# CHAPTER lxxii.

An Act for conferring further powers on the Company of Proprietors of the Plymouth Dock Waterworks for changing the name of the Company and for other purposes. [9th July 1889.]

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WHEREAS by an Act passed in the thirty-third year of the reign of King George the Third chapter eighty-five intituled "An Act for supplying the towns of Plymouth Dock Stoke Damarel "Stonehouse and the parts adjacent in the county of Devon with "water" the Company of Proprietors of the Plymouth Dock Waterworks (in this Act called "the Company") were incorporated and empowered to supply the towns of Plymouth Dock Stoke Damarel and Stonehouse and places adjacent with water:

And whereas by the Plymouth Dock (Devonport) Waterworks Act 1876 (in this Act called "the Act of 1876") further powers were conferred on the Company:

And whereas for the better and more effectually enabling the Company to meet the increasing demand for water within their limits of supply and for other purposes connected with their undertaking it is expedient that the Company be empowered to construct additional works and to acquire additional lands as by this Act authorised:

And whereas it is expedient that the name of the Company be changed:

And whereas it is expedient that the Company be authorised to raise further moneys for the purposes of this Act and for the general purposes of their undertaking:

And whereas plans and sections showing the lines and levels of the works authorised by this Act and plans showing the lands which may be taken under the powers of this Act and also books of reference containing the names of the owners and lessees or reputed owners and lessees and of the occupiers of the lands required or which may be taken for the purposes or under the powers of this Act were duly deposited with the clerk of the peace

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for the county of Devon and are herein-after respectively referred to as the deposited plans sections and books of reference:

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:—

Short title.

**1.** This Act may be cited as the Devonport Waterworks Act 1889.

Incorporation of general Acts.

**2.** The following Acts and parts of Acts are (except where expressly varied by this Act) incorporated with and form part of this Act (that is to say):—

The Lands Clauses Consolidation Acts 1845 1860 and 1869 as amended by the Lands Clauses (Umpire) Act 1883:

The Waterworks Clauses Acts 1847 and 1863:

The provisions of the Railways Clauses Consolidation Act 1845 with respect to the temporary occupation of lands near the railway during the construction thereof; but such provisions shall apply only to the reservoir and enlargements of reservoir by this Act authorised:

The clauses and provisions of the Companies Clauses Consolidation Act 1845 with respect to the following matters (that is to say):—

The distribution of the capital of the Company into shares;

The transfer or transmission of shares;

The payment of subscriptions and the means of enforcing the payment of calls;

The forfeiture of shares for non-payment of calls;

The remedies of creditors of the Company against the shareholders;

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

The conversion of borrowed money into capital;

The consolidation of shares into stock;

The making of dividends;

The giving of notices;

The provision to be made for affording access to the special Act by all parties interested:

Part I. (relating to cancellation and surrender of shares) Part II. (relating to additional capital) Part III. (relating to debenture stock) and Part IV. (relating to change of name) of the Companies Clauses Act 1863 as amended by the Companies Clauses Act 1869:

Provided that section 44 of the Waterworks Clauses Act 1847 as incorporated with the Act of 1876 and with this Act shall take effect as if the words "with the consent in writing of the owner or "reputed owner of any such house or of the agent of such owner" were omitted therefrom.

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 expressions "the waterworks" and "the undertaking" respectively mean and include the waterworks and the works connected therewith and the undertaking by this Act authorised:

And for the purposes of this Act—

The expression "railway" in the provisions of the Railways Clauses Consolidation Act 1845 incorporated with this Act means the reservoir and enlargements of reservoir by this Act authorised and the expression "centre of the railway" in those provisions means any part of such works:

And the expression "superior courts" or "court of competent jurisdiction" or any other like expression in this Act or any Act wholly or partially incorporated herewith shall be read and have effect as if the debt or demand with respect to which the expression is used were a simple contract debt and not a debt or demand created by statute.

Power to make works.

**4.** Subject to the provisions of this Act the Company may make and maintain in the lines and according to the levels shown on the deposited plans and sections the works herein-after described and may enter upon take and use such of the lands shown upon the said plans and described in the deposited books of reference as may be required for the purpose and may collect and impound by and in their works and thence distribute all or any springs and waters on the site of such works or in or under any lands for the time being of the Company. The works herein-before referred to and hereby authorised are wholly situate in the county of Devon and are:—

(A.) An enlargement in a north-easterly direction of the existing storage reservoir of the Company called or known as the Crown Hill Reservoir which enlargement will be wholly situate in the parish of Tamerton Foliott and will commence by a junction with the said existing reservoir at the north-easterly end thereof and will terminate about eight chains to the north-east of the said end of the existing reservoir;

(B.) An enlargement of the said Crown Hill Reservoir by the raising of the existing embankment thereof;

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(c.) A diversion wholly in the parish of Tamerton Foliott of the Devonport Leat commencing by a junction with the said leat at a point fourteen chains or thereabouts measured along the course of the leat in a southerly direction from the existing bridge carrying the public road known as Tamerton Road or Loosleigh Lane over the leat and terminating by a junction with the leat at a point eight chains or thereabouts measured along the course of the leat below the point of commencement above described;

(d.) A road to be wholly situate in the parishes of Egg Buckland and Tamerton Foliott commencing in the parish of Egg Buckland by a junction with the public highway leading from Plymouth to Tavistock at a point nine chains or thereabouts measured in a south-westerly direction along the said public highway from its junction with the said road called or known as Tamerton Road or Loosleigh Lane and terminating in the parish of Tamerton Foliott by a junction with the existing occupation road of the Company situate to the north-west of and near to the said Crown Hill Reservoir at a point ten chains or thereabouts measured along the said existing occupation road in a north-westerly direction from the junction of that road with the said public highway leading from Plymouth to Tavistock;

(e.) A reservoir or tank to be wholly situate in the parish of Tamerton Foliott and to be constructed in certain lands belonging to the Company near the village of Roborough and abutting on the Devonport Leat and Belliver Lane;

(f.) A line of pipes commencing in the said reservoir or tank (e.) and terminating in the parish of Tamerton Foliott by a junction with the existing gauge basin of the Company situate at or near the north-eastern corner of the said existing Crown Hill Reservoir;

(g.) All such embankments walls aqueducts cuts channels conduits culverts drains weirs reservoirs filter beds wells tanks mains pipes roads approaches engines machinery appliances and other works and conveniences as may be necessary or convenient in connexion with the works above described or any or either of them.

Plans of enlargement of Crown Hill Reservoir to be submitted to Secretary of State for War for his approval.

**5.** The Company shall submit to Her Majesty's Principal Secretary of State for the War Department detailed plans of the enlargements by this Act authorised of the said Crown Hill Reservoir and shall obtain the consent thereto of the said Principal Secretary for the time being signified in writing under his hand before they proceed to alter or enlarge the said reservoir.

Limits of deviation.

**6.** In making the works by this Act authorised the Company may deviate laterally from the lines thereof shown or described on the deposited plans to any extent within the limits of deviation shown thereon and where on any road along which the line of any of such works is shown no such limits are defined the boundaries of such road shall be deemed to be such limits and the Company may deviate vertically from the levels shown on the deposited sections to any extent not exceeding three feet upwards and ten feet downwards:

Provided that the Company shall not in the exercise of the powers of lateral deviation hereby given make any embankment or retaining wall of any reservoir of a greater height above the general surface of the ground than the height shown on the deposited plans and three feet in addition.

Power to acquire additional lands.

**7.** Subject to the provisions of this Act the Company in addition to the other lands which they are by this Act authorised to acquire may enter upon take use and hold the following lands or any part thereof shown upon the deposited plans and described in the deposited books of reference (that is to say):—

Certain lands situate in the parishes of Egg Buckland and Tamerton Foliott and lying adjacent or near to the enlargement by this Act authorised of the Crown Hill Reservoir and respectively numbered 108 109 110 56 57 and 58 on the $\frac{1}{2500}$ Ordnance Map of the said parish of Egg Buckland and 959 962 963 964 965 966 967 and 969 on the $\frac{1}{2500}$ Ordnance Map of the said parish of Tamerton Foliott.

Period for compulsory purchase of lands.

**8.** The powers of the Company for the compulsory purchase of lands for the purposes of this Act shall cease after the expiration of three years from the passing of this Act.

Period for completion of works.

**9.** If the waterworks authorised by this Act and shown on the deposited plans are not completed within seven years from the passing of this Act then on the expiration of that period the powers by this Act granted to the Company for executing the same or otherwise in relation thereto shall cease except as to so much thereof as is then completed but nothing in this Act contained shall restrict the Company from extending enlarging altering reconstructing or removing any of their tanks engines machinery mains pipes works or plant from time to time as occasion may require.

Power to purchase additional lands by agreement.

**10.** The Company may from time to time for the purposes of their undertaking purchase by agreement in addition to the lands which they are already authorised to hold under the powers of the recited Acts or to take by compulsion under the powers of this Act

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any quantity of land not exceeding in the whole twenty acres or any easement right or privilege therein thereunder or thereover not being an easement or privilege of water Provided that the Company shall not deal with such lands so as to create a nuisance nor on any such lands erect or authorise or permit the erection of any buildings other than buildings connected with or necessary for their undertaking.

Power to take easements &c. by agreement.

**11.** Persons empowered by the Lands Clauses Consolidation Act 1845 or otherwise enabled to sell and convey or release lands may if they think fit subject to the provisions of that Act and of the Lands Clauses Consolidation Acts Amendment Act 1860 and of this Act grant to the Company any easement right or privilege not being an easement of water required for the purposes of this Act in over or affecting any such lands and the provisions of the said Acts with respect to lands and rentcharges so far as the same are applicable in this behalf shall extend and apply to such grants and to such easements rights and privileges as aforesaid respectively.

Reservation of water rights &c. on sale.

**12.** On the sale by the Company of any lands they may reserve to themselves all or any part of the water or water rights or other easements belonging thereto and may make the sale subject to such reservations accordingly and may also make any such sale subject to such other reservations special conditions restrictions and provisions with respect to the use of water exercise of noxious trades or discharge or deposit of manure sewage or other impure matter as they think fit.

Restriction on taking houses of labouring class.

**13.**—(1.) The Company shall not except with the previous consent in writing of the Local Government Board under the powers of this Act purchase or acquire in any city borough or other urban sanitary district or in any parish or part of a parish not being within an urban sanitary district ten or more houses which after the passing of this Act have been or on the fifteenth day of December last were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers

(2.) For the purposes of this section the expression "labouring class" means and includes mechanics artisans 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 of such persons who may be residing with them.

For protection of the

**14.** The following provisions for the protection and benefit of the mayor aldermen and burgesses of the borough of Plymouth (in

this section called the corporation) shall apply and have effect (that is to say):—

corporation of Plymouth.

1. All works crossing or affecting the leat belonging to the corporation shall be executed at the expense of the Company under the superintendence and to the reasonable satisfaction of the engineer of the corporation and according to plans and sections to be previously submitted to such engineer and reasonably approved of by him in writing Provided that if such engineer shall not have expressed his approval or disapproval of the said plans and sections within one month after the same shall have been submitted to him he shall be deemed to have approved thereof;
2. The works shall be constructed and maintained so as not to cause the leakage or abstraction of water from the leat and so as not to impede or interfere with the flow of the water therein;
3. If by reason of the construction of the works or any of them or the failure of any of the works the said leat shall be injured or the water therein shall leak or be abstracted or interfered with the Company shall compensate the corporation for all costs to which the corporation may be put in repairing the said damage and shall effectually indemnify and hold harmless the corporation from all claims and demands upon or against them by reason of such construction or failure or otherwise by reason of the acts or defaults of the Company or any of their contractors or their respective servants or workmen;
4. The Company shall not acquire any estate or interest in the lands and property of the corporation other than an easement or right of constructing and maintaining therein the works by this Act authorised;
5. The amounts to be paid for the acquisition of such easement shall in case of dispute be settled in the manner provided by the Lands Clauses Consolidation Act 1845 with respect to the purchase of land otherwise than by agreement;
6. If any difference shall arise between the Company and the corporation or their engineer respecting any of the works matters or things or the amount of any costs losses damages or expenses under the provisions of this section the same shall at the request of either party be settled by an engineer to be appointed by the President for the time being of the Institute of Civil Engineers and the costs and expenses attending any such reference shall be borne and paid as he may direct.

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**Fraudulently injuring meters, &c.**

**15.** If any person wilfully fraudulently or by culpable negligence injures or suffers to be injured any pipe meter or fitting belonging to the Company or fraudulently alters the index to any meter or fraudulently prevents any such meter or the index thereof from duly registering the quantity of water supplied he shall (without prejudice to any other right or remedy for the protection of the Company or the punishment of the offender) for every such offence be liable to a penalty not exceeding five pounds and the Company may in addition thereto recover the amount of any damages sustained by them and the existence of artificial means for causing such alteration or prevention when such pipe meter or fitting is under the custody or control of the consumer shall be primâ facie evidence that the same has been fraudulently caused by the consumer using such pipe meter or fitting.

**Contracts for supplying water for public purposes.**

**16.** The Company may from time to time enter into and carry into effect agreements with Her Majesty's Principal Secretary of State for the War Department the Lords of the Admiralty and any county local or sanitary authority for the supply by the Company to any such government county local or sanitary authority respectively of water whether in bulk or otherwise within the limits of supply of the Company provided that such supply of water do not interfere at any time with the supply of water for domestic purposes within the limits of supply.

**Change of name of Company.**

**17.** On the passing of this Act the name of the Company shall be changed and shall be the Devonport Water Company.

**Power to raise additional capital.**

**18.** The Company may subject to the provisions of Part II. of the Companies Clauses Act 1863 for the purposes of this Act and for the general purposes of their undertaking from time to time raise any additional capital not exceeding in the whole eighty thousand pounds by the creation and issue at their option of new ordinary shares or stock or new preference shares or stock or wholly or partially by one or more of those modes respectively but the Company shall not issue any share created under the authority of this Act of less nominal value than ten pounds nor shall any such share or stock vest in the person or corporation accepting the same unless and until the full nominal amount of such share or stock (if such share or stock shall be issued at or above par) together with any premium obtained upon the sale thereof shall have been paid in respect thereof Provided that it shall not be lawful for the Company to create and issue under the powers of this Act any greater nominal amount of capital than shall be sufficient to produce including any premiums which may be obtained on the sale thereof the sum of eighty thousand pounds.

Except as otherwise provided new shares or stock to be subject to same incidents as existing shares or stock.

**19.** Except as is by this Act otherwise provided the capital in new shares or stock created by the Company under this Act and the new shares or stock therein and the holders thereof respectively shall be subject and entitled to the same powers provisions liabilities rights privileges and incidents whatsoever in all respects as if that capital were part of the now existing capital of the Company of the same class or description and the new shares or stock were shares or stock in that capital The capital in new shares or stock so created shall form part of the capital of the Company.

Dividends on new shares or stock.

**20.** Every person who becomes entitled to new shares or stock shall in respect of the same be a holder of shares or stock in the Company and shall be entitled to a dividend with the other holders of shares or stock of the same class or description proportioned to the whole amount from time to time called and paid on such new shares or to the whole amount of such stock as the case may be.

Restriction as to votes in respect of preferential shares or stock.

**21.** Except as otherwise expressly provided by the resolution creating the same no person shall be entitled to vote in respect of any new shares or stock to which a preferential dividend shall be assigned.

Profits of the Company limited.

**22.** The Company shall not in any one year make out of their profits any larger dividend on the additional share capital to be raised under the powers of this Act whether ordinary or preferential than five pounds in respect of every one hundred pounds actually paid up of such capital unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend on the ordinary capital which shall have fallen short of the said sum of five pounds per centum per annum.

Dividend on different classes of stock or shares to be paid proportionately.

**23.** In case in any year the net revenues of the Company applicable to dividend shall be insufficient to pay the full amount of the prescribed maximum rate of dividend on each class of ordinary stock or shares in the capital of the Company a proportionate reduction shall be made in the dividend of each class.

New shares or stock to be offered by auction or tender.

**24.** Notwithstanding anything in this Act contained the Company shall when any shares or stock created under the powers of this Act are to be issued and before offering the same to the holder of any other shares or stock in the Company and whether the ordinary shares or ordinary stock of the Company are or is at a premium or not offer the same for sale by public auction or by tender in such manner at such times and subject to such conditions of sale as the Company shall from time to time determine Provided that at any such sale no single lot shall comprise more than one hundred pounds nominal value of shares or stock and that the reserved price put upon such shares or stock shall not be less than

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the nominal amount thereof and notice of the amount of such reserved price shall be sent by the Company in a sealed letter to the Board of Trade not less than twenty-four hours before the day of auction or the last day for the reception of tenders as the case may be and such letter may be opened after such day of auction or last day for the reception of tenders and not sooner and provided that no priority of tender shall be allowed to any holder of shares or stock in the Company except that if any bidding or offer by tender of any holder or holders of shares or stock be the same in amount as any bid or offer made by any other person the bidding or offer of such holder or holders of shares or stock shall be accepted in preference.

Purchase money of capital sold by auction to be paid within three months.

**25.** It shall be one of the conditions of any sale of shares or stock under this Act that the whole nominal amount thereof together with any premium given by any purchaser at such sale shall be paid to the Company within three months after such sale.

Notice to be given as to sale of shares or stock.

**26.** The intention to sell any such shares or stock by auction or by tender shall be communicated in writing to the town clerk of the borough of Devonport and to the secretary of the committee of the London Stock Exchange at least twenty-eight days before the day of auction or the last day for the reception of tenders as the case may be and notice of such intention shall be duly advertised once in each of two consecutive weeks in one or more local newspapers circulating within the said borough.

Shares or stock not sold by auction or by tender to be offered to shareholders.

**27.** When any shares or stock created under the powers of this Act have been offered for sale by auction or tender and not sold the same shall be offered at the reserved price put upon the same respectively for the purpose of sale by auction or tender to the holders of ordinary shares or ordinary stock of the Company in manner provided by the Companies Clauses Act 1863 Provided always that any shares or stock so offered and not accepted within the time prescribed by the said Act shall again be offered for sale by public auction or by tender in the manner and subject to and in accordance with the foregoing provisions of this Act with respect to the sale of shares and stock but at a lower reserved price than the price put upon the same at the preceding offer thereof for sale by auction or tender (not being less than the nominal value of the shares or stock so offered) and any shares or stock not then sold shall be again offered to the holders of ordinary shares or ordinary stock at the last-mentioned reserved price and so from time to time on failure of any sale or offer.

Application of premium arising on

**28.** Any sum of money which shall arise by way of premium from the issue of any such shares or stock after deducting therefrom

the expenses of and incident to such issue shall not be considered as profits of the Company but shall be expended in extending or improving the works of the Company or in paying off money borrowed or owing on mortgage by the Company and shall not be considered as part of the capital of the Company entitled to dividend.

issue of shares or stock.

**29.** The Company may from time to time subject to the provisions of this Act borrow on mortgage of the undertaking any sum or sums not exceeding in the whole one-fourth part of the amount of the additional capital by this Act authorised to be raised and at the time actually issued by shares or stock but no part thereof shall be borrowed until the whole of the shares or stock at the time issued together with the premium (if any) realised on the sale thereof shall have been fully paid up and the Company have proved to the justice who is to certify under the fortieth section of the Companies Clauses Consolidation Act 1845 before he so certifies that such shares and stock and premium (if any) have been issued and fully paid up and upon production to such justice 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.

Power to borrow in respect of additional capital.

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

As to conversion of borrowed money into capital.

**31.** All mortgages granted by the Company in pursuance of the powers of any Act of Parliament before the passing of this Act and subsisting at the passing hereof shall during the continuance of such mortgages and subject to the provisions of the Acts under which such mortgages were respectively granted have priority over any mortgages granted by virtue of this Act but nothing in this section contained shall affect any priority of the interest of any debenture stock at any time created and issued by the Company.

Existing mortgages to have priority.

**32.** Section 28 (arrears may be enforced by appointment of receiver) of the Act of 1876 is by this Act repealed but without prejudice to any appointment heretofore made or to the continuance of any proceedings which may have been commenced under any such provision prior to the passing of this Act.

Repeal of provisions of former Act with respect to appointment of receiver.

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For appointment of receiver.

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

Power to create debenture stock.

**34.** The Company may create and issue debenture stock subject to the provisions of Part III. of the Companies Clauses Act 1863 as amended by the Companies Clauses Act 1869 but notwithstanding anything therein contained the interest of all debenture stock at any time created and issued by the Company shall rank pari passu with the interest of all mortgages at any time granted by the Company and shall have priority over all principal moneys secured by such mortgages.

Receipt in case of persons not sui juris.

**35.** If any money is payable to a shareholder or debenture or debenture stock holder being a minor idiot or lunatic the receipt of the guardian or committee of his estate shall be a sufficient discharge to the Company.

Priority of mortgages over other debts.

**36.** All moneys to be raised by the Company on mortgage or debenture stock under the provisions of this Act shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act Provided always that this priority shall not affect any claim against the Company or their property in respect of any rentcharge granted or to be granted by them in pursuance of the Lands Clauses Consolidation Act 1845 or the Lands Clauses Consolidation Acts Amendment Act 1860 or in respect of any rent or sum reserved by or payable under any lease granted or made to the Company in pursuance of any Act relating to the Company which is entitled to rank in priority to or pari passu with the interest on their mortgages or debenture stock nor shall anything in this section contained affect any claim for land taken used or occupied by the Company for the purposes of the Company's undertaking and works or injuriously affected by the construction thereof or by the exercise of any powers conferred on the Company.

Application of moneys.

**37.** All moneys raised under this Act whether by shares stock debenture stock or borrowing shall be applied only to the purposes of this Act and the Company's undertaking to which capital is properly applicable.

Saving rights of Her Majesty's

**38.** And whereas it is necessary that the lands hereditaments and works belonging to Her Majesty or vested in Her Majesty's

Principal Secretary of State for the War Department.

Principal Secretary of State for the War Department for the public service should be preserved intact and free from all intrusion or obstruction Be it therefore enacted that nothing in this Act contained shall authorise the Company to enter upon use or interfere with any land soil or water or any right in respect thereof vested in or exercised by the said Principal Secretary for the time being or to take away lessen prejudice or alter any of the rights privileges or powers vested in or exercised by the said Principal Secretary for the time being without his previous consent signified in writing under his hand and which consent the said Principal Secretary for the time being is hereby authorised to give subject to such special or other conditions as he shall see fit to impose on the said Company.

Costs of Act.

**39.** All costs charges and expenses preliminary to and of and incident to the preparing and applying for and the obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company.

Printed by Eyre and Spottiswoode,
FOR
T. Digby Pigott, Esq., the Queen's Printer of Acts of Parliament.

And to be purchased, either directly or through any Bookseller, from
EYRE AND SPOTTISWOODE, East Harding Street, Fleet Street, E.C.; or
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