

No. 45.

3rd Session, 8th Parliament, 61 Victoria, 1898

BILL.

An Act respecting the British Columbia
Southern Railway Company.

First reading, March 2nd, 1898.

(PRIVATE BILL).

Mr. MORRISON.

OTTAWA

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1898

An Act respecting the British Columbia Southern
Railway Company.

WHEREAS the British Columbia Southern Railway Com- Preamble.
pany has, by its petition, prayed for the passing of an
Act to confirm a lease of a portion of the railway of the said
company and for the purposes hereinafter set forth, and it is
5 expedient to grant the prayer of the said petition : Therefore
Her Majesty, by and with the advice and consent of the
Senate and House of Commons of Canada, enacts as follows :

1. Section 4 of chapter 36 of the statutes of 1897, is hereby ^{1897, c. 36,}
amended by inserting after the word "Company" in the ^{s. 4 amended.}
10 second line thereof, the words "either with or without an
option of purchase."

2. The lease to the Canadian Pacific Railway Company of Lease to
C. P. R.
confirmed.
that portion of the British Columbia Southern Railway Com-
pany's railway between the eastern boundary of British Colum-
15 bia and Nelson, with the option of purchase as therein men-
tioned, (a copy of which lease is set out in the schedule to this
Act) is hereby confirmed and declared to be valid and binding
on each of the said companies parties thereto according to the
tenor thereof, and each of the said companies may do what-
20 ever is necessary in order to give effect thereto, provided that
nothing in this Act or in the said lease shall relieve either of
the said companies from any of its duties or liabilities under
the railway laws of Canada.

SCHEDULE.

THIS INDENTURE made the first day of January, in the year
1898, between the British Columbia Southern Railway Com-
pany, hereinafter called the "the Lessor," of the first part;
the Canadian Pacific Railway Company, hereinafter called
"the Lessee," of the second part; and Sir William C. Van
Horne, K.C.M.G., and Richard B. Angus, Thomas G. Shaugh-
nessy, and William Hanson, Esquires, all of the city of
Montreal; Sir George A. Kirkpatrick, K.C.M.G., and Edmund
B. Osler, Esquire, of the city of Toronto; William Whyte,
Esquire, of the city of Winnipeg, Harry Abbott, Esquire, of
the city of Vancouver, and John A. Gemmill, Esquire, of the
city of Ottawa, being all the holders of shares in the capital
stock of the Lessor, hereinafter referred to in the aggregate as
"the Shareholders," of the third part:

WHEREAS the Lessor was duly authorized by Acts of the
Legislature of the province of British Columbia to build a

railway of a gauge of not less than three feet. from the eastern boundary of British Columbia to New Westminster, in three sections, and a branch as follows :

(a.) The Eastern section to consist of that portion of the said railway commencing at the junction of Summit Creek with Michel Creek ; thence by way of Michel Creek to Elk River and the Upper Kootenay River, with power to go to the forty-ninth parallel and the Tobacco Plains ;

(b.) The Central section to consist of that portion of the railway commencing at a point on the Elk River near the junction of the Elk River with the Kootenay River ; thence in a northerly direction to a point at or near Cranbrook ; thence by the Moyee Pass to the Lower Kootenay River or by the alternative route from Cranbrook by way of St. Mary's River to Pilot Bay, on Kootenay Lake, or to the Lardo River ;

(c.) The Western section to consist of that portion of the railway commencing from the western terminus of the Central section to the coast, by the most convenient route, to a favourable place for crossing the Fraser River to the city of New Westminster ; thence to a suitable terminus on Burrard Inlet, and shall include a branch line to Nelson via Salmon River.

(d.) A branch line from a point on the main line at or near the Forks of Michel Creek ; thence by way of Michel Creek to Martin Creek ;

And whereas an Act of the Parliament of Canada declared the undertaking of the Lessor to be a work for the general advantage of Canada and enacted, amongst other things, that the Lessor might lease its works or any part thereof to the Lessee on such terms and conditions and for such period as should be agreed upon between the directors of the said Lessor and said Lessee ; provided that the lease be sanctioned by the consent in writing of every shareholder of the Lessor and by the Governor in Council ; or failing such consent of every shareholder, then by two-thirds of the votes of the shareholders present or represented at a special or general meeting duly called for the purpose, and by the approval of the Governor in Council after notice of the proposed application therefor has been published in the *Canada Gazette* and in a newspaper published at Vancouver in British Columbia for at least four weeks previous to the hearing of such application ;

And whereas it has been agreed between the respective boards of the Lessor and the Lessee that the Lessor shall on the terms and conditions hereinafter specified, lease the portion of its railway hereinafter more particularly described unto the Lessee in perpetuity with the option of purchasing the same in the manner and for the consideration stated in these presents ;

And whereas by an Act of the Parliament of Canada (53 Victoria, chapter 47) the Lessee is authorized, amongst other things to enter into a lease of the line of any other company in Canada which has been empowered by the Parliament of Canada to make or grant the same to the Lessee and upon such terms and conditions and for such period as are from time to time agreed upon by the boards of directors of the respective companies, provided that every such transaction shall be subject to the approval of two-thirds of the votes of the shareholders of the Lessee present or represented at an annual general meeting or a special general meeting called for the purpose ;

1. NOW THIS INDENTURE WITNESSETH that in consideration of the premises and of the covenants on the part of the Lessee hereinafter contained the Lessor doth hereby demise and lease unto the Lessee, its successors, and assigns the railway of the Lessor, as now constructed or hereafter to be constructed, between the eastern boundary of the Province of British Columbia and the town of Nelson in the said province, and its appurtenances; such appurtenances, including amongst other things, all lands, stations, station yards, freight houses, shops, engine houses, water tanks, tracks, sidings, turntables, water and water rights, fences, gates, cattle-guards, farm crossings and all buildings, erections and structures of every kind which have been or may be acquired for use in the operation of that railway as well as all the rights, powers and franchises of the Lessor in respect of the same and every part thereof, and the surveys, plans, works, plant, machinery and other property of the Lessor used or intended to be used therewith; all which railway and appurtenances and rights, powers, franchises, works and other properties are hereinafter referred to in the aggregate as "the said demised railway." To have and to hold the said demised railway unto the Lessee, its successors and assigns from and after the date of these presents thenceforth in perpetuity, yielding and paying rent therefor as hereinafter more particularly specified in the covenant of the Lessee in that behalf.

2. The Lessor for itself and its successors doth hereby covenant with the Lessee, its successors and assigns as follows, that is to say:

3. The Lessee may at all times hereafter during the said demise take, in the name of the Lessor or of any of its officers, such legal proceedings as are from time to time deemed by the Lessee to be necessary or expedient in the exercise of the said rights, powers and franchises, which officers are hereby authorized and required, upon the demand of the Lessee, to append their signatures and to affix the seal of the Lessor to any document which may be useful in the exercise by the Lessee of any of the said rights, powers or franchises.

4. The Lessor will, at the request of the Lessee, affix the name and seal of the Lessor to any document or instrument, and do all acts, matters and things as and when the same may be necessary for the convenient, efficient and effectual working of the said demised railway, and for carrying out and giving effect to this lease in all respects.

5. While this lease remains in force the Lessee, from time to time, may make such lawful rules, regulations and by-laws concerning the running and operation of the said demised railway and the management of the business connected therewith as shall be deemed by the Lessee to be requisite for the efficient and advantageous administration and enjoyment thereof, and may make and amend and alter the tariff of tolls for the carriage of freight and passengers over the whole or any part of the said railway so demised as aforesaid, and if the Lessee shall deem it expedient that such rules, regulations, by-laws and tariffs, or any of them, be made by the Lessor, then the Lessor will make the same by such method as shall be most effective, and will do all such acts and things as may be properly done in order to complete and validate the same; but such rules and regulations, by-laws and tariffs by whomsoever

made, shall be at all times subject to the provisions of every Act of the Parliament of Canada which may be applicable to the railway so demised as aforesaid; at any time or times when the Lessee may deem it expedient so to do, the Lessee may use the name of the Lessor in any suit or proceeding arising out of the exercise of any of the said rights, powers or franchises, but all costs, damages and expenses which may be caused by such use of the name of the Lessor shall be borne and paid by the Lessee.

6. The Lessee paying the rent hereinafter reserved and fulfilling its covenants herein contained, shall at all times hereafter, during this demise, have peaceable and undisturbed possession of the said demised railway without any lawful interruption by the Lessor or any other person or persons whomsoever.

7. And the Lessee, for itself and its successors, doth hereby covenant with the Lessor, its successors and assigns, as follows, that is to say :

8. The Lessee will, in the first instance, provide and advance all moneys necessary to defray the cost of acquiring and completing the said demised railway according to plans and specifications as hereinafter mentioned, and the Lessor shall have and is hereby given the option of repaying to the Lessee the amount of such cost (which is to include interest during construction) at any time during the continuance of the demise contained in these presents, after at least six months notice in writing of its intention so to do, the cost which may be so repaid as aforesaid, being the cost without deduction on account of any subsidy or bonus or other advantage given in aid of the said railway or any part thereof.

9. Until the Lessor shall exercise its said option of repaying to the Lessee, as aforesaid, the said cost of the acquisition and completion of the said demised railway, and shall have actually repaid the same, the Lessee will pay to the Lessor as rental a nominal sum, that is to say : One dollar per annum on the first day of each calendar year, it being the intention of the parties to these presents that in the meantime the use of the moneys so to be provided and advanced by the Lessee to defray the said cost as aforesaid, shall be the compensation for the use of the said demised railway ; and from and after the date on which the Lessor shall repay, if it do repay to the Lessee the said cost as aforesaid, the Lessee will pay to the Lessor in semi-annual payments, on the first day of January and of July in each year, a rental equal to four per centum per annum on the actual cost to the Lessor of the said demised railway, such cost being, in the first instance, the amount which the Lessor repays to the Lessee as above provided for, and being thereafter the actual cost as it stands at the beginning of each half-year, for which the rental is to be paid, at the rate of four per centum per annum as aforesaid.

10. At all times during its tenancy under this indenture, the Lessee will keep the said demised railway in good repair, order and condition, and will pay all taxes, assessments, rates and impositions which may become payable either by the Lessor or the Lessee in respect of the said demised railway or the traffic over it, and whether the same be imposed by provincial or municipal authority or otherwise howsoever, and

will protect and indemnify the Lessor against every loss or damage which may happen and every claim which may be made in consequence of the working by the Lessee of the said demised railway, and will, at its own costs and charges, do and perform all acts, conditions and things which the Lessor shall be bound by its charter or by any general railway law of Canada to do or perform in respect of the said demised railway or any part thereof, and of the government either of Canada or of the province of British Columbia.

11. The lessee will not sublet, transfer or set over or cause to be sublet, transferred or set over the said demised railway or any part thereof, or this lease or any interest under it unto any person or corporation without the consent in writing of the Lessor or its successors or assigns first had and obtained.

12. The Lessor, for itself and its successors doth hereby further covenant with the Lessee, its successors and assigns that at any time before the Lessor shall have repaid to the Lessee the said cost of the said demised railway as aforesaid, the Lessee, its successors and assigns, shall have and the Lessor doth hereby give to the Lessee, its successors and assigns the option of purchasing and taking forever the said demised railway free from all encumbrances by giving to the Lessor a valid acquittance of all claim which the Lessee may have in respect of moneys which shall then have been so provided and advanced by the Lessee to defray the said cost as aforesaid, and on giving such acquittance the Lessee, its successors and assigns, shall be entitled to a valid and absolute conveyance from the Lessor and its successors of the said demised railway free from all encumbrances;

13. And the Lessor and the Lessee do hereby mutually agree each for itself and its successors with the other, its successors and assigns as follows:

14. The said demised railway shall be acquired and completed so as to accord with the plans and specifications adopted by Her Majesty the Queen, and the Lessee in their agreement dated the sixth day of September, A.D. 1897, and made under the authority of an Act of the Parliament of Canada 60-61 Victoria chapter 5, in so far as they relate to that portion of the railway therein described which lies between the Eastern boundary of British Columbia and the town of Nelson or with such other plans and specifications, if any, as may at any time or times be adopted in respect thereof by agreement between the respective Boards of Directors of the parties hereto of the first and second parts.

15. The Lessor's covenant giving the said option of purchase to the Lessee is to take effect as soon as the Parliament of Canada has confirmed this indenture or has authorized the Lessor to give such option, and not before.

16. Each of the shareholders doth hereby consent to and sanction the lease to and the option of purchase by the Lessee embodied in this indenture.

Witness the corporate seal of the Lessor and of the Lessee and the signature of their respective officials below named and also the hand and seal of each of the shareholders.

BRITISH COLUMBIA SOUTHERN
RAILWAY COMPANY.

[Seal]

T. G. SHAGHNESSY,
President.
H. CAMPBELL OSWALD,
Secretary.

THE CANADIAN PACIFIC RAILWAY COMPANY.

[Seal]

W. C. VAN HORNE,
President.
C. DRINKWATER,
Secretary.

Witness :

C. DRINKWATER,
J. P. GEDDES.

{	W. C. VAN HORNE,	[Seal.]
	R. B. ANGUS,	[Seal.]
	T. G. SHAGHNESSY,	[Seal.]
	WM. HANSON,	[Seal.]
	GEO. A. KIRKPATRICK,	[Seal.]
	E. B. OSLER,	[Seal.]
	W. WHYTE,	[Seal.]
	H. ABBOTT,	[Seal.]
	J. A. GEMMILL,	[Seal.]