CHAPTER xi.

An Act to authorise the Airdrie and Coatbridge Water Company to raise additional capital; and for other purposes. [8th June 1874.]

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WHEREAS by "The Airdrie and Coatbridge Waterworks Act, 1846," (in this Act referred to as "the Act of 1846,") the Airdrie and Coatbridge Water Company (in this Act called "the Company") were incorporated and empowered to supply with water the towns of Airdrie and Coatbridge, suburbs thereof, and places adjacent, in the county of Lanark, and for that purpose to raise a share capital of twenty-two thousand five hundred and eighty pounds and to borrow seven thousand five hundred pounds: 9 & 10 Vict. c. cclxxxviii.

And whereas under the provisions of "The Companies Clauses Consolidation (Scotland) Act, 1845," the said amount of seven thousand five hundred pounds has been raised by the creation of new shares instead of by borrowing, and the share capital of the Company now amounts to thirty thousand and eighty pounds:

And whereas the trade and population within the limits of the Act of 1846 have greatly increased and are still increasing, and the Company have from time to time enlarged and extended their works, and are required further to enlarge and extend the same for the purpose of meeting the increased demand for water within the said limits:

And whereas the Company have expended all the moneys they were authorised to raise, and it is expedient that they be authorised to raise additional share and loan capital for the purposes of their undertaking:

And whereas in virtue of the powers in that behalf contained in "The Forth and Clyde Navigation and Airdrie and Coatbridge Water Act, 1848," (herein-after called "the Act of 1848,") an agreement, dated the twenty-fifth and twenty-seventh days of February 11 & 12 Vict. c. xli.

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and the first day of March, and registered in the books of Council and Session at Edinburgh the twenty-seventh day of April, all in the year one thousand eight hundred and sixty-four, was entered into between the Company and the Company of Proprietors of the Forth and Clyde Navigation, and which agreement is set forth in the schedule to this Act:

30 & 31 Vict. c. cvi.

And whereas by virtue of "The Caledonian Railway and Forth and Clyde Navigation Companies Act, 1867," the said Company of Proprietors of the Forth and Clyde Navigation was dissolved, and their undertaking and rights, property and assets were thereby transferred to and vested in the Caledonian Railway Company:

And whereas under the provisions of the said agreement, and in the events therein contemplated, certain sums of money may become payable by the Company to the said Caledonian Railway Company, as now in right of the said Company of Proprietors of the Forth and Clyde Navigation, and it is expedient that the Company be authorised to apply for the purposes of any such payment such part as may be necessary of the money by this Act authorised to be raised:

And whereas it is expedient that the powers of the Company be in various respects enlarged, and that some of the provisions of the Act of 1846 be amended:

And whereas the objects aforesaid cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as "The Airdrie and Coatbridge Waterworks (Amendment) Act, 1874."

Provisions of certain general Acts incorporated.

2. "The Waterworks Clauses Acts, 1847 and 1863," "The Lands Clauses Consolidation (Scotland) Act, 1845," except the provisions thereof with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry upon lands by the promoters of the undertaking, the clauses and provisions of "The Companies Clauses Consolidation (Scotland) Act, 1845," with respect to the several matters following, (that is to say,) the distribution of the capital of the Company into shares, the transfer or transmission of shares, the payment of subscriptions and the means of enforcing the payment of calls, the forfeiture of shares for nonpayment of calls, the remedies of creditors of the Company against the shareholders, the borrowing of money by the Company

on mortgage or bond, the conversion of the borrowed money into capital, the consolidation of the shares into stock, the general meetings of the Company, and the exercise of the right of voting bythe shareholders, the making of dividends, the giving of notices, and the provision to be made for affording access to the special Act by all parties interested; and Parts I., II., and III. of "The Companies Clauses Act, 1863," relating respectively to cancellation and surrender of shares, to additional capital, and to debenture stock, as amended by "The Companies Clauses Act, 1869," are (except where expressly varied by this Act) incorporated with and form part of this Act.

Interpretation 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; and the word "undertaking" means the waterworks and all works connected therewith belonging to the Company and authorised to be constructed by the Act of 1846, and in pursuance of the provisions of the Act of 1848 and the said agreement set forth in the schedule to this Act.

Power to raise additional capital.

4. The Company may from time to time raise any additional capital, not exceeding in the whole forty thousand pounds, by the creation and issue of new ordinary or new preference shares or stock, or (at the option of the Company) partly by new ordinary and partly by new preference shares or stock.

Shares not to issue of less nominalvalue than 10*l.*, nor until one fifth paid.

5. The Company shall not issue any share created under the authority of this Act of less nominal value than ten pounds, nor shall any such share vest in the person accepting the same unless and until a sum not being less than one fifth of the amount of such share is paid in respect thereof.

Calls.

6. One fifth of the amount of a share shall be the greatest amount of a call, and two months at least shall be the interval between successive calls.

Receipts for persons disqualified.

7. If any money is payable to a shareholder, being a minor, idiot, or lunatic, the receipt of his tutor or curator or curator bonis shall be a sufficient discharge to the Company.

Privileges, &c. of the holders of new capital.

8. Save as by this Act otherwise provided, the holders of shares or stock in the additional capital hereby authorised to be raised shall be entitled to the like rights and privileges and be subject to the like liabilities as the holders of shares or stock in the existing ordinary capital of the Company.

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Limiting dividends on new capital.

9. The Company shall not in any one year pay out of their profits any larger dividend on the additional share capital of forty thousand pounds, to be raised under the powers of this Act, than seven pounds in respect of every one hundred pounds actually paid up of such capital as shall be issued as ordinary capital, or six pounds on every one hundred pounds actually paid up of such capital as may be issued as preference capital.

Power to borrow on mortgage.

10. The Company may, in respect of the additional capital of forty thousand pounds which they are by this Act authorised to raise, from time to time borrow on mortgage any sums not exceeding in the whole ten thousand pounds, but no part thereof shall be borrowed until shares for so much of the said additional capital as is to be raised by means of shares are issued and accepted and one half of such capital is paid up, and the Company have proved to the sheriff who is to certify under the forty-second section of "The Companies Clauses Consolidation (Scotland) Act, 1845," before he so certifies, that shares for the whole of such capital have been issued and accepted, and that one half of such capital has been paid up, and that not less than one fifth part of the amount of each separate share in such capital has been paid on account thereof, before or at the time of the issue or acceptance thereof, and until stock for one half of so much of the said additional capital as is to be raised by means of stock is fully paid up, and the Company have proved to such sheriff as aforesaid, before he so certifies, that such shares or stock, as the case may be, were issued and accepted, and paid up bonâ fide, and are held by the persons or corporations to whom the same were issued, or their executors, administrators, successors, or assigns, and also if the said capital is raised by shares that such persons or corporations, or their executors, administrators, successors, or assigns, are legally liable for the same; and upon production to such sheriff of the books of the Company, and of such other evidence as he shall think sufficient, he shall grant a certificate that the proof aforesaid has been given, which shall be sufficient evidence thereof.

Arrears may be enforced by appointment of a judicial factor.

11. The mortgagees of the Company may enforce payment of arrears of interest or principal or principal and interest due on their mortgages by the appointment of a judicial factor, and in order to authorise the appointment of a judicial factor in respect of arrears of principal, the amount owing to the mortgagees by whom the application for a judicial factor is made shall not be less than one thousand pounds in the whole.

Debenture stock.

12. The Company may create and issue debenture stock subject to the provisions of Part III. of "The Companies Clauses Act,

1863;" but notwithstanding anything therein contained, the interest of all debenture stock at any time created and issued by the Company shall rank pari passu with the interest of all mortgages at any time granted by the Company, and shall have priority over all principal moneys secured by such mortgages.

As to conversion of borrowed money into capital.

13. The Company shall not have power to raise the money by this Act authorised to be borrowed on mortgage or any part thereof by the creation of shares or stock instead of borrowing, or to convert into capital the amount borrowed under the provisions of this Act, unless in either case all dividends upon the shares or stock so created, whether ordinary or preferential, are limited to a rate not exceeding five pounds per centum per annum.

Priority of mortgages over other debts.

14. All money raised or to be raised by the Company on mortgage or debenture stock under the provisions of this Act shall have priority against the Company, and the property from time to time of the Company, over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act: Provided always, that this priority shall not affect any claim against the Company or their property in respect of any annual feu duty or ground annual payable or to become payable by them in pursuance of "The Lands Clauses Consolidation (Scotland) Act, 1845," or "The Lands Clauses Consolidation Acts Amendment Act, 1860," or in respect of any tack-duty payable under any lease granted or made to the Company in pursuance of any Act relating to the Company, which is entitled to rank in priority to, or pari passu with the interest on their mortgages or debenture stock.

Application of moneys.

15. All moneys raised under this Act, whether by shares or stock or by borrowing, shall be applied by the Company for the purposes of this Act and of their undertaking, including in such purposes the payment of any sum or sums of money which may become payable by the Company under the provisions of the said agreement set forth in the schedule to this Act.

Power to acquire and hold additional lands.

16. The Company may acquire by agreement, and hold for the purposes of filters, depôts, pipe-yards, offices, and other buildings and conveniences in connexion with their undertaking, any lands which, in addition to the lands now held by them shall not exceed in the whole six acres.

Saving existing contracts, &c.

17. Notwithstanding anything in this Act contained, all purchases, conveyances, deeds, contracts, and agreements entered into or made before the passing of this Act by, to, or with the Company, and now in force, shall be binding and of as full force and effect

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against or in favour of the Company, and may be enforced as fully and effectually as if this Act had not been passed.

Expenses of Act.

18. All 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.

SCHEDULE referred to in the foregoing Act.

These presents entered into and concluded by and between "The Airdrie and Coatbridge Water Company," incorporated under "The Airdrie and Coatbridge Waterworks Act, eighteen hundred and forty-six," first party, and the Company of Proprietors of the Forth and Clyde Navigation, incorporated under the Act of the fourth and fifth Victoria, caput fifty-five, and other statutes, second party; witnesseth, That whereas by the statute of the eleventh and twelfth Victoria, caput forty-one (eighteen hundred and forty-eight), intituled "An Act to authorise the Company of Proprietors of the "Forth and Clyde Navigation and the Airdrie and Coatbridge Water Company "to enter into agreements for certain purposes," it was enacted "That it shall "be lawful for the said Airdrie and Coatbridge Water Company to dispose of "and for the said Company of Proprietors of the Forth and Clyde Navigation "to take, on such terms as have been or may be agreed upon by and between "the said Companies, so much of the water which the said Water Company "are authorised by their said Act to collect and distribute as shall not be "necessary for the full supply of the towns and places therein mentioned or "referred to; and for that purpose it shall be lawful for the said Companies "respectively to enter into such agreements, leases, or contracts as may be "expedient and necessary, for such periods and with and under such conditions "and stipulations as have been or may be mutually agreed upon:" And whereas after the date of the passing of that Act the waterworks authorised by the first party's Act of incorporation, which had been commenced prior to that date, were completed, and consisted among others of a reservoir at Roughrigg of the computed capacity of seventy-five million cubic feet, and of relative feeders or conduits for conveying thereto the brooks known as the Shotts Burn and Drumbowie Burn: And whereas the said reservoir and feeders were constructed partly at the expense of the first party and partly at the expense of the second party, the first party having on their part settled with the landowners and their tenants for the price or value of the entire ground forming the site of the reservoir, including in part the site of the said feeders and for tenants' damages, and having also disbursed the cost of constructing the embankment of the said reservoir to the height which was originally designed to ensure a capacity computed at thirty million cubic feet, that being the capacity which was calculated by the first party to be adequate for the purposes of supplying the district specified in the Act of incorporation; and the second party having on their part disbursed the expense of forming the tunnel or conduit (excepting three hundred and twenty-eight pounds eighteen shillings and sevenpence disbursed by the first party), whereby the Shotts Burn, and for part of the way Drumbowie Burn along with it, are conveyed to the reservoir, and also of heightening or elevating the original embankment, and of forming a lateral or wing embankment in extension thereof, so as to add as computed forty-five

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million cubic feet to the capacity of the reservoir as originally designed, and make up the same to the aggregate computed capacity of seventy-five million cubic feet before mentioned, besides which the second party also disbursed or advanced to the first party a sum of two thousand pounds in relief or to account of their outlay: And whereas after the completion of the said reservoir and feeders the use and benefit of the water collected in the said reservoir was taken by both parties, the first party taking their supply by means of their pipe at the base of the reservoir, and the second party taking their supply by means of their off-let sluice at the top level of the embankment, as originally designed and made by the first party: And whereas disputes and differences came to subsist between the parties, in the course of which the first party disconnected the Shotts Burn and the reservoir, and also cut off any supply of water from the reservoir to the second party, and for the details of the parties disputes and differences quoad ultra, and their claims and demands the one against the other, reference is made to the action now depending at the instance of the second party against the first party, and to the counter action recently served at the instance of the first party against the second party, a print of the revised record in the action first mentioned, and a copy of the summons in the action second mentioned being subscribed by the parties as relative hereto, and held as repeated brevitatis causa; and seeing it has now been arranged between the parties to settle all of their differences and to discharge all their disputed claims, and to enter into this agreement for disposing of the surplus water of the said reservoir to the second party in the sense and under the authority of the foresaid statute of the eleventh and twelfth Victoria, caput forty-one (eighteen hundred and forty-eight), and on the terms herein-after written: Therefore, as authorised by the said statute, and in the sense thereof, the parties have agreed, and do hereby mutually and severally covenant and agree and bind and oblige themselves as follows; that is to say,

First. The parties have discharged, and do hereby severally discharge each other of all their claims and demands at the instance of the one against the other, and of the foresaid actions at the instance of the one against the other, and of all that has followed or is competent to follow upon the said claims and demands, or upon the said actions, whether as regards principal sums, interest, costs, or consequents.

Second. The Shotts Burn shall be forthwith re-connected with, and the water thereof conveyed into, the said reservoir by means of the said tunnel; and further, the supply of the second party with water from the said reservoir shall be resumed and renewed by their said off-let sluice, it being understood that the expense of the repairs of the intake sluices and works at Bogfoot for re-connecting the Shotts Burn with the reservoir shall be executed and paid by the second party, which they shall have full power to do on the first party's ground, and also full power to execute all necessary repairs and improvements on the tunnel and intake thereto at Shotts Burn, and that free of any claims for damages by the first party, with a right of way to the second party to and from the said tunnel and sluices through the lands belonging to the first party for all necessary purposes connected with the reservoir.

Third. The whole water, computed at the maximum of forty-five million cubic feet as aforesaid, which may from time to time accumulate and be stored

in the said reservoir above the off-let sluice made at the top level of the embankment as originally designed by and constructed at the expense of the first party, shall be deemed and is hereby declared to be surplus water, that is, water not necessary for the full supply of the towns and places mentioned or referred to in the first party's Act of incorporation in the sense of the foresaid statute of eighteen hundred and forty-eight, and of the provisoes of this agreement hereinafter written.

Fourth. The equivalent to be paid and rendered by the second party for the right to the said surplus water, as herein-after conferred upon them, shall be and is hereby pactionally reckoned at three fifth parts of the total cost of, or aggregate disbursements of both parties upon the said waterworks and site thereof (excluding the filters, supply pipes, and all others the first party's works extra of the reservoir); further, the amount in money of the said three fifth parts of the said cost or disbursements to be rendered or paid by the second party shall be and is hereby pactionally declared to be the sums which the second party has already disbursed as aforesaid, amounting, as set forth in the foresaid action, to thirteen thousand four hundred and twenty-five pounds fifteen shillings and sevenpence, with the addition of a further sum of four thousand pounds, amounting together to seventeen thousand four hundred and twenty-five pounds fifteen shillings and sevenpence, which additional sum of four thousand pounds shall be paid and be payable in cash to the first party within two months after this agreement shall have been executed.

Fifth. The whole of the foresaid surplus water (excepting that portion thereof which may necessarily flow through the first party's off-let pipe or pipes) shall be and is hereby disposed of in the sense of the foresaid statute of eighteen hundred and forty-eight to and in favour of the second party as follows, that is to say, the first party has let, and does hereby in tack and assedation set to the second party the whole of the said surplus water (excepting as aforesaid), and that for the space of thirty years from and after the term of Martinmas eighteen hundred and sixty-three, unless the lease shall sooner terminate under one or other of the provisoes after written, with power to the second party to use and enjoy the whole of the said surplus water (excepting as aforesaid), and to take the full benefit and advantage thereof.

Sixth. Upon the termination of the said period of thirty years before stipulated for the duration of the said lease, the same shall nevertheless subsist and continue (if not superseded previously by a new agreement between the parties) until such time as one or other of the following events shall occur, that is, either that the parties shall enter into a new agreement which shall annul or supersede, or be substituted for, the said lease, or that the first party shall exercise the option which is now and hereby conferred upon them of paying up and refunding to the second party the foresaid principal sum of seventeen thousand four hundred and twenty-five pounds fifteen shillings and sevenpence (with the addition of the sum, if any, which the second party may pay for minerals, as herein-after provided for), which the first party shall be entitled to do at the expiry of twelve months notice, to be given before the termination of the said thirty years, or at the expiry of the like notice to be given at any time after the expiration of that period; and on the date of the foresaid sum of seventeen thousand four hundred and twenty-five pounds fifteen shillings and sevenpence (including as aforesaid) being paid over to the second party, the lease

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then subsisting, and the second party's right to use and enjoy the said surplus water, shall alike cease and come to an end.

SEVENTH. In the event of the first party being obliged to supply the district mentioned in their Act with a larger supply of water than can be contained in the reservoir below the second party's off-let sluice, the first party shall be entitled, on giving twelve months notice to the second party, to have the said off-let sluice raised or elevated, on their repaying to the second party a proportion of the said sum of seventeen thousand four hundred and twenty-five pounds fifteen shillings and sevenpence (including as aforesaid), corresponding to the storage space or capacity which shall thus be abstracted from the second party, provided that if the said off-let sluice shall be so raised or elevated as in the opinion of the arbiter after mentioned to render the remainder of the reservoir above the said off-let sluice as so raised practically unavailable for the purposes of the second party, the latter shall be entitled to repayment of the whole of the foresaid sum of seventeen thousand four hundred and twenty-five pounds fifteen shillings and sevenpence (including as aforesaid), and on receipt of the same the second party's lease and their right to the said surplus water shall cease.

EIGHTH. The public burdens, rates, taxes, and feu duties affecting or connected with the reservoir, and the expense of maintaining and repairing the embankments and other works of the reservoir (excepting the tunnel for conveying the Shotts Burn from Bogfoot to the Drumbowie Burn), shall be borne and disbursed by the parties in the foresaid proportion of two fifths by the first party and three fifths by the second party, it being understood that the second party shall be at the expense of properly repairing their out-let sluices and the pitching of the embankment to the north of the sluice up to the rock; and that after this shall have been done, the maintenance shall be borne by the parties mutually in the proportions above specified, except in so far as applies to the off-let sluices of the respective parties, which shall be maintained by each party respectively.

NINTH. In the event of both parties being of opinion that it shall be necessary for the safety of the embankments or works to purchase all or any of the several minerals under the reservoir or any portion thereof, and agreeing to purchase the same, the price shall be advanced by the two parties in the proportions of two fifths and three fifths before specified, and any sum advanced by the second party for that purpose shall be deemed and dealt with as part of their disbursements in the sense of this agreement as aforesaid.

TENTH. The maintenance and repair of the tunnel for the Shotts Burn, so far as the same extends from the intake sluice at Bogfoot to its junction with the Cross Tunnel on the Drumbowie Burn, shall be borne and defrayed by the second party; but in the event of any damages arising to the tunnel from working the minerals under the lands belonging to the first party, such damage shall be borne by the first party. The expense of settling with Mr. Buchanan for the passage of the line of tunnel, and getting right thereto through his lands, to be borne equally by the two parties.

ELEVENTH. Each party shall provide and pay keepers to regulate their respective off-let sluices at the reservoir, but the second party shall provide and pay the keeper of the intake sluice at the mouth of the tunnel at Bogfoot.

Twelfth. In case of failure of the works of the reservoir, or outbreak of water therefrom, the damage thence to arise from injury to the works or by flooding shall be borne and sustained by the parties in the proportions of two fifths and three fifths before specified.

Thirteenth. In the event of any dispute or difference arising between the parties with respect to the true intent or meaning of these presents, or to the due and adequate implement thereof, or to any act or operation performed or falling to be performed under or with reference to these presents, or to any act, deed, matter, or thing whatsoever arising out of or connected with these presents, all the parties' disputes and differences shall be and hereby are submitted and referred to Walter Crum, Esquire, of Thornliebank; whom failing, James Richardson Forman, Civil Engineer in Glasgow; whom failing, James Dunlop, Esquire, of Clyde; whom failing, to any arbiter to be named by the sheriff of Lanarkshire on the application of either party, whose award, interim or final, partial or total, the parties shall be bound to abide by and implement in all respects and particulars.

Lastly. The said first and second parties bind and oblige themselves and their foresaids to implement and fulfil their respective parts of the premises to each other, under the penalty of one thousand pounds sterling, to be paid by the party failing to the party observing or willing to observe their part thereof, and that over and above performance. And the parties consent to the registration hereof, and of the decree or decrees arbitral, interim or final, partial or total, to be pronounced in virtue of the above submission (if any) in the books of Council and Session, or others competent, for preservation and execution, and also in the register of sasines, for publication, and thereto constitute George Monro and Robert Lee, Esquires, Advocates, Procurators. In witness whereof, these presents, written on this and the six preceding pages of stamped paper by Arthur Forbes, clerk to Moncrieff, Paterson, Forbes, & Barr, writers in Glasgow, are subscribed, along with the print of the revised record and the copy of the summons, both within referred to (under the declarations that the word "hereto" is interlined to be read between the words "relative" and "and" on the twelfth line from the foot of page second hereof, and that the words "that is, water," are interlined to be read between the words "water" and "not" on the fifteenth line from the foot of page third hereof, both before subscription hereof), by Gavin Black of Rawyards (Chairman) and John Jeffray, writer in Glasgow (Vice-Chairman), and both directors of the said Airdrie and Coatbridge Water Company, for and in name and on behalf of the said Airdrie and Coatbridge Water Company, and these presents are sealed with the common seal of the said Airdrie and Coatbridge Water Company, all at Airdrie, on the twenty-fifth day of February, in the year eighteen hundred and sixty-four, before these witnesses, John Telford and Thomas Marshall, both clerks to James Kidd, banker in Airdrie, secretary to the said Airdrie and Coatbridge Water Company; and these presents are subscribed by the Right Honourable Thomas, Earl of Zetland, &c., Governor of the said Company of Proprietors of the Forth and Clyde Navigation, on behalf of the said Company of Proprietors, at Aske, near Richmond, Yorkshire, on the twenty-seventh day of the said month of February, and year last above written, before these witnesses, Henry Gordon Dickson, writer to the Signet, Edinburgh, and William Bungay, valet

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to the said Earl of Zetland; and these presents are sealed with the corporate seal of the said Company of Proprietors, and countersigned by Robert Readman, secretary to the said Company of Proprietors, also on behalf of the said Company of Proprietors, at Glasgow, on the first day of March, and year last above written, before these witnesses, James Downie and John Macaulay, both clerks in the office of the said Company of Proprietors at Port Dundas, Glasgow. (Signed) Gavin Black, C.; John Jeffray, V.-Chairman (L.S.); Zetland; R. Readman, Secy. (L.S.); John Telford, Witness; Thos. Marshall, Witness; H. G. Dickson, Witness; William Bungay, Witness; James Downie, Witness; J. Macaulay, Witness.

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