



CHAPTER cxxvii.

An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the burgh and parish of North Berwick. A.D. 1885.
[31st July 1885.]

WHEREAS the Right Honourable Sir William Vernon Harcourt, one of Her Majesty's Principal Secretaries of State, made a Provisional Order set forth in the schedule hereunto annexed, under the provisions of the Public Health (Scotland) Act, 1867:

30 & 31 Vict.
c. 101.

And whereas it is requisite that the said Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Order set forth in the schedule hereunto annexed is hereby confirmed.

Order in
schedule
confirmed.

2. The local authorities mentioned in the said Order shall not under the powers of this Act or of the said Order, without the consent of the Secretary of State for the Home Department, purchase or acquire in any district within the meaning of the Public Health (Scotland) Act, 1867, ten or more houses which, after the passing of this Act, have been, or on the fifteenth day of December last were, occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers.

Special
provision
as to
labouring
class
dwellings.

For the purposes of this section, the expression "labouring class" includes mechanics, artizans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons, other than

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Short title. **3.** This Act may be cited as the North Berwick Water Supply Confirmation Act, 1885.

SCHEDULE.

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NORTH BERWICK WATER.

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PUBLIC HEALTH (SCOTLAND) ACT, 1867 (30 & 31 VICT. c. 101.)

Provisional Order.

WHEREAS by the Public Health (Scotland) Act, 1867, it is, inter alia, enacted (section eighty-nine) that, “with respect to the improvement of burghs having a population of less than ten thousand according to the census last taken, and not having a Local Act for police purposes, and with respect to parishes (exclusive of any parts of such parishes as are situated within the district of any local authority other than the parochial boards of such parishes),” “the local authority if they think it expedient so to do, may acquire and provide or arrange for a supply of water for the domestic use of the inhabitants, and for that purpose may conduct water from any lake, river, or stream, may dig wells, make and maintain reservoirs, may purchase, take upon lease, hire, construct, lay down, and maintain such waterworks, pipes, and premises, and do and execute all such works, matters, and things as shall be necessary and proper for the aforesaid purpose, and may themselves furnish a supply of water, or contract or arrange with any other person to furnish the same; and for the purposes aforesaid the local authority shall be held to have all the powers and rights given to promoters of undertakings by the Lands Clauses Acts: Provided always, that they shall make reasonable compensation for the water so taken by them, and for the damage which may be done to any lands by reason of the exercise of the powers hereby conferred, in terms of the said Acts,” and that the local authority, if they have any surplus water, after fully supplying what is required for domestic purposes, may supply water from such surplus to any public baths and wash-houses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied:”

And whereas it is further provided by the said Act (section ninety) that upon compliance with the provisions therein contained with respect to advertisements and notices, the local authority may present to one of Her Majesty's Principal Secretaries of State a petition stating the land intended to be taken, and the purposes for which it is required, and praying that the local authority may, with reference to such land, be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and that upon the receipt of such petition, and proof of the proper advertisements having been published and notices served, the Secretary of State may direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to the prayer of such petition; and after the

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completion of such inquiry the Secretary of State may by Provisional Order empower the local authority to put in force, with reference to the land referred to in such Order, the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as he may think fit :

And whereas it is further provided by the said Act (section ninety-two) that two or more local authorities may combine together for the purpose of executing and maintaining any works by the said Act authorised in regard to water supply, that may be for the benefit of their respective districts :

And whereas the Police Commissioners of the burgh of North Berwick are the local authority in the said burgh ; and the parochial board of the parish of North Berwick, in the county of Haddington, a part of which parish is situate within the limits of the said burgh of North Berwick, but over the landward part of which parish the jurisdiction of a town council, or of police commissioners, or trustees exercising the functions of police commissioners, does not extend, are the local authority in the landward part of the said parish under the Public Health (Scotland) Act, 1867 ; and the said Police Commissioners and parochial board are herein-after referred to as " the local authorities " :

And whereas a petition under the provisions of the said Act has been presented to me, as one of Her Majesty's Principal Secretaries of State, by the local authorities, setting forth that the water supply of the said burgh and parish is insufficient, and that it would be of great advantage to the inhabitants of the said burgh and parish, or such part or parts thereof as have been or may be formed into a special water supply district under the powers and provisions of the said Act, if the petitioners were authorised to obtain a supply of water for the domestic use of the inhabitants and occupiers of houses and lands in the said burgh and parish, and for trading or manufacturing purposes within the said burgh and parish, and for the domestic use of the inhabitants and occupiers of houses and lands adjoining and near the conduits or lines of pipes which at present supply the burgh of North Berwick with water, and that for the purpose of obtaining and affording such supply of water the petitioners had constructed certain works, and proposed under the provisions of the said Act and the Lands Clauses Acts to purchase and take lands and to construct additional works and conveniences, and to intercept and divert into the said works, and to take, impound, appropriate, and distribute so much of the waters of the stream called the Garvald or Papan Water (herein-after called the " Papan Water "), and of any affluents thereof above the point of commencement of the aqueduct or catch-water drain forming part of the proposed works, as might be required for the purposes of the proposed water supply ; and that the petitioners had published the advertisements and deposited the plan and served the notices required by the ninetieth section of the said Act :

And whereas the said petition prayed that a Provisional Order might be made, empowering the petitioners to put in force, with reference to the lands before mentioned, the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement :

And whereas inquiry having been directed and duly held in respect of the matters mentioned in the said petition, I have resolved to grant the prayer thereof ; and a plan and sections describing the works intended to be constructed, and the lands intended to be taken for the purposes thereof and of the said water supply, have been signed by me with reference to this Order, and will be

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deposited with the sheriff-clerk of the county of Haddington, at his office in Haddington :

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Now, therefore, in pursuance of the powers vested in me by the Public Health (Scotland) Act, 1867, I, as one of Her Majesty's Principal Secretaries of State, do, by this Provisional Order under my hand, direct that from and after the passing of any Act of Parliament confirming the same,—

1. It shall be lawful for the police commissioners of the burgh of North Berwick, and the parochial board of the parish of North Berwick, as the local authorities in the said burgh and the landward part of the said parish respectively, to put in force, with reference to the lands described on the said plan, and within the limits of deviation shown thereon, the provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement ; but the said powers are granted only under the following conditions and modifications ; that is to say,—

(1.) Until the expiration of two years from the passing of an Act confirming this Order, or until such previous date as the reservoir herein-after mentioned shall be completed, the local authorities shall not abstract from the Papana Water a greater quantity of water in each day of twenty-four hours than one hundred thousand gallons, being the quantity at present taken by them from the said stream, and if the said reservoir is not completed within the said period of two years the right to abstract water from the Papana Water shall thereupon cease and determine, but the said right shall revive so soon as the said reservoir shall have been completed and shall afford the supply as compensation water herein-after provided for ;

(2.) The local authorities shall within the said period of two years construct and complete a reservoir as after specified, which will enable them to discharge or allow to flow as compensation water down the Donolly Burn (an affluent of the Papana Water), immediately below the embankment of the reservoir to be constructed by them on that Burn, a preferential supply of three hundred thousand gallons of water taken from the Papana Water at or above the point (g) after mentioned in a continuous and uniform stream during every day of twenty-four hours, and they shall in all time thereafter discharge or allow to flow down the said Burn from the said reservoir the said quantity of compensation water, and such water shall have preference over any water the local authorities may be entitled to draw from the said reservoir, and shall be in full of all claims, by all persons interested in the waters of the Papana Water, for compensation for the taking, impounding, and appropriating of the said waters which, under the Public Health (Scotland) Act, 1867, the Lands Clauses Acts, and this Order, the local authorities are empowered to take, impound, and appropriate ;

(3.) The said reservoir shall be constructed in the valley of the Donolly Burn according to plans approved of by and at the sight and to the satisfaction of James Wilson, civil engineer, Greenock, whom failing, of an engineer to be appointed by the sheriff of the Lothians (herein-after referred to as "the said engineers"), the said engineers to be entitled to fix the dimensions and other particulars of the said reservoir necessary to secure the said supply of compensation water, and the local authorities shall be bound permanently to maintain the said reservoir at their own expense, and the fees and expenses incurred to the said engineers for anything done by them,

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- or either of them, under the provisions hereof, shall be paid by the local authorities ;
- (4.) The local authorities shall not be entitled to abstract any water from the Papana Water lower down than the point (g) shown on the deposited plan, at the upper end of the proposed catchwater drain (which catchwater drain is to be a closed water-tight pipe), and the water abstracted shall be impounded in the said reservoir ; and they shall construct a bye-wash channel on both sides of the said reservoir, the said catchwater drain and bye-washes to be constructed to the satisfaction of the said engineers, so as to prevent any water other than Papana Water taken from or above the said point (g) finding its way into the said reservoir ;
- (5.) The local authorities shall construct and maintain, until they shall supply compensation water as aforesaid, a suitable measuring gauge over or through which the said quantity of water not exceeding one hundred thousand gallons in each day of twenty-four hours shall flow or be discharged ; and upon the completion of the said reservoir to supply compensation water, then they shall construct, and for ever after maintain, immediately below the embankment thereof, a suitable measuring gauge over or through which the said compensation water shall flow or be discharged ; and such gauges shall be open to the inspection and examination of the several persons interested in the water so to flow or be discharged over or through the same ; and if at any time such gauges, or either of them, shall be in an unfit state of repair or condition for the purpose for which they are intended, the same shall forthwith be put into a proper and efficient state of repair and condition by and at the expense of the local authorities, or if they fail so to do within seven days after notice given to them by or on behalf of any of the persons interested as aforesaid, it shall be lawful for any person so interested to cause such works to be done and performed in connexion with the said gauges as shall be necessary for placing them in a proper and efficient state and condition, and to recover the expense of such works, with full costs of suit, against the local authorities in any court of competent jurisdiction ;
- (6.) The local authorities shall, so soon as the works to be executed under this Order are completed, cease to take water from the Papana Water below Snawdon farm-steading, and in lieu of the existing sheep-washing pool in the said stream, the local authorities shall construct, at their own cost, and to the satisfaction of the Most Honourable William Montague, Marquess of Tweeddale, and his heirs and successors, and of his or their tenants in the farm at Snawdon, a sheep-washing pool in the said stream below such last-mentioned point of abstraction, and thereafter the said Marquess and his heirs and successors, and his or their tenants, shall not be entitled to use the existing washing-pool : Provided always, that nothing herein contained shall prejudice, alter, or affect the right of the said Marquess and his heirs and successors, and his or their tenants, to continue to use the existing washing-pool until such new washing-pool shall have been provided ;
- (7.) The said Marquess and his heirs and successors, and his or their tenants, shall be entitled to continue to abstract water from the Papana Water for use at the farm-house and farm-steading of Snawdon, and for driving the thrashing mill machinery on the said farm, notwithstanding that such water is abstracted from the said stream above, and is restored to it below the

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point where the local authorities shall abstract water under the powers of this Order : Provided that the local authorities shall have power when they see fit to intercept the overflow-water from the mill pond at Snawdon not required for the said purposes, and to lead the same to their catchwater pipe by a close pipe laid at the sight and to the satisfaction of the said engineers, and so that no water other than the overflow, if any, from the present mill-pond shall be impounded or abstracted by the local authorities ;

(8.) The local authorities shall make and maintain a substantial fence round the reservoir to be constructed by them on the Donolly Burn ;

(9.) The said Marquess and his heirs and successors, and all persons whom he or they may authorise or permit, shall have the sole and exclusive right at all times to fish and boat on the said reservoir, and that over and above and irrespective of the compensation which the said Marquess and his heirs and successors, and his or their tenants, may be found entitled to for land taken and injury sustained by and through the construction of the said reservoir and the other works herein-before referred to ; and the local authorities shall, at their own expense, erect and permanently maintain a grating or gratings to prevent the fish from escaping from the said reservoir down the Donolly Burn, or down their aqueducts and lines of pipes, and shall at all times keep in the said reservoir a sufficient quantity of water for the preservation of the fish in or frequenting it : Provided always, that the said local authorities shall be entitled to keep such boats on the said reservoir as they may find necessary for inspecting, maintaining, and repairing the said reservoir and works ;

(10.) The local authorities shall make provision for enabling the sheep and stock of the said Marquess, and his heirs and successors, and his or their tenants, to get access at all times to the water of the reservoir, or in lieu thereof shall provide water at all times for the supply of such sheep and stock grazing in the fields adjoining the said reservoir ; and in the event of water being abstracted from the Papan Water by the local authorities to such an extent as to materially interfere with the supply to the cattle and other bestial, the local authorities shall also provide one watering-place in each of the fields on the property of the said Marquess, situated between the point of abstraction and the point at which the compensation water is returned to the stream.

2. Persons empowered by the Lands Clauses Consolidation (Scotland) Act, 1845, to sell and convey or dispose of lands may, if they think fit, subject to the provisions of that Act and of the Lands Clauses Consolidation Acts Amendment Act, 1860, grant to the local authorities any servitude, right, or privilege required for the purposes of this Order, in, over, or affecting any such lands ; and the provisions of the said Acts with respect to lands and annual feu duties or ground annuals, so far as the same are applicable in this behalf, shall extend and apply to such grants, and to such servitudes, rights, and privileges as aforesaid respectively.

3. In this Order the expression "the Lands Clauses Acts" means the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and the word "lands" has the meaning

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Given under my hand and seal at Whitehall, this fourteenth day of May
one thousand eight hundred and eighty-five.

(Signed) W. V. HARCOURT.

LONDON: Printed by EYRE and SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1885.