CHAPTER clviii.

An Act to confirm a Provisional Order under the Public Health (Scotland) Act 1867 and the Acts amending the same relating to Borrowstounness Water Supply. A.D. 1897.

[6th August 1897.]

WHEREAS Her Majesty's Secretary for Scotland has made the Provisional Order set forth in the Schedule hereunto annexed under the provisions of the Public Health (Scotland) Act 1867 and the Acts amending the same and it is necessary that the said Order should be confirmed by Parliament: 30 & 31 Vict. c. 101.

Be it therefore 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:—

1. The Provisional Order as amended contained in the schedule hereto annexed shall be and the same is hereby confirmed. Confirmation of Provisional Order.

2. This Act may be cited as the Borrowstounness Water Order Confirmation Act 1897. Short title.

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SCHEDULE.

PROVISIONAL ORDER.

WHEREAS by the Public Health (Scotland) Act 1867 it is inter alia enacted section 89 that with respect to the improvement of burghs having a population of less than ten thousand according to the census last taken and not having a local Act for police purposes "the local authority if they "think it expedient so to do may acquire and provide or arrange for a supply "of water for the domestic use of the inhabitants and for that purpose may "conduct water from any lake river or stream may dig wells make and main- "tain reservoirs may purchase take upon lease hire construct lay down and "maintain such waterworks pipes and premises and do and execute all such "works matters and things as shall be necessary and proper for the aforesaid "purpose and may themselves furnish a supply of water or contract or arrange "with any other person to furnish the same and for the purposes aforesaid the "local authority shall be held to have all the powers and rights given to "the promoters of undertakings by the Lands Clauses Acts Provided always "that they shall make reasonable compensation for the water so taken by them "and for the damage which may be done to any lands by reason of the "exercise of the powers hereby conferred in terms of the said Acts" And that the local authority if they have any surplus water after fully supplying what is required for domestic purposes may supply water from such surplus to any public baths and washhouses or for trading or manufacturing purposes on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied;

And whereas it is further provided by the said Act section 90 that upon compliance with the provisions therein contained with respect to advertisements and notices the local authority may present to one of Her Majesty's Principal Secretaries of State a petition stating the land intended to be taken and the purposes for which it is required and the names of the owners lessees and occupiers of lands who have assented dissented or are neuter in respect of the taking of such land or who have returned no answer to the notice and praying that the local authority may with reference to such land be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement and that upon the receipt of such petition and proof of the proper advertisements having been published and notices served the Secretary of State may direct an inquiry in the district in which the land is situate or otherwise inquire as to the propriety of assenting to the prayer of such petition and after the compeltion of such inquiry the Secretary of State may by Provisional Order empower the local autnority to put in force with reference to the land referred to in such Order the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement or any of them;

And whereas by the Secretary for Scotland Act 1885 all powers and duties vested or imposed on the said Secretary of State by the Public Health (Scotland) Act 1867 and Acts amending the same were transferred to vested in and imposed on the Secretary for Scotland;

And whereas the Commissioners of the Burgh of Borrowstounness in the county of Linlithgow acting under the Burgh Police (Scotland) Act 1892 are the local authority within the said burgh under and for the purposes of the Public Health (Scotland) Act 1867 and the Acts amending and extending the same;

And whereas a petition under the provisions of the Public Health (Scotland) Act 1867 has been presented to me as Secretary for Scotland by the said Commissioners setting forth among other things that the present water supply of the said burgh is insufficient and inadequate for the wants of the burgh and that it would be of great advantage to the inhabitants of the said burgh and districts adjacent if the petitioners were authorised to obtain an additional supply of water for domestic purposes and for trading and manufacturing and other purposes under the provisions of the said Public Health (Scotland) Act 1867 and that the petitioners propose to construct works for the purpose of affording such supply of water and to purchase and take under the powers and provisions of the Lands Clauses Acts the lands and water required for the purposes of the said water supply and the said works all which lands water and works are or will be situate in the parishes of Torphichen Linlithgow Borrowstounness and Carriden all in the county of Linlithgow and that the petitioners had published the advertisements and deposited the plans sections and book of reference and served the notices required by the ninetieth section of the first-recited Act and the said petition prayed that a Provisional Order might be made empowering the petitioners to put in force with reference to the lands and water before mentioned the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement;

And whereas due inquiry having been directed and held in respect of the matters mentioned in the said petition I have resolved to grant the prayer of the said petition and a plan describing the works to be constructed and the lands and water intended to be taken for the purposes thereof and of the said water supply and a book of reference to such plan containing the names of the owners or reputed owners lessees or reputed lessees and of the occupiers of such lands and water have been signed by me with reference to this Order and will be deposited with the sheriff clerk of the county of Linlithgow at his office in Linlithgow:

Now therefore in pursuance of the powers contained in the Public Health (Scotland) Act 1867 and transferred to and vested in me by the Secretary for Scotland Act 1885 I the Right Honourable Alexander Hugh Lord Balfour of Burleigh Her Majesty's Secretary for Scotland do by this Provisional Order under my hand direct that from and after the passing of any Act of Parliament confirming the same:—

1. Clause seven of the Waterworks Clauses Act 1847 and also the clauses of the said Act with respect to the breaking up of streets for the purpose of

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laying pipes and the provisions of the Waterworks Clauses Act 1863 with respect to the security of the reservoirs constructed by the undertakers are hereby incorporated with this Order.

2. The expression "the special Act" in the Lands Clauses Acts and in the clauses and provisions of the Waterworks Clauses Acts 1847 and 1863 incorporated herewith shall mean and include this Order and the expression "the promoters of the undertaking" in the Lands Clauses Acts and "the undertakers" in the said clauses and provisions of the Waterworks Clauses Acts 1847 and 1863 shall with reference to this Order mean the Commissioners of the burgh of Borrowstounness (herein-after referred to as "the Burgh Commissioners") and the word "lands" in this Order shall have the meaning assigned to it in the Lands Clauses Acts and shall include water and the right thereto.

3. The Burgh Commissioners may subject to the provisions of this Order put in force with reference to the lands described on the plans and in the book of reference the provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement.

4. The Burgh Commissioners in constructing the works described on the plans may deviate laterally from the lines laid down thereon to any extent not exceeding the limits of lateral deviation shown thereon and may deviate vertically from the levels of the said works as defined on the sections to any extent not exceeding three feet upwards and five feet downwards Provided that as regards the Reservoir (Work No. 1) the Commissioners may not deviate to any extent upwards but may deviate to any extent downwards Provided that the Burgh Commissioners shall not in the exercise of the power of lateral deviation hereby given construct any embankment or retaining wall of the reservoir hereby authorised of a greater height above the general surface of the ground than that shown on the deposited sections Provided also that they shall not raise any aqueduct culvert conduit or pipe above the surface of the ground unless so shown on the sections and then only to the extent so shown Provided also that they may erect any water tower standpipe or other light work of any height which for the time being may be necessary or proper for the purposes of this Order.

5. The Burgh Commissioners may in the execution of their works take wayleaves easements servitudes or other limited rights over lands and other property subject to such conditions as may be agreed on with the persons interested.

6. The Burgh Commissioners shall as soon as the waterworks described on the said plans are completed so far as to be able to afford the supply of compensation water herein-after mentioned cause to be discharged from the Reservoir (Work No. 1) described on the plans down the Brunton Burn a regular and continuous flow of water of not less than one hundred and forty thousand gallons in every day of twenty-four hours which quantity of water shall be deemed to be full compensation to all owners lessees and occupiers of lands mills works and other properties and all other persons for the water intercepted and appropriated under this Order.

7. The Burgh Commissioners shall construct and at all times maintain in sufficient repair a suitable measuring weir or gauge at the said reservoir on the Brunton Burn over or through which the said quantity of compensation water shall flow or be delivered and which weir or gauge shall be open to the inspection of all persons legally interested in the waters flowing down the Brunton Burn.

8. For the protection of the owners and occupiers of lands which may be taken for the purposes of this Order the following provisions shall (unless otherwise agreed between the Burgh Commissioners and any owner or occupier) have effect (that is to say) :—

(1.) The Burgh Commissioners shall construct the waste weir of the Reservoir (Work No. 1) at a level not less than five feet below the level of the waste weir as shown on the deposited section ;

(2.) The Burgh Commissioners shall provide a supply of water to a trough controlled by a ball-cock for cattle drinking in any field which by the construction of the works authorised by this Order may be deprived of the existing water supply for such purpose :

(3.) Nothing contained in this Order shall authorise the Burgh Commissioners to interfere with the existing water supply to Lochcote House and offices :

(4.) The owners of any lands may drain their lands so far as the same are not taken for the purposes of this Order Provided always that if the Burgh Commissioners should at any time consider it necessary for safeguarding the purity of their water supply they may at their own expense carry the drainage of any such lands past the reservoir into the Brunton Burn :

(5.) The owners for the time being of the estate of Lochcote and Gormyre and of the estate of Kipps shall have and may exercise the exclusive right of fishing shooting and boating over the respective portions of the Reservoir (Work No. 1) constructed on land now forming part of these estates respectively and the owner for the time being of the estate of Lochcote and Gormyre may keep one boat on the said reservoir and may erect and maintain in good order a boat-house at such place as may be approved by the Burgh Commissioners and may also stock the reservoir with fish :

(6.) The Burgh Commissioners shall fence the reservoir so far as it will be constructed on the lands of Lochcote and Gormyre by a malleable iron fence at least four feet high to the satisfaction of James Inglis Davidson of Saughton Mains and shall also fence the remainder of the reservoir by a similar fence or in the option of the owner of the lands of Kipps by a dry stone dyke of the same height and construction as the existing dyke :

(7.) The Burgh Commissioners shall in constructing the drain for diverting the sewage of Lochcote House and offices construct the same to the reasonable satisfaction of the sanitary inspector of the county of Linlithgow and the Burgh Commissioners shall maintain such drain so constructed in all time coming :

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(8.) The Burgh Commissioners shall not without the consent of the owner of the lands of Lochcote erect any house on any part of the lands acquired under the powers of this Order (except a tool house) and any sluice keeper's house and offices which may be required by the Burgh Commissioners shall not be erected nearer Lochcote House than Easterwoodside:

(9.) The Burgh Commissioners shall not draw off the water in the reservoir to a lower level than six feet from the bottom at the outlet except for the purpose of cleaning or repairing the reservoir and the Burgh Commissioners shall give not less than a week's written notice to the owner or the occupier of Lochcote House of the intention to draw off the water for such purposes:

(10.) After the completion of the works the Burgh Commissioners shall only be entitled to have access thereto through the lands of Lochcote when it shall be reasonably necessary for the purpose of inspecting the works or regulating the water supply or repairing the works or any part of the same and no person other than the Burgh Commissioners or their contractor or persons in their employment engaged in the business of the Burgh Commissioners shall have access to the reservoir or any of the works constructed under this Order so far as the same may be situated on the lands of Lochcote.

9. Nothing in this Order shall prejudice or affect—

(1.) The agreement entered into between Henry Temple Blair of Avontown on the one part and the trustees of the town and harbour of Borrowstounness incorporated by the Borrowstounness Town and Harbour Act 1875 as such trustees and as the local authority within the burgh of Borrowstounness acting under the Public Health (Scotland) Act 1867 and other Acts extending and amending the same (now the burgh commissioners) on the other part dated the tenth and nineteenth days of September one thousand eight hundred and seventy-seven and registered in the books of council and session the twenty-first day of May one thousand eight hundred and ninety-seven:

(2.) An agreement made between John Pringle of Wester Carribber and Kipps and the Burgh Commissioners dated twenty-fifth day of May and seventh day of June and registered in the books of council and session the fourteenth day of June all in the year one thousand eight hundred and ninety-seven:

(3.) A lease entered into between William Horn Henderson solicitor Linlithgow Judicial Factor on the trust estate of William Forbes Forbes of Castleton and Lochcote and the Burgh Commissioners dated the twenty-fourth day of June one thousand eight hundred and ninety-seven all relating to the existing water rights and the reservoirs of the existing water supply of the burgh:

(4.) An agreement made between the Burgh Commissioners on the one part and the owners of the lands of Lochcote and Gormyre on the other part dated the sixteenth twenty-first and twenty-third and recorded in the books

of council and session the twenty-third days of July one thousand eight hundred and ninety-seven relating to the acquisition of lands and other rights in connexion with the said Reservoir (Work No. 1) and other works. A.D. 1897.

10. The Burgh Commissioners shall not under the powers of this Order purchase or acquire in any district within the meaning of the Public Health (Scotland) Act 1867 ten or more houses which on the fifteenth day of December last were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers or except with the consent of the Secretary for Scotland ten or more houses which were not so occupied on the said fifteenth day of December but have been or shall be subsequently so occupied.

For the purposes of this section the expression "labouring class" includes mechanics artizans labourers and others working for wages hawkers costermongers persons not working for wages but working at some trade or handicraft without employing others except members of their own family and persons other than domestic servants whose income does not exceed an average of thirty shillings a week and the families of any such persons who may be residing with them.

Given under my hand and seal at Whitehall this seventh day of May one thousand eight hundred and ninety-seven.

L.S.

Balfour of Burleigh.

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