that in pursuance of the said agreement, the said Municipal Corporation, on the 27th day of May, 1854, passed a By-law for raising the sum of Three Thousand Pounds to purchase the right of way for the said Branch Railway, and procured an agreement to submit to arbitration to be executed by all the owners of the land required for the
 15 same ; and that in the year 1855 the Legislature, at the instance of the said Municipal Corporation, and of the said Railway Company, passed the Act intituled, "An Act to remove doubts as to the power of the Ontario, Simcoe and Lake Huron Railroad Union Company, to construct Branch Line into the Town of Barrie," with a view to the carrying out of
 20 the said agreement ;" that in the year 1859 the said Act, intituled, "An Act relating to the Northern Railway Company of Canada, was passed, vesting the said Northern Railway and its appurtenances in the Crown, but with the power to the Governor in Council, on certain conditions to retransfer the same to the Company ; and that in the year 1860, another
 25 Act was passed, intituled, "An Act relating to the Northern Railway of Canada," reciting the Act of 1859, and an order in Council made under it, revesting the said Railway and its appurtenances in the said Company, subject to the conditions, clauses and provisions made in and by the said Order in Council ; that during the year 1861 an Act was passed by the
 30 Legislative Assembly, intituled, "An Act to amend the Act 23rd Victoria, Chapter 105, intituled, "An Act relating to the Northern Railway of Canada, so far as relates to the construction of the Branch Line into the Town of Barrie, and other matters therein mentioned," and after reciting as hereinbefore recited, it was therein declared that
 35 it was not the intention of the Legislature, by the said Act of 1860, to prevent or relieve the said Company constituted by the said Act, from being bound by any obligation contracted by the Northern Railway of Canada, with the Corporation of the Town of Barrie :

That while the said lastly mentioned Act of 1861 was before the Legis-
 40 lative Council, and before its final passage, the said Northern Railway and the said Corporation of the Town of Barrie, by an instrument in writing, bearing date the 16th day of May, 1861, agreed that a compromise should take place, whereby the said Act of 1861 should be withdrawn from the Legislative Council, and the claim of the said Corpora-
 45 tion of the Town of Barrie against the said Northern Railway referred to arbitration.

That by the said agreement it was provided that in such reference to arbitration, "no appeal was to be made to the Act passed in 1859, relating to the Northern Railway of Canada, or to the Order of the Governor General in Council of the 11th day of May, 1859, or to the Act in relation to the said Railway, passed in 1860, so far as to prevent or relieve the said company constituted by these Acts from being bound by any obligation contracted by the said company with the corporation of the Town of Barrie before the passing of the said Acts, but that the arbitration should proceed to be heard and determined, and an award made as though the said Acts had not been passed." 5 10

That the Honorable Samuel Bealey Harrison, Judge of the County Court of the United Counties of York and Peel, was by the said agreement appointed sole Arbitrator, to hear and determine upon the matters and claims in dispute between the said parties, and it was provided that his award should be final and binding between the parties respectively. 15

"That on the 26th day of September, 1861, mutual Bonds of Submission were duly executed under the respective seals of the said Railway Company and the said Corporation of Barrie, whereby the said parties became bound each to the other in the penal sum of £10,000, to abide by and perform the award, arbitrament and determination of the said Samuel Bealey Harrison; that the said Samuel Bealey Harrison accepted the burden of the said Arbitrator, and upon hearing both parties and after having considered the allegations, evidence and proofs submitted to him, did "in pursuance of the said submission," on the 31st day of January, 1862, make and publish this award under his hand and seal, as follows:— 20 25

1st. That there was, in 1853, a valid and binding agreement made by the then Railway Company, with the Corporation of the Town of Barrie, to construct a branch line of Railway from the main track in Innisfil into the Town of Barrie, provided that suitable land and water frontage for a terminus, with a right of way thereto from the said main track, was procured by the said Corporation of the Town of Barrie, free of cost to the said Railway Company. 30

2nd. That such suitable land and water frontage for a terminus with right of way thereto, from the said main track, was procured by the said Corporation of the Town of Barrie, free of cost to the said Railway Company, and to the satisfaction of the said Railway Company, at very considerable expense and trouble to the said Corporation of the Town of Barrie. 35

3rd. That the said Railway Company did not, nor did the said Northern Railway Company of Canada at any time since construct the said branch line, and that the claim of the said Corporation of the Town of Barrie to have the same constructed, has never been abandoned or given up at any time, but on the contrary, has been always since, upon all convenient occasions, urged and pressed for performance. 40

4th. That reference being had to the agreement in the said memorandum of agreement, (by which this award is to be made as though the several Acts of Parliament therein referred to had not been passed.)

I award, adjudge and find, that the said claim of the said Corporation of the Town of Barrie to have the said agreement performed, is still subsisting, and if not performed, their right to compensation in lieu thereof, ought to be awarded. And 45

5th. As compensation for the non performance of the said agreement, and in full satisfaction of the said claim of the said Corporation of the Town of Barrie against the said Northern Railway Company of Canada, in respect thereof, as by the said reference I am empowered to do; I do hereby order, adjudge and determine, that the said Northern Railway Company of Canada, and their successors shall, and do well and truly pay, or cause to be paid, to the said Corporation of the town of Barrie, or 55

their successors, on the Tenth day of March next ensuing the date of this my award, between the hours of Twelve of the clock at noon, and Two of the clock in the afternoon of that day, at the office of Messrs Morrison and Sampson, in the City of Toronto, the sum of Five Thousand Pounds of lawful money of Canada, and that the said sum be received by the said Corporation of the Town of Barrie, in full satisfaction and discharge of; and for all the said matters in difference to me referred, as aforesaid.

6th. And I do further award, order, adjudge and direct that the said Northern Railway Company of Canada do, when requested so to do, by the said Corporation of the Town of Barrie, make and execute to them, a valid deed of conveyance in fee, of all those certain lands and tenements mentioned, and comprised in a certain Indenture of Bargain and Sale, made by one John Boon to the said Company, and dated the Eighteenth day of August, 1855, and shall, and do further, when so requested, as aforesaid, make and execute a general release of all claims in respect of the land and right of way conveyed to them, or agreed to be conveyed to them, by the several parties over whose lands the said branch line from the main track into the town of Barrie was to pass.

7th. And Seventhly, and lastly, I do further award, order, adjudge and determine, that the said Northern Railway Company of Canada do bear and pay the costs and charges of this reference, as well their own costs and charges, as also the costs and charges of the said Corporation of the Town of Barrie, the same to be taxed in the usual manner, and also the costs of this my award, which I assess at the sum of forty pounds:

That after the said award was published, the said Railway Company took exceptions to the same, and by their counsel moved the Court of Queen's Bench to set it aside on the ground of uncertainty; and that after argument the said Court of Queen's Bench by its judgment, confirmed the said award.

That immediately after the said Court of Queen's Bench had confirmed the said award, certain parties professing to be Bondholders of the said Railway Company, filed a Bill in the Court of Chancery for Upper Canada, and obtained an injunction against the said Railway Company preventing them from paying the said award, and restraining the said Corporation of Barrie from enforcing payment of the sum awarded by execution, "on the ground that the Act passed in 1859, the order of the Governor General in Council of the 11th May, 1859, and the confirmation Act of 1860, did not grant any provisions for the payment of the said award, as well as impeaching the authority of the Directors of the said Northern Railway Company to refer the said claim to arbitration.

That doubts have arisen whether the effect of the last mentioned Act, the Order of the Governor General in Council and the Confirmation Act of 1860, may not be construed as making the said Railway Company a new Company and as preventing or relieving them from being bound by the obligation arising out of the original agreement with the Corporation of Barrie or from being liable to pay the amount of the said award,—which doubts the said Corporation of Barrie pray may be removed: And whereas it is expedient to remove the same: Therefore Her Majesty declares and enacts as follows:

1. It was not the intention of the Legislature, by the said Act of 1859 to prevent or relieve the Railway Company which might be constituted under the said Act from being bound by any obligation contracted by the Northern Railway of Canada with the Corporation of the Town of Barrie before the passing of the said Act, and it was the intention of the Legislature by the Act of 1860, that the Railway Company in which, by the said Act, and the order in Council therein recited, the whole property and franchise of the Northern Railway

Intention of the Legislature and rights of the Corporation of Barrie declared.

Company of Canada were re-vested, should be the same Company and Corporation which existed under the same name before the passing of the Act of 1859, and should remain bound by any such obligation aforesaid,—and the said Railway Company and the said Corporation of the Town of Barrie are respectively bound by the agreement firstly and secondly mentioned in the preamble of this Act and by the said award, to the same extent, and in the same manner, and with the same rights respectively as if the said two Acts of 1859 and 1860 had not been passed; And the said Act of 1855, authorizing the construction by the said Railway Company of a Branch Line into the Town of Barrie, is now in force; and the Bond or Share capital, and the earnings of the said Railway Company may be applied, to, and with the said Railway and its appurtenances and appliances, and all real estate, rolling stock and plant of the said Company, shall be and are liable for the construction of the said Branch Line, or at the option of the said Corporation of the Town of Barrie, for the payment of the damages and costs mentioned in the preamble of this Act, awarded by the said Samuel Bealey Harrison against the said Railway Company, and in preference to any claim founded on the said Acts of 1859 or 1860, or on any loan made or anything done under the said Acts, or either of them.

Corporation
may take out
execution.

2. And the said Corporation of the Town of Barrie may, if they think proper, forthwith after the passing of this Act enter up Judgment on the said award, and by execution levy upon the said Company the amount awarded with costs.

Public Act.

3. This Act shall be deemed a public Act.