CHAPTER xxxiv.

An Act to incorporate a Company and to authorise the sale and transfer to them of the harbour of Ardrossan and for other purposes. [25th September 1886.]

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WHEREAS the harbour of Ardrossan in the county of Ayr (herein-after called "the harbour") forms or is reputed to form part of the entailed estate of Eglinton Ardrossan and others under and in virtue of the deeds of entail following viz.—Disposition and deed of entail dated fourteenth twenty-first and twenty-eighth March thirteenth April and twelfth May and registered in the register of entails the thirty-first May and in the books of Council and Session twentieth June one thousand eight hundred and thirty-six made and executed by Richard Alexander Oswald Sir David Hunter Blair Baronet Alexander West Hamilton Colonel William Blair and Archibald Campbell trustees of the deceased Hugh Montgomerie of Skelmorlie Earl of Eglinton in favour of the now also deceased Right Honourable Archibald William Montgomerie Earl of Eglinton and Winton K.T. (therein named and designed Archibald Montgomerie Hamilton of Skelmorlie and Bourtreehill Earl of Eglinton) and the heirs male of his body whom failing the other heirs male of the body of the said deceased Hugh Montgomerie of Skelmorlie Earl of Eglinton whom failing the other heirs of tailzie contained in the nomination and deed of tailzie executed by the said deceased Hugh Montgomerie Earl of Eglinton bearing date the seventh day of March one thousand eight hundred and fourteen and recorded in the books of Council and Session the twenty-seventh day of December one thousand eight hundred and nineteen in the course and order of succession therein expressed and which other heirs of tailzie are inserted in the said deed of entail as in the said nomination and deed of tailzie (2.) The foresaid nomination and deed of tailzie recorded in the register of entails on the thirty-first day of May one thousand eight hundred and thirty-six and (3.) Conveyance and deed of entail of the harbour of Ardrossan docks

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and other works executed by the said deceased Archibald William Montgomerie Earl of Eglinton and Winton in favour of himself and his heirs of tailzie under the foresaid destination dated the twenty-seventh day of January and recorded in the register of entails the fifth and in the books of Council and Session the seventeenth days of March one thousand eight hundred and fifty-five:

And whereas by divers Acts of Parliament the trustees of the said Hugh Earl of Eglinton and the heir of entail in possession of the entailed estate were authorised to borrow moneys on the security of the harbour and the docks and other works connected therewith and the rates and duties leviable thereat and of the whole entailed estate of Eglinton Ardrossan and others and to expend the same in the improvement of the harbour docks and other works:

And whereas by the Ardrossan Harbour Consolidation Act 1864 (herein-after called the Act of 1864) on the recital that additional accommodation was required for the increasing traffic of the harbour the Acts relating to the harbour were consolidated and amended and further powers were granted to Archibald William Montgomerie Earl of Eglinton and Winton the then heir of entail in possession of the harbour and of the said entailed estate and the heirs of entail entitled to succeed thereto for enlarging improving and managing the harbour for the alteration or modification of the rates leviable thereat and for the borrowing and application of further moneys for the purposes thereof:

And whereas the said Earl and his predecessors have executed extensive works of improvement at the harbour and for that purpose there has been borrowed and there is now owing under the powers of the herein-before mentioned Acts on the security of the rates leviable at the harbour and of the said entailed estate the sum of fifty-seven thousand five hundred and eighty pounds:

And whereas by an agreement entered into between the said Earl as heir of entail in possession of and vested in the harbour and the Barrmill and Kilwinning Railway Company now the Lanarkshire and Ayrshire Railway Company (herein-after called the railway company) contained in Schedule C. to the Lanarkshire and Ayrshire Railway Act 1884 (herein-after called the Act of 1884) it was agreed inter alia on the recital of the powers conferred by the Act of 1864 and in consideration of the obligation therein undertaken by the railway company that so soon as Parliament should have given the railway company the necessary power to make and maintain an extension of their railway to Ardrossan and Ardrossan Harbour and as soon as the railway company should have obtained subscriptions for the capital required to construct the same then the said Earl as heir of entail

foresaid bound and obliged himself and the heir of entail for the time being proprietors and in possession of the harbour and of the entailed estate of Eglinton Ardrossan and others but not his heirs general or executors to proceed forthwith to improve and enlarge the harbour as authorised and empowered by the Act of 1864 substantially conform to a plan prepared jointly by George Miller Cunningham and John Strain and docquetted and subscribed as relative to the agreement under recital and the said Earl bound and obliged himself in giving effect to the said plan to complete amongst others certain specific works mentioned in that agreement:

And whereas by the agreement under recital the said Earl further agreed and bound and obliged himself and his heirs of entail but not his heirs general or executors to expend a sum not exceeding one hundred and fifty-two thousand pounds on the works of improvement at the harbour mentioned in Article Second of that agreement and to raise the sum of one hundred and forty-eight thousand four hundred and twenty pounds under the powers of the Act of 1864 and to apply the same as part of the foresaid sum of one hundred and fifty-two thousand pounds towards the construction and equipment of the said works and in respect the cost of those works and their equipment was estimated to exceed the said sum of one hundred and forty-eight thousand four hundred and twenty pounds the said Earl bound and obliged himself to raise and expend such sum in addition to the said sum of one hundred and forty-eight thousand four hundred and twenty pounds as might be necessary for the completion and equipment of the said works not exceeding the sum of three thousand five hundred and eighty pounds:

And whereas by the Act of 1884 the railway company were authorised to extend their railway to Ardrossan and Ardrossan Harbour and the capital required for the construction thereof has been duly subscribed and the works are now in active progress:

And whereas the railway company on the second day of October one thousand eight hundred and eighty-five required the said Earl to proceed with the works of improvement at the harbour in accordance with the obligation on him and his heirs of entail contained in the agreement before recited:

And whereas on or about the nineteenth day of January one thousand eight hundred and eighty-three the said Earl presented a petition to the Lords of Council and Session in Scotland setting forth among other things that he was desirous of availing himself of the provisions of the statutes therein recited authorising the sale of an entailed estate in Scotland or part thereof and of

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obtaining authority to sell the harbour with the docks and other works and appurtenances thereof and thereto belonging with the powers rights and privileges and with and under the conditions contained in the several Acts relating thereto in so far as applicable with the rates and duties exigible thereat and of applying the price in manner therein set forth:

And whereas after various steps of procedure the Lord Ordinary upon the eighth day of August one thousand eight hundred and eighty-three pronounced an interlocutor (set forth in the Schedule A. to this Act) authorising such sale either by public auction or private bargain subject to the debts and obligations affecting the harbour and under the condition and obligation that the purchaser should in all time thereafter be bound to maintain the harbour in proper and adequate repair for the accommodation of persons resorting to and using the same and subject also to directions as to the application of the price and the other conditions and provisions in that interlocutor contained:

And whereas on the sixteenth day of January one thousand eight hundred and eighty-five the interlocutor of the Lord Ordinary was varied by the Lords of Council and Session by interlocutor of that date also set forth in the Schedule A. to this Act to the effect of requiring that the articles of roup or minute of sale and disposition to the purchaser to be executed in pursuance of the order of sale pronounced as aforesaid should contain certain clauses for the protection of the Glasgow and South-western Railway Company:

And whereas by the interlocutor of the Lord Ordinary authorising the sale of the harbour by public auction or by private bargain it was provided that the sale should not be by private bargain if the next heir should intimate within one month after the date of the interlocutor that he desired the sale to be by public auction and it was directed that a copy of the interlocutor should forthwith be sent by registered letter to the next heir the Honourable Seton Montolieu Montgomerie in order that if so advised he might within one month lodge a minute in process intimating that he desired a public sale:

And whereas such letter was duly sent on the fourteenth day of August one thousand eight hundred and eighty-three but no minute was lodged by the said Seton Montolieu Montgomerie desiring the sale to be by public auction:

And whereas the said Seton Montolieu Montgomerie died on the twenty-sixth day of November one thousand eight hundred and eighty-three:

And whereas the next heir now entitled to succeed to the entailed estate is the Honourable George Arnulph Montgomerie who is above the age of twenty-five years:

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And whereas the said Honourable George Arnulph Montgomerie has issue to wit Archibald Seton Montgomerie and William Alexander Montgomerie who are both under age:

And whereas the said Earl has agreed with the Company incorporated by this Act (herein-after called "the Company") for the sale and transfer to the Company of the harbour subject to the provisions of the interlocutor of the Lord Ordinary of the eighth day of August one thousand eight hundred and eighty-three and of the interlocutor of the Lords of Council and Session of the sixteenth day of January one thousand eight hundred and eighty-five and of the Act of 1864 (as amended by this Act) and the Act of 1884 and of this Act and it is expedient that the Company should be incorporated and that such sale and transfer should be authorised in manner and subject to the conditions herein-after provided:

And whereas it is expedient to provide for the payment of the price of the harbour undertaking in shares or stock of the Company and for vesting a portion of such shares or stock in trustees for behoof of the said Earl and the heirs of entail succeeding to the said entailed estate:

And whereas it is expedient that the Act of 1864 should be in some respects amended:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted and be it enacted by the 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 (that is to say):—

Short title.

1. This Act may be cited as the Ardrossan Harbour (Sale and Transfer) Act 1886.

Incorporation of Acts.

2. The Companies Clauses Consolidation (Scotland) Act 1845 and Part I. relating to cancellation and surrender of shares and Part III. relating to debenture stock of the Companies Clauses Act 1863 are (except where expressly varied by this Act) incorporated with and form part of this Act.

Interpretation.

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 said Earl" means the Right Honourable Archibald William Montgomerie Earl of Eglinton and Winton or the heir of entail for the time being in possession of the harbour and the

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entailed estate of Eglinton Ardrossan and others and the trustees or tutors or curators or administrators in law or other legal guardians of any such heir in minority or under legal incapacity or disability;

"The Company" means the Company incorporated by this Act;

"Person" includes corporation;

"The harbour" means the harbour of Ardrossan in the county of Ayr and the docks breakwaters lands railways sidings tramways buildings and other works of or belonging to the said Earl in connexion therewith within the limits of the harbour as defined by the Act of 1864 together with all fixed loose and floating plant boats tugs dredgers punts machinery rolling stock and effects of or belonging to the said Earl (whether as heir of entail or as an individual) and used in connexion with the harbour docks lands railways sidings tramways buildings and other works and all tolls dues rates charges rents and moneys rights privileges feus leases powers and authorities of the said Earl (whether as heir of entail or as an individual) leviable receivable exerciseable or enjoyable (subsequent to the date of transfer) under the Act of 1864 or otherwise in connexion with the harbour;

"Harbour debt" or "heritable debt" means any bond or disposition in security rentcharge annuity liferent provision or other debt payment or annual charge heritably secured by over or affecting the harbour or entailed estate of Eglinton Ardrossan and others granted under or in virtue of the authority of any Act of Parliament relating to the harbour or under and in virtue of or authorised by any Act relating to entails in Scotland public or private or by any deed of entail or family provision or otherwise by any deed or writing and existing at the passing of this Act.

Company incorporated.

4. The Earl of Eglinton and Winton, the Honourable Greville Richard Vernon, John Watson, James Neilson, John Hogarth, Hugh Hogarth, John Cuninghame, and all other persons and corporations who have already subscribed to or shall hereafter become proprietors in the harbour undertaking and their executors administrators successors and assigns respectively shall be and are hereby united into a Company for the purpose of the sale and transfer of the harbour and for other the purposes of this Act and for those purposes shall be and are hereby incorporated by the name of "the Ardrossan Harbour Company" and by that name shall be a body corporate with perpetual succession and a common

seal with power to purchase take hold and dispose of lands and other property for the purposes of this Act.

Capital.

5. The capital of the Company shall be three hundred thousand pounds in thirty thousand shares of ten pounds each.

The Company shall issue one hundred and fifty thousand pounds of such capital as fully paid up ordinary shares to the Earl of Eglinton and Winton the Honourable George Arnulph Montgomerie and Patrick Blair Writer to Her Majesty's Signet Edinburgh as trustees for the said Earl and to the Earl as an individual for the purposes and in accordance with the provisions herein-after contained and when the same have been issued and accepted the Company shall issue one hundred and fifty thousand pounds being the balance of such capital of three hundred thousand pounds as preference shares with such preferential rights and privileges and a preferential dividend not exceeding the rate of four and a half per cent. per annum attached thereto as the Company may determine.

The Company shall issue fifty thousand pounds of such preferential capital as fully paid up preference shares to the said trustees for the said Earl for the purposes and in accordance with the provisions herein-after contained.

Provided always that if in any year ending the 31st day of January there are not profits available for payment of the full amount of the preferential dividend or interest in that year on such preference capital no part of the deficiency shall be made good out of the profits in any subsequent year or out of any other funds of the Company.

The holders of preference shares shall have the same rights of voting at all meetings of the Company as the holders of ordinary shares.

Certain preference shares not to issue until one fifth paid up.

6. The Company shall not issue any share in the balance of one hundred thousand pounds of the said preference capital created under the authority of this Act nor shall any such share vest in the person or corporation 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.

7. One fifth of the amount of a share shall be the greatest amount of a call and three months at least shall be the interval between successive calls and four fifths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.

Defining rights of voting by shareholders.

8. At all general meetings of the Company every holder of ordinary shares or stock and preference shares or stock shall be

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entitled to one vote in respect of every share of the nominal amount of ten pounds or of every ten pounds of stock held by him Provided always that no shareholder shall be entitled to vote at any meeting in respect of any share on which any call then remains unpaid.

Receipt clause in case of minors idiots &c.

9. 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.

Power to borrow.

10. The Company may from time to time borrow on mortgage of the harbour undertaking any sum not exceeding in the whole ninety-nine thousand nine hundred and ninety-nine pounds Of such sum the Company may borrow not exceeding sixty-six thousand six hundred and sixty-six pounds in respect of the two hundred thousand pounds issued to the said trustees for the said Earl and to the Earl as an individual as fully paid up ordinary and preference shares and they may borrow thirty-three thousand three hundred and thirty-three pounds when and so soon as shares for the remainder of the preference capital being one hundred thousand pounds are issued and accepted and one half of such last-mentioned portion of 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 the last-mentioned portion of the capital in respect of which the borrowing power is proposed to be exercised 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 portion of capital has been paid on account thereof before or at the time of the issue or acceptance thereof and that the Company have proved to such sheriff as aforesaid before he so certifies that such shares were issued and accepted (and to the extent aforesaid 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 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 certificate shall be sufficient evidence thereof.

The powers of borrowing money conferred by the Act of 1864 shall not be exerciseable by the Company.

For appointment of a judicial factor.

11. The mortgagees of the undertaking may enforce payment of arrears of interest or principal or principal and interest due on

their mortgages by the appointment of a judicial factor 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 ten 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 and of all mortgages at any time created and issued or granted by the Company under this or any subsequent Act shall subject to the provisions of any subsequent Act rank pari passu (without respect to the dates of the securities or of the Acts of Parliament or resolutions by which the stock and mortgages were authorised) and shall have priority over all principal moneys secured by such mortgages.

Earl may guarantee interest and dividends on mortgage and preferential shares of the Company.

13. The said Earl may if he think fit guarantee and secure for a term not exceeding seven years after the passing of this Act the due and regular payment of the interest or dividends on any moneys borrowed or preferential shares issued by the Company under and by virtue of this Act and the said Earl may for the purpose of any such guarantees from time to time grant and execute all necessary bonds or other securities over the said entailed estate.

Any moneys which the said Earl may from time to time pay in discharge or satisfaction of any such guarantee shall subject as after-mentioned be a debt due by and be repaid to him by the Company on demand with interest at the rate of five pounds per centum per annum during the non-payment thereof Such debt and the interest thereon shall be postponed to and rank for payment after the interest and dividends for the time being due and payable on any moneys borrowed or preferential shares issued by the Company under and by virtue of this Act.

Application of moneys.

14. All moneys raised under this Act whether by shares debenture stock or borrowing shall be applied only for the purposes of this Act to which capital is properly applicable.

First ordinary meeting and quorum.

15. The first ordinary meeting of the Company shall be held within three months after the passing of this Act and the quorum for general meetings whether ordinary or extraordinary shall be seven shareholders holding together not less than ten thousand pounds in the capital of the Company.

Number of directors.

16. The number of directors shall be seven but the Company may from time to time reduce the number provided that the number be not less than three.

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Qualification of directors.

17. The qualification of a director shall be the possession in his own right of not less than twenty-five shares.

Quorum.

18. The quorum of a meeting of directors shall be three and when the number is reduced to three the quorum shall be two.

First directors.

19. The Honourable Greville Richard Vernon, John Watson, Hugh Hogarth, John Cuninghame, James Neilson, and two others to be nominated by them or the majority of them and consenting to such nomination shall be the first directors of the Company and shall continue in office until the first ordinary meeting held after the passing of this Act At that meeting the shareholders present in person or by proxy may either continue in office the directors appointed by this Act or nominated as aforesaid or any of them or may elect a new body of directors or directors to supply the place of those not continued in office the directors appointed by this Act or nominated as aforesaid being if qualified eligible for re-election and at the first ordinary meeting to be held in every year after the first ordinary meeting the shareholders present in person or by proxy shall (subject to the power herein-before contained for reducing the number of directors) elect persons to supply the places of the directors then retiring from office agreeably to the provisions of the Companies Clauses Consolidation (Scotland) Act 1845 and the several persons elected at any such meeting being neither removed nor disqualified nor having died or resigned shall continue to be directors until others are elected in their stead in manner provided by the same Act.

Until transfer harbour undertaking to be carried on in usual manner.

20. The said Earl shall until the date of the transfer authorised by this Act maintain the harbour in good and efficient order and condition and shall perform all obligations in connexion therewith in like manner in every respect as if this Act had not been passed and all capital expenditure incurred by the said Earl in accordance with the agreement contained in Schedule C. to the Act of 1884 for the purposes of the harbour undertaking from and after the first day of January one thousand eight hundred and eighty-six together with interest at the rate of four pounds per centum per annum on all items making up or comprised in such expenditure from the time of the same having been expended by the said Earl until payment thereof by the Company (in this Act referred to as "the intermediate expenditure of the said Earl") shall be paid in cash by the Company in manner by this Act prescribed.

Sale and transfer of Harbour undertaking.

21. Subject to the provisions of this Act the Company shall purchase and the said Earl shall sell and transfer to the Company for the consideration after mentioned the harbour.

The sale of the harbour shall be carried into effect by a duly stamped deed to be executed by the said Earl and on the execution of that deed the harbour shall subject to the provisions of this Act become and shall thenceforth be transferred to and vested in the Company and may and shall thereafter be held maintained and used by the Company The Company shall only be entitled to require the said Earl to execute the said deed when the shares for the balance of the one hundred thousand pounds of preference capital mentioned in section six of this Act shall have been issued and duly subscribed for and not less than one fifth of the amount of said shares shall have been paid up The date of the execution of said deed by the said Earl is in this Act referred to as "the date of the transfer."

Defining date of transfer.

Provided always that within three months from the date of the transfer the Company shall produce the deed of conveyance to the Commissioners of Inland Revenue and in default of such production the ad valorem stamp duty with interest thereon at the rate of five pounds per centum per annum from the date of the conveyance shall be recoverable from the Company with full costs of suit and all costs and charges attending the same.

22. The transfer of the harbour shall be subject to the conditions of the said interlocutors of the Court of Session dated the eighth day of August one thousand eight hundred and eighty-three and sixteenth day of January one thousand eight hundred and eighty-five in so far as such conditions are not inconsistent with or expressly varied by this Act.

Conditions of transfer.

The deed of conveyance shall contain after the dispositive clause a clause in the terms set forth in the first part of the Schedule B. to this Act and after the clause of assignation of writs a clause in the terms set forth in the second part of the said Schedule B.

23. Notwithstanding the transfer by this Act authorised all easements and rights over or upon any part of the harbour which immediately before the date of the transfer were or might have been rightfully exercised or enjoyed by any lessee tenant or grantee of the said Earl or his predecessors shall continue to be so exercised or enjoyed by such lessee tenant or grantee and by any person claiming title through such lessee tenant or grantee in the same manner and in all respects as fully as if this Act had not passed.

Saving of existing easements.

24. Notwithstanding the transfer by this Act authorised the said Earl and all persons deriving title from the said Earl or his predecessors and their respective tenants shall at all times by means of any roads or ways for the time being existing over any lands comprised in the harbour undertaking have all such reasonable

Owners and others to have rights of access to and way over docks &c.

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rights of access to and over the harbour as shall be necessary for the convenient user of their own lands and as shall not interfere with the business or works of the harbour undertaking free of all payment but subject in respect of any user of the harbour to the same tolls rates and charges (if any) as shall for the time being be received by the Company from other persons in respect of the like user.

As to debts and claims affecting undertaking.

25. Notwithstanding the transfer by this Act authorised the said Earl shall pay or provide for the satisfaction and discharge of the moneys owing by the said Earl secured by mortgage of the harbour undertaking and unpaid at the date of the transfer and all other debts and moneys owing by the said Earl affecting the harbour at that date and the said Earl shall be entitled to all moneys securities for moneys and all debts due or belonging to the said Earl or any persons on his behalf in respect of the harbour at the date of the transfer and to all tolls rates duties moneys and penalties payable or recoverable at or before such date by virtue of the Act of 1864 and the same respectively shall thereafter be due and payable from or to the said Earl and shall be recoverable from or by the said Earl by the same ways and means and subject to the same conditions as the same would or might have been recoverable from or by the said Earl if the transfer had not been effected and this Act had not been passed.

Power to Earl of Eglinton and creditors to agree as to debts.

26. The said Earl and the creditors in or persons holding any harbour debt or heritable debt may in their option agree for such debt being discharged and restricted as regards the harbour undertaking and in that event the same shall until paid subsist and continue to be as good valid and effectual against the said entailed estate other than the harbour as if the harbour undertaking had not been originally comprised in the security.

The said Earl may if he thinks fit fix a period for the repayment of the harbour debt or heritable debt or he may borrow on the security of the said entailed estate but excluding the harbour such sum or sums of money as may be necessary to pay off the whole or part of the harbour debt or heritable debt and that by bond and disposition in security in the terms so far as applicable of Schedule A. to the Act of 1864 or the said debt may be assigned to other persons in the terms and conform so far as applicable to Schedule B. to the Act of 1864.

Saving contracts &c.

27. Notwithstanding the transfer by this Act authorised all agreements and contracts which before the date of the transfer have been made or entered into by or with the said Earl in the ordinary

course of business and which are in force at the date of the transfer shall be as valid and of as full force and effect in favour of or against the Company as if the same had been made or entered into by or with the Company by name. A.D. 1886.

Causes and rights of action reserved.

28. Notwithstanding the transfer by this Act authorised all causes and rights of action accrued before the date of the transfer and then in any manner enforceable by for or against the said Earl shall be and remain as good valid and effectual for or against the said Earl as they would or might have been for or against the said Earl if the transfer had not been effected and this Act had not been passed.

As to pending actions &c.

29. Nothing in this Act contained shall release discharge suspend or in anywise prejudicially affect any action or other proceeding at law commenced by or against the said Earl either solely or jointly with any person before the date of the transfer and then pending but the same may thereafter be maintained continued prosecuted or enforced by or against the said Earl either solely or as the case may require jointly with such other person in like manner in all respects as if the transfer had not been effected and this Act had not been passed.

Special Acts to apply to Company.

30. From and after the date of the transfer the Act of 1864 and the Act of 1884 shall except so far as they are by this Act expressed to be saved varied or amended remain in full force and all rights and powers thereby conferred on and vested in the said Earl in relation to the harbour may be enjoyed and exercised by the Company in relation to the harbour undertaking All acts to be done continued or completed or which but for the transfer and this Act would might or could be done continued or completed by the said Earl or his officers or servants and all moneys to be expended under or by virtue of those special Acts shall or may except as by this Act expressly provided be done continued or completed and expended by the Company and their officers and servants as the case may be and those special Acts so far as they relate to or affect the said Earl or the harbour shall be read and construed as if the name of the Company had been used therein in relation to the harbour undertaking instead of the name of the said Earl.

Unexecuted works of Earl to be completed.

31. Except as by this Act otherwise expressly provided all works which the said Earl is at the date of the transfer bound under the Act of 1884 to execute and complete and which are not then executed or completed shall forthwith and before any other works are undertaken be executed or completed by the Company and for that purpose the Company shall have and be subject to all the powers rights and obligations which were conferred or imposed upon

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the said Earl by the Act of 1864 and the Act of 1884 or either of them and which but for the transfer and the passing of this Act might have been exercised by or enforced against the said Earl.

Provided nevertheless that until the improvement enlargement and works mentioned in Article Two of the agreement contained in Schedule C. to the Act of 1884 have been carried out and executed in manner and subject to the provisions therein mentioned and the expenditure mentioned in Article Three of the said agreement has been made either by the Company or by the said Earl or partly by one and partly by the other of them all the powers of and obligations upon the said Earl in respect of such improvement enlargement and works and in respect of such expenditure shall so far as not implemented by the Company be and remain in full force and effect and be as valid and effectual to and obligatory upon the said Earl as if this Act had not been passed and the said Earl may for that purpose raise and borrow moneys not only on the security of the harbour and the rates and duties leviable thereat but also on the whole entailed estates of Eglinton Ardrossan and others and may accordingly exercise the borrowing powers so far as not exhausted of the Act of 1864 Provided always that nothing herein contained shall be deemed to alter extend or enlarge the obligations of the said Earl under said agreement so far as the same shall not have been implemented by the Company.

When and so soon as the above-mentioned improvement enlargement and works have been carried out and executed and the above-mentioned expenditure has been made the powers of the said Earl to raise and borrow moneys on the security of the harbour and the rates and duties leviable thereat shall so far as unexercised cease and determine but without prejudice nevertheless to his power to borrow moneys under the Act of 1864 on the security of the said entailed estates (other than the harbour) so far as in accordance with the provisions of this Act All moneys which the said Earl may require to pay in terms of this clause shall be a debt due by and repaid to him by the Company on demand with interest at the rate of five per cent. per annum during the non-payment.

Earl to remain a principal obligant under the Lanarkshire and Ayrshire Railway Act 1884.

32. Notwithstanding the provisions of this Act the said Earl shall be and remain a principal obligant under the agreement contained in Schedule C. to the Act of 1884 and the said Act and he shall not be or be deemed to be a cautioner or surety in respect of the obligations contained in the said agreement and Act.

Byelaws to remain in force.

33. All the byelaws rules and regulations of the said Earl relating to the management use or control of the harbour undertaking shall notwithstanding the transfer by this Act authorised and

the passing of this Act after the date of the transfer continue to be in force and applicable to and in respect of the harbour undertaking and shall and may be enforced by and available to the Company in their own name as well for the recovery of penalties as for all other purposes as if the same respectively had been in the first instance made by the Company until other byelaws rules and regulations are duly made by the Company in their stead.

General saving of rights and claims.

34. Notwithstanding the transfer by this Act authorised and the passing of this Act everything before the date of the transfer done suffered and confirmed respectively under or by virtue of the Act of 1864 or the Act of 1884 or either of them shall except as otherwise by this Act specially provided be as valid as if this Act had not been passed and the sale and transfer and this Act respectively shall accordingly be subject and without prejudice to everything so done suffered and confirmed respectively and to all rights liabilities claims and demands present or future which if the sale and transfer had not taken place and this Act had not been passed would be incident to or consequent on anything so done suffered and confirmed respectively and with respect to all things so done suffered and confirmed respectively and to all such rights liabilities claims and demands the Company shall to all intents represent the said Earl and the generality of this provision shall not be deemed to be restricted by any other of the provisions of this Act.

Company to issue shares for purpose of providing for consideration for sale.

35. The Company shall subject as herein-after mentioned create as fully paid up and issue to the Earl of Eglinton and Winton the said George Arnulph Montgomerie and Patrick Blair as trustees for the said Earl and to the Earl as an individual ordinary shares of the Company to the nominal amount of one hundred and fifty thousand pounds and preference shares of the Company to the nominal amount of fifty thousand pounds and the said Earl shall accept such shares to the extent of one hundred and forty thousand pounds of ordinary shares and fifty thousand pounds of preference shares to be held by the said trustees as after-mentioned in full payment and satisfaction of the price of the harbour and to the extent of ten thousand pounds in ordinary shares as the price of any plant machinery rolling stock or effects belonging to the Earl as an individual.

The intermediate expenditure if any of the Earl shall be paid by the Company to the Earl in cash.

Harbour to be transferred free of debts &c.

36. As on and from the date of the transfer the Company shall have and hold the harbour freed and discharged (as between the Company and the said Earl) from all debts obligations contracts and liabilities affecting the same unless as in this Act otherwise

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expressly provided and may subject to the provisions of this Act use exercise and enjoy all the powers rights privileges and authorities (except with reference to the raising of money by borrowing) possessed by the said Earl with reference to the harbour undertaking immediately before the sale or transfer or which but for the sale or transfer might accrue to him.

Trusts of shares and purchase moneys in hands of trustees.

37. The said Earl of Eglinton and Winton George Arnulph Montgomerie and Patrick Blair shall stand possessed of the one hundred and forty thousand pounds ordinary shares and fifty thousand pounds preference shares in the capital of the Company which the Company is hereby authorised and required to issue to them as the price or consideration for the sale and transfer of the harbour and of any other moneys which shall from time to time come to their hands by virtue of this Act:

In trust for the ends uses and purposes following to wit:

1. In trust for the Right Honourable Archibald William Montgomerie Earl of Eglinton and Winton as heir of entail in possession of the entailed estates of Eglinton Ardrossan and others and the heirs of entail for the time being in their order of succession by and in virtue of the deeds of entail constituting the title to the said estates.
2. The said shares shall remain liable for and be deemed to be burdened with the said debt of fifty-seven thousand five hundred and eighty pounds and all other moneys borrowed under the Act of 1864 so long as such moneys remain unpaid and they shall be subject also to the obligations of the said Earl under the Act of 1884.
3. The said trustees shall be deemed trustees appointed by and in virtue of and for the purposes of the entail (Scotland) Act 1882 as regards the said shares and they shall possess the whole powers and privileges by that Act conferred as far as applicable.
4. On application to the Court of Session in Scotland by the said trustees or by the said Earl the Court shall make such provisions for the holding management sale or transfer of the said shares as they shall think proper and expedient subject to the deeds of entail of the said estates and the provisions of the Acts relating to entail in Scotland.
5. The rights and privileges of the said Earl under the deeds of entail of the said estates or under any Acts relating to entail in Scotland are notwithstanding the trust hereby created saved and reserved to them except as otherwise by this Act provided.

Saving as to rights of creditors.

38. Nothing in this Act contained shall in any way prejudice or restrict the rights powers and interests of the holders of the harbour debt or heritable debt until the same shall be satisfied or discharged as by this Act provided.

As to powers to grant long leases and feus under Act of 1864.

39. All the powers of the said Earl to grant long leases and feus of parts of the said entailed estates other than the harbour granted by the Act of 1864 are hereby expressly saved and reserved and shall continue in force to the same effect and extent as if this Act had not been passed.

Determination of differences.

40. Any difference dispute or question arising in respect of any of the provisions of this Act or anything to be done thereunder or otherwise in relation thereto between the Company and the said Earl shall except where otherwise by this Act expressly provided be referred to some person as sole arbitrator to be chosen by the parties or to be named on the application of either party by the Lord Advocate of Scotland for the time being and the reference and award shall in all cases have all the incidents and consequences of a reference to and award by a sole arbitrator and the arbitrator shall have power to decide upon and award as to the costs of the reference and to award and direct any costs to be taxed or appoint any accountant or other person to ascertain for him any specific facts or to make any calculation or estimates.

Section 20 of Act of 1864 not to apply to Company.

41. Section 20 of the Act of 1864 shall not apply to the Company but shall otherwise remain in full force and effect.

Provision for Merchant Shipping Act and general Acts.

42. Nothing in this Act contained shall exempt the Company or the harbour from the provisions of the Merchant Shipping Act 1854 or any general Acts relating to docks or dues on 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 or alteration under the authority of Parliament of the rates or dues authorised to be taken at the harbour.

Restricting execution of certain works without consent of Board of Trade.

43. The Company shall not under the powers of this Act 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 such approval being signified as last aforesaid and where any such work may have been constructed the Company

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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 Company and the amount of such costs and charges shall be a debt due from the Company to the Crown and shall be recoverable accordingly with costs.

Saving rights of the Crown to foreshore.

44. 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.

45. Nothing contained in this Act shall divest take away prejudice diminish or alter any estate right privilege power or authority now or from time to time vested in or enjoyed or exerciseable by the Queen's Majesty Her heirs or successors.

Saving as to deeds of entail and rights of creditors.

46. Nothing in this Act contained shall be held or construed to alter innovate or defeat the deeds of entail of the estates of Eglinton Ardrossan and others or the conditions and provisions thereof excepting only in so far as may be hereby otherwise expressly provided or as may be necessary for carrying into effect the purposes of this Act and except as otherwise expressly provided nothing in this Act contained shall affect or limit or in any way prejudice or restrict the rights powers and interests of the holders of any bond and disposition in security or encumbrance over or affecting the said entailed lands and estates.

Saving clause for Lanarkshire and Ayrshire Railway Company.

47. Nothing in this Act contained shall prejudice or affect the Act of 1884 or the agreements scheduled to that Act entered into between the Earl of Eglinton and Winton and the railway company and the deed of conveyance of the harbour shall be made and executed subject in all respects to the conditions provisions restrictions and obligations contained in that Act and those agreements.

General saving.

48. Saving and reserving always to the Queen's most Excellent Majesty Her heirs and successors and to all other persons bodies

politic or corporate their heirs and successors executors administrators and assigns all such estate rights title interest claim and demand whatsoever in to or out of the harbour or any part thereof as they or any of them had before the passing of this Act or could or might have had in case this Act had not been passed But excepting from the aforesaid saving the following persons to wit: the Right Honourable Archibald William Montgomerie Earl of Eglinton and Winton the Honourable George Arnulph Montgomerie Archibald Seton Montgomerie William Alexander Montgomerie and the other heirs of entail who may be entitled to succeed to the said lands and estates under and by virtue of the said deeds of entail.

Expenses of Act.

49. All costs charges and expenses of and incidental to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company.

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SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

(1.) INTERLOCUTOR of LORD FRASER, ORDINARY, ordering Sale of the HARBOUR of ARDROSSAN. In Petition of the Earl of Eglinton and Winton.

8th August 1883.—The Lord Ordinary officiating on the Bills having considered the petition and proceedings with the report by Mr. John P Wright W.S. No. 19 of process—Finds that the procedure has been regular and proper and in conformity with the statutes and acts of sederunt Interpones authority and grants an order of sale of all and whole the harbour of Ardrossan lying in the parish of Ardrossan and county of Ayr with the docks and other works and appurtenances thereof and thereto belonging and the capital stock thereof and with all the powers rights and privileges contained in the several Acts relating to the said harbour docks and other works and rates and duties exigible thereat and subject to all the debts and obligations affecting the same in virtue thereof except in so far as such debts may fall to be paid up or extinguished out of the price to be received for said subjects under the authority of the Court as after mentioned But with and under this condition and obligation which is appointed to be inserted in the deed of entail under which the said subjects are held that the disponee shall be bound and obliged at all times hereafter to maintain the said harbour docks and other works in proper and adequate repair and condition for the accommodation of persons resorting to entering or using the same and with the powers rights and privileges and with and under the conditions contained in the several Acts relating thereto all in so far as applicable and reserving right to the seller and his successors in the remaining entailed lands to carry drains from said lands through the subjects and others above described into the sea Orders the said subjects and others above described to be sold by public auction or by private bargain in the option of the petitioner in one lot at a price not less than the sum of £130,680 2*s.* 3*d.* sterling payable said price at the first term of Whitsunday or Martinmas which shall occur after the date of the said sale which term shall be date of entry of the purchaser or purchasers and that in the case of a sale by public auction within Dowell's Rooms George Street Edinburgh upon such day and at such hour as the petitioner may fix And in the event of the said subjects and others not being sold at the foresaid price the same shall be sold thereafter at such price in such manner and upon such conditions as may be hereafter fixed by the Court Providing that the sale of said subjects and others shall not be by private bargain if the next heir shall intimate within one month after the date of this interlocutor that he desires the sale by public auction And upon the said subjects and others being sold as aforesaid authorises the petitioner or the heir of entail in possession for the time being on payment of

the price to make and execute a disposition in favour of the purchaser or purchasers Appoints the petitioner previous to selling the said subjects and others by public auction to insert an advertisement stating the time and place of sale and the upset price to be published at least once weekly for not less than four weeks prior to the date of sale in the Scotsman newspaper and the Ayr Observer and in such other newspapers as the petitioner may think expedient Remits to Mr. John P Wright to revise and adjust the said advertisement and the articles of roup Authorises payment out of said price when obtained of the costs charges and expenses incurred in the present application Appoints an account thereof to be lodged in process and remits to the auditor of Court to tax the same and to report Appoints the said price after payment therefrom of said costs charges and expenses and subject to the debts provisions annuities and charges after mentioned or the balance of said price if any after payment or provision for payment has been made therefrom of said debts provisions annuities or charges to be paid into the Union Bank of Scotland (Limited) on a consignation receipt at the sight of the said John P Wright subject to the orders of Court or in the option of the petitioner the equivalent of said free price or of said balance as the case may be according to the current price of the day in consolidated stock of the United Kingdom to be transferred into a special account to be opened with said bank in the name of the accountant of Court subject to the order of the Court Remits to Mr. John P Wright to revise and adjust the disposition to the purchaser or purchasers and to see the sale carried out in terms of the statute and of this interlocutor and that payment or due provision for payment is made out of the said price of all debts provisions annuities or terminable charges secured upon or validly affecting the said subjects authorised to be sold and that the same quoad such subjects are duly discharged or that the said price is held as surrogatum for the subjects and others sold as aforesaid or applied pro tanto in payment according to their legal rights of priority of said debts provisions annuities or terminable charges secured or validly affecting said subjects as aforesaid and to report and decerns Appoints a copy of this interlocutor to be forthwith sent by registered letter to the respondent the Honourable Seton Montolieu Montgomerie in order that if so advised he may within one month lodge a minute in process intimating that he desires a public sale Quoad ultra continues the petition.

PATRICK FRASER.

(2.) INTERLOCUTOR of the LORDS of COUNCIL and SESSION.

Varying Interlocutor of the Lord Ordinary.

Edinburgh 16th January 1885.—The Lords having resumed consideration of the reclaiming note for the Glasgow and South-western Railway Company against Lord Kinnear's interlocutor of 11th and 15th July 1884 together with the clauses suggested by both parties in terms of the interlocutor of 18th November last recal the said interlocutor of Lord Kinnear and find that the articles of roup or minute of sale and disposition to the purchaser to be executed

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in pursuance of the order of sale pronounced by the Lord Ordinary on 8th August 1883 shall contain clauses in terms of the adjusted draft No. 39 of process and remit to the Lord Ordinary to proceed Find no expenses due up to this date.

"JOHN INGLIS I.P.D."

Signed 4th February 1885.

SCHEDULE (B.)

FIRST PART.

Excepting always from the harbour lands and other subjects and pertinents thereof hereby conveyed the whole lines of rails with the relative switches and crossings formed upon the harbour of Ardrossan and lying between the said harbour and the east side of Princes Street Ardrossan including the lines of rails which are situated alongside of the docks and quays which belong to the Glasgow and South-western Railway Company All as delineated and coloured red upon duplicate plans signed as relative to the agreement first herein-after specified and all alterations upon or additions to the said lines of rails switches and crossings which have been or may be made by the Glasgow and South-western Railway Company in virtue of the provisions of the agreements first and second herein-after specified All which excepted subjects are hereby declared to be and to remain the property of the Glasgow and South-western Railway Company and their successors notwithstanding anything herein contained and shall be maintained in good order and repair by the Glasgow and South-western Railway Company at their sole expense in all time coming But declaring that the solum on which the said lines of rails switches and crossings are laid as also the branch lines leading into the ballast discharging berths are not excepted from but are included in the subjects hereby conveyed And declaring always that these presents are granted with and under and subject to the whole conditions provisions restrictions limitations obligations reserved powers and rights so far as conceived in favour of the Ardrossan Railway Company or the Glasgow and South-western Railway Company in so far as still subsisting specified in (First) An agreement entered into between the Right Honourable the Earl of Eglinton and Winton now deceased as sole proprietor or about to be vested as sole proprietor of the harbour of Ardrossan on the first part and the Ardrossan Railway Company with consent and concurrence of the Glasgow and South-western Railway Company for all interest they had or might acquire in the premises on the second part dated fifth sixth and tenth July one thousand eight hundred and fifty-four and recorded in the division of the General Register of Sasines applicable to the county of Ayr the seventh day of January one thousand eight hundred and eighty-six and (Second) An agreement entered into between me the said Earl of Eglinton and Winton sole proprietor of the harbour of Ardrossan on the first part and the Glasgow and South-western Railway Company on the second part dated third and thirteenth April one thousand eight hundred and sixty-six and recorded in the said division of the General Register of Sasines applicable to the county of Ayr the seventh day of January

one thousand eight hundred and eighty-six And the said Ardrossan Harbour Company and their foresaids shall be bound and obliged as by acceptance hereof they bind and oblige themselves and them to observe implement and fulfil the said agreements and whole clauses therein contained so far as undertaken by and incumbent on the said deceased Earl of Eglinton and Winton or me or his or my heirs and successors and to free and relieve me and my foresaids of all obligations contained in the said agreements in all time coming and the said conditions provisions restrictions limitations obligations reserved powers and rights specified in the said two agreements so far as conceived in favour of the said Ardrossan Railway Company and Glasgow and South-western Railway Company or either of them and in so far as presently subsisting are hereby directed to be inserted at length or validly referred to in terms of law in all subsequent conveyances instruments and other writs and titles of the said harbour and others hereby disponed. A.D. 1886

Second Part.

I assign to the said Ardrossan Harbour Company and their foresaids the whole reservations declarations powers and rights conceived in favour of the said deceased Earl of Eglinton and Winton and his successors and in favour of me and my successors contained in (First) The said agreement between the said Earl of Eglinton and Winton now deceased on the first part and the Ardrossan Railway Company with consent and concurrence foresaid on the second part dated and recorded as aforesaid (Second) The said agreement between me the said Earl of Eglinton and Winton on the first part and the Glasgow and South-western Railway Company on the second part dated and recorded as aforesaid and (Third) Supplementary agreement between me on the first part and the Glasgow and South-western Railway Company on the second part dated the nineteenth and twenty-sixth days of August one thousand eight hundred and seventy-three together with the said two agreements and supplementary agreement themselves whole clauses tenor and contents thereof in so far as conceived in favour of the said deceased Earl of Eglinton and Winton and his successors and of myself and my successors: surrogating hereby and substituting the said Ardrossan Harbour Company and their foresaids in the full right and place of the said Earl of Eglinton and Winton now deceased and of myself and his and my successors in the said two agreements and supplementary agreement and all that has followed or is competent to follow thereon now and in all time coming.

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