



CHAP. xxxiii.

An Act for authorizing the Dumbarton Water Commissioners to make and maintain an additional storage reservoir and other works, and to give an increased supply of water for dividing the Burgh of Dumbarton into wards; and for other purposes. A.D. 1869.
[24th June 1869.]

WHEREAS by "The Dumbarton Waterworks Reclamation and Municipal Extension Act, 1857," (herein-after called "the recited Act,") the provost, magistrates, and town council of the burgh of Dumbarton were appointed commissioners for executing that Act, and were empowered to supply with water the inhabitants and occupiers of property within the parliamentary burgh of Dumbarton and suburbs thereof, and district and places adjacent, within the parishes of Dumbarton, West or Old Kilpatrick, and Cardross, and to construct certain reservoirs and other works for the purpose of providing and affording such supply, and to borrow the sum of ten thousand pounds for defraying the expense of such works: 20 & 21 Vict.
c. xx.

And whereas the said provost, magistrates, and town council, acting as commissioners under the said Act, constructed certain of the waterworks thereby authorized, but postponed the construction of certain others of the said works until the increasing demand for water should render them necessary, and the period for acquiring lands compulsorily and for constructing the said remaining works has expired:

And whereas the increase of population in the said burgh, and the extension of manufactories requiring a supply of water, which have taken place, have now rendered it necessary that an additional supply of water should be provided, and that the commissioners should be authorized to construct an additional storage reservoir and other works, and for that purpose to borrow an additional sum of money, and to levy increased rates and charges for the supply of water:

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And whereas plans and sections showing the lines, situation, and levels of the proposed new works, and a book of reference to the said plans, have been deposited for public inspection in the office at Dumbarton of the principal sheriff clerk of the county of Dumbarton, and are herein-after referred to as the deposited plans, sections, and book of reference :

And whereas by the recited Act the municipal boundaries of the said burgh were extended so as to comprehend the whole territory lying within the parliamentary boundaries of the burgh, and it would be convenient and beneficial that the said burgh should be divided into wards :

And whereas the objects aforesaid 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 of the Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited for all purposes as "The Dumbarton Waterworks and Municipality Act, 1869."

8 & 9 Vict.

c. 19.,

10 & 11 Vict.

c. 17.,

23 & 24 Vict.

c. 106., and

26 & 27 Vict.

cc. 93. and

118. incorpo-

rated.

2. "The Lands Clauses Consolidation (Scotland) Act, 1845," "The Lands Clauses Consolidation Acts Amendment Act, 1860," "The Waterworks Clauses Act, 1847," except the clauses with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit, and "The Waterworks Clauses Act, 1863," are (except where expressly varied by this Act) incorporated with and form part of this Act.

10 & 11 Vict.

c. 16. incor-

porated.

3. "The Commissioners Clauses Act, 1847," with the exception of the clauses with respect to the qualification of commissioners, with respect to the election and rotation of the commissioners where the commissioners are to be elected by the ratepayers or other like class of electors, with respect to the meetings and other proceedings of the commissioners and their liabilities, and with respect to the accounts to be kept by the commissioners, is (except where expressly varied by this Act) incorporated with and forms part of this Act, and shall apply to the commissioners acting under the recited Act and this Act, and to the waterworks authorized to be constructed and the mortgages authorized to be granted under the authority of the recited Act and this Act.

Interpreta-
tion of
terms.

4. 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 some-

thing in the subject or context repugnant to such construction; the expression "the burgh" means the burgh of Dumbarton as extended by the recited Act; the expression "the council" means the provost, magistrates, and town council of the burgh for the time being; the expression "the provost" means the provost of the burgh for the time being; the expression "the commissioners" means the commissioners for executing and carrying into effect the objects of the recited Act and of this Act, so far as relating to the waterworks and purposes connected therewith; and the expression "the sheriff" means the sheriff of the county of Dumbarton or his substitute.

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5. The commissioners constituted by the recited Act for executing and carrying into effect the objects of that Act, so far as relating to the waterworks and purposes connected therewith, shall execute and carry into effect the objects of this Act, so far as relating to the waterworks and purposes connected therewith; and the works authorized by this Act shall be held to form part of the commissioners undertaking authorized by the recited Act.

Commissioners.

6. Subject to the provisions of this Act, the commissioners may make and maintain, in the lines and according to the levels shown on the deposited plans and sections, the works herein-after described, and may enter upon, take, and use such of the lands and streams delineated on the said plans and described in the deposited book of reference as may be required for that purpose. The works herein-before referred to, and authorized by this Act, are:—

Power to make works according to deposited plans.

First. A reservoir, with an embankment, a byewash, and all other proper works relative thereto, upon lands forming parts of the estates of Auchentorlie and Strathleven in the parishes of Old or West Kilpatrick and Dumbarton, on and adjoining the course of the stream called Overton Burn, above and near to the waterfall on that stream known as the Black Linn:

Secondly. A cut or conduit, with all proper works in connexion therewith, commencing at the said reservoir at or near the said embankment at a point in the said parish of Old or West Kilpatrick, and terminating by a junction with the existing cut or conduit belonging to the commissioners at its eastern extremity, about seven furlongs (measured along the said existing cut) from the north-eastern side of the commissioners Garshake reservoir.

7. In addition to the sum of ten thousand pounds authorized to be borrowed by the commissioners under the authority of the recited Act, the commissioners may from time to time borrow on mortgage

Power to borrow on mortgage.

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any sum or sums not exceeding in the whole five thousand pounds, and may make and grant mortgages and assignments of the waterworks and of the several water rates and charges authorized and leviable by the commissioners under the provisions of the recited Act and of this Act, in security of the payment of the money borrowed by them under the authority of the recited Act and of this Act, and interest thereon; and if, after having so borrowed the said sums or any part thereof, the commissioners pay off the same otherwise than by means of the sinking fund herein-after provided, it shall be lawful for them again to borrow the amount so paid off, or any part thereof, and so from time to time; and the mortgages and assignments to be made and granted by the commissioners may be partly in writing and partly printed, engraved, or lithographed, and shall be subscribed by at least three of the commissioners at a meeting of the commissioners.

Commis-
sioners may
borrow on
cash account.

8. The commissioners may accept and take from any bank or banking company credit on a cash account to be opened and kept with such bank or banking company in the name of the commissioners, according to the usage of bankers in Scotland, to the extent of the sums which the commissioners are authorized to borrow as aforesaid, or any part thereof, and may make and grant mortgages and assignments of the waterworks, and of the several water rates and charges authorized and leviable under the authority of the recited Act and this Act, in security of the payment of the amount of such credit, or of the sums advanced from time to time on such cash account, with interest thereon: Provided always, that the whole sums due and owing by the commissioners on such cash account, and borrowed by them on mortgage, shall never, when taken together, exceed the sums by the recited Act and this Act authorized to be borrowed by the commissioners.

Arrears may
be enforced
by appoint-
ment of a
judicial
factor.

9. In the event of any principal money borrowed by the commissioners on mortgage as aforesaid, or any interest thereon, not being paid within one month after such payment shall have become due, and after demand thereof in writing, it shall be lawful for any mortgagee holding, by himself or in conjunction with any other mortgagee or mortgagees joining in the application, not less than three thousand pounds of debt, to render his or their security effectual by the appointment of a judicial factor; and the application for such appointment shall be made by summary petition to the Court of Session, or, in time of vacation, to the lord ordinary on the bills, who are hereby respectively authorized and required, on such application being made by any mortgagee or mortgagees holding the sum before specified,

to appoint some person as judicial factor to the effect and with the powers herein-after mentioned, unless previously to such application being advised the amount of such principal money or interest, with interest thereon and expenses, shall have been paid to the petitioner or petitioners, or unless the said court or lord ordinary, as the case may be, shall be satisfied that consignation thereof should, under the circumstances, be accepted in lieu of payment, and such consignation be made accordingly; and the interlocutor making such appointment shall not be subject to review or appeal.

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10. The judicial factor so appointed, on finding security in common form, shall exercise all the powers conferred by the recited Act and this Act upon the commissioners for and in relation to assessing, levying, and recovering the several water rates and charges by such Acts granted, and managing and maintaining the undertaking; and the commissioners shall hand over to him all rate books and other books and documents necessary for that purpose; and after defraying the expense of such application, management, and maintenance, the said judicial factor shall from time to time apply and pay over the balance of the sums received by him to the several parties entitled to the same, according to the priority by the recited Act and this Act established; and such judicial factory shall continue not only until all arrears due at the date of the appointment of such judicial factor, and any interest which shall have become due during his continuance in office, with interest and expenses, including the expenses of the application for such appointment and of carrying the purposes thereof into execution, shall have been paid, but also until any half year's interest which, although not due, may become current during his continuance in office, and a sufficient sum to meet expenses, shall have been paid or consigned in one of the chartered banks in Scotland; and upon payment and consignation as aforesaid of the said principal money, interest, and expenses it shall be lawful for the commissioners to apply to the Court of Session or lord ordinary as aforesaid, for the recall of the appointment of the judicial factor.

Powers and duties of judicial factor.

11. All mortgages granted by the commissioners in pursuance of the powers of the recited Act before the passing of this Act, and which shall be subsisting at the time of the passing of this Act, shall during the continuance of such mortgages have priority over any mortgages to be granted by virtue of this Act.

Existing mortgages to have priority.

12. The several sums borrowed by the commissioners under the authority of this Act shall be applied for the purposes of and connected with the waterworks and supply of water authorized by the

Application of money borrowed.

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Sinking fund.

13. After the passing of this Act, the following provision shall regulate the amount to be set apart by the commissioners as a sinking fund for paying off the monies borrowed under the recited Act and under this Act, instead of the provisions in "The Commissioners Clauses Act, 1847," or in the recited Act contained, with respect to the amount to be set apart as a sinking fund, (that is to say,) the commissioners shall set apart annually as a sinking fund, out of the several rates and charges levied by them under the authority of the recited Act and of this Act, such sums of money as they shall think fit, not less than the following, videlicet, in each of the first five years after the passing of this Act, a sum not less than one pound per centum on the largest aggregate amount of the principal monies which shall at any one time previously to the time of setting apart such sum have been borrowed by the commissioners; in each of the next five years thereafter, a sum not less than one pound ten shillings per centum on the largest aggregate amount of the principal monies which shall at any one time previously to the time of setting apart such sum have been borrowed by the commissioners; and in each subsequent year a sum not less than two pounds per centum on the largest aggregate amount of the principal monies which shall at any one time previously to the time of setting apart such sum have been borrowed by the commissioners, until the whole sums borrowed by the commissioners on mortgage and cash account under the recited Act and this Act shall be paid off; and the sums so from time to time set apart, and the dividends and interest arising therefrom, shall from time to time be invested, accumulated, and applied in the manner prescribed by the recited Act with respect to the sums therein appointed to be set apart as a sinking fund.

Provisions for recovering feu duties.

14. All feu duties and ground annuals for any lands or streams, or any easement or servitude over the same, which shall be acquired by the commissioners, shall be a first charge on the waterworks authorized by and on the water rates and charges leviable under the recited Act and this Act, anything in those Acts or in the Acts incorporated therewith to the contrary notwithstanding; and if at any time any such feu duties or ground annuals remain unpaid for thirty days after they respectively become payable it shall be lawful for the person entitled for the time being to payment of such feu duties or ground annuals to recover the same from the commis-

sioners, with interest and costs, either by action before the sheriff, or summarily by poinding and sale of the goods and effects of the commissioners, on application by petition to the sheriff; and it shall not be lawful for any such person to resume possession of the lands or streams, or easement or servitude, so conveyed, or to proceed by any action of declarator or reduction, or by real diligence, or any other process whatever (saving as herein-before mentioned), in respect thereto or in respect to the said feu duties or ground annuals.

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15. In addition to the lands authorized to be taken as aforesaid, the commissioners may purchase lands not exceeding two acres for the purpose of making depôts, pipe yards, and other buildings and conveniences in connexion with the works by the recited Act and this Act authorized.

Lands for extraordinary purposes.

16. The powers of the commissioners 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.

Powers for compulsory purchases limited.

17. It shall be lawful for the commissioners to make lateral deviations from the lines of the works by this Act authorized to the extent delineated on the deposited plans, and to deviate from the levels of the said works as defined on the deposited sections to any extent not exceeding five feet, excepting in the case of the reservoir, in respect of which it shall not be lawful to deviate from the levels defined on the said sections to an extent exceeding three feet.

Power to deviate.

18. It shall be lawful for the commissioners, by means of the works by this Act authorized, to abstract, intercept, impound, and store up the water of the said stream called Overton Burn, and to convey the said water into the town of Dumbarton, and to supply the same to the inhabitants and occupiers of property within the limits of the recited Act, and for the other purposes for which they are by that Act authorized to supply water: Provided always, that it shall not be lawful for the commissioners to diminish the minimum quantity of water in the said stream, which they are required by the eighteenth section of the recited Act to allow to flow below the weir in that section mentioned.

Power to store and supply water.

19. Before intercepting and impounding in the reservoir by this Act authorized the water of the said stream called Overton Burn the commissioners shall erect and thereafter maintain at or in connexion with the said reservoir and with the weir erected in terms of the recited Act such gauges and works as shall be necessary for securing and which shall secure that the minimum flow of water in the said stream through the lands of Overton, immediately below the

Provision as to Overton Burn.

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said weir, shall not at any time after the said reservoir shall have been completed and in use be reduced below 20 cubic feet per minute, and the said commissioners shall also erect and thereafter maintain at the said weir such additional works as shall protect the said gauges and works from being silted up or otherwise obstructed; and in case of any difference of opinion as to the sufficiency of the gauges and works to be erected for maintaining the flow in the stream, or as to the means requisite for preventing the silting up or obstruction of the said gauges and works or any of them, the same shall be formed and maintained at the sight and to the satisfaction of an engineer to be named by the sheriff of the county of Dumbarton, on the application of the commissioners or of the proprietor of the estate of Overton, from time to time, when and so often as may be necessary.

Rights of fishing, &c. in reservoir in lands of Auchentorlie and Strathleven reserved to proprietors.

20. The respective proprietors for the time being of the estate of Auchentorlie, and of the mansion house of Strathleven, or of that part of the estate of Strathleven called the Moor of Dumbarton, and the families and visitors of such proprietors or proprietor, or other persons having the written authority of either of such proprietors, shall have and enjoy the exclusive right of fishing, shooting, and sporting in and over the reservoir by this Act authorized to be formed upon lands forming parts of the said estates of Auchentorlie and Strathleven, and of keeping and using pleasure boats on the said reservoir, and of skating and curling thereon, but so that the exercise of such rights shall not injure the embankment of the said reservoir or any of the other works of the commissioners, or pollute the water in the said reservoir; and the said proprietors respectively shall also have the right (without prejudice to a similar right on the part of the commissioners) of protecting the said reservoir from trespassers, by using all lawful means therefor, and the rights before mentioned (excepting the right of protecting the said reservoir from trespassers) shall not belong to or be enjoyed by the commissioners or any of them, or any of their officers or servants, or any person deriving or pretending to derive authority from them: Provided always, that the rights before mentioned shall be personal to the said before-mentioned proprietors, and it shall not be lawful for the said proprietors to let on lease or transfer the said rights to any person for any pecuniary or other consideration whatsoever: Provided also, that it shall be lawful for the commissioners, or any person acting under their authority, to keep and use boats on the said reservoir for the sole purpose of inspecting, repairing, and renewing the works of the commissioners, and cleansing the said reservoir, and that, except in so far as the provisions herein-before contained confer

upon the said proprietors the rights herein-before specified, and exclude the commissioners from the exercise of such rights, nothing herein contained shall be held to take away or diminish any of the rights, powers, and authorities by the recited Act and this Act conferred on the commissioners in respect to the said reservoir or otherwise.

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21. The works by this Act authorized shall be completed within seven years from the passing of this Act; and if the said works shall not be completed within that period, then, on the expiration thereof, the powers by this Act granted to the commissioners for making and completing the said works, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall then be completed: Provided always, that nothing herein contained shall restrain the commissioners from extending their mains and pipes from time to time, whenever it shall be necessary so to do, for the purpose of supplying water within the limits of the recited Act.

Period for completion of works.

22. For the purpose of providing for the better distribution of the water supply among the inhabitants, it shall be lawful for the commissioners to require the owner of any dwelling house or tenement of dwelling houses not properly supplied with water, in any street within the limits of compulsory supply defined in the recited Act in which the pipes of the commissioners are laid, to take a supply of water for such house or tenement, by connecting a service pipe with the main pipe of the commissioners in any such street, and to provide, lay, and maintain in good and sufficient repair such service pipes, stand pipes or taps, cisterns, and other means and apparatus, and in such positions, as shall appear to the commissioners to be necessary for that purpose, and as shall be fixed by them; and in the event of refusal or delay on the part of such owner to comply with such requisition it shall be lawful for the commissioners to enter such house or tenement and premises connected therewith, and to provide, lay, and maintain such service pipes, stand pipes or taps, cisterns, and other means and apparatus, in such positions as shall appear to them to be necessary for the purpose aforesaid, and to recover the expense thereof from such owner in the same manner as rates or charges are recoverable by the commissioners under the recited Act and "The Waterworks Clauses Act, 1863": Provided always, that in the case of houses not exceeding ten pounds of yearly rent or value such owner shall not be required to introduce water into each house, but only such means of supply for each tenement of houses as the commissioners may deem necessary: Provided also, that in case of any question or difference

Owners to provide and maintain service pipes.

A.D. 1869. arising between the commissioners and such owner with respect to the necessity for such supply being provided for any such house or tenement, or with respect to the number or description of service pipes, stand pipes or taps, cisterns, or other means and apparatus necessary for the purpose aforesaid, the same shall be determined and fixed by the sheriff, on summary application by either of the parties; and the decision of the said sheriff shall be final, and not subject to appeal or review in any court or by any process whatsoever.

Power to commissioners to levy charges.

23. In lieu of the charges which the commissioners are by the recited Act authorized to take from the owner or occupier of any house or part of a house within the said limits of compulsory supply, for a supply of water for domestic purposes, the commissioners may, in respect of each year from and after the fifteenth day of May one thousand eight hundred and seventy, demand for such supply a charge at a rate per annum not exceeding one shilling per pound upon the rack rent or annual value of the premises so supplied with water, including the office houses, yards, and other pertinents of the same; and such charge shall be assessed and be leviable and recoverable in the same manner as is provided in the recited Act for the assessment, levying, and recovery by the commissioners of the rates and charges which they are by that Act authorized to demand and take for a supply of water for domestic purposes, and in "The Waterworks Clauses Act, 1863": Provided always, that the commissioners shall not be obliged to furnish a supply of water to any person for a less sum than two shillings and sixpence in any one year.

Application of rates and charges.

24. The several rates and charges levied and received by the commissioners under the authority of the recited Act and of this Act shall be applied in the manner and to the purposes following; (that is to say,)

First, in defraying the expense of managing and maintaining the waterworks and incident thereto, and in paying any feu duties and ground annuals exigible in respect of any lands or streams acquired by the commissioners:

Secondly, in payment of the interest on the money borrowed by the commissioners:

Thirdly, in setting apart fifty pounds annually towards the reserve fund authorized by the recited Act:

Fourthly, in setting apart the sinking fund by this Act required:

Fifthly, in making up the remainder of the reserve fund authorized by the recited Act; and

Lastly, in carrying the several other provisions of the recited Act and of this Act relating to the waterworks into execution, in such manner as the commissioners for the time shall order and direct. A.D. 1869.

25. All offenders against any of the provisions of the recited Act or this Act, or of any of the Acts incorporated with the same respectively, or against any of the byelaws of the commissioners, may be prosecuted, and all penalties and forfeitures in respect of offences against any of such provisions or byelaws may be recovered, by and in the name of the clerk of the commissioners for the time being, before the sheriff, or before any one or more of the justices of the peace for the county of Dumbarton. Prosecution of offences.

26. All penalties and forfeitures exigible under the provisions of the recited Act and this Act, and of the Acts wholly or partially incorporated therewith (excepting any penalties which may be imposed upon the commissioners), shall be paid over to the commissioners instead of being applied in the manner provided by the last-mentioned Acts or the Act therein referred to. Application of penalties.

27. For the purpose of parliamentary and municipal elections, the burgh shall be divided into five wards, and each ward shall have a distinctive number, and there shall be three councillors for each ward; and within two months after the passing of this Act, the provost, the sheriff depute of the county of Dumbarton, and a person to be appointed by one of Her Majesty's Principal Secretaries of State, or any two of those parties, shall proceed to determine the boundaries of the wards, having regard to the number of municipal electors, and also to the value of the property as appearing in the valuation roll, and shall cause the proposed division into wards to be delineated upon a plan, which shall be open to the inspection of all persons concerned for the space of fourteen days; and notice of the place where the said plan may be seen shall be given previously to the first of the said fourteen days by advertisement in one or more newspapers published or circulating within the burgh or the said county; and upon a day after the expiry of the said fourteen days, to be specified in the said advertisement, the parties aforesaid shall hear all concerned for their interests, and shall finally adjust the proposed division, and shall fix and determine the wards to which the existing town councillors shall be apportioned, and the order in which they shall retire by rotation, and shall report the same to one of Her Majesty's Principal Secretaries of State; and on their report being approved of by him the said division into wards shall be Burgh divided into wards.

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A.D. 1869. — published once at least in the Edinburgh Gazette and in one of the newspapers published or circulating within the burgh or the said county; and the said boundaries of wards, having been approved of and published as aforesaid, shall take effect, and shall be the boundaries of wards in making up all subsequent rolls of parliamentary and municipal electors for the burgh; and all the provisions of the Acts in force for the time for regulating parliamentary and municipal elections in royal burghs which return or contribute to return a member or members to Parliament, and are divided into wards, shall, subject to the provisions of this Act, apply to the burgh.

Expenses of
Act.

28. The costs, charges, and expenses incurred in preparing for and obtaining this Act, and incidental thereto, shall be paid, as to nine tenths parts thereof by the commissioners, and as to one tenth part thereof by the council.

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