



## CHAPTER cxlii.

An Act to enable the Elgin and Lossiemouth Harbour Company to deepen and improve Lossiemouth Harbour to raise further moneys and for other purposes.

A.D. 1890.

[4th August 1890.]

**W**HEREAS an Act (herein-after called "the recited Act") was passed in the fourth and fifth years of the reign of His late Majesty King William the Fourth intituled "An Act for constructing and maintaining a new Harbour at Stotfield Point near to and in conjunction with the old Harbour of Lossiemouth in the county of Elgin and Forres" by which Act the Company thereby incorporated were authorised to purchase from the magistrates and town council of the city and royal burgh of Elgin (herein-after called "the corporation") the then existing port and harbour of Lossiemouth with the shore and harbour dues thereof and to form a new and improved harbour at Stotfield Point aforesaid :

And whereas the Company thereby incorporated in pursuance of the powers thereby granted purchased the said then existing harbour of Lossiemouth and constructed the said intended new harbour at Stotfield Point and expended for those purposes the sum of eighteen thousand eight hundred pounds part of a sum of twenty thousand pounds which they were by the recited Act authorised to raise by shares and the sum of seven thousand five hundred pounds part of a sum of eight thousand pounds which they were by the said Act authorised to borrow on the credit of the rates and duties leviable by virtue thereof :

And whereas by the Elgin and Lossiemouth Harbour Improvement Act 1856 (herein-after called "the Act of 1856") the recited Act was repealed subject to the provision that the Company by that Act incorporated (herein-after called "the Company") should notwithstanding such repeal for the purposes of the Act of 1856 and



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A.D. 1890. as and from the commencement of the recited Act remain incorporated as theretofore but by the name "the Elgin and Lossiemouth Harbour Company" in place of the name "the Stotfield and Lossiemouth Harbour Company":

And whereas by the Act of 1856 the Company were in addition to the capital of twenty thousand pounds by the recited Act authorised to be raised empowered to raise by shares of the nominal amount of twenty pounds each any further sum of money not exceeding the sum of eighteen thousand pounds such shares to be considered as part of the general capital of the Company and to be subject to the same provisions in all respects as if they had been part of its original capital and the Company were also by the same Act authorised from time to time to borrow on mortgage of the rates and duties to be levied under the Act of 1856 any sums of money not exceeding four thousand six hundred and sixty-six pounds in the whole:

And whereas the Company were also by the Act of 1856 authorised to extend enlarge cleanse and deepen the said harbour within the limits therein prescribed and according to the plan and section therein mentioned and also to levy the rates and duties in respect of the use of the said harbour and the works and conveniences connected therewith in sections forty-nine fifty one and fifty-two of the Act of 1856 and in the several schedules thereto set forth:

And whereas the above enumerated sections of the Act of 1856 and the said schedules thereto were repealed by the Elgin and Lossiemouth Harbour Order 1868 (herein-after called "the Order of 1868") and the Company were by the said Order authorised for the use of their harbour and works to demand levy and recover in respect of vessels goods fish animals and things described in the schedules to such Order any sums not exceeding the several rates in such schedules specified:

And whereas the Company have under the powers of the recited Act and the Act of 1856 raised by ordinary shares the sum of twenty-three thousand four hundred and fifty-eight pounds and by preference shares the sum of ten thousand seven hundred and twenty pounds and they have also borrowed on mortgage the sum of twelve thousand and sixty-three pounds thirteen shillings and they have applied the moneys so raised and borrowed together with the sum of seven thousand two hundred and nineteen pounds eighteen shillings and eightpence derived from the revenues from time to time accruing in respect of their harbour making in all the sum of fifty-three thousand four hundred and sixty-one pounds



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eleven shillings and eightpence in carrying into effect the purposes of the Act of 1856 and the Order of 1868 to which capital was properly applicable: A.D. 1890.

And whereas by reason of the harbour being shallower at low water than the other harbours in the neighbourhood thereof and of its being also insufficient to admit fishing boats of the size now required for the herring and other fisheries upon which the revenues of the harbour are mainly dependent the receipts arising from the rates and duties which the Company are authorised to demand and levy have greatly decreased and will continue to decrease unless the harbour be deepened and improved so as to adapt it to the altered requirements of the fishing and coasting trade:

And whereas the revenue of the harbour is inadequate to meet the interest on the mortgage debt of the Company and to pay a dividend upon the preference shares:

And whereas the Company can only raise the moneys necessary for the deepening and improvement of the harbour by a first charge on the harbour undertaking with a preference and priority over the existing mortgages of the Company and it is expedient that the powers for raising such moneys by such means be granted to the Company and that they be authorised to apply the same in deepening and improving their harbour as herein-after provided:

And whereas the improvement of the harbour in such manner as to retain and increase the resort thereto of boats ships and vessels is of great importance to the Great North of Scotland Railway Company as the owners of the Morayshire Railway and also to the corporation as owners of the feu duties of lands and houses in the village of Lossiemouth and to Captain James Brander Dunbar Brander and his successors in the entailed estates of Pitgaveny Kinneddar and others in the county of Elgin superiors and owners of the feu duties of the lands and property of the village of Branderburgh inhabited by the fishermen and others using and resorting to the harbour and it is expedient they be severally and respectively authorised to guarantee the several annual sums of money herein-after provided by way of collateral security for the moneys to be raised by the Company on mortgage as aforesaid:

And whereas it is expedient that the rates and duties authorised by the Order of 1868 be amended as herein-after provided:

And whereas the Bill for this Act has been approved in writing by upwards of three-fourths in value of the holders of mortgages of the Company and of the holders of four pounds ten shillings per cent. preference shares of the Company and of the holders of five pounds per cent. preference shares of the Company respectively:

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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 in manner following (that is to say) :—

Short title.

1. This Act may be cited as the Elgin and Lossiemouth Harbour (Loans) Act 1890.

Partial incorporation of Harbours Docks &c. Act.

2. The Harbours Docks and Piers Clauses Act 1847 except where expressly varied by or inconsistent with this Act is incorporated with and forms part of this Act with the exception of the provisions with respect to police of the harbour and of sections 25 and 26 and unless the Board of Trade shall otherwise require with the exception of the provisions with respect to lifeboats with respect to keeping a tide and weather gauge and with respect to buoys light-houses and beacons.

Partial incorporation of Companies Clauses Act.

3. Subject to the provisions of this Act the provisions of the Companies Clauses Consolidation (Scotland) Act 1845 with respect to the following matters (that is to say) :—

The borrowing of money by the Company on mortgage or bond ;  
and

The provision to be made for affording access to the special Act  
by all persons interested ;

are so far as applicable and except where expressly varied by or inconsistent with this Act incorporated with and form part of this Act.

Interpretation.

4. In this Act the several words and expressions to which meanings are assigned by the Acts partially incorporated herewith have the same respective meanings unless there be something in the subject or context repugnant to such construction the expression "the Company" means the Elgin and Lossiemouth Harbour Company the expression "the harbour" means the Elgin and Lossiemouth Harbour the expression "the corporation" means the magistrates and town council of the city and royal burgh of Elgin the expression "the Act of 1856" means the Elgin and Lossiemouth Harbour Improvement Act 1856 the expression "the Order of 1868" means the Elgin and Lossiemouth Harbour Order 1868 the expression "the Special Act" means the Act of 1856 the Order of 1868 and this Act.

Power to dredge

5. The Company may with the consent of the Board of Trade in writing within the limits or area defined and prescribed by the



Act of 1856 cleanse dredge deepen and improve the harbour so that there shall be within so much of the same as the Company may from time to time deem to be expedient a depth of not less than six feet of water at low water of ordinary spring tides or such greater depth as may from time to time be required for providing sufficient accommodation for the fishing and coasting and other boats and vessels using the same and the Company may from time to time carry into effect execute and maintain all works which may be necessary for obtaining and maintaining such depth or depths as aforesaid.

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—  
deepen and  
improve  
harbour.

6. Part II. of the schedule to the Order of 1868 is hereby repealed and the Company may subject to the provisions of that Order as varied by this Act demand levy and recover in respect of the several vessels matters and things described in the schedule to this Act any sums not exceeding the several rates and duties in such schedule specified anything in the said Order or the schedule thereto to the contrary notwithstanding.

Varying  
certain rates  
and duties.

7. Clause eleven of the Order of 1868 shall be read and construed as if the rates and duties by this Act authorised were rates and duties authorised by that Order and included in the schedule thereto.

Clause 11 of  
Order of  
1868 to  
apply to new  
rates and  
duties.

8. The Company may for the purposes of this Act from time to time borrow at interest on the security of the harbour undertaking in addition to the sums already borrowed by them any sum or sums of money not exceeding twenty thousand pounds in the whole and in the event of any part of the money so borrowed being repaid otherwise than as by this Act prescribed the Company may reborrow the same but all moneys so reborrowed shall be deemed to form the same loan as the moneys originally borrowed and for securing the repayment of the moneys so borrowed or any part or parts thereof and of the interest from time to time accruing due thereon the Company may grant to the lender or lenders of such moneys a mortgage or mortgages of the rates rents duties and charges and all other the revenues for the time being levied by or accruing to the Company and either with or without an assignation or assignment of all or any of the several annual sums by this Act authorised to be granted as a collateral security for the moneys so to be borrowed and the Company may attach the guarantee herein-after provided to any part or parts of such sum of twenty thousand pounds.

Power to  
Company to  
borrow.

9. All such mortgages and assignations in security shall be by deed duly stamped and signed by two or more of the directors of

How mort-  
gages and

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A.D. 1890, the Company duly authorised at any meeting of the directors and  
assignments in security to be executed. countersigned by the secretary of the Company and sealed with the  
common seal of the Company as evidence that they have been so  
authorised.

For protection of lenders. **10.** Lenders of money to the Company under this Act shall not  
be bound to inquire as to the observance by the Company of any  
of the provisions of this Act or to see to the application or be  
answerable for any loss or non-application of the money lent or any  
part thereof.

Mortgages under this Act to form a first charge upon the harbour rates &c. **11.** The mortgage or mortgages to be granted by the Company  
under the powers of this Act shall form a first charge upon the  
rates rents duties and charges and all other the revenues for the  
time being levied by or accruing to the Company and shall rank in  
preference and priority to the rights claims and interests of the  
respective holders of the mortgages heretofore granted by the  
Company and now subsisting but nothing herein contained shall  
affect any existing priority of charge in respect of the said now  
subsisting mortgages inter se.

Application of money borrowed. **12.** All moneys borrowed by the Company under the powers of  
this Act shall be applied only to the purposes of the works hereby  
authorised and to which capital is properly applicable.

Sinking fund. **13.** In addition to the sum which the Company are by section  
fifty-six of the Act of 1856 directed to set apart as a sinking fund  
for extraordinary purposes the Company may and they are hereby  
required in each year after the expiration of two years from the  
time at which they shall borrow any money for the purposes of  
this Act to set apart as a sinking fund such a sum as shall be  
sufficient to pay off the whole of the moneys borrowed under the  
powers of this Act within fifty years from the time of borrowing  
such moneys or the Company shall pay off the same by equal yearly  
or half yearly instalments of principal or of principal and interest  
within the said period of fifty years.

Great North of Scotland Railway Company may guarantee two hundred pounds a year as collateral security to mortgagees of Company. **14.** As a collateral security pro tanto for the moneys borrowed  
by the Company under this Act or any part thereof and the due  
and punctual payment of the principal and interest thereof the  
Great North of Scotland Railway Company by deed under their  
common seal may bind and oblige themselves to pay to the Com-  
pany or to the lender or lenders of the moneys so borrowed or any  
part thereof as the case may be in the event of the revenues of the  
Company being insufficient to meet the accruing interest upon such  
moneys and the instalments by this Act prescribed to be set apart



or paid out of the said revenues as in this Act provided an annual sum not exceeding two hundred pounds by two equal instalments at such dates for such term of years not exceeding fifty and subject to such conditions as may be stipulated and expressed in such deed and the annual sum so guaranteed to be paid shall form a charge upon the revenues of the Great North of Scotland Railway Company available for dividend to the ordinary shareholders of that Company.

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15. In like manner and for the like purpose the corporation may by deed duly executed bind and oblige themselves to pay out of the funds coming into their hands or under their control to the Company or to the lender or lenders of the moneys so borrowed or any part thereof as the case may be in the event of the revenues of the Company being insufficient to meet the accruing interest upon such moneys and the instalments by this Act prescribed to be set apart or paid out of the said revenues as in this Act provided an annual sum not exceeding one hundred pounds and may by such deed charge the said annual sum upon the common good of the said city and royal burgh the feu duties payable to them in respect of lands and houses in the village of Lossiemouth and the rates rents and revenues of the Corporation or any one or more of such securities such annual sum to be payable by two equal instalments at such dates for such term of years not exceeding fifty and subject to such conditions as may be stipulated and expressed in such deed.

Corporation of Elgin may guarantee one hundred pounds a year to mortgagees of Company.

16. In like manner and for the like purpose Captain James Brander Dunbar Brander or other the tenant for life for the time being in possession of the entailed estates of Pitgaveny Kinneddar and others in the parishes of Drainie and Saint Andrew's in the county of Elgin may by deed under his hand bind and oblige himself and his successors to pay to the Company or to the lender or lenders of the moneys borrowed under the powers of this Act or any part thereof as the case may be in the event of the revenues of the Company being insufficient to meet the accruing interest upon such moneys and the instalments by this Act prescribed to be set apart or paid out of the said revenues as in this Act provided an annual sum not exceeding two hundred pounds and may by such deed charge the said annual sum upon the said lands and assign the feu duties rents and income thereof in security for the payment thereof such annual sum to be payable by two equal instalments at such dates for such term of years not exceeding fifty and subject to such conditions as may be stipulated and expressed in such deed.

Power to owner of entailed estates of Pitgaveny Kinneddar &c. to guarantee two hundred pounds a year to mortgagees of Company



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As to loans  
by Public  
Works Loan  
Commissioners.

**17.** If the Company borrow any money from the Public Works Loan Commissioners under this Act and the Harbours and Passing Tolls &c. Act 1861 and the Acts amending the same—

(1) That loan and the security therefor shall not have priority over any loan previously borrowed under this Act or the security therefor except so far as the creditors consent to such priority under the Public Works Loans Act 1875 or otherwise but shall have priority over any loan subsequently borrowed in pursuance of this Act or any other special Act and the security therefor; and

(2) The amount which the Company are authorised by this Act to borrow shall be diminished by the amount of any loan borrowed from the Public Works Loan Commissioners under this Act and the Harbours and Passing Tolls &c. Act 1861 and the Acts amending the same.

Indemnity to  
persons  
under  
disability  
consenting  
to Act.

**18.** Trustees executors tutors curators and other guardians of minors or others under disability any law to the contrary notwithstanding who have assented bonâ fide to the Bill for this Act are hereby indemnified and saved harmless against all claims of any person by reason of such assent having been given by them or any of them and no claim for loss or damage of any kind shall be competent to any person against any such trustees executors tutors curators and other guardians of minors or others under disability in respect of such assent so given by them.

Annual  
return to  
Board of  
Trade with  
respect to  
sinking fund.

**19.** The Company shall within twenty-one days after the expiration of each year during which any sum is required to be set apart for a sinking fund or paid as an instalment under this Act transmit to the Board of Trade a return in such form as may be prescribed by that Board and verified by statutory declaration if so required by them showing the amount which has been invested for the purpose of such sinking fund or paid as an instalment during the year preceding the making of such return and the description of the securities upon which the same has been invested and also showing the purposes to which any portion of the moneys invested for the sinking fund or any interest thereof has been applied during the same period and the total amount remaining invested at the end of the year and in the event of any wilful default in making such return the Company shall be liable to a penalty of not exceeding twenty pounds If it appear to the Board of Trade by such return or otherwise that the Company have in any year during which a sum is required to be set apart for a sinking fund under this Act failed to set apart such sum or have applied any portion of the



moneys set apart for that fund or any interest thereof to any purposes other than those authorised by this Act the Board of Trade may by order direct that a sum not exceeding double the amount in respect of which such default shall have been made shall be set apart and invested as part of the sinking fund and such order shall be enforceable by decree of either Division of the Inner House of the Court of Session in Scotland in a summary application presented for that purpose. A.D. 1890.

**20.** Nothing contained in this Act or to be done under the authority thereof shall in any manner affect the title to any of the subjects or any rights powers or authorities mentioned in or reserved by sections twenty-one and twenty-two of the Crown Lands Act 1866 and belonging to or exerciseable on behalf of Her Majesty Her heirs or successors. Saving rights of Crown under Crown Lands Act.

**21.** Nothing contained in this Act shall authorise the Company 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.

**22.** Nothing in this Act contained shall be deemed to exempt the Company from the provisions of the Merchant Shipping Act 1854 the Merchant Shipping Amendment Act 1855 or of any general Act relating to merchant shipping harbours or dues upon shipping or on goods carried in ships now in force or which shall be passed during the present or any future session of Parliament or from any future revision and alteration under the authority of Parliament of the rates and duties authorised by the Order of 1868 or by this Act. Reservation of Merchant Shipping Acts 1854 and 1855 as to pilotage lighthouses &c.

**23.** The costs charges and expenses of and incident to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company out of any moneys coming into their hands by virtue of the Act of 1856 the Order of 1868 and this Act. Costs of Act.



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**SCHEDULE** referred to in the foregoing Act.

DUTIES FOR BOATS EXCLUSIVE OF THEIR CARGOES.

	£	s.	d.
All open boats engaged in the herring fishery at the port in full of tonnage duty including charges for water hawsers and lights for the period of their fishing season - - -	1	10	0
All open boats loading or discharging herrings not engaged at the port for the season shall on each occasion of entering the harbour pay one shilling each and when wind-bound eightpence each			
Other boats each loading or discharging - - -	0	2	6
Ditto wind-bound - - -	0	1	0
Ditto when above 15 tons register to be charged according to tonnage duties for vessels under Part I. of the schedule to the Elgin and Lossiemouth Harbour Order 1868.			
Each white fishing boat for one year commencing 1st November and payable annually in advance - - -	2	0	0

NOTE.—Boats paying the first-mentioned dues under the foregoing schedule are exempt from charges for water hawsers or lights under Part V. of the schedule to the Elgin and Lossiemouth Harbour Order 1868.

Water and hawsers shall only be paid for if supplied and the charge for lights only made for as long as lights are exhibited.

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