



## CHAPTER xlix.

An Act to authorise the magistrates and council of the burgh of Falkirk to intercept the sewage of the burgh and convey the same to the River Carron; and to make and maintain new drainage works; and for other purposes. A.D. 1886.

[4th June 1886.]

**W**HEREAS by the Falkirk Police and Improvement Act, 1859 (herein-after called "the Act of 1859"), the magistrates and council of the burgh of Falkirk (who are herein-after referred to as "the Commissioners") were appointed Commissioners for carrying that Act into execution: 22 & 23 Vict.  
c. cxxiii.

And whereas the General Police and Improvement (Scotland) Act, 1862, has been adopted within the burgh:

And whereas the Commissioners are the local authority within the burgh, under the Public Health (Scotland) Act, 1867:

And whereas the streams known as the Meadow or East Burn, otherwise called the Lady's Mill Burn, the Mungal Mill or West Burn, and the Pest Burn and Bainsford Burn respectively, which run through some parts or part of the burgh, have become polluted with sewage and become otherwise insanitary, and it is necessary for the health of the inhabitants that the sewage of the burgh should be intercepted, separated and diverted from the said streams or burns, and conveyed separately to the River Carron by means of the drainage works by this Act authorised:

And whereas it is expedient that the Commissioners should be authorised to raise further money by assessment and charges, and by borrowing, for the purposes of this Act:

And whereas plans and sections, showing the lines and levels of the several works authorised by this Act, and also a book of reference containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of the lands and other property required, or which may be taken for the purposes or under the powers of this Act, were duly deposited in the offices at Stirling

A.D. 1886. and Falkirk respectively, of the principal sheriff clerk of the county of Stirling, and are herein-after respectively referred to as the deposited plans, sections and book of reference :

And whereas the purposes 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 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 Falkirk Drainage Act, 1886.

When Act  
to take  
effect.

2. This Act shall come into operation and take effect on and from the first day of August, one thousand eight hundred and eighty-six, except as regards the provisions as to assessment, which shall come into operation and take effect on and from the fifteenth day of May, one thousand eight hundred and eighty-seven.

Interpreta-  
tion of terms.

3. 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 something in the subject or context repugnant to such construction; the expression "the burgh" means the burgh of Falkirk, within the parliamentary limits and boundaries thereof, as defined by the Act second and third William the Fourth, chapter sixty-five; the expression "the Commissioners" means the magistrates and council of the burgh of Falkirk, as Commissioners for executing and carrying into effect the objects of the Act of 1859, and of this Act; the expression "valuation roll" means the valuation roll made up in terms of the Act seventeen and eighteen Victoria, chapter ninety-one, intituled "An Act for the valuation of lands and heritages in Scotland," or any Act amending the same; the expression "the sheriff" means the sheriff of the county of Stirling, or his substitute; the word "person" includes companies, corporations, police commissioners, lunacy boards, and local authorities; and in the Acts wholly or partially incorporated with this Act the word "schoolmaster" includes session clerk; the expression "the special Act" means this Act; the expressions "the company," "the undertakers," "the promoters of the undertaking," and "the Commissioners," mean the Commissioners; the expressions "the drainage department," "the drainage undertaking," mean the drainage undertaking authorised by this Act; and for the purposes of this Act, in the provisions of the Railways Clauses Consolidation (Scotland) Act, 1845, incorporated with this Act, the expression "the railway" means the



works by this Act authorised, and the expression "the centre of the railway" means any part of these works as delineated upon the deposited plans; and in the Commissioners Clauses Act, 1847, the expression "the undertaking" includes the whole undertaking of the Commissioners under this Act.

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4. The Commissioners Clauses Act, 1847, except the clauses thereof with respect to the qualification of the 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, and also with the exception of clauses 84, 86 and 87, is (except when expressly varied by this Act) incorporated with and forms part of this Act, and shall apply to the Commissioners acting under this Act, and to the drainage works and mortgages authorised to be made and granted under the authority of this Act.

Incorporation of Commissioners Clauses Act.

5. The following Acts and parts of Acts (so far as the same respectively are applicable for the purposes and are not inconsistent with the provisions of this Act) are hereby incorporated with and form part of this Act:—

Incorporation of other general Acts.

The Lands Clauses Consolidation (Scotland) Act, 1845;

The Lands Clauses Consolidation Acts Amendment Act, 1860;

The clauses and provisions of the Railways Clauses Consolidation (Scotland) Act, 1845, with respect to the temporary occupation of lands near the railway during the construction thereof, and the crossing of roads and other interference therewith; but such clauses and provisions shall apply only in the case of the main sewers and other works immediately connected therewith by this Act authorised.

6. The Commissioners shall be the Commissioners for executing and carrying into effect the objects of this Act; and the drainage works authorised by this Act shall be held to form part of the undertaking of the Commissioners.

Commissioners.

7. The Commissioners may, subject to the provisions of this Act, make and maintain, in the lines and according to the levels shown on the deposited plans and sections, the main intercepting and outfall sewers herein-after described, together with all proper works, buildings, conduits, valves, sluices, and other appliances in connexion therewith, and may enter upon, take and use such of the lands and heritages shown on the deposited plans, and described in the deposited book of reference, as may be required for these

Power to make intercepting sewers.

A.D. 1886. purposes. The works herein-before referred to and authorised by this Act are:—

1. A main intercepting and outfall sewer, extending to three thousand five hundred and twenty yards or thereabouts in length, commencing at the point in the burgh and parish of Falkirk where the centre of the stream known as Meadow or East Burn crosses the centre of the street known as East Bridge Street, and terminating at a point at or near low-water mark of the River Carron, in the said parish of Falkirk, two hundred yards or thereabouts in a north-westerly direction from the north-east corner of the field numbered 262 on the Ordnance Survey map of said parish of Falkirk, which main intercepting and outfall sewer will be situate partly in the burgh and wholly in the parish of Falkirk, and county of Stirling;

2. A main intercepting and outfall sewer, extending to three thousand two hundred and eighty yards or thereabouts in length, commencing at a point in the field marked No. 1036 on the Ordnance Survey map of the burgh and parish of Falkirk, twenty yards or thereabouts in a north-westerly direction from the north-east corner of the house marked Burnhead on the said Ordnance Survey map of the burgh and parish of Falkirk, and terminating by a junction with the main intercepting and outfall sewer last above described at a point in the burgh boundary of Falkirk, two hundred yards measured along the centre of the road leading from Abbots-haugh to Dalderse Mill in a north-easterly direction, from the edge of the water in the Forth and Clyde Canal on the north side thereof, which main intercepting and outfall sewer will be situate wholly in the burgh and parish of Falkirk and county of Stirling.

Works  
affecting the  
Forth and  
Clyde Navi-  
gation.

8. Whereas it is intended that the main intercepting and outfall sewer No. 1, herein-before described, shall be carried under the Forth and Clyde Navigation now vested in and belonging to the Caledonian Railway Company (herein-after called "the Caledonian Company"), at a point near Lock No. 4 of said navigation in the parish of Falkirk, and that the main intercepting and outfall sewer No. 2, herein-before described, shall be carried under the said navigation at a point near Lock No. 6 of said navigation in the same parish; therefore the following provisions are hereby enacted for the protection of the Caledonian Company, that is to say:—

(1.) The Commissioners before entering upon or interfering with the said navigation, or with any houses, lands or works belonging to the Caledonian Company in connexion therewith, or



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opening up the ground within a distance of thirty feet on either side thereof at either of the said points of crossing, shall submit to the engineer of the Caledonian Company working plans, sections and specifications showing the manner in which their works are to be carried below the said navigation, and the houses, lands and works of that company connected therewith, and the Commissioners shall not commence operations within the said distance at either of the said points of crossing until the said plans, sections and specifications are approved of by such engineer; and the said operations shall be executed at the sight and to the reasonable satisfaction of such engineer, and all costs, charges and expenses incurred to such engineer in relation to the matters aforesaid shall be paid by the Commissioners: Provided always that the Commissioners shall not take or acquire any of the said lands belonging to the Caledonian Company, or any right therein, other than an easement, or right of making, maintaining and using the aforesaid works, under the same in manner by this section prescribed;

- (2.) The works of the Commissioners at the said points of crossing and within the distance aforesaid shall be completed within one month after the commencement thereof respectively, of which commencement the Commissioners shall give one month's previous notice in writing to the Caledonian Company;
- (3.) The said operations shall be carried on and completed, and the said works shall be maintained by the Commissioners in all time coming in a state of perfect repair, at the sole risk of the Commissioners, and so that no leakage of the said navigation shall be caused by or in consequence of the said operations or works, and the Commissioners shall be liable for all damages occasioned to the said navigation, and houses, lands and works connected therewith, or to the traders on the said navigation, or to the adjoining country, by or in consequence of their operations or failure to maintain the said works as aforesaid whensoever such damages may occur;
- (4.) If in consequence of the said operations or of any failure in the works of the Commissioners, boats, barges, or other vessels shall be prevented from using the said navigation as freely and uninterruptedly as at present, then the Commissioners shall pay to the Caledonian Company the actual damage thereby occasioned, or in lieu thereof and in the option of that company as and by way of ascertained and liquidated damages the sum of ten pounds for every hour during which the interruption or impediments shall continue not exceeding forty-eight consecutive hours, but if beyond forty-eight consecutive hours, then the sum of ten pounds for each of the said forty-eight hours,



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and the sum of twenty pounds for every hour during which such interruption or impediments shall continue after such first forty-eight hours, and in default of payment of any such actual or ascertained and liquidated damages, upon demand being made on the Commissioners, the Caledonian Company may sue for and recover the same, together with full expenses against the Commissioners, by action in the Court of Session or before the sheriff;

- (5.) If at any time there shall be any leakage of the said navigation, caused by or in consequence of the operations or works of the Commissioners, and if the Commissioners do not within twenty-four hours after notice in writing of such leakage to their clerk forthwith proceed to execute the operations necessary for the prevention of such leakage, the Caledonian Company are hereby empowered to perform all such operations at the risk of the Commissioners without prejudice to their right to recover the amount of all actual damage which may be caused as aforesaid (or in their option, but only when such leakage causes interruption or impediment to the use of the navigation as aforesaid ascertained and liquidated damages at the rates herein-before provided), so long as such leakage shall continue both before and after the giving of such notice and during the currency thereof; and the Caledonian Company shall be entitled to recover from the Commissioners the expense of all such operations, and in default of payment thereof or of such ascertained and liquidated damages, as the case may be, the same may be recovered as herein-before provided with reference to damages for interruptions or impediments to the use of the said navigation;
- (6.) Nothing in this Act contained shall alter, prejudice, affect or take away any of the rights, powers, privileges or authorities vested in the Caledonian Company, or shall authorise the Commissioners to alter the line or level of the said navigation, or to reduce the breadth or depth thereof, or in any manner to obstruct or impede the use of the same or any part thereof, and it shall not be lawful for the Commissioners without the previous consent in writing of the Caledonian Company, to leave less than a clear depth of thirteen feet from the top-water level of the said navigation to the top of the sewer, or other work of the Commissioners under the same at either of the said points of crossing: Provided, nevertheless, that nothing herein contained shall prevent the Commissioners from carrying into execution the powers of this Act, but always consistently with the provisions of this section and with reference to the safety of the said navigation and works connected therewith.



9. The Commissioners shall construct the main intercepting and outfall sewer (No. 1), and the other works herein-before described, and shall exercise the other powers of this Act, so far as crossing, or affecting, or interfering with the lines of railway and railway works of the Caledonian Company, and lands connected therewith, in accordance with the following provisions and not otherwise, that is to say :—

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Works  
affecting  
Caledonian  
Railway.

- (1.) The main sewer and other works which may be constructed by the Commissioners, so far as in any manner interfering with any lines of railway or railway works of the Caledonian Company, or lands connected therewith, shall be of such design and materials as shall be approved of by the engineer for the time being of that company, and shall be constructed and completed under the superintendence and to the reasonable satisfaction in all respects of such engineer, and according to working plans, sections and specifications to be submitted to and approved of by him previously to the commencement of the works affecting the property of the Caledonian Company, and all costs, charges and expenses incurred to such engineer in relation to the matters aforesaid shall be paid by the Commissioners ;
- (2.) The works of the Commissioners at each of the points where the same cross or affect any of the railways or railway works of the Caledonian Company, shall be completed within one month after the commencement thereof respectively, of which commencement the Commissioners shall give one month's previous notice in writing to the Caledonian Company ;
- (3.) The main sewer and other works of the Commissioners shall be made and for ever maintained and used, and all operations connected therewith shall be conducted in such a manner as not to injure or endanger the stability of any of the lines or works, nor to cause any interruption, impediment, or inconvenience to the traffic of the Caledonian Company, and if in the construction, maintenance, or use of the said sewer or other works any injury be caused to any of the Caledonian Company's lines or works, or any interruption, impediment, or inconvenience be occasioned to their traffic, the Commissioners shall pay all damages arising from or consequent on such injury, interruption, impediment, or inconvenience ;
- (4.) The Commissioners shall not, without the previous consent in writing of the Caledonian Company, enter upon or interfere with any railways, works, or lands belonging to that company further or otherwise than is necessary for constructing and



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maintaining the main sewer and works across and through the said railways, works, or lands, and the Commissioners shall not without such consent alter the lines or levels of any of the railways or works of the Caledonian Company, nor take or acquire any of the lands belonging to that company, or any right therein other than an easement or right of making, maintaining, and using the said main sewer and works under or across the same in manner by this section prescribed.

Caledonian  
Railway  
Company  
may connect  
their sewers  
with those of  
the Commis-  
sioners.

**10.** If the Caledonian Company resolve to connect any sewer or drain running through or alongside of the Forth and Clyde Navigation, or any of their lines of railway works or lands with either of the said main sewers authorised by this Act, the Commissioners shall permit such connexion to be formed free of any charge whatever: Provided always that all such works shall be executed to the reasonable satisfaction of the burgh surveyor.

Differences  
between  
Commis-  
sioners and  
Caledonian  
Railway  
Company to  
be settled by  
arbitration.

**11.** If any difference shall at any time arise between the Commissioners and the Caledonian Company or their respective engineers with respect to any of the matters referred to in any of the three next preceding sections, such difference shall be determined by an engineer to be appointed by the Board of Trade on the application of either the Commissioners, or the Caledonian Company.

For protec-  
tion of North  
British  
Railway  
Company.

**12.** The Commissioners shall construct the main sewers and works by this Act authorised, and shall exercise the other powers of this Act, so far as crossing, or affecting, or interfering with the lines of railway, works, and lands of the North British Railway Company (in this section called the railway company), in accordance with the following provisions and not otherwise, that is to say:—

- (1.) The main sewers and other works which may be constructed by the Commissioners, so far as in any manner interfering with any lines, works, or lands belonging to the railway company shall be of such design and materials as shall be approved of by the engineer for the time being of that company, and shall be constructed and completed under the superintendence and to the reasonable satisfaction in all respects of such engineer, and according to working plans, sections and specifications, to be submitted to and approved of by him previously to the commencement of the works affecting the property of the railway company, and all costs, charges and expenses incurred to such engineer in relation to the matters aforesaid shall be paid by the Commissioners;



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(2.) The main sewers and other works shall be made and for ever maintained and used, and all operations connected therewith shall be conducted in such a manner as not to injure or endanger the stability of any of the lines or works, nor to cause any interruption, impediment, or inconvenience to the traffic of the railway company, and if in the construction, maintenance, or use of the sewers or works connected therewith any injury be caused to any of the railway company's lines or works, or any interruption, impediment, or inconvenience be occasioned to their traffic, the Commissioners shall pay all damages arising from or consequent on such injury, interruption, impediment, or inconvenience;

(3.) If the railway company resolve to connect any sewer or drain running through their line of railway works or lands with the said main sewers the Commissioners shall permit such connexion to be formed free of any charge whatever: Provided always that all works so done shall be to the reasonable satisfaction of the burgh surveyor;

(4.) The Commissioners shall not, without the previous consent in writing of the railway company, enter upon or interfere with any railways, works, or lands belonging to that company further or otherwise than is necessary for constructing and maintaining the main sewers and works connected therewith across and through the said railways, works, or lands, and the Commissioners shall not without such consent alter the lines or levels of any of the railways or works of the railway company, nor take or acquire any of the lands belonging to that company, or any right therein other than an easement or right of making, maintaining, and using the said main sewer and works connected therewith under or across the same in manner by this section prescribed;

(5.) If any difference shall at any time arise between the Commissioners and the railway company or their respective engineers with respect to any of the matters referred to in this section, such difference shall be determined by an engineer to be appointed by the Board of Trade on the application of either the Commissioners, or the railway company.

**13.** If there be any omission, misstatement or erroneous description of any lands, or of the owners, lessees or occupiers of any lands shown on the deposited plans or specified in the deposited book of reference, the Commissioners, after giving ten days notice to the owners, lessees and occupiers of the lands in question, may apply to the sheriff for the correction thereof; and if it appear to the sheriff that the omission, misstatement or erroneous description arose from

Errors and omissions in plans and book of reference may be corrected by sheriff, who shall certify the same.



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Certificate  
to be  
deposited.

mistake, he shall certify the same accordingly, and he shall in his certificate state the particulars of the omission and in what respect any such matter is misstated or wrongly described, and such certificate shall be deposited with the principal sheriff clerk of the county of Stirling, and kept by such principal sheriff clerk with the other documents to which the same relates, and thereupon the deposited plans or book of reference (as the case requires) shall be deemed to be corrected according to the certificate, and the Commissioners may enter on, take, hold and use those lands and execute the works in accordance with such certificate.

Power to  
deviate  
laterally and  
vertically.

**14.** The Commissioners may, in constructing the works by this Act authorised, deviate laterally from the lines thereof as shown on the deposited plans to the extent of the limits of lateral deviation shown thereon, but not further; and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding three feet upwards and five feet downwards: Provided also that no deviation from the lines and levels shown on the deposited plans shall be made below high-water mark without the consent, in writing, of the Board of Trade.

Power to  
alter roads,  
&c., tem-  
porarily.

**15.** For the purposes and during the execution of the several works which the Commissioners are by this Act authorised to make, and in maintaining the same, and subject to the provisions of this Act, the Commissioners may from time to time break up, or cross over or under, alter or stop up, temporarily, any streets, highways, roads, lanes, paths, bridges, railways, canals, passages, sewers, drains, watercourses, gas pipes and water pipes, and electric or telephonic apparatus in any of the lands shown on the deposited plans, and specified in the deposited book of reference, and which they may from time to time find it expedient for any of those purposes so to interfere with, providing a proper temporary substitute before interrupting the traffic on any such street, highway or railway, or the flow of water, gas, sewage or electricity in any such sewer, drain, watercourse, canal or pipe, and making full compensation to all persons injuriously affected thereby: Provided that nothing in this section shall extend to authorise any interference with electric apparatus or other property of Her Majesty's Postmaster General: Provided also that nothing in this section shall extend to or authorise any interference with any works of any undertakers within the meaning of the Electric Lighting Act, 1882, to which the provisions of section 15 of the said Act apply.

Power to  
agree for  
easements,  
&c.

**16.** The Commissioners may, subject to the provisions of this Act, take by agreement, and any person by the Lands Clauses Consolidation (Scotland) Act, 1845, or the Lands Clauses Consolidation



Acts Amendment Act, 1860, or otherwise enabled to sell lands, may grant to them any estate, easement, servitude, interest, right or privilege (not being an easement or servitude of water) in, over, affecting or belonging to lands at a price or yearly rent, feu duty, or otherwise; but in the case of a person not enabled otherwise than by the said Acts to sell lands, then, subject and according to the provisions relative to the taking of lands by agreement contained in the said Acts; and for the purposes of this section any such estate, easement, servitude, interest, right or privilege shall be deemed to be lands within the meaning of those Acts.

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**17.** In addition to the lands authorised to be taken as aforesaid, the Commissioners may purchase lands not exceeding five acres for the purpose of making depôts, and other buildings and conveniences in connexion with the works by this Act authorised.

Lands for extra-ordinary purposes.

**18.** 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 four years from the passing of this Act.

Limiting time for exercise of compulsory powers of purchase.

**19.** If the works authorised by this Act are not completed within six years from the passing of this Act, then, on the expiration of that period, the powers by this Act granted to the Commissioners for executing any works not so completed, or in relation thereto, shall cease to be exercised, except as to so much thereof as is then completed.

Period for completion of works.

**20.** The Commissioners shall not under the powers of this Act, without the consent of the Secretary for Scotland, 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. 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 domestic servants, whose income does not exceed an average of thirty shillings a week, and the families of any such persons who may be residing with them.

Restriction on displacing persons of labouring class.

**21.** The Commissioners shall make and maintain all such sewers, drains, or pipes and appurtenances as may be necessary for connecting all existing sewers, outfalls of sewage, or drains within the burgh which now discharge into the Meadow or East Burn, otherwise called the Lady's Mill Burn, the Mungal Burn or West Burn, the Pest Burn and Bainsford Burn respectively, with the main

Existing sewers and drains to be connected with works.



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sewers before described, or for discharging or conducting the water and contents of such existing sewers, outfalls of sewage and drains into the proposed main sewers, and may make and maintain all necessary sluices, valves, pipes, manholes, offlets, overflows, or appurtenances required for carrying out the objects of this Act, and vary, extend, or enlarge all existing sewers, outfalls of sewage, or drains for the purposes before mentioned.

Sewers and drains formed after main sewers to be connected therewith.

**22.** From and after the construction of the said main sewers and other works, it shall not be lawful for any person to make or construct any sewer, outfall of sewage, or drain within the burgh so as to lead or discharge into the said Meadow or East Burn, otherwise called the Lady's Mill Burn, the Mungal Burn or West Burn, the Pest Burn and Bainsford Burn, or any of them, nor to convey or discharge drainage or sewage from any lands or heritages within the burgh into the same, or any of them, but every such sewer, outfall of sewage, or drain shall be connected with the said main sewers and other works; and all such drainage or sewage shall be conveyed or discharged into the said main sewers and other works by means of properly constructed sewers, outfalls of sewage, or drains.

Application of section 81 of Public Health (Scotland) Act.

**23.** The provisions of section 81 of the Public Health (Scotland) Act, 1867, shall apply to the main and other sewers which may be constructed under the authority of this Act.

Future junctions within burgh to be executed by Commissioners at cost of owners.

**24.** With respect to any sewer, outfall of sewage, or drain to be constructed within the burgh after the said main sewers or other works shall have been executed, and to be connected therewith, the point of junction of such sewer, outfall of sewage, or drain with the said main sewers or other works, and the mode of effecting such junction, shall be determined by the Commissioners, and the work of or connected with such junction shall be done by them at the expense of the person constructing such sewer, outfall of sewage, or drain.

Owners of property beyond burgh, drained by future junctions, to pay a sum of money.

**25.** The owners of all lands and heritages beyond the burgh, any sewer, outfall, or drain from which shall, after construction of the said main sewers and works, be connected with the same, shall be liable in payment to the Commissioners of a reasonable sum of money for the use of the said main sewers and works, which the Commissioners are hereby authorised and required to fix and exact in respect of all such lands and heritages, and such connexions shall only be made by the Commissioners, or other person duly authorised by the Commissioners, and at the cost of the person requiring such connexions.

Penalty for unauthorised junctions.

**26.** Every person not being employed or authorised by the Commissioners to do so, who shall make such junction, or who shall



make or cause to be made any sewer, outfall of sewage, or drain from any lands or heritages into, or connect such sewer, outfall, or drain with the said main sewers, or other works connected therewith, shall be liable to a penalty not exceeding five pounds, together with the expenses of prosecution and conviction, to be ascertained on conviction, and the Commissioners may cause such junction with the main sewers or other works to be re-made, to such extent and in such manner as they may consider necessary or expedient, and the expense incurred thereby shall be paid by the owner of such lands and heritages. A.D. 1886.

**27.** In the event of its being at any time hereafter found that the sewage conveyed to the River Carron by the main sewers and works by this Act authorised, can be otherwise used and applied by the Commissioners, the right to the said sewage is hereby reserved to the Commissioners. Rights to sewage reserved.

**28.** The Commissioners shall and they are hereby authorised and required, once in every year, to estimate and fix the amount of money necessary to be levied for the purpose of defraying the costs, charges, and expenses of the drainage department for and during the year then current, and the interest of money borrowed by the Commissioners for the purposes of this Act and the payment to the sinking fund, together with the expense of maintaining and managing or extending the drainage works, and the whole or such portion of the salaries, wages, and other expenses of the treasurers, engineers, surveyors, clerks, collectors, or other officers or servants employed by the Commissioners, as they shall think equitable and fair to charge against the drainage department, and all other charges and expenses. Commis-sioners to estimate annual sums required.

**29.** The estimate to be made up in manner before provided shall be submitted to and considered by the Commissioners at a meeting to be held as soon as conveniently may be after they shall have obtained a copy of the valuation roll for the year then current, and at such meeting or any adjournment thereof, the Commissioners may, and they are hereby authorised and required, in order to raise such a sum of money as, along with any money they may receive for or in respect of or properly applicable to the drainage department, shall be sufficient for the purposes aforesaid of the drainage department, impose, assess and levy a rate or assessment, which shall not exceed in any year sixpence in the pound, to be called "the Drainage Assessment," upon and from the owners and occupiers of all lands and heritages within the burgh, according to the yearly value thereof, as entered in the valuation roll for the year then current, payable equally by such owners and occupiers. Estimate to be considered, and drainage assessment imposed.



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Lands, &c.  
how to be  
valued.

**30.** The annual value of the following lands or heritages shall, for the purposes of the drainage assessment, be held to be the nearest aggregate sum of pounds sterling to one fourth of the annual value thereof entered in the valuation roll, viz. :—

(1.) All lands and premises used exclusively as a canal or basin of a canal, or towing-path of the same, or as a railway, constructed under the powers of any Act of Parliament, for public conveyance, excepting the stations, depôts and buildings which shall be assessable to the same extent as other lands and heritages within the burgh;

(2.) All the underground gas pipes or underground works of any gas undertaking;

(3.) All woodland, arable, meadow or pasture ground or other ground used for agricultural purposes.

Drainage  
assessment  
to be assessed  
from Whit-  
sunday to  
Whit-  
sunday.

**31.** The drainage assessment shall be assessed for the period from the term of Whitsunday in each year to the term of Whitsunday in the year following, and shall be payable at the offices of the Commissioners on such day in each year as the Commissioners shall appoint.

Mode of  
recovery of  
assessment.

**32.** If any person shall refuse or neglect to pay any drainage assessment imposed upon him, or for which he is liable under the provisions of this Act, for the space of three months next after such assessment shall be due, and demanded by the collector appointed by the Commissioners, such demand being made by a written or printed notice left at the place of abode or place of business of such person, if such place of abode or place of business be within the burgh, or if any such person shall not have any such known place of abode or place of business, by a written or printed notice left at the place of abode or place of business last known to have been occupied by such person within the burgh, or sent through the post office addressed to such person at his place of abode or place of business, it shall be lawful for the collector either to recover such assessment according to the ordinary procedure before any competent court, or to apply to the sheriff, or to any two justices of the peace for the county of Stirling, for a warrant to any of their respective officers to enter the lands or premises occupied by such person, and to seize, take possession of, and carry away his goods and effects, or so much thereof as shall appear to be necessary, as after mentioned; and it shall be competent to the said sheriff or justices, and they are respectively hereby authorised and required to grant such warrant, upon a certificate signed by the collector of such demand having been made, and of such person being in arrear to the amount



stated in such certificate, together with one penny upon each pound of the rental of the lands or heritages in respect of which such person is assessed in name of penalty; and if such assessment and penalty shall not be paid, together with the costs or charges incurred in obtaining such warrant (as the same shall be fixed by the judge, and stated in the warrant), upon presentment of the said warrant to such person, or at his place of abode or place of business, then the collector is hereby authorised to cause an officer or officers to seize, take possession of, and carry away so much of the goods and effects of such person as shall appear sufficient for satisfying by the sale thereof the assessment due by him, with the penalty and costs, fixed as aforesaid, and the further charges incurred or to be incurred in carrying the warrant into execution; and if such assessment shall not be paid within four days next after such seizure is made, together with the penalty, costs and charges; then the collector is hereby authorised to sell or cause to be sold the said goods and effects so seized, by public roup, at such public place as may be fixed by the Commissioners as a proper place for such sales; and the collector shall return the surplus of the price, if any, after payment of the said assessment and penalty and costs, to the owner of the said goods and effects; and the collector shall be bound to preserve the warrants of such seizures and sales, and enter in a book to be kept for the purpose the names of the parties proceeded against, the assessment due, the expense of the proceedings, and the net proceeds of such sales, which book shall be open without any fee to the inspection of all parties interested, for three months after the date of each sale, and at any time within that period it shall be competent to any party considering himself aggrieved to complain to the sheriff of anything done unjustly or oppressively in regard to such seizure or sale, such complaints being made in the form of a petition subscribed by the complainer, and the decision of the sheriff on such petition shall be final.

**33.** No misnomer, mistake, or informality committed in any proceedings for recovery of any assessment under this Act shall prejudice the recovery of such assessment and expenses, nor shall such proceedings fall or abate by the death, resignation, or removal of the collector instituting the same, or by any change in the persons holding office as Commissioners, but it shall be lawful for the collector for the time to prosecute and follow forth procedure commenced and carried on in the name of any previous collector, in all respects as if such procedure had been taken by himself: Provided that it shall not be competent for any person to sue nor

Recovery of assessment not to be prejudiced by informalities.



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for any court of law to entertain any action, or proceeding against the Commissioners or the collector or officers or other persons employed in executing any warrant in reference to any assessment under this Act, by reason of any mistake, informality, or misnomer, if the goods or other effects seized or sold under such warrant were bonâ fide the property or in the lawful possession of the person actually liable in payment of such assessment under the provisions of this Act.

Drainage  
assessment  
to be  
regulated  
so as not  
to exceed  
expenses.

**34.** If in any year the revenue of the drainage department shall be more than sufficient for all the purposes to which it is applicable, the Commissioners shall, and they are hereby required to, carry the surplus to the credit of the drainage department, in reduction of the estimate of money required for the drainage department in the following year; and when a deficiency occurs in one year it shall be provided for in the estimate and by assessment in the next year; and the Commissioners shall, as nearly as possible, so regulate the drainage assessment that it may, one year with another, produce the amount of money required: Provided always that the drainage assessment shall always be a rate consisting of an integral number of pence in the pound.

Application  
of assess-  
ment and  
charges.

**35.** The assessment and charges, levied and received by the Commissioners under the authority of this Act, and any other income of the drainage department, 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 drainage undertaking, including salaries and other payments to officers and servants, and the annual costs, charges and expenses incident to the drainage department, and paying any feu duties and ground annuals, and other annual payments exigible in respect of any lands or property forming part of the drainage undertaking;

Secondly, in payment of the interest on the money borrowed by the Commissioners;

Thirdly, in setting apart the sinking fund by this Act required.

Application  
of penalties.

**36.** All penalties and forfeitures exigible under the provisions of 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.

Prosecution  
of offences.

**37.** All offenders against any of the provisions of this Act, or of any of the Acts incorporated with the same, may be prosecuted, and all penalties and forfeitures in respect of offences against any of such provisions 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 Stirling. A.D. 1886.

**38.** The Commissioners may from time to time borrow, in addition to any money which they have borrowed or are otherwise authorised to borrow, for sewerage or drainage purposes, any sums for executing the main intercepting and outfall sewers and works connected therewith authorised by this Act, and for the other purposes of this Act, not exceeding in all ten thousand pounds, and may make and grant mortgages of the drainage assessment authorised by this Act in security of the money so borrowed and interest thereon. Power to borrow for drainage works.

**39.** If after having borrowed the money by this Act authorised, or any part thereof, the Commissioners shall pay off the same or any part thereof otherwise than by means of the sinking fund herein-after mentioned, it shall be lawful for the Commissioners again to borrow the amount so paid off upon the same securities as those upon which the money so paid off was secured, and so from time to time. Commissioners may re-borrow.

**40.** 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 aggregate amount which the Commissioners are at the time authorised to borrow, or any part thereof, and may make and grant mortgages and assignments of their drainage undertaking, and of the drainage assessment authorised and leviable under the authority of 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 aggregate amount by this Act authorised to be borrowed. Commissioners may borrow on cash account.

**41.** Every mortgage to be granted by the Commissioners under this Act may be in the form contained in the First Schedule to this Act, or to the like effect, and shall be by deed duly stamped, and the consideration shall be truly stated therein. Form of mortgage.

**42.** Every mortgage to be granted by the Commissioners may be partly in writing and partly printed, and shall, besides being under the common seal of the Commissioners, be signed by the treasurer to the Commissioners and the town clerk; and all drafts or orders on the cash account before mentioned shall be signed by the said Manner in which mortgages and orders on bank account to be signed and executed.



A.D. 1886. treasurer and the town clerk: Provided always, that none of the said persons shall, by his subscription of any such mortgage, draft, or order, be or be held to have rendered himself individually or personally liable for the payment of any money so borrowed, drawn, or received, or any interest thereon, or of any sums whatsoever in respect thereof.

Transfers of mortgages.

**43.** Any person entitled to any such bond or mortgage may transfer his right and interest therein to any other person; and every such transfer shall be by deed, or by indorsation on the bond or mortgage, duly stamped, wherein the consideration shall be truly stated, and may be in the form of the Second Schedule to this Act, or to the like effect.

Transmission of mortgages in case of bankruptcy.

**44.** If any such bond or mortgage be transmitted by reason of the bankruptcy of the person entitled thereto, there shall be produced to the Commissioners official evidence of such bankruptcy, and of the vesting of the bankrupt estate in the trustee, official assignee, or other person to whom such estate shall be transferred.

Mortgages of assessment to be personal estate.

**45.** All bonds or mortgages, and all moneys advanced and lent on the security of the assessment under this Act, shall be moveable or personal estate, and transmissible as such, and shall not be of the nature of heritable or real estate.

Discharge of mortgages.

**46.** Any person entitled to any mortgage granted by the Commissioners under the authority of this Act may discharge the same, and his right and interest therein, in favour of the Commissioners; and every such discharge may be written, or partly written and partly printed, on the mortgage, and may be according to the form contained in the Third Schedule to this Act or to the like effect; and such discharge, when signed by the person entitled to such mortgage and duly stamped, shall be valid and effectual to all intents and purposes.

Drainage sinking fund.

**47.** The Commissioners may, and they are hereby required, in each year after the expiration of one year from the time at which they shall borrow any money for the purposes of this Act, to set apart as a sinking fund, from and out of the drainage assessment, such a sum as shall, by accumulation with compound interest thereon at the rate of three and a half per centum per annum, be sufficient to pay off the whole of the moneys so borrowed within fifty years from the time of borrowing such moneys.

Application of moneys borrowed.

**48.** Subject to the provisions of this Act, the money borrowed by the Commissioners on mortgage or cash account under the authority of this Act, and the moneys borrowed on the security of the drainage assessment by this Act authorised, shall be applied in



carrying into effect the drainage works, and paying for any property or rights in property which may be acquired in connexion therewith, and in the payment of mortgages, and of any cash credit or cash account granted, obtained, or opened in respect of such works and property, and in carrying out the other provisions of this Act, being in every case purposes to which capital is properly applicable. A.D. 1886.

**49.** No person lending money to the Commissioners shall be bound to inquire as to the observance by the Commissioners of any provision of this Act, or be bound to see to the application, or be answerable for any loss or non-application of such money or any part thereof. Protection  
of lender  
from  
inquiry.

**50.** In the event of any principal money borrowed by the Commissioners on mortgage as aforesaid, or any interest thereon, not being paid within three months 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 one 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 authorised 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. Appoint-  
ment of  
judicial  
factor.

**51.** The judicial factor so appointed, on finding security in common form, shall exercise all the powers conferred by this Act upon the Commissioners, for and in relation to assessing, levying and recovering the assessment by this Act granted; 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 this Act established; and Powers and  
duties of  
judicial  
factor.



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such judicial factor 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 consignment 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.

Existing mortgages to have priority.

**52.** All mortgages granted by the Commissioners on their drainage undertaking, and on the drainage assessment 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.

Works on foreshore not to be constructed without consent of Board of Trade.

**53.** The Commissioners shall not construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and re-flows, any work without the previous consent of the Board of Trade, to be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade, and then only according to such plan and under such restrictions and regulations as the Board of Trade may approve of, such approval being signified as last aforesaid; and where any such work may have been constructed, the Commissioners shall not at any time alter or extend the same without obtaining, previously to making any such alteration or extension, the like consents or approvals. If any such work be commenced or completed contrary to the provisions of this Act, the Board of Trade may abate and remove the same, and restore the site thereof to its former condition, at the cost and charge of the Commissioners, and the amount of such costs and charges shall be a debt due from the Commissioners to the Crown, and shall be recoverable accordingly, with costs.

Abatement of work abandoned or decayed.

**54.** If a work constructed by the Commissioners on, in, over, through or across tidal lands or a tidal water is abandoned or suffered to fall into decay, the Board of Trade may abate and remove the work, or any part of it, and restore the site thereof to its former condition, at the expense of the Commissioners, and the amount of such expense shall be a debt due from the Commissioners to the Crown, and be recoverable accordingly, with costs, or the



same may be recovered, with costs, as a penalty is recoverable from the Commissioners. A.D. 1886.

55. If at any time the Board of Trade deems it expedient for the purposes of this Act to order a survey and examination of a work constructed by the Commissioners, on, in, over, through, or across tidal lands, or tidal water, or of the intended site of any such work, the Commissioners shall defray the expense of the survey and examination, and the amount thereof shall be a debt due from the Commissioners to the Crown, and be recoverable accordingly, with costs, or the same may be recovered, with costs, as a penalty is recoverable from the Commissioners. Survey of works by Board of Trade.

56. Nothing contained in this Act shall authorise the Commissioners to take, use, or in any manner interfere with, any portion of the shore or bed of the sea, or of any river, channel, creek, bay or estuary, or any right in respect thereof, belonging to the Queen's most Excellent Majesty, in right of Her Crown, and under the management of the Board of Trade, without the previous consent in writing of the Board of Trade, on behalf of Her Majesty (which consent the Board of Trade may give); neither shall anything in this Act contained extend to take away, prejudice, diminish or alter any of the estates, rights, privileges, powers or authorities vested in, or enjoyed, or exerciseable by the Queen's Majesty, Her heirs or successors. Saving rights of the Crown in the foreshore.

57. The costs, charges and expenses incurred in preparing for and obtaining this Act, and incidental thereto, shall be paid by the Commissioners out of the burgh assessments or moneys borrowed under this Act. Costs of Act.



A.D. 1886.

The SCHEDULES referred to in the foregoing Act.

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**THE FIRST SCHEDULE.**

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**FORM OF MORTGAGE.****FALKIRK DRAINAGE.**

Mortgage No.                      £

By virtue of the Falkirk Drainage Act, 1886, we, the magistrates and council of the burgh of Falkirk, as Commissioners under the said Act, in consideration of the principal sum of [specify amount], paid by [name and designation of mortgagee] to the treasurer to the said Commissioners, for the purposes of the said Act, do hereby grant and assign to the said [name of mortgagee], and his executors, administrators and assignees [or as the case may be], such proportion of the drainage assessment, to be levied by the said Commissioners under the authority of the said Act, as the said sum of [specify amount] doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the drainage assessment, to hold to the said mortgagee and his foresaids until the said principal sum and the whole interest due thereon shall be fully paid and satisfied; and it is hereby stipulated that the said principal sum shall be repayable on the [date], or shall thereafter, in virtue hereof, remain as a loan to the said Commissioners until the expiration of such further term of years, and at such rate of interest, as shall be specified in a minute or minutes to be indorsed hereon, and signed by the said mortgagee or his foresaids, and by the said treasurer and town clerk, which minute or minutes are hereby declared and shall be held to be valid and binding, though they may be neither holograph of the said parties, nor tested; and the said Commissioners, shall pay interest on the said principal sum from the                      day of                      to the said date of repayment first above mentioned (being at the rate of [specify rate] per centum per annum), declaring that the said mortgagee and his foresaids shall not be entitled to make, and that the said Commissioners shall not be bound to recognise or register, any partial assignation of these presents, or of the sums of money, principal or interest, herein contained, and that the said Commissioners shall not be liable for any expenses that may be incurred by the said mortgagee or his foresaids for or in relation to the preparation, revision, adjustment, or execution of this mortgage, or of any discharge, renunciation, assignation, or minute of postponement or renewal thereof.

In witness whereof [testing clause, according to law of Scotland].

[Signed by the Treasurer and the Town Clerk.]

L.S.



## THE SECOND SCHEDULE.

A.D. 1886.

## FORM OF TRANSFER OF MORTGAGE.

I [name and designation of mortgagee], in consideration of the sum of [specify amount], paid to me by [name and designation of transferee], do hereby transfer to the said [name of transferee], and his executors administrators, and assignees [or as the case may be], a certain mortgage, number [number of mortgage], dated the [date of mortgage], made in my favour by the magistrates and council of the burgh of Falkirk as Commissioners under and by virtue of the Falkirk Drainage Act, 1886, in connexion with the drainage undertaking authorised by that Act, for securing the sum of [principal sum in mortgage] [or if the transfer be by indorsement, the within mortgage], together with the interest thereon, from and after the [date from which transferee is to be entitled to the interest], and all my right and interest in and to the principal money thereby secured, and interest thereon as aforesaid, and in and to the rates and charges thereby assigned. In witness whereof [testing clause, according to the law of Scotland].

## THE THIRD SCHEDULE.

## FORM OF DISCHARGE.

Received from the treasurer to the Commissioners, acting on their behalf, the sum of \_\_\_\_\_, being the principal sum contained in the within mortgage (all interest due thereon having been previously paid), and the said mortgage is now delivered up as paid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_



