



CHAPTER xxxvii

An Act to alter the constitution of the Commissioners of the Faversham Navigation to confer further powers upon the said Commissioners with respect to their finances and with respect to rates tolls duties and charges to enlarge the powers of the said Commissioners and for other purposes. [1st August 1951.]

WHEREAS by an Act passed in the year eighteen hundred 5 & 6 Vict. and forty-two intituled "An Act for improving the c. xlii. navigation of Faversham Creek in the county of Kent" Commissioners (hereinafter called "the Commissioners") were appointed for carrying the said Act into execution by the name of "the commissioners of the Faversham Navigation" and the Commissioners were by the said Act authorised to remove obstructions and difficulties then occasioned to the navigation of the creek through which the tide flows from the East Swale up to Ordnance Wharf in the town of Faversham and otherwise to improve the navigation of such creek and thereafter to demand and recover tolls upon vessels carrying passengers goods wares merchandise and other matters or things upon the said creek between Nagden Wharf and the said Ordnance Wharf and other powers including power to borrow money on the credit of the said tolls and of the other property of the Commissioners and power to make byelaws were conferred upon the Commissioners:

And whereas by an Act passed in the year eighteen hundred 6 & 7 Vict. and forty-three intituled "An Act to extend the powers and c. xxix. provisions of an Act passed in the last session of Parliament intituled 'An Act for improving the navigation of Faversham Creek in the county of Kent'" further powers were conferred upon the Commissioners including power (at their discretion) to make and maintain a towing path by the side of the said creek

and powers to execute works for the improvement of the said creek from Hollow Shore to the said Ordnance Wharf to fill in a dock known as the Town Dock to work regulate and manage the sluice at Sluice Bridge on the said creek to borrow any sum of money which together with any sum of money borrowed either under the first recited Act or the said Act should not exceed the sum of thirty-three thousand pounds to demand and recover the tolls by the first recited Act authorised in respect of vessels upon the said creek between the said Hollow Shore and the said Ordnance Wharf and additional tolls in respect of coal brought imported or carried into or up the said creek and further power to make byelaws:

And whereas it is expedient to make provision for the alteration of the constitution of the Commissioners as in this Act provided:

And whereas the Commissioners have borrowed money on mortgage to the extent of the sum of thirty-two thousand pounds under the authority of the hereinbefore recited Acts and there exist mortgages to secure a sum of sixteen thousand seven hundred pounds on which interest has been paid by the Commissioners up to the thirty-first day of December nineteen hundred and fifteen and it is expedient to provide for cancelling such mortgages upon the terms mentioned in this Act and to confer upon the Commissioners further powers of raising money:

And whereas in order to enable the Commissioners to continue efficiently to carry on their undertaking it is expedient to increase the tolls which they may demand and recover and to authorise new tolls in respect of certain goods carried in vessels upon the said creek and to confer other powers upon the Commissioners as in this Act provided:

And whereas a sluice erected at Sluice Bridge on the navigation by the council of the borough of Faversham is now under the management of the Commissioners who are empowered to work the same five times during each course of spring tides if they shall think it necessary to cleanse and keep open the increased depth of navigation up to the said Ordnance Wharf and it is expedient to increase the number of times when the said sluice may be so worked:

And whereas the powers 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 King'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):—

PART I

PRELIMINARY

1. This Act may be cited as the Faversham Navigation Act 1951 and this Act and the Acts passed in the years eighteen hundred and forty-two and eighteen hundred and forty-three and intituled respectively “ An Act for improving the navigation of Faversham Creek in the county of Kent ” and “ An Act to extend the powers and provisions of an Act passed in the last session of Parliament intituled ‘ An Act for improving the navigation of Faversham Creek in the county of Kent ’ ” may be cited together as “ the Faversham Navigation Acts 1842 to 1951 ”.

Short and
collective titles.

2. This Act is divided into Parts as follows:—

Act divided
into Parts.

Part I.—Preliminary.

Part II.—Constitution of Commissioners.

Part III.—Financial.

Part IV.—As to outstanding mortgages.

Part V.—Tolls etc.

Part VI.—Miscellaneous.

3. In this Act—

Interpretation.

“ Act of 1842 ” means the Act passed in the year eighteen hundred and forty-two intituled “ An Act for improving the navigation of Faversham Creek in the county of Kent ” ;

“ Act of 1843 ” means the Act passed in the year eighteen hundred and forty-three intituled “ An Act to extend the powers and provisions of an Act passed in the last session of Parliament intituled ‘ An Act for improving the navigation of Faversham Creek in the county of Kent ’ ” ;

“ Authorised rates ” means the tolls or duties which the Commissioners are for the time being authorised to levy receive demand and recover in pursuance of the existing Acts as amended by this Act and the rates and charges which they are for the time being authorised to demand take and make in pursuance of this Act ;

“ Commissioners ” means the Commissioners appointed or elected under and by virtue of the Act of 1842 or this Act ;

“ Corporation ” means the mayor aldermen and burgesses of the borough of Faversham ;

PART I
—cont.

- “ County council ” means the county council of the administrative county of Kent ;
- “ Existing Acts ” means the Act of 1842 and the Act of 1843 ;
- “ Local authorities ” means the corporation the county council and the rural council ;
- “ Minister ” means the Minister of Transport ;
- “ Navigation ” means the creek called Faversham Creek through which the tide flows from the East Swale at Hollow Shore up to Ordnance Wharf in Faversham and all works connected therewith belonging to the Commissioners ;
- “ Rural council ” means the rural district council of Swale ;
- “ Shipowners ” means owners or part owners of vessels registered as belonging to the port of Faversham ;
- “ Sluice ” means the sluice erected at Sluice Bridge on the navigation and referred to in section 20 (Power for Commissioners to work sluice) of the Act of 1843.
- “ Statutory security ” means any security in which trustees are for the time being authorised by law to invest trust moneys and any mortgage bond debenture debenture stock stock or other security created by a local authority as defined in section 34 of the Local Loans Act 1875 but does not include annuities rentcharges or securities transferable by delivery or any securities of the Commissioners ;
- “ Vessel ” includes ships boats lighters barges and all other craft ;
- “ Wharfowners ” means the owners of wharves on the navigation.

38 & 39 Vict.
c. 83.

Incorporation
of provisions
of Harbours
Docks and
Piers Clauses
Act 1847 and
consequential
repeals.

10 & 11 Vict.
c. 27.

4.—(1) The provisions of section 28 (Exemption of vessels in H.M. or the public service from rates) sections 51 to 65 (with respect to the appointment of harbour masters dock masters and pier masters and their duties) section 83 (Byelaws may be made for all or any of the purposes herein named) sections 88 89 and 90 (with respect to publication of byelaws byelaws being binding and proof and publication of byelaws) and section 99 (Saving as to rights of Crown Admiralty etc.) of the Harbours Docks and Piers Clauses Act 1847 are hereby incorporated with and form part of this Act.

(2) For the purposes of such incorporation the following words shall have the following respective meanings:—

“ the harbour dock or pier ” shall mean the navigation ;

- “ the undertakers ” shall mean the Commissioners ;
 “ the prescribed limits ” shall mean the navigation ;
 “ the special Act ” shall mean this Act.

PART I
 —cont.

(3) The said sections 28 and 99 as incorporated with this Act shall apply to and for the benefit of any government department in the same manner as they apply to and for the benefit of the government departments specially named therein.

(4) Sections 49 (Commissioners may make byelaws to govern themselves and their servants) 50 (Fines for breach of such byelaws) 160 (Vessels lying so as to obstruct navigation) and 161 (Vessels may be unloaded) of the Act of 1842 and sections 28 to 35 (which relate to byelaws) of the Act of 1843 are hereby repealed.

PART II

CONSTITUTION OF COMMISSIONERS

General

5. On the first day of June nineteen hundred and fifty-two the enactments mentioned in the First Schedule to this Act and relating to the appointment election and powers of the Commissioners are hereby repealed. Repeal.

6. Notwithstanding any repeal effected by this Act each of the persons holding office as a Commissioner at the passing of this Act shall unless he shall previously die or resign or become disqualified to be a Commissioner continue to hold that office until the first day of June nineteen hundred and fifty-two. Present
Commissioners
continued
in office.

7.—(1) Notwithstanding any repeal effected by this Act the Commissioners shall continue until the first day of June nineteen hundred and fifty-two to consist of— Constitution
of Com-
missioners.

The lord of the manor of Faversham ;

The mayor of the borough of Faversham ;

The four aldermen of the borough of Faversham ;

The chairman of the trustees of the public charities of Faversham ;

The vicars of Boughton Faversham Hernhill Newnham and Ospringe ;

The rectors of Eastling and Norton ;

Alfred Bax Chambers ;

Frederick Cremer ;

Thomas James Davis ;

PART II
—cont.

Garnett Denne ;
Frederick Ivo Neame ;
Jasper Beale Neame ;
Marshall Brook Pollock.

(2) On and after the first day of June nineteen hundred and fifty-two the Commissioners shall consist of—

Five Commissioners appointed by local authorities as follows:—

By the county council	1
By the corporation	3
By the rural council	1

Eight Commissioners appointed by the wharfowners ;

Two Commissioners appointed by the Chamber of Shipping of the United Kingdom after consultation with such body as the Minister may approve as being representative of the shipowners ;

One Commissioner appointed by the Kent River Board ;

One of the trustees for the time being of the public charities of Faversham.

Notwith-
standing
repeals
Commissioners
to continue.

8. Notwithstanding any repeal effected by this Act the several persons who from time to time are under this Act or any subsequent Act amending or extending this Act holding office as Commissioners shall (subject to the provisions of any such subsequent Act) continue by the name of "the Commissioners of the Faversham Navigation" and shall be a body corporate under that name with perpetual succession and a common seal and all other powers and privileges of a body corporate and by that name may sue and be sued and shall have power to purchase take on lease hold and dispose of land and other property (without any licence in mortmain) and to put into execution the provisions of the Faversham Navigation Acts 1842 to 1951.

Provision in
case of first of
June falling on
a Sunday etc.

9. Whenever the first day of June in any year is a Sunday or a day appointed for a bank holiday public fast or thanksgiving the second day of June in that year or the next day which is not a Sunday bank holiday fast day or day of thanksgiving shall for the purposes of the appointment of Commissioners for the purposes of this Act be substituted for the first day of June in that year.

Commissioners appointed by local authorities

Appointment
of Com-
missioners
by local
authorities.

10.—(1) (a) Each of the local authorities shall on or before the first day of June in the year nineteen hundred and fifty-two and in every third year thereafter respectively appoint the number of persons mentioned in subsection (2) of section 7

(Constitution of Commissioners) of this Act opposite the name of such authority to be a Commissioner for the ensuing three years.

PART II
—cont.

(b) If on the first day of June by which an appointment should be made under paragraph (a) of this subsection any of the local authorities fail to appoint a person to be a Commissioner that authority shall make such appointment within ninety days next after that day.

(2) Every person appointed to be a Commissioner under this subsection shall hold office on and from the date of his appointment until and including the thirty-first day of May in the third year after his appointment unless he shall previously die or resign and on the expiry of his term of office shall be eligible for reappointment.

(3) Notice in writing of the name of any person appointed to be a Commissioner under this section shall be given by the clerk of the local authority by which he is appointed to the clerk to the Commissioners.

Commissioners appointed by wharfowners

11.—(1) (a) The wharfowners shall on or before the first day of June in the year nineteen hundred and fifty-two and in every third year thereafter appoint eight persons being wharfowners to be Commissioners for the ensuing three years.

Appointment
of Com-
missioners by
wharfowners.

(b) If on the first day of June by which an appointment should be made under paragraph (a) of this subsection the wharfowners fail to appoint persons to be Commissioners the wharfowners shall make such appointment within ninety days next after that day.

(2) Every person appointed to be a Commissioner under this section shall hold office on and from the date of his appointment until and including the thirty-first day of May in the third year after his appointment unless he shall previously die resign or become disqualified to be a Commissioner and on the expiry of his term of office shall if qualified be eligible for reappointment.

(3) Notice in writing of the name of any person appointed to be a Commissioner under this section shall be given by the wharfowners to the clerk to the Commissioners.

Commissioners appointed by Chamber of Shipping

12.—(1) (a) On or before the first day of June in the year nineteen hundred and fifty-two and in every third year thereafter and subject to the provisions of subsection (2) of section 7 (Constitution of Commissioners) of this Act the Chamber of Shipping of the United Kingdom shall appoint two persons to be Commissioners for the ensuing three years.

Appointment
of Com-
missioners by
Chamber of
Shipping.

PART II
—cont.

(b) If on the first day of June by which an appointment should be made under paragraph (a) of this subsection the Chamber of Shipping of the United Kingdom fail to appoint persons to be Commissioners the said Chamber of Shipping shall make such appointment within ninety days next after that day.

(2) Every person appointed to be a Commissioner under this section shall hold office on and from the date of his appointment until and including the thirty-first day of May in the third year after his appointment unless he shall previously die or resign and on the expiry of his term of office shall be eligible for reappointment.

(3) Notice in writing of the name of any person appointed to be a Commissioner under this section shall be given by the Chamber of Shipping of the United Kingdom to the clerk to the Commissioners.

Commissioner appointed by river board

Appointment
of Com-
missioner by
Kent River
Board.

13.—(1) (a) On or before the first day of June in the year nineteen hundred and fifty-two and in every third year thereafter the Kent River Board shall appoint a person to be a Commissioner for the ensuing three years.

(b) If on the first day of June by which an appointment should be made under paragraph (a) of this subsection the Kent River Board fail to appoint a person to be a Commissioner the said board shall make such appointment within ninety days next after that day.

(2) Every person appointed to be a Commissioner under this section shall hold office on and from the date of his appointment until and including the thirty-first day of May in the third year after his appointment unless he shall previously die or resign and on the expiry of his term of office shall be eligible for reappointment.

(3) All appointments by the Kent River Board under this section shall be made in writing under the seal of the board and notice thereof shall be given to the clerk to the Commissioners.

As to vacancies among Commissioners appointed under this Act

As to supplying
vacancies in
cases of Com-
missioners
appointed
under this Act
and ceasing
to act.

14. If any person appointed to be a Commissioner under this Act shall during his term of office as a Commissioner die resign or become disqualified the person or body by whom he was appointed shall with all convenient speed and subject in the case of the Chamber of Shipping of the United Kingdom to compliance with the requirement as to consultation contained in subsection (2) of section 7 (Constitution of Commissioners) of this Act appoint another qualified person to be a Commissioner and the person so appointed shall be entitled to hold office so long only as the Commissioner in whose stead he is appointed would have been entitled to continue in office but shall if qualified be eligible for reappointment.

PART III

FINANCIAL

15.—(1) The Commissioners may on the security of their undertaking or the authorised rates borrow on mortgage— Power to borrow.

(a) such sum not exceeding ten thousand pounds as may from time to time be required for any of the purposes of their undertaking for which capital may properly be applied and not otherwise ;

(b) such further sum as may be required for the payment of the costs charges and expenses of and incidental to the preparing of applying for and obtaining and passing of this Act or otherwise in relation thereto.

(2) The Commissioners shall repay the sums so borrowed in the case of sums borrowed under paragraph (a) of subsection (1) of this section within such period as the Commissioners may determine not exceeding thirty years from the date or dates of borrowing and in the case of sums borrowed under paragraph (b) of the said subsection within such period as the Commissioners may determine not exceeding five years from the passing of this Act which periods shall be the fixed periods for the purposes of this Act.

16. The Commissioners shall pay off all moneys borrowed by them under the powers of section 15 (Power to borrow) of this Act either by equal yearly or half-yearly instalments of principal or of principal and interest combined or by means of a sinking fund or partly by one of those methods and partly by another or others of them and the payment of the first instalment or the first payment to the sinking fund shall be made within twelve months or when the money is repayable by half-yearly instalments within six months from the date of borrowing. Mode of payment off of money borrowed.

17.—(1) The Commissioners may borrow for the purpose of— Power to reborrow.

(a) paying off any moneys previously borrowed under this Act by the Commissioners which are intended to be repaid forthwith ; or

(b) replacing moneys which during the preceding twelve months have been temporarily applied from other moneys of the Commissioners in repaying moneys previously borrowed under this Act and which at the time of such repayment it was intended to replace by borrowed moneys :

Provided that the Commissioners shall not have power to borrow under this section—

(a) for the purpose of making any payment to a sinking fund or of paying any instalment or making any annual

PART III
—cont.

payment which has or may become due in respect of borrowed moneys ; or

(b) for the purpose of replacing any moneys previously borrowed which have been repaid—

(i) by instalments or annual payments ; or

(ii) by means of a sinking fund ; or

(iii) out of moneys derived from the sale of land ;

or

(iv) out of any capital moneys properly applicable to the purpose of the repayment other than moneys borrowed for that purpose.

(2) Any moneys borrowed under this section shall for the purposes of repayment be deemed to form part of the original loan and shall be repaid within that portion of the fixed period which remains unexpired and the provisions which are for the time being applicable to the original loan shall apply to the moneys borrowed under this section.

Sinking fund.

18.—(1) If the Commissioners determine to repay by means of a sinking fund any moneys borrowed under this Act the sinking fund shall be formed and maintained either—

(a) by payment to the fund throughout the fixed period of such equal annual sums as will be sufficient to pay off within that period the moneys for the repayment of which the sinking fund is formed (a sinking fund so formed being hereinafter called a non-accumulating sinking fund) ; or

(b) by payment to the fund throughout the fixed period of such equal annual sums as with accumulations at a rate not exceeding such rate as the Minister may approve will be sufficient to pay off within that period the moneys for the repayment of which the sinking fund is formed (a sinking fund so formed being hereinafter called an accumulating sinking fund).

(2) Every sum paid to a sinking fund and in the case of an accumulating sinking fund the interest on the investments of the sinking fund shall unless applied in repayment of the moneys for the repayment of which the sinking fund is formed be immediately invested in statutory securities but the Commissioners may from time to time vary and transpose the investments.

(3) In the case of a non-accumulating sinking fund the interest on the investments of the fund may be applied by the Commissioners towards the equal annual payments to the fund.

(4) The Commissioners may at any time apply the whole or any part of a sinking fund in or towards the discharge of the moneys for the repayment of which the sinking fund was formed:

Provided that in the case of an accumulating sinking fund the Commissioners shall pay into the fund each year and accumulate during the residue of the fixed period a sum equal to the interest which would have been produced by such sinking fund or part thereof so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based.

(5) If at any time the income of an accumulating sinking fund is not equal to the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the equal annual payments to the fund are based any deficiency shall be made good by the Commissioners.

(6) If at any time the income of an accumulating sinking fund is in excess of the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the equal annual payments to the fund are based any such excess may be applied towards such annual payments.

(7) Any surplus of a sinking fund remaining after the discharge of the whole of the moneys for the repayment of which it was formed shall be applied to such capital purposes as the Commissioners with the consent of the Minister may determine.

(8) Any expenses connected with the formation maintenance investment application or management of or otherwise in relation to any sinking fund under this Act shall be paid by the Commissioners in addition to the payments provided for by this Act.

19.—(1) If at any time it appears to the Commissioners that the amount in a sinking fund together with the sums which will be payable thereto in accordance with the provisions of this Act and in the case of an accumulating sinking fund with the accumulations thereon will not be sufficient to repay within the fixed period the moneys for the repayment of which the sinking fund is formed the Commissioners shall either temporarily or permanently make such increased payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose and if it appears to the Minister that any such increase is necessary the Commissioners shall increase the payments to such extent as the Minister may direct. Adjustments to sinking fund.

(2) If the Commissioners desire to accelerate the repayment of any moneys borrowed they may with the approval of the Minister increase the amounts payable to the sinking fund.

PART III
—cont.

(3) If the amount in a sinking fund together with the sums which will be payable thereto in accordance with the provisions of this Act and also in the case of an accumulating sinking fund together with the accumulations thereon will in the opinion of the Minister be more than sufficient to repay within the fixed period the moneys for the repayment of which the sinking fund is formed the Commissioners may reduce the payment to the sinking fund either temporarily or permanently to such amounts as will in the opinion of the Minister be sufficient to repay within the fixed period the moneys for the repayment of which the sinking fund is formed.

(4) If at any time the amount in a sinking fund together with the accumulations thereon in the case of an accumulating sinking fund will in the opinion of the Minister be sufficient to repay the moneys for the repayment of which the sinking fund is formed within the fixed period the Minister may authorise the Commissioners to suspend the annual payments to the sinking fund until the Minister otherwise directs.

Return to
Minister.

20.—(1) The clerk to the Commissioners shall within two months after the expiration of each financial year transmit to the Minister a return showing the provision made by the Commissioners for the repayment of moneys borrowed by the Commissioners under the authority of this Act.

(2) The return shall show such particulars shall be made up to such date and shall be in such form as the Minister may require shall be certified by the treasurer or other person whose duty it is to keep the accounts of the Commissioners and shall if so required by the Minister be verified by statutory declaration made by that person.

(3) If it appears to the Minister from any return made under this section or otherwise that the Commissioners—

- (a) have failed to pay any instalment or annual payment required to be paid ; or
- (b) have failed to appropriate to the discharge of any loan any sum required to be so appropriated ; or
- (c) have failed to set apart any sum required for a sinking fund ; or
- (d) have applied any portion of a sinking fund to a purpose other than those authorised ;

the Minister may by order direct that such sum as is specified in the order not exceeding the amount in respect of which default has been made shall be paid or applied in the manner and by the date set out in the order and the Commissioners shall notify the Minister as soon as the order has been complied with.

(4) An order made under the last preceding subsection may be enforced at the instance of the Minister by mandamus.

(5) If a return required to be made under this section is not made within the time specified in subsection (1) of this section the person in default shall be liable to a penalty not exceeding twenty pounds and notwithstanding the recovery of any such penalty the making of the return may be enforced at the instance of the Minister by mandamus.

PART III
—cont.

21. All moneys raised or to be raised by the Commissioners on mortgage under the provisions of this Act shall have priority against the Commissioners and the property from time to time of the Commissioners over all other claims on account of any debts incurred or engagements entered into by them: Priority of mortgages over other debts.

Provided that this priority shall not affect any claim against the Commissioners or their property in respect of any rentcharge granted or to be granted by them in pursuance of the Lands Clauses Acts or in respect of any rent or sum reserved by or payable under any lease granted or made to or vested in the Commissioners which is entitled to rank in priority to or *pari passu* with the interest on their mortgages.

22. Any person advancing money to the Commissioners shall not be bound to require any further or other evidence of the power of the Commissioners to borrow the money advanced by such person than such as is afforded by a certificate signed by two of the Commissioners and countersigned by the clerk of the Commissioners that the Commissioners are not exceeding the powers of borrowing conferred upon them by this Act. Protection of lenders.

23.—(1) The Commissioners may for the purposes of or in connection with their undertaking borrow or raise money on temporary loans from bankers by means of overdrafts or otherwise: Commissioners may incur temporary loans.

Provided that the aggregate amount outstanding at any one time of the money so borrowed or raised shall not exceed five thousand pounds and such moneys shall as nearly as may be be repaid together with interest within two years from the date of borrowing.

(2) The power conferred by this section shall be in addition to any power for the time being of the Commissioners to borrow on mortgage of their undertaking.

PART IV

AS TO OUTSTANDING MORTGAGES

24. In this Part of this Act—

“mortgages” means the unredeemed mortgages to secure the sum of sixteen thousand seven hundred pounds borrowed by the Commissioners;

“mortgagees” means the holders for the time being of any of the mortgages.

Definitions
for Part IV.

PART IV

—cont.

Cancellation of
mortgages.

25. On the first day of January nineteen hundred and fifty-two the mortgages shall by virtue of this Act be cancelled and upon delivery to the Commissioners of any such mortgages the Commissioners shall pay to the person who immediately before that date was the holder thereof the sum of three pounds for each one hundred pounds of the principal sum secured thereby.

Sums paid to
be held in same
rights as
cancelled
mortgages.

26. Any sum paid by the Commissioners in pursuance of the last preceding section of this Act to a mortgagee shall be held in the same rights on the same trusts and subject to the same powers provisions charges and liabilities as those in on or subject to which the mortgages were held immediately before the first day of January nineteen hundred and fifty-two and so as to give effect to and not to revoke any deed will or other instrument or testamentary or other disposition disposing of or affecting the mortgages and every such deed will instrument or disposition shall take effect with reference to the whole or a proportionate part (as the case may be) of the moneys so paid by the Commissioners.

As to payment
into court.

27. In the event of any mortgagee failing to deliver his mortgage to the Commissioners the Commissioners shall within a reasonable time after the first day of January nineteen hundred and fifty-two pay into court as if it belonged to a trust of which they were trustees in the name of such mortgagee an amount equal to the sum of three pounds in respect of each one hundred pounds secured by each mortgage held by him immediately before the said first day of January. A certificate given in accordance with rules made under the Supreme Court of Judicature (Consolidation) Act 1925 stating that the sum referred to has been paid into court shall be a sufficient discharge to the Commissioners.

15 & 16 Geo. 5.
c. 49.

PART V

TOLLS ETC.

Increase of
tolls and
duties.

28.—(1) The provisions of this section shall come into force on the first day of January nineteen hundred and fifty-two.

(2) Section 25 (Tolls) of the Act of 1843 shall be read and have effect as if the tolls or duties upon vessels specified in that section were severally increased by an amount equal to one hundred and fifty per centum of the respective amounts thereof as so specified.

(3) If the total amount of the toll or duty leviable upon any vessel at any one time in pursuance of this section includes a fraction of a penny the fraction if less than one halfpenny shall not be charged and if equal to or more than one halfpenny shall be charged as a penny.

(4) All references in any unrepealed provisions of the existing Acts to the tolls and duties which the Commissioners are entitled to demand receive and recover shall (so far as applicable and not inconsistent with this Act) be construed as including a reference to the tolls and duties which the Commissioners are for the time being authorised to levy in pursuance of this section or of an order of the Minister made under section 31 (Revision of rates) of this Act.

(5) Section 25 (Tolls) and section 26 (Further toll on completion of works) of the Act of 1843 so far as they relate to a toll or duty upon coals shall be repealed as from the coming into force of this section.

29. The Commissioners may demand and take in respect of goods brought imported or carried into or upon any part of the navigation rates and charges not exceeding those specified in Part I of the Second Schedule to this Act subject to the regulations set forth in Part II of that schedule.

30. The Commissioners may make reasonable charges for all work done towage and other services rendered facilities afforded and lighters tugs buildings plant machinery and appliances provided by them for the dispatch of business at the navigation or for the convenience of shipmasters merchants and others concerned with the traffic thereat in so far as such charges are not expressly provided for by the existing Acts or this Act. Any charges leviable by the Commissioners under this section may be recovered by the Commissioners from the person from whom they are due in any court of competent jurisdiction.

31.—(1) If it is represented by application in writing to the Minister—

- (a) by any chamber of commerce or shipping or any representative body of traders or shipowners; or
- (b) by any person who in the opinion of the Minister has a substantial interest in the trade of the navigation and is a proper person to make an application; or
- (c) by the Commissioners;

that under the circumstances then existing the authorised rates should be revised in whole or in part the Minister if he thinks fit may make an order revising all or any of the authorised rates referred to in the application and may fix the date as from which such order shall take effect and thenceforth such order shall remain in force until the same expires or is revoked or modified by a further order of the Minister made in pursuance of this subsection.

PART V
—cont.

(2) An application made to the Minister under subsection (1) of this section shall be accompanied by such information and particulars as the Minister may consider relevant certified in such manner as he may require.

(3) Where upon an application under subsection (1) of this section an order has been made or the Minister has decided not to make an order no further application for a revision of any of the rates to which the application related shall be made within twelve months from the date of such order or decision as the case may be.

(4) Before making an order under subsection (1) of this section the Minister shall consult with such bodies or persons as aforesaid as appear to him to be appropriate including the Commissioners where they are not the applicants and for the purpose of ascertaining such bodies or persons may require public notice of the application to be given and where an objection to an application is made by the Commissioners or by any such body or person as aforesaid and is not withdrawn the Minister unless it appears to him that the objection is of a trivial nature shall cause an inquiry to be held in reference to the application.

(5) Subject to the proviso to this subsection the Minister shall not by an order under subsection (1) of this section make any such revision of the authorised rates as in his opinion would so far as can be estimated be likely to result in the annual revenue of the Commissioners being insufficient or more than sufficient to enable the Commissioners with efficient management of their undertaking to make adequate provision for paying all proper expenses of and connected with the working management and maintenance of their undertaking including interest on loan capital (regard being had by him to any capital which the Commissioners may reasonably be expected to expend) making good depreciation providing for any contributions which the Commissioners may reasonably and properly carry to any reserve fund contingency fund or sinking fund and meeting all other costs charges and expenses if any properly chargeable to revenue:

Provided that in any case in which the Minister is satisfied that there are special circumstances affecting the undertaking of the Commissioners taking into account the financial condition of the undertaking during such period preceding the date on which an application is made under subsection (1) of this section as the Minister considers to be appropriate the Minister may revise the authorised rates in such manner as he thinks just and reasonable with due allowance for such special circumstances notwithstanding that such revision is likely to result in the annual revenue of the Commissioners being insufficient to

enable the Commissioners to make adequate provision for all of the matters referred to in the foregoing provisions of this subsection.

PART V
—cont.

(6) Subsections (2) to (5) of section 290 of the Local Government Act 1933 shall apply to inquiries which the Minister may cause to be held under this section as if they were an inquiry held in pursuance of subsection (1) of that section and the Commissioners were a local authority. 23 & 24 Geo. 5.
c. 51.

(7) The power of the Minister to make an order under this section shall be exercisable by statutory instrument.

32.—(1) The revenue received from tolls duties rates and charges or otherwise under this Act shall be applicable for the purposes and in the order following and not otherwise:— Application
of revenue.

(a) in payment of the costs of and connected with the applying for obtaining and passing of this Act;

(b) in payment of the expense properly chargeable to revenue of the maintenance repair renewal and management of the undertaking of the Commissioners and all conveniences connected therewith;

(c) in payment year by year of the interest accruing on moneys borrowed under this Act;

(d) in payment of the instalments as they become due in discharge of any moneys so borrowed and repayable by instalments and in forming a sinking fund in accordance with this Act for payment of principal moneys borrowed under this Act.

(2) The surplus (if any) after providing for the purposes aforesaid shall be applied to the purposes of the undertaking of the Commissioners.

(3) Section 143 (Application of the tolls) of the Act of 1842 and section 27 (Application of the tolls) of the Act of 1843 are hereby repealed.

PART VI

MISCELLANEOUS

33. Sections 19 21 and 23 of the Act of 1842 shall be amended to the extent shewn in the Third Schedule to this Act. Amendment
of certain
sections of
Act of 1842.

34.—(1) (a) At the general meeting of the Commissioners holden in the month of February in each year one of the Commissioners shall be elected chairman of the Commissioners and the person so elected shall hold office as such chairman until the next yearly general meeting of the Commissioners: Order of
business at
meetings of
Commissioners
and
committees.

Provided that in any year in which there is a triennial appointment of Commissioners under this Act the Commissioner who was elected chairman of the Commissioners at the general

PART VI
—cont.

meeting holden in the month of February in that year shall hold office as such chairman until and including the thirty-first day of May in that year but shall be eligible for re-election as such chairman as hereinafter in this section provided.

(b) At the first meeting of the Commissioners holden after the thirty-first day of May in any year in which there is a triennial appointment of Commissioners under this Act one of the Commissioners shall be elected chairman of the Commissioners and the person so elected shall hold office as such chairman until the next yearly general meeting of the Commissioners.

(2) All questions considered at any meeting of the Commissioners or of a committee of the Commissioners appointed under section 13 (General meeting may appoint committees) of the Act of 1842 shall be decided by the votes of the majority present. If there be an equal division of votes the chairman of the meeting in addition to his own vote as a Commissioner or a member of the committee shall have a casting vote:

Provided that if the chairman of the Commissioners shall be absent from any meeting of the Commissioners or of a committee of the Commissioners then one of the Commissioners present shall be elected by the majority of the votes of the Commissioners present at such meeting chairman of the meeting and a chairman so elected shall have a casting vote on an equal division of votes at that meeting.

(3) Section 15 (Order of business at meetings of Commissioners and committees) of the Act of 1842 is hereby repealed.

As to exercise
by committee
of powers
of Act.

35. The committee from time to time appointed by the Commissioners under section 13 (General meeting may appoint committees) of the Act of 1842 may carry into effect any of the provisions of this Act in the like manner and to the same extent as they may carry into effect the provisions of the existing Acts.

Towage
service.

36. The Commissioners may undertake and shall be deemed always to have had power to undertake the performance of towage service for any vessels entering or leaving or using the navigation and may and shall be deemed always to have had power to provide charter hire build or otherwise acquire and maintain let and use tugs propelled by steam or otherwise or contract for the use of such tugs and do all other acts and things necessary or proper for that purpose.

As to sluice.

37.—(1) The purposes of the existing Acts and of this Act to which capital money and money arising from tolls may properly be applied by the Commissioners shall include and shall be deemed always to have included the provision and maintenance of gates machinery and apparatus in connection with the sluice.

(2) Notwithstanding anything in section 20 (Power for Commissioners to work sluice) of the Act of 1843 it shall be lawful for the Commissioners to work the sluice as and when the Commissioners think fit and the said section 20 of the Act of 1843 shall be read and have effect accordingly.

38.—(1) It shall be lawful for the Commissioners or any person on their behalf being duly authorised in writing under the hand of their clerk to enter and inspect any wharf on the navigation between the hours of eight o'clock in the morning and sunset in order to ascertain whether such wharf is so constructed or is in such a condition as to be a danger to shipping or to impede the passage of vessels using the navigation. Inspection and repair of wharves.

(2) If as the result of any such inspection as is referred to in subsection (1) of this section it appears to the Commissioners that any such wharf is so constructed or in such a condition as aforesaid they may by notice in writing require the owner of such wharf within such time as may be specified in such notice (not being less than one month from the date thereof) to execute such works as may be reasonably necessary in order to abate the danger or remedy the impediment.

(3) Any question arising between the Commissioners and such owner under this section as to what is reasonably necessary in order to abate danger to shipping or remove the impediment of the passage of vessels shall be referred to and determined by an arbitrator to be agreed upon between the parties or failing such agreement to be appointed on the application of either party after notice in writing to the other of them by the President of the Institution of Civil Engineers and subject as aforesaid the provisions of the Arbitration Act 1950 or any statutory modification thereof from time to time in force shall apply to any such reference and determination. 14 Geo. 6.
c. 27.

(4) The owner of any such wharf who fails within the time limited by any notice served upon him under subsection (2) of this section to commence and thereafter diligently to proceed to complete such works as may be required by the Commissioners or determined to be necessary under this section shall be liable to a penalty not exceeding twenty pounds and to a further penalty not exceeding two pounds for each day on which the offence continues after conviction therefor.

(5) A penalty imposed under this section may be recovered summarily.

39.—(1) The Minister may appoint a person to be auditor to examine and audit the accounts of the Commissioners and may fix the payments to be made to him for salary and for expenses (if any) and the amount of the salary and expenses (if any) shall be paid by the Commissioners out of the tolls duties rates and charges or other income received by them under this Act. Auditor.

PART VI
—cont.

(2) The Minister may at any time revoke the appointment of any person as auditor and thereupon shall unless he sees special reason to the contrary appoint another person as auditor.

(3) The Commissioners shall on demand by the auditor produce to him all books accounts deeds papers writings and other documents and furnish him with all information in their possession or power and afford him all reasonable facilities for conducting the examination and audit.

(4) If the Commissioners refuse or neglect to comply with any of the provisions of this section they shall be liable to a penalty not exceeding twenty pounds for every month during which they neglect or refuse so to comply.

Accounts.

40.—(1) The Commissioners shall within three months after the date to which their annual accounts and balance sheet are made up send a copy of the same to the Minister.

(2) The Commissioners shall as from the expiration of that period be liable to a penalty not exceeding twenty pounds for every refusal or neglect to comply with the foregoing provisions.

(3) The accounts of the Commissioners referred to in this section shall be made up to the end of the thirty-first day of December in each year.

(4) Section 36 (Annual account to be transmitted to the clerk of the peace) of the Act of 1842 is hereby repealed.

Appointment
of a receiver.

41.—(1) The holders of any security given in respect of money borrowed under this Act may enforce payment of arrears of interest or principal or principal and interest due on their securities by the appointment of a receiver.

(2) In order to authorise the appointment of a receiver in respect of arrears of interest or principal or principal and interest the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than ten per centum of the total amount of the money then borrowed under this Act and not paid off.

10 & 11 Vict.
c. 16.

(3) Sections 86 and 87 of the Commissioners Clauses Act 1847 shall be incorporated with this Act and in those sections the expression "Commissioners" shall mean the Commissioners and the expressions "mortgage" and "mortgagee" shall respectively include any security for money borrowed under this Act and the holder of any such security.

Byelaws.

42.—(1) The byelaws which may from time to time be made by the Commissioners in exercise of the powers in that behalf conferred on them by section 83 of the Harbours Docks and Piers Clauses Act 1847 may provide for the imposing of a

penalty not exceeding five pounds for every offence against the byelaws and of a daily penalty not exceeding forty shillings for every day such offence shall continue after conviction thereof.

(2) Notwithstanding the provisions of the Harbours Docks and Piers Clauses Act 1847 relating to the procedure for the making and confirmation of byelaws by the Commissioners the provisions of subsections (3) to (6) of section 250 and section 252 of the Local Government Act 1933 shall apply to all byelaws to be made by the Commissioners in respect of their undertaking and in the application of such last-mentioned provisions the Minister shall be the confirming authority.

43.—(1) The Commissioners shall deliver to the Registrar of Companies a printed copy of this Act and he shall retain and register it. If such copy is not so delivered within three months from the passing of the Act the Commissioners shall incur a penalty not exceeding two pounds for every day after the expiration of those three months during which the default continues and any Commissioner or officer of the Commissioners who knowingly and wilfully authorises such default shall incur a like penalty. Copy of Act to be registered.

(2) Every penalty under this section shall be recoverable summarily.

(3) There shall be paid to the registrar by the Commissioners on such copy being registered the fee of five shillings.

44. The costs charges and expenses preliminary to and of and incidental to the preparing of applying for and the obtaining and passing of this Act shall be paid by the Commissioners. Costs of Act.

SCHEDULES

THE FIRST SCHEDULE

ENACTMENTS RELATING TO THE APPOINTMENT ELECTION AND
POWERS OF COMMISSIONERS REPEALED BY THIS ACT

Sections 1 2 3 4 5 6 7 17 18 20 22 and 24 of the Act of 1842

THE SECOND SCHEDULE

PART I

RATES AND CHARGES ON GOODS

Description of goods	Per ton	Wharfage
		s. d.
Ballast	—	Subject to special arrangement
Bricks	Per ton	6
„ bath	Per ton	10
„ scorise	Per ton	6
Coal	Per ton	1 6
Corn	Per ton	6
Fertilisers	Per ton	6
Granite (broken)	Per ton	6
„ (kerbs and setts)	Per ton	6
„ (polished)	Per ton	10
Manure (bags)	Per ton	6
Oils	Per ton	10
Railway sleepers	—	Subject to special arrangement
„ appliances	—	Subject to special arrangement
„ machinery	—	Subject to special arrangement
Shipbuilding material	—	Subject to special arrangement

All goods not particularly enumerated in the above list shall be liable to such reasonable rates and charges as the Commissioners may prescribe.

PART II

REGULATIONS

1. All weights and measures mentioned in Part I of this schedule save where specially excepted are imperial weights and measures.

2. Where goods are charged at per ton or at per cwt. or by other measures there shall be payable for any fraction of a ton or cwt. or other measure as the case may be the rate payable in respect of a whole ton or cwt. or other measure if the fraction exceeds one-half and half that rate if the fraction does not exceed one-half.

3. In weighing and measuring goods for ascertaining the rates payable in respect thereof the weight and measurement of the packing and packages (if any) shall be included.

2ND SCH.
—cont.

4. Goods imported and transhipped direct into another vessel for export seawards shall be allowed a remission or drawback of the whole of the rate in respect of import and shall be liable to such rate (if any) in respect of export as the Commissioners may determine not exceeding the rate specified in Part I of this schedule.

5. Any fraction of a penny in the total amount of rates payable at one time by any person may be charged as one penny.

THE THIRD SCHEDULE

AMENDMENT OF SECTIONS OF ACT OF 1842

Section 19 leave out "such" where it first appears alter "contracts" to "contract" alter "such Commissioners" to "the Commissioners".

Section 21 leave out "or contract".

Section 23 leave out "such".

PRINTED BY HENRY GEORGE GORDON WELCH, C.B.E.

Controller of His Majesty's Stationery Office and King's Printer of Acts of Parliament

LONDON: PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE

Price 1s. 6d. net

(76394)

PRINTED IN GREAT BRITAIN

Faversham Navigation Act, 1951

14 & 15 GEO. 6 Ch. xxxvii

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10. Appointment of Commissioners by local authorities.

Commissioners appointed by wharfowners

11. Appointment of Commissioners by wharfowners.

Commissioners appointed by Chamber of Shipping

12. Appointment of Commissioners by Chamber of Shipping.

Commissioner appointed by river board

13. Appointment of Commissioner by Kent River Board.

As to vacancies among Commissioners appointed under this Act

14. As to supplying vacancies in cases of Commissioners appointed under this Act and ceasing to act.

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16. Mode of payment off of money borrowed.
17. Power to reborrow.
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