CHAP. cxcv.

An Act for authorising the transfer of the Undertaking of the Company of Proprietors of the Barnsley Canal Navigation to the Undertakers of the Navigation of the Rivers of Aire and Calder in the county of York, and for providing a better supply of Water to the said Canal; and for other purposes. [14th August 1871.]

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WHEREAS by an Act passed in the thirty-third year of the reign of His Majesty King George the Third, intituled "An "Act for making and maintaining a navigable canal from the "river Calder in the township of Warmfield-cum-Heath to or "near the town of Barnsley, and from thence to Barnby Bridge "in the township of Cawthorne in the west riding of the county "of York, and certain railways and other roads to communicate "therewith," the Company of Proprietors of the Barnsley Canal Navigation (herein-after called "the Barnsley Company") were authorised to construct the canal and other works in the said Act described, and for those purposes to raise by subscription a sum of seventy-two thousand pounds, and also to raise by subscription, or by borrowing on mortgage, a further sum of twenty-five thousand pounds: 33 G. 3. c. 110.

And whereas by another Act passed in the forty-eighth year of the reign of His said Majesty, chapter thirteen, the Barnsley Company were, for the purpose of discharging their debts and completing their undertaking, authorised to raise by subscription an additional sum of forty-three thousand two hundred pounds, and to borrow on mortgage an additional sum of ten thousand pounds: 48 G. 3. c. xiii.

And whereas under the powers of the first-recited Act the Barnsley Company raised by shares in their undertaking the said sum of seventy-two thousand pounds, and borrowed on mortgage the said sum of twenty-five thousand pounds, or thereabouts, and expended the sums so raised and borrowed upon their undertaking:

A.D. 1871.

And whereas under the powers of the secondly-recited Act the Barnsley Company raised the said additional sum of forty-three thousand two hundred pounds by increasing the amount of their share capital, and applied the said sum of forty-three thousand two hundred pounds partly in redeeming the whole of the said mortgage debt and partly in the completion of their undertaking, but did not borrow any portion of the said sum of ten thousand pounds:

And whereas the Barnsley Canal Navigation is directly connected with the navigation of the rivers of Aire and Calder, and under two leases, each dated the eighth day of August one thousand eight hundred and fifty-five, the trustees for the undertakers of the last-named navigation are lessees of the undertaking of the Barnsley Company, including the powers of taking tolls thereon, for a term of twenty-one years, which term will expire on the thirtieth day of November one thousand eight hundred and seventy-five:

And whereas the supply of water to the Barnsley Canal Navigation is insufficient for the proper working of the traffic thereon, and it is expedient that provision should be made for improving that supply, and for economising the use of the water in that navigation, and that proper works should be authorised for those purposes, but the Barnsley Company have at present no funds for the construction of such works:

And whereas the Undertakers of the Navigation of the Rivers of Aire and Calder in the county of York (herein-after called "the Undertakers") are willing to contribute the funds necessary for the construction of such works, in the event of the Barnsley Canal Navigation being transferred to them, and of a sufficient supply of water being secured for the requirements of that navigation:

And whereas, subject to the approval of Parliament, an agreement has been entered into between the Barnsley Company and the Undertakers for the sale and transfer of the undertaking of the Barnsley Company to the Undertakers, for the consideration and under the conditions specified in that agreement (a copy of which agreement is set out in the First Schedule to this Act), and it is expedient that such agreement should be sanctioned and confirmed, and that the said undertaking should be transferred accordingly:

And whereas by the first-recited Act, upon the recital that the proprietors of the River Dun Navigation and also the owners and proprietors of mills both on the river Dearne and on the river Dun were materially interested in the water of the said river Dearne, and in the rivers, streams, and waters which flow into that river, and by means of that river into the river Dun, it was provided that the Barnsley Company should not divert into their navigation any water out of the river Dearne or any tributary

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

Short title.

1. This Act may be cited for all purposes as "The Barnsley Canal Transfer Act, 1871."

Provisions of general Acts herein named incorporated.

2. "The Lands Clauses Consolidation Act, 1845," "The Lands "Clauses Consolidation Acts Amendment Act, 1860," and clauses 6 to 12 inclusive, clause 16, and clauses 18 to 24 inclusive, with respect to the construction of the railway and the works connected therewith, clauses 30 to 44 inclusive, with respect to the temporary occupation of lands near the railway during the construction thereof, clause 45, with respect to lands for additional stations, clauses 49 to 58 inclusive, and clauses 65 to 67 inclusive, with respect to the crossing of roads or other interference therewith, clauses 68 to 75 inclusive, with respect to works for the accommodation of lands adjoining the railway, clauses 77 to 85 inclusive, with respect to mines lying under or near the railway; and clauses 126 to 137 inclusive, with respect to the settlement of disputes by arbitration, of "The Railways Clauses Consolidation "Act, 1845," are (except where expressly varied by this Act) incorporated with and form part of this Act, and shall apply to the works by this Act authorised to be constructed as if such works were a railway.

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, and—

The expression "the Barnsley Company" means the Company of Proprietors of the Barnsley Canal Navigation:

The expression "the committee of management" means the committee of management of the Barnsley Company:

The expression "the Undertakers" means the Undertakers of the Navigation of the Rivers of Aire and Calder in the county of York:

The expression "the trustees" means the trustees in whom are vested for the time being the lands and hereditaments, and other property of the Undertakers:

The expression "the Barnsley Canal Acts" means the Acts of Parliament herein-before first and secondly recited:

And in the Acts wholly or partially incorporated herewith,—

The expression "the special Act" means this Act; the expressions "the promoters of the undertaking" and "the Company"

A.D. 1

10 & 11 Vict. c. ccxci.

thereof, but for many years past such waters have been admitted into the said navigation; and by the fortieth section of "The South Yorkshire, Doncaster, and Goole Railway Act, 1847," upon the recital that the Barnsley Company had, with the permission of the River Dun Navigation Company, for some time past enjoyed the use of water from the river Dearne, and from certain rivers, streams, and waters which flow into the said river Dearne, and by means of that river into the river Dun, for the supply of the Barnsley Canal, it was enacted that it should not be lawful for the South Yorkshire, Doncaster, and Goole Railway Company (to whom by the said Act the undertaking of the River Dun Navigation Company was transferred) in any manner to interfere with, diminish, or prejudice such use and enjoyment by the Barnsley Company of the water from the aforesaid rivers, streams, or waters, or from any of them, so long as the Barnsley Company should demand and take for and in respect of vessels and traffic passing over the said Barnsley Canal to and from the canal above Barugh Locks into the Dearne and Dove Canal (which was by the same Act transferred to the said railway company) no higher or greater tolls or charges than should for the time being be demanded for and in respect of vessels and traffic passing over the Barnsley Canal to and from the canal above Barugh Locks into and from the Aire and Calder Navigation, and should not take any greater tolls or charges than were then taken below Barugh Locks, and it is expedient that such water should continue to be admitted into the Barnsley Canal Navigation under proper regulations, and that an additional supply of water should be provided for the purposes of the said navigation from the Oakenshaw Beck, and that the storage capacity of the Cold Hiendley Reservoir of the said navigation should be increased, and that the necessary conduits and other works for those purposes, and for the purpose of economising the use of water in the said navigation, and for pumping water from and into certain parts of the said navigation and into the said reservoir, should be sanctioned:

And whereas plans and sections of the proposed works showing the lines, situation, and levels thereof, and the lands to be taken under the authority of this Act, with a book of reference to those plans containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, have been deposited in the office at Wakefield of the clerk of the peace for the west riding of the county of York, which plans, sections, and book of reference are herein-after referred to as the deposited plans, sections, and book of reference:

But the purposes aforesaid cannot be effected without the authority of Parliament:

respectively mean the Undertakers of the Navigation of the Rivers of Aire and Calder in the county of York; the expressions "the works," "the undertaking," and "the railway" respectively mean the works by this Act authorised to be constructed; and the expression "the centre of the railway" means any part of such works: A.D.

And in those Acts as incorporated with this Act, and in this Act,—

The expression "superior courts" or "court of competent jurisdiction," or any other like expression, shall be read and have effect as if the debt or demand with respect to which the expression is used were a common simple contract debt, and not a debt or demand created by statute:

unless in any case there be something in the subject or context repugnant to such construction.

Barnsley Company to sell their undertaking to Undertakers of Aire and Calder Navigation, and agreement for sale confirmed.

4. The Barnsley Company shall sell to the Undertakers, and shall transfer to the trustees in trust for the Undertakers, and the Undertakers shall purchase the undertaking of the Barnsley Company, including the canal, basins, reservoirs, weirs, locks, wharfs, towing-paths, aqueducts, railways, and other works, lands, houses, and other hereditaments, waters, water rights, and other easements, boats, waggons, engines, machinery, and implements, and all other property whatsoever, whether real, personal, or mixed, and all powers, authorities, rights of action and suit, and other rights and privileges belonging to or vested in the Barnsley Company, or in any trustees or trustee for or on behalf of that Company, and the powers of demanding and taking tolls, rates, duties, and charges for vessels, and for tonnage, craneage, porterage, wharfage, and warehouse room, and all other powers, privileges, and exemptions whatsoever conferred on the Barnsley Company by the Barnsley Canal Acts, upon such terms and conditions as, subject to the provisions of this Act, are contained in the said agreement entered into between the Barnsley Company and the Undertakers, free from all mortgage, bond, or other debts, if any, of the Barnsley Company; and the said agreement is, subject to the provisions of this Act, hereby confirmed: Provided always, that nothing in the said agreement or in this Act contained shall operate to confer upon the Undertakers or the trustees any right to receive or recover any moneys in the hands of the treasurer or any other officer of the Barnsley Company or of their bankers on their behalf, or any shares in the undertaking of the Barnsley Company which may be in trust for that Company, or to enable the Undertakers to claim compensation for any improvements made by them on the undertaking of the Barnsley Company, or for any lands or minerals purchased by the Undertakers for the purposes thereof, during the said term of twenty-one years granted by the said leases.

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s to completion of transfer.

5. For the purpose of the completion of the sale and purchase of the undertaking of the Barnsley Company, the Barnsley Company shall, by deed under their common seal, in the form set forth in the Second Schedule to this Act annexed, or to the like effect, convey to the trustees, free as between the Barnsley Company and the Undertakers from all mortgage, bond, and other debts, if any, the undertaking of the Barnsley Company as herein-before defined, and shall within one month after the passing of this Act deliver the said deed to the Undertakers; and such deed shall be duly stamped for denoting the proper stamp duty by law payable in respect of the conveyance on such sale, and a memorial containing a copy of the said deed at full length shall be registered by the Undertakers in the registry of deeds at Wakefield for the west riding of the county of York; and from and after the completion of such purchase by the execution of the said deed, the said undertaking of the Barnsley Company, together with the works by this Act authorised, and the lands, houses, and other property acquired or erected under the powers of this Act, and all the profits and advantages to arise therefrom, shall be and stand vested in the trustees, their heirs and assigns, in trust for themselves and the rest of the Undertakers, in the same manner, upon the same trusts, for the like purposes, and with the like indemnification as the present property of the Undertakers and the profits and advantages arising therefrom are and stand vested in the trustees at the time of the passing of this Act; and on the completion of such purchase in manner aforesaid, the two several leases aforesaid for the term of twenty-one years of the undertaking of the Barnsley Company, and the tolls thereon, to the Undertakers, dated respectively the eighth day of August one thousand eight hundred and fifty-five, shall absolutely determine; and the Undertakers may apply any of the funds belonging to them, or which they have power to raise, to the payment of the purchase money and of the costs, charges, and expenses of and connected with the completion of such purchase: Provided always, that every trustee in whom at the time of the completion of the sale and purchase of the undertaking of the Barnsley Company as aforesaid there shall stand vested any estate or interest, whether legal or equitable, in any lands or hereditaments for or on behalf of the Barnsley Company, and the heirs, executors, administrators, and assigns of every such trustee, shall, when required, by and at the expense of the Undertakers, convey and assure such estate or interest to the trustees for and on behalf of the Undertakers without any consideration.

Payment of consideration money and sums in lieu of rent.

6. The Undertakers shall pay to the Barnsley Company, or to any person appointed by them to receive the same, on the thirtieth day of November one thousand eight hundred and seventy-five, the sum of

forty-six thousand eight hundred pounds sterling, as the consideration for the sale of the said undertaking, and shall also, until such payment shall have been made, and in lieu of the rent which they would have paid to the Barnsley Company if the said two leases were not determined by this Act, pay to the Barnsley Company, on the same days upon which such rent would in that event have been payable, sums of the same amount as the rent which would on such days have been payable under the said leases, including the sum which would have been payable to the Barnsley Company on the said thirtieth day of November one thousand eight hundred and seventy-five, without any deduction except income tax; and in the event of any of the said sums remaining unpaid the Barnsley Company may recover the same, with interest at the rate of five per centum per annum until paid, from the Undertakers in any court of competent jurisdiction, or, in so far as regards the said payments in lieu of rent, by the same means as in the said leases are provided for recovering such rent.

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Receipts for purchase money and other sums.

7. The receipts or acknowledgments of the Barnsley Company, under their common seal, for the said purchase money, and for the other moneys to be paid to them as aforesaid, shall be good and sufficient discharges to the Undertakers for such moneys respectively, and the Undertakers shall not be bound to see to the application of such moneys, or be answerable or accountable for any loss, misapplication, or non-application thereof.

Moneys in the hands of Barnsley Company and payments to be made to them to be assets of that Company.

8. All moneys which at the time of the completion of the sale and purchase of the undertaking of the Barnsley Company shall be in the hands of that Company, or of the bankers or other agents of that Company on behalf of that Company, and all rent, if any, due at that time by the Undertakers to that Company, shall belong to and be part of the assets of the Barnsley Company.

Application of purchase money and sums in lieu of rent.

9. The sum of money paid by the Undertakers to the Barnsley Company as the consideration for their undertaking shall be applied in the first place in payment of the moneys, if any, due by the Barnsley Company upon mortgage or bond, and of all other moneys, if any, due by the Barnsley Company; and the remainder of such sum of money, and the sums arising from the annual payments in lieu of rent herein-before required to be made by the Undertakers to the Barnsley Company, after deducting therefrom any costs or expenses incurred in the distribution thereof, and in winding up the affairs of the Barnsley Company, shall be distributed under the control and superintendence of the committee of management amongst the several persons who at the time when such sums respectively are payable in manner herein-before provided shall be

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Persons appearing on the register of shareholders to be held to be the proprietors.

10. The several persons whose names appear in the register of proprietors of shares in the Barnsley Company as the proprietors of shares therein at the time shall, until the committee of management receive notice to the contrary, be considered to be the persons entitled to participate in the distribution of the moneys to be divided as aforesaid among the proprietors of shares in that Company; and the receipts of those persons shall be good discharges to the Barnsley Company and the committee of management for their respective shares and proportions of the assets of the Barnsley Company on such distribution.

Cases in which undistributed assets may be paid into court.

11. If, at the expiration of twelve months after the payment of any sum or sums of money by the Undertakers to the Barnsley Company, any part of any such sum or sums of money so paid remains undistributed,—

First, by reason of the same not having been claimed by any person entitled thereto:

Secondly, by reason of any person claiming the same not having shown, to the satisfaction of the committee of management, a sufficient title thereto:

Thirdly, by reason of the person claiming the same, or entitled thereto, being under any disability or incapacity, and of no person competent to give an effectual receipt for the same having claimed the same on behalf of the person entitled thereto:

then the committee of management may pay the same into the High Court of Chancery under any Acts from time to time in force for the relief of trustees; and every such payment into the said court shall effectually discharge the Barnsley Company and the committee of management from all further liability with respect to the moneys so paid, or to the claim in satisfaction of which such moneys shall be so paid, and for the purposes of this Act shall be deemed payment thereof to a person absolutely entitled thereto; and any person afterwards showing to the said court that he is entitled to such moneys or any part thereof may obtain payment of the

same out of court accordingly: Provided always, that the committee of management may deduct, out of every sum of money which they shall pay into court as aforesaid, all such costs, charges, and expenses as they shall incur in relation to such payment, and to the application to the court for that purpose.

Indemnity to the committee of management.

12. The respective members of the committee of management for the time being, or any of them, shall not be charged with any more moneys than they respectively shall actually receive by virtue of this Act, and no one or more of them shall be answerable or accountable for the other or others of them, or for his or their acts or defaults, and they respectively shall not be answerable for any accidental or involuntary loss, damage, or increased expense consequent upon any exercise of the discretionary powers hereby given to the committee of management.

Executors, &c. empowered to give receipts.

13. It shall be lawful for all committees of the estates of idiots or lunatics, and for all executors, administrators, and guardians in whose respective names any shares in the capital of the Barnsley Company are or shall be standing, to give effectual receipts for the money which may under the provisions of this Act be paid to them; and every such receipt shall be a sufficient discharge to the Barnsley Company, and shall release them and the committee of management and officers of that company from all obligation in respect of the money for or in respect of which such receipt shall be given.

Undertakers to exercise powers of Barnsley Canal Acts.

14. From and after the completion of the sale and purchase of the undertaking of the Barnsley Company by the execution of the said deed of conveyance in manner aforesaid, the Barnsley Canal Acts shall, except so far as they are by this Act varied or repealed, remain in full force, and all rights and powers thereby conferred on and vested in the Barnsley Company in relation to their undertaking may be enjoyed and exercised by the Undertakers in relation to that undertaking, and all matters to be done, continued, or completed, or which but for the passing of this Act would, might, or could be done, continued, or completed by the Barnsley Company, or their committee of management, officers, or servants, under or by virtue of the Barnsley Canal Acts, shall or may, from and after the said date, be done, continued, or completed by the Undertakers; and the Barnsley Canal Acts, and any other Acts of Parliament containing provisions relating to the Barnsley Company, unless such construction would be inconsistent with the provisions of this Act or of the Acts incorporated with this Act, shall from and after the said date be read and construed as if the name of the Undertakers had been used therein instead of the name of the Barnsley Company.

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Powers of the Undertakers and of committees.

15. Such of the powers and duties conferred and imposed on the Barnsley Company by the Barnsley Canal Acts as are by this Act transferred to the Undertakers may be exercised and performed by the Undertakers, or by any committee or committees appointed by the Undertakers for the management of their navigation; and after the completion of the sale and purchase of the undertaking of the Barnsley Company as aforesaid, and in so far as the powers contained in the Barnsley Canal Acts may under the provisions of this Act be exercised by the Undertakers, everything which is by the Barnsley Canal Acts required or directed to be done under the common seal of the Barnsley Company may be done under the hands and seals of the trustees, or under the hands of the committee of directors of the Undertakers, or of any five of such committee, accordingly as the same would be done under the hands and seals of the trustees, or under the hands of the said committee, if such thing related to the undertaking of the Undertakers, and everything which is by the said Acts required or directed to be done by or at a general meeting or assembly of the proprietors of the Barnsley Company may be done by or at a general or special assembly of the Undertakers.

Conveyances, &c. to remain in force.

16. Except as by this Act otherwise provided, or except in so far as is inconsistent with the provisions of this Act, all contracts and conveyances made or entered into before the said date of completion of the sale and purchase to, with, in favour of, by, for, or on behalf of the Barnsley Company, or any person on their behalf, shall after that date be and remain as good, valid, and effectual in favour of, against, and with reference to the Undertakers, and may be proceeded on and enforced by or against the Undertakers in the same manners to all intents and purposes as the same might have been proceeded on and enforced by or against the Barnsley Company if this Act had not been passed, and the Barnsley Company shall indemnify the Undertakers against all loss or damage which may be sustained by the Undertakers by reason or in consequence of any act or omission of the Barnsley Company.

Debts due to and by the Barnsley Company to be paid to and by them.

17. Notwithstanding the passing of this Act and the completion of the said sale and purchase, the Barnsley Company shall remain and be liable to all claims and demands whatsoever at law or in equity to which that Company are or would have been liable if this Act had not been passed; and all persons who owe any money to the Barnsley Company, or to any person on their behalf, shall pay the same, with all interest (if any) due or to accrue due for the same, to the Barnsley Company; and all debts and moneys due or owing by or recoverable from the Barnsley Company, or for the payment whereof the Barnsley Company are or but for this Act

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diately above Barugh Mill in the township of Barugh and parish of Darton, to a point on the Barnsley Canal about ten yards eastward from the eastern end of the lowest lock at Barugh of the said canal :

An embankment (called on the deposited plans and in this Act embankment No. 1), commencing at or near the south-westernmost corner of the existing Cold Hiendley Reservoir, passing in a northerly direction, and terminating at or near a point in the northern boundary fence of the field lying immediately northward of the Cold Hiendley pumping engine in the township of Wintersett, and distant about three hundred yards measuring along the line of the said fence in an easterly direction from the western boundary of the said township; and also an embankment (called on the deposited plans and in this Act embankment No. 2), commencing at or near the said south-westernmost corner of the existing Cold Hiendley Reservoir, passing in an easterly direction, and terminating at or near the south-eastern corner of the said reservoir; and also an embankment (called on the deposited plans and in this Act embankment No. 3), commencing at or near a point in Haw Park Lane distant about one hundred and seventy-six yards measuring in a north-easterly direction from the said point of termination of embankment No. 1, and terminating at or near a point in Haw Park Lane four hundred and fifty yards or thereabouts north-eastward from the said point of termination of embankment No. 1 :

And the Undertakers may also, subject to the provisions of this Act, enter upon, take, and use the whole or part of a piece of land bounded on the eastern side by the Barnsley Canal, and on the northern side by the river Calder, and situate in the township of Sandal Magna and parish of Sandal Magna, at or near the point where the said canal joins the said river, as delineated on the deposited plans and described in the deposited book of reference, to the extent shown within the line delineated on the deposited plans, and described thereon as "limit of deviation :" Provided always, that it shall not be lawful for the Undertakers to enter upon, take, use, or otherwise interfere with the road delineated on the deposited plans and numbered thereon 18 in the township of Wintersett and parish of Wragby.

As to lands and roads which will be flooded at Cold Hiendley Reservoir.

21. Subject to the provisions of this Act, the Undertakers may enter upon, take, and use all or any of the lands delineated on the deposited plans, within the limits of deviation shown thereon as surrounding the Cold Hiendley Reservoir, and described in the book of reference, and may flood with water, to the height to which

would have been liable, shall be recoverable from and be paid, with all interest (if any) due or to accrue due thereon, by the Barnsley Company.

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General saving of rights.

18. Notwithstanding the passing of this Act, and except only as is by this Act otherwise expressly provided, everything before the passing of this Act done, suffered, and confirmed respectively, under or by virtue of the Barnsley Canal Acts, shall be as valid as if this Act were not passed; and this Act shall accordingly, except only as is by this Act otherwise expressly provided, be subject and without prejudice to everything so done, suffered, and confirmed respectively, and to all rights, claims, liabilities, and demands, both present and future, which, if this Act were not passed, would be incident to or consequent on any and every thing so done, suffered, and confirmed respectively: Provided always, that the generality of this provision shall not be restricted by any other of the clauses and provisions of this Act.

Powers of Barnsley Company for winding up their affairs, and dissolution of that Company.

19. From and after the passing of this Act the Barnsley Company shall continue to exist only for the purpose of receiving, and if need be of enforcing, the payment to them by the Undertakers of the annual sums in lieu of rent and the consideration money by this Act required to be paid to them by the Undertakers, and of receiving and collecting any other moneys due to them, and of satisfying their debts and obligations, and of distributing their assets among the proprietors of shares in the said Company; and when all the debts and liabilities of the Barnsley Company are fully paid and satisfied, and their affairs are finally wound up, the Barnsley Company shall be dissolved and cease to exist; and after the passing of this Act all other powers conferred on the Barnsley Company by the Barnsley Canal Acts and any other Acts relating to the Barnsley Company shall cease to be exerciseable by the Barnsley Company, and shall be exercised by the Undertakers as herein-before provided.

Power to make works.

20. Subject to the provisions of this Act, the Undertakers may make and maintain, in the lines and situation and according to the levels shown on the deposited plans and sections, the conduits and embankments herein-after described, and all proper works and conveniences connected therewith, and may enter upon, take, and use such of the lands delineated on the deposited plans and described in the deposited book of reference as may be required for that purpose. The conduits and embankments herein-before referred to and authorised by this Act are,—

A double culvert or conduit from a point on the right bank of the river Dearne, about fifty-five feet to the eastward of the eastern side of the wooden bridge over the said river, imme-

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provisions of the Barnsley Canal Acts inconsistent with the powers of taking, using, or diverting any of the said waters, and all rights and privileges which may now or would hereafter interfere with the said powers, are hereby repealed and extinguished:

Restricting right to take water from river Dearne.

Provided always, that it shall not be lawful for the Undertakers to take or divert any water from the said river Dearne at the said point in the parish of Darton excepting at such times as there shall be a flow of water exceeding six inches in depth passing over the mill weir across the said river at Barugh Mill for a width of not less than thirty-one feet four inches (being the width of the top of the said weir as existing on the first day of January one thousand eight hundred and seventy-one); nor shall it be lawful for the Undertakers to take or divert any water from the said river Dearne at the said point, except over the top of a permanently fixed weir or sill, the length whereof shall not exceed ninety feet, and the top whereof shall be not lower in any part than six inches above the level of the top of the said mill weir, and the Undertakers shall construct such new weir or sill in a substantial and water-tight manner, without any sluice or other opening through the same, and shall at all times thereafter maintain and keep the same in good repair, and so that the difference between the levels of the two weirs shall never be less at any time than the before-mentioned height of six inches; and the Undertakers may also divert into the said navigation and the works by this Act authorised the waters of the stream called the Oakenshaw Beck at a point where that stream forms the boundary between the parishes of Crofton and Sandal Magna, near and to the eastward of the bridge carrying the Oakenshaw Lane across the Barnsley Canal Navigation, and the waters of the river Calder at a point in the parish of Sandal Magna near the junction of the said navigation with the said river; and may also divert into the works by this Act authorised the waters of the said Barnsley Canal Navigation.

Power of inspection.

24. The owner or owners of any water-power mill or mills situated on the river Dearne below the Barugh Weir shall be entitled by themselves or their agents, at all reasonable times, to enter upon the premises of the Undertakers for the purpose of inspecting the Barugh Mill Weir and any works to be constructed by the Undertakers at Barugh, and of taking measurements in order to ascertain that the Undertakers are complying with the provisions of this Act.

Penalty for taking water of Dearne in contravention of the

25. If the Undertakers shall at any time wilfully take or divert into the Barnsley Canal any of the waters of the river Dearne at or near Barugh Mill aforesaid, in contravention of the provisions in regard thereto of this Act, the Undertakers shall for every day on

the top-water level of the Cold Hiendley Reservoir will be raised by means of the works authorised by this Act, all or any of the lands so taken: Provided always, that in exercising the powers conferred by the sixteenth section of "The Railways Clauses Consolidation Act, 1845," as incorporated with this Act, as respects those portions of the roads called Haw Park Lane, Long Dam Lane, and Ferry Top Lane, which will be affected by the flooding with water aforesaid, the Undertakers shall not divert the respective courses of the said roads, but may raise the levels of those portions of the said roads to the height of three feet six inches above the height to which the top-water level of the Cold Hiendley Reservoir will be raised as aforesaid, and may carry the portion of the road called Haw Park Lane so raised along any part of the said embankment No. 3, but so as not to divert the course of such road.

Provisions as to pipe from Ryhill to Nostell Priory.

22. The Undertakers shall not raise the level of the waters of the said reservoir to such a height as to cover the pipe belonging to Charles Winn, Esquire, which is laid from the spring near Ryhill in the parish of Wragby to the said Charles Winn's residence at Nostell in Wragby aforesaid, until they shall, to the reasonable satisfaction of the said Charles Winn, his heirs or assigns, have provided and laid down a new pipe, of the same internal diameter as the present one, from some point in the existing pipe which will be immediately above the raised water level of the reservoir, and continued the same in a course and at a level which shall be above the raised water of the said reservoir, until it shall form a junction with the existing pipe at a point outside the said reservoir, and shall have legally secured to the said Charles Winn, his heirs and assigns, full right at all times hereafter to open the ground along the course in which the said new pipe shall be laid in order to repair and preserve the same in full efficiency and until all such works shall have been completed: Provided that if any dispute shall arise as to the efficiency or completion of the said work or the grant of such powers, such difference shall be referred to the arbitration of some person to be mutually agreed upon, or, in case of disagreement, to be appointed by the chairman of quarter sessions for the west riding of the county of York for the time being, on the request of either party, whose directions in the matter shall be obeyed as well by the Undertakers as by the said Charles Winn, his heirs and assigns.

Power to take and divert water.

23. Notwithstanding anything in the Barnsley Canal Acts contained, the Undertakers may from time to time take and use, and may divert into the Barnsley Canal Navigation and the works by this Act authorised, the waters of the river Dearne at a point at or near Barugh Mill in the parish of Darton; and all the

which they shall so wilfully take or divert any such waters forfeit and pay to the occupiers of each of the water-power mills on the rivers Dearne and Don affected thereby, down to and including the mills called Conisborough Mills, and also to the mayor, aldermen, and burgesses of the borough of Doncaster in the county of York as owners or reputed owners of the Doncaster Town Corn Mill, and also to the said mayor, aldermen, and burgesses as owners or reputed owners of the Doncaster Waterworks, and also to the South Yorkshire Railway and River Dun Company and their lessees the Manchester, Sheffield, and Lincolnshire Railway Company, (who may sue for and recover the same,) as liquidated damages, the sum of five pounds, and such occupiers and Corporation of Doncaster may respectively, from time to time, recover such compensation, with costs, from the Undertakers in any court of competent jurisdiction: Provided that in case of any mill being in the occupation of several persons no greater penalty than five pounds per day shall be payable by the Undertakers in respect of that mill.

provisions of this Act.

26. The Undertakers shall not at any time, either permanently or temporarily, raise or allow to be raised the level of the crown of the weir of Barugh Mill, at any point between the said mill and the northern end of the said weir, as existing on the first day of January one thousand eight hundred and seventy-one, and (inter alia) the placing of a plank or other solid matter on the top of such weir shall be deemed a raising of the level of the said weir, and, in the event of the Undertakers acting in contravention of this provision, they shall for every such offence forfeit and pay to Wentworth Blackett Beaumont, of Bretton, in the county of York, Esquire, his heirs and assigns, the sum of five pounds, and the further sum of five pounds for every day during which or any part of which such offence shall continue, such forfeiture to be recoverable in manner provided by the sections of "The Lands Clauses Consolidation Act, 1845," with respect to the recovery of forfeitures, penalties, and costs.

For protection of Wentworth Blackett Beaumont, Esquire, as proprietor of the estate of Bretton.

27. The Undertakers may, for the purposes of the Barnsley Canal Acts and of this Act, purchase by agreement and hold any quantity of land which they may require, not exceeding five acres, in addition to the lands herein-before authorised to be taken for the purposes of this Act.

Lands for extraordinary purposes.

28. All persons empowered by "The Lands Clauses Consolidation Act, 1845," and "The Lands Clauses Consolidation Acts Amendment Act, 1860," respectively, to sell and convey or release lands, shall have full power, if they think fit, to grant to the Undertakers, subject to the provisions of those Acts respectively, in fee or in consideration of any yearly or other rent or otherwise, any ease-

Owners may grant easements.

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ment, right, or privilege (but not of water) in, over, or affecting any lands by this Act authorised to be taken or held by the Undertakers; and for the purposes of this Act the several provisions of those Acts respectively with respect to lands and rentcharges, so far as the same respectively are applicable in that behalf, shall extend and apply to easements and rentcharges reserved by grants of easements respectively.

Period for compulsory purchase of lands.

29. The powers of the Undertakers for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of three years from the passing of this Act.

Power to deviate.

30. Subject to the provisions of this Act, the Undertakers may, in constructing the works by this Act authorised, deviate to any extent within the limits shown and expressed on the deposited plans as the intended limits of deviation, and may also deviate from the levels shown on the deposited sections to any extent not exceeding three feet in respect of the embankments and reservoir, and not exceeding five feet in respect of the other works herein-before described.

Period for completion of works.

31. The conduits and embankments by this Act authorised shall be completed within seven years from the passing of this Act, and on the expiration of that period the powers by this Act granted to the Undertakers for making and completing the same, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall then be completed.

Power to purchase minerals.

32. The Undertakers may at any time treat and agree with the owners, lessees, and occupiers of all coal and other minerals under or near any of the works constructed under the authority of this Act, such minerals being also under lands delineated on the deposited plans and described in the deposited book of reference, for the purchase of all such coal or other minerals as the Undertakers may think proper to be left for the security and preservation of the said works: Provided always, that nothing herein contained shall extend to alter or repeal the provisions contained in the forty-third and forty-fourth sections of the first-recited Act for the protection or benefit of Sir Francis Wood, Baronet, his heirs or assigns, but the provisions of the said sections shall continue in force, anything herein-before contained notwithstanding.

Undertakers may apply their funds for construction of works, &c.

33. The Undertakers may apply any of the funds belonging to them, or which they have power to raise, to the construction of the works and the acquisition of lands and easements therein, and waters, by this Act authorised to be constructed and acquired by them.

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Tolls.

34. From and after the passing of this Act the sixty-fourth section of the first-recited Act, and the twelfth and thirteenth sections of the second-recited Act, are hereby repealed, and in lieu of the tolls thereby authorised it shall be lawful for the Undertakers to demand and take for their own use, in respect of boats, barges, and other vessels navigated and conveyed, and of the tonnage of coals, minerals, goods, wares, merchandise, commodities, and other things conveyed or carried on or along the Barnsley Canal, any tolls not exceeding the following; (that is to say,)

In respect of the tonnage of all articles conveyed or carried upon the said canal or any part thereof, as follows:

First class:

Coal, slack, culm, charcoal, road material, manure, lime, and limestone, per ton of twenty hundredweight, per mile one halfpenny:

Second class:

Iron, slates, stone, bricks, tiles, and clay, per ton of twenty hundredweight, per mile one penny:

Third class:

Grain, timber, general merchandise, and all other articles, per ton of twenty hundredweight, per mile one penny halfpenny:

Provided that the Undertakers may demand and take for or in respect of all articles navigated or conveyed upon the said canal between the wharf of the Barnsley Company at Barnsley and the junction with the Dearne and Dove Canal, the tolls following; that is to say, for all articles included within the first or second of the aforesaid classes one penny per ton, and for all articles included within the third of such classes one penny halfpenny per ton, and for all articles whatsoever (excepting as respects articles so navigated between the said wharf and the said junction) navigated or conveyed upon the said canal for any distance less than two miles may demand and take tolls as for two miles, and if the cargo of any vessel shall not amount to thirty tons may demand and take tolls as for thirty tons, and if such cargo shall be composed of various kinds of articles chargeable under this Act with different rates of toll may demand and take for the weight short or wanting to make up the said cargo to thirty tons tolls at the same rate as those at which the largest part of such cargo is chargeable.

Tolls wi
respect
unloaded
vessels.

35. Notwithstanding anything in the sixty-sixth section of the first-recited Act, the Undertakers shall not demand or take any higher toll than three farthings per ton per mile upon thirty tons

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in respect of any vessel which shall pass unloaded upon the Barnsley Canal, and shall not return loaded the same way back, or which shall come down the said canal unloaded, without having immediately previously passed up the said canal loaded with a cargo upon which tolls to the extent of thirty tons or upwards shall have been paid.

Tolls as to vessels passing unloaded into and out of the Dearne and Dove Canal.

36. Notwithstanding anything in the sixty-sixth section of the first-recited Act, if any vessel shall pass loaded over the Barnsley Canal from its junction with the Calder to any place on the Barnsley Canal above the uppermost Walton Lock, and if there shall have been paid to the Undertakers in respect of such vessel and the cargo therein the full tolls chargeable upon a cargo of thirty tons or upwards, and such vessel shall be navigated unloaded along the said canal from the place where such cargo shall have been discharged to or into the Dearne and Dove Canal, the Undertakers shall not demand or take any tolls in respect of the passage of such vessel unloaded over such part of the Barnsley Canal; and for any vessel which may pass unloaded from the Dearne and Dove Canal into the said Barnsley Canal to be loaded, and shall return to the said Dearne and Dove Canal with a cargo of thirty tons or upwards, the Undertakers shall not demand or take any tolls except the tolls chargeable in respect of the return cargo.

Power to recover tolls.

37. The Undertakers may recover the tolls by this Act authorised in the manner prescribed by the Barnsley Canal Acts for recovering tolls, rates, and duties by those Acts authorised.

Saving rights of the Crown.

38. Nothing contained in this Act, or in any of the Acts herein referred to, shall authorise the Undertakers to take, use, or in any manner interfere with any land or hereditaments, or any rights of whatsoever description belonging to the Queen's most Excellent Majesty in right of her Crown, and under the management of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, or either of them, without the consent in writing of the same Commissioners, or one of them, on behalf of Her Majesty, first had and obtained for that purpose (which consent such Commissioners are hereby respectively authorised to give); neither shall anything in the said Act or Acts 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.

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39. Nothing herein contained shall be deemed to exempt the Barnsley Canal Navigation, or the works by this Act authorised to

be constructed, from the provisions of any general Act relating to canals or navigations, now in force or which may hereafter pass during this or any future session of Parliament, nor from any future revision or alteration, under the authority of Parliament, of the maximum rates, tolls, and duties, or of the rates for small parcels, authorised by the Barnsley Canal Acts or this Act.

Provisions of present and future general Acts.

40. All the costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of this Act, or otherwise in relation thereto, shall be paid by the Undertakers.

Expenses of Act.

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SCHEDULES referred to in the foregoing Act.

FIRST SCHEDULE.

Heads of an Agreement, made the 30th day of November 1870, between Edward Tew and Percy Tew, of Wakefield, bankers, Edward Lancaster, of Barnsley, auctioneer, and the Reverend John Heaton Micklethwait, of Painthorpe, near Wakefield, clerk, (four members of the committee of the Company of Proprietors of the Barnsley Canal Navigation, acting for themselves and the rest of the said committee,) of the first part; the Company of Proprietors of the Barnsley Canal Navigation (herein-after called "the Barnsley Company") of the second part; and William Aldam, of Frickley Hall, Walter Thomas William Spencer Stanhope, of Cannon Hall, James Brown, of Rossington, and Francis Darwin, of Creskeld Hall, Esquires, four directors for the Undertakers of the Navigation of the Rivers of Aire and Calder in the county of York (herein-after called "the Undertakers"), of the third part.

Whereas by virtue of two indentures, dated respectively the 8th day of August 1855, and made between the Barnsley Company of the one part, and the trustees for the Undertakers of the other part, the undertaking of the Barnsley Company, and the tolls thereof, and all the hereditaments and property of the Barnsley Company are in lease to the trustees for the Undertakers for the term of 21 years from the 1st day of December 1854; and in one of the said indentures is contained a covenant by the Barnsley Company that if the Undertakers or their trustees should at any time during the said term be desirous of purchasing the premises so demised as aforesaid for 57,600*l.*, the Barnsley Company would, at the request and expense of the said Undertakers or their trustees, apply for and use their best endeavours to obtain an Act of Parliament to authorise the sale of the premises to the Undertakers at the price aforesaid, and upon such Act being obtained, and on payment of the purchase money, would do and execute all such acts and deeds us should be necessary for effectually vesting the premises in the trustees for the Undertakers; and it was thereby agreed that such application to Parliament, and all proceedings preparatory thereto or consequent thereon, should be under the sole direction and control and management of the Undertakers or their trustees, who should be at liberty at any period and at any stage to discontinue the same, or to withdraw any Bill which should be introduced in Parliament for the purpose aforesaid:

And whereas the supply of water which is secured to the Barnsley Canal by the Acts of Parliament relating thereto is insufficient for working the traffic thereon, and it has become necessary that an application should be made to Parliament to authorise works for improving the water supply of the said canal, and for economising the use of water in the canal: And whereas the Barnsley Company have no funds applicable to the construction of such works: And whereas the Undertakers are willing to purchase the premises at the price of 46,800*l.* upon the terms herein-after mentioned, if the sanction of Parliament can be obtained, and the Barnsley Company are willing to sell the premises to the Undertakers on those terms: Now these presents witness that it is mutually agreed between the parties hereto in manner following:

1. This agreement is subject in all respects to the sanction of Parliament being obtained to the carrying out thereof, and to such a supply of water being secured by Act of Parliament for working the traffic of the Barnsley Canal, at the expense of the Undertakers, as they shall consider adequate for that purpose. As between the parties hereto the question of the adequacy of the water supply shall not be re-opened after the passing of the Act.

2. The undertaking of the Barnsley Company shall be sold to the Undertakers for 46,800*l.*, and transferred to them or their trustees by an Act of Parliament to be applied for for that purpose, or immediately after the passing of such Act; and the Barnsley Company shall do all such acts as shall be necessary for vesting their undertaking, and all their real and personal estate and effects, in the Undertakers or their trustees; and all deeds, plans, books, accounts, and papers belonging to the Barnsley Company, except the register of shareholders and any papers relating solely thereto, shall be handed over to the Undertakers immediately after the passing of the Act.

3. The aforesaid price shall be paid to the person appointed by the Barnsley Company to receive the same on the 30th day of November 1875, and the Undertakers shall pay to the same person, until the consideration money is paid, an annual sum equal to the rent under the existing leases, payable as therein provided.

4. The Barnsley Company shall be dissolved at the expiration of such time after payment of the consideration money as shall be fixed by the Bill to be applied for for the distribution of the assets of the Barnsley Company.

5. A Bill shall be introduced into Parliament in the ensuing session, pursuant to the notice already given, for authorising the works and conferring the powers mentioned in that notice, or such of the same works and powers as the Undertakers shall think fit, and the parties hereto shall bonâ fide use their best endeavours to secure the passing of such Bill.

6. If such Bill shall not pass, the Barnsley Company shall in any subsequent session or sessions of Parliament during the term aforesaid, at the request and expense of and in conjunction with the Undertakers, apply for and bonâ fide use their best endeavours to obtain an Act for authorising and conferring such works and powers for improving the water supply of the Barnsley Canal, and economising the use of the water in that canal, as the Undertakers shall think fit, and for otherwise carrying out this agreement.

7. Every such application to Parliament shall be made in all respects in the manner provided by the said lease, and the Undertakers shall be at liberty at any period and stage to withdraw the same in case any alteration shall be made

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therein (by adding, striking out, or varying any clause or provision), which alteration the Undertakers shall deem prejudicial to their interests.

8. Nothing herein contained shall affect the said leases or any of the provisions thereof respectively until the passing of such Act as aforesaid, but immediately thereupon the said leases shall absolutely determine; but the Barnsley Company shall have the same powers of recovering the annual sum payable under the third head of this agreement as they now have for recovering the rent under the said leases.

SECOND SCHEDULE.

Form of Conveyance of Undertaking of Barnsley Canal Company.

By virtue of "The Barnsley Canal Transfer Act, 1871," and in consideration of the sum of forty-six thousand eight hundred pounds, payable as by the said Act directed, we, the Company of Proprietors of the Barnsley Canal Navigation, do hereby grant, release, convey, assign, and confirm unto the trustees of the Undertakers of the Navigation of the rivers of Aire and Calder in the county of York; that is to say, unto (*here name the trustees*), their heirs and assigns, the whole undertaking of us the said Company of Proprietors of the Barnsley Canal Navigation, including the canal, basins, reservoirs, weirs, locks, wharfs, towing-paths, aqueducts, railways, and other works, lands, houses and other hereditaments, waters, water rights, and other easements, boats, waggons, engines, machinery, and implements, and all other property whatsoever, whether real, personal, or mixed, and all powers, authorities, rights of action and suit, and other rights and privileges belonging to or vested in us the said Company of Proprietors of the Barnsley Canal Navigation, or in any trustees or trustee for or on behalf of us, and the powers of demanding and taking tolls, rates, duties, and charges for vessels, and for tonnage, craneage, porterage, wharfage, and warehouse room, and all other powers, privileges, and exemptions whatsoever conferred on us the said Company of Proprietors of the Barnsley Canal Navigation, by an Act passed in the thirty-third year of the reign of His Majesty King George the Third, chapter one hundred and ten, and by another Act passed in the forty-eighth year of the reign of His said Majesty, chapter thirteen, and all our right, title, and interest to and in the same and every part thereof, to hold unto the said , their heirs and assigns, in trust for the said Undertakers, according to the true intent and meaning of "The Barnsley Canal Transfer Act, 1871."

Given under our common seal, this day of in the year of our Lord one thousand eight hundred and

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