CHAPTER lxvi.

An Act to extend the time granted to the Dun Drainage Commissioners for the completion of certain Works; to authorise new Works; to confer further Borrowing Powers; and for other purposes. [3d July 1879.]

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WHEREAS in the year one thousand eight hundred and twenty-seven, in the session of Parliament of the seventh and eighth years of the reign of King George the Fourth, an Act (chapter ninety-four, local and personal,) was passed for the draining, embanking, and protecting of low lands on the north side of the River Don below Doncaster, in the west riding of the county of York (which Act is in this Act called "the Act of 1827"):

And whereas the Act of 1827 (section 1) appointed the person therein named to be the Commissioner for executing the necessary works and for carrying the powers of that Act into effect, and (section 4) provided for the election of successors to him, and also provided (among other things) that the Commissioner should (as soon as might be after the works were completed) draw up an award directing by whom and in what manner the works should thereafter be maintained (section 57):

And whereas by the Dun Drainage Act, 1873, (in this Act called "the Act of 1873,") which proceeded on the preamble that the works executed under the Act of 1827 were insufficient for their intended purpose, and were not adapted to the then present condition of the lands which they were designed to benefit, and that neither the Act of 1827 nor the award thereunder provided for the extension or improvement of works made under that Act, and also that it was expedient that an improved system of drainage should be established for the district comprised in the award, and that other lands in the neighbourhood of that district should be brought within the operation of the same system, and also that it was expedient that the execution, maintenance, and management of

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that improved system should be intrusted to a body of Commissioners to be constituted and empowered for the purpose, it was enacted (among other things) to the effect following; namely,

That there should be a body of Commissioners (therein-after called "the Commissioners") for executing that Act (section 6), and that the rules set forth in Part I. of the fifth schedule to that Act should apply to elections of Commissioners (section 14);

That, subject to the provisions of that Act, the Commissioners might make and execute divers cuts or channels, embankments, and works (sections 23 to 27 inclusive);

That if any work shown on the deposited plans and sections in that Act mentioned was not completed within seven years from the passing of that Act, then at the end of that time the powers of the Commissioners for executing the same under that Act should cease (section 30);

That the Commissioners should have power to levy and assess divers rates (sections 44 to 47 inclusive, and 49 and 50);

That the amount expended by the Commissioners, out of money borrowed and the Dun Drainage Works Rate, in the construction of works, and purchasing and acquiring lands and interests therein, should not exceed in the aggregate the sum of sixty-four thousand pounds (section 48);

That the Commissioners might from time to time borrow at interest, on the security of the Dun drainage rate, such sums of money as they from time to time thought requisite for the execution of that Act, not exceeding in the whole the sum of forty thousand pounds (section 66);

That the Commissioners might borrow of the Public Works Loan Commissioners, and those Commissioners might lend to them, such sum of money as the Public Works Loan Commissioners thought fit for the purposes of and on any security authorised by that Act, and without requiring any further or other security (section 71);

That the Commissioners should, within twelve months after the passing of that Act, nominate and appoint a competent person, being a land valuer, to act as a Sub-Commissioner, who should have power, subject to the approval of the Commissioners, to obtain such professional assistance as he should think necessary, and who should view the several lands intended to be taxed under that Act, and ascertain the state of drainage of the said lands, and fix the proportion in which the said lands should be assessed towards the works and maintenance rates autho-

rised by that Act, graduated according to the different degrees of benefit which in his judgment the said lands would derive from the said works, and that he should have power, if he thought fit, to exempt entirely any lands which in his opinion would derive no benefit from the said works, and that such Sub-Commissioner should, within one year after his appointment, make an award embodying his decision on the matters aforesaid; and that the Commissioners might, if they thought fit, after an interval of four years from the date of such award, and of any subsequent award, again nominate and appoint a Sub-Commissioner, and that each such newly appointed Sub-Commissioner should review the previous award and make any alteration or modification thereof as he in his judgment might consider necessary (section 10):

And whereas the Commissioners nominated and appointed a Sub-Commissioner, and the said Sub-Commissioner so appointed did on or about the fifth day of December one thousand eight hundred and seventy-four make his award dated that day, embodying his decision on the matters aforesaid, which award was executed and deposited as required by the Act of 1873:

And whereas the Commissioners have proceeded to make and execute the various works authorised as aforesaid by the Act of 1873, and the same are now in course of construction and completion, and the Commissioners have borrowed and expended under the Act of 1873 the sum of forty thousand pounds:

And whereas it is expedient that the time for the construction and completion of the said works limited by the Act of 1873 should be extended, and that the borrowing powers of the Commissioners should be increased:

And whereas it is expedient that the provisions of the Act of 1873 with reference to the appointment and powers of a Sub-Commissioner as aforesaid should be repealed, and that the Commissioners should themselves exercise the powers hitherto exercised by such Sub-Commissioner:

And whereas it is expedient that the Commissioners should be empowered to make, execute, and maintain the works herein-after mentioned, and to acquire lands and easements for that purpose:

And whereas it is expedient to make further provision with respect to the election of Commissioners, and to provide for the annual publication of an abstract of their accounts:

And whereas plans and sections describing the lines, situations, and levels of the intended new works, and a book of reference to those plans containing the names of the owners or reputed owners,

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lessees or reputed lessees, and of the occupiers of lands on the line of those works, or within the limits of deviation as defined on the plans describing those lands, have been deposited with the clerk of the peace for the west riding of the county of York, which are in this Act referred to as the deposited plans, sections, and book of reference:

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

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

Short title.

1. This Act may be cited as the Dun Drainage Act Amendment Act, 1879.

Incorporation of general Acts. 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18.

2. The following enactments, so far as they are applicable for the purposes of and are not varied by or inconsistent with this Act, are hereby incorporated with and form part of this Act; (that is to say,) the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (in this Act called "the Lands Clauses Acts").

Interpretation of term "the Commissioners."

3. In this Act "the Commissioners" means the Dun Drainage Commissioners constituted by the Act of 1873.

Power to execute and maintain works.

4. Subject to the provisions of this Act, the Commissioners may—

(1.) Embank, enlarge, improve, deepen, cleanse, and maintain a certain drain or watercourse called Clay Dyke, situate in the parish of Fishlake in the west riding of the county of York, from Hell Wicket to Blackshaw Clough, and may enlarge and maintain Hell Wicket Clough: Provided always, that the door of Hell Wicket Clough shall be open only at such times as the door of Blackshaw Clough is open, and that after Blackshaw Clough has been closed by the flood waters of the River Dun, Hell Wicket Clough shall not be opened until Blackshaw Clough has been re-opened for the discharge of water during the continuance of two clear tides:

Provided also, that nothing in this Act contained shall be construed into an authority for the Commissioners or shall in anywise enable them to bring the water off Flashley Carr through the said parish of Fishlake by a continuously embanked or high-level drain from Hell Wicket Clough to Blackshaw Clough; provided also, that the Commissioners shall not have power to levy rates upon any

lands beyond the Dun drainage district as defined by the Dun Drainage Act, 1873, (section 5,) and shown upon the Dun drainage district map deposited with the clerk of the peace for the west riding of the county of York in pursuance of section 42 of that Act; and provided also, that the Commissioners shall for ever hereafter save harmless and keep indemnified the Corporation of the Level of Hatfield Chase and their successors, in whom the said Hell Wicket Clough and the embankment in which the same is situate are now vested, from and against all claims, actions, suits, and liabilities for damages or otherwise arising from or relating to the works hereby authorised; and that the said Commissioners shall for ever maintain the said Hell Wicket Clough, and shall for ever maintain the embankment in which the same is situate, for a distance of two chains on either side of the said Clough, in such good and efficient manner as to protect the lands in the said parish of Fishlake from flood waters passing over or through the said embankment.

(2.) Make and maintain a cut or channel commencing in the parish of Kirk Bramwith, in the west riding of the said county of York, at the Flashley Carr Drain, near Willow Bridge, extending in a southerly direction to and under the Bramwith Drain, and terminating in the parish of Barnby-upon-Don, in the said riding, by a junction with the cut or channel No. 2 authorised by the Act of 1873, at a place called Barnby Dun Rands.

Observance of deposited plans.

5. Subject to the provisions of this Act, the Commissioners, in making the works authorised by this Act, shall make the same in the lines and according to the levels shown on the deposited plans and sections, so far as the same are shown thereon, but they may deviate laterally to any extent within the limits of deviation shown on those plans, and vertically to any extent not exceeding five feet, and they shall not make any variation, extension, or enlargement of any cut for drainage being more than eleven feet wide at the bottom thereof, unless the same is shown on the deposited plans and sections.

Period for completion of works.

6. If any work shown on the deposited plans and sections is not completed within seven years from the passing of this Act, then at the end of that time the powers of the Commissioners for executing the same under this Act shall cease.

Power to take certain lands.

7. Subject to the provisions and for the purposes of this Act, the Commissioners may from time to time enter on, take, and use

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all or any part of the lands described in the deposited plans and book of reference.

Correction of omissions, &c.

8. If any omission, mis-statement, or erroneous description is found to have been made of land, or of an owner, lessee, or occupier of land, described or intended to be described in the deposited plans or book of reference, the Commissioners may apply to two justices for the correction thereof, after giving ten days notice to the owners, lessees, and occupiers of the land; and if it appears to the justices that the same arose from mistake they shall certify accordingly, stating the particulars, and their certificate shall be deposited with and shall be kept with and shall be part of the deposited plans or book of reference, and the same shall thereupon be deemed to be corrected according to the certificate, and the Commissioners may enter on, take, hold, and use the land accordingly.

Period for compulsory purchase of lands.

9. The powers of the Commissioners for the compulsory purchase of lands shall not be exercised after the expiration of five years from the passing of this Act.

Power to purchase lands by agreement.

10. The Commissioners may from time to time purchase by agreement any lands required for the purposes of this Act and hold the same, so that the lands held by them under this section do not exceed in the whole at one time five acres, and that such lands be used for drainage purposes only.

Power to agree for easements.

11. Persons empowered by the Lands Clauses Acts or otherwise to sell and convey or release lands may, but as regards persons so empowered by the Lands Clauses Acts only subject, to the provisions of those Acts and of this Act, grant to the Commissioners, and the Commissioners may take and hold, any easement, term, right, or privilege required for the purposes of this Act in, over, or affecting lands, for a gross sum or at a yearly rent or otherwise; and the provisions of the Lands Clauses Acts with respect to lands and rentcharges, so far as the same are applicable in this behalf, shall extend and apply to such easements, terms, rights, and privileges as aforesaid.

Power to Commissioners to sell, lease, or otherwise dispose of lands.

12. Notwithstanding anything in this Act, the Commissioners may at any time and from time to time sell, lease, or otherwise dispose of any lands acquired by them under this Act and no longer required for the purposes of this Act, or any part thereof, absolutely or for such terms of years or other interests, at or for such rents or other considerations, and subject to such covenants, conditions, and stipulations, or on such other terms as they think

expedient, and in the meantime the same shall remain vested in them unconditionally.

Expense of works and powers of Commissioners.

13. Subject to the provisions of this Act, the Act of 1873 shall be read and construed as if the works by this Act authorised were among the works authorised by the Act of 1873, and the powers and duties of the Commissioners under that Act with respect to the levying and assessing and recovery of rates and otherwise shall apply to the works by this Act authorised, and to this Act, as if the last-mentioned works had been authorised by the Act of 1873; and the Commissioners shall be entitled to provide the funds necessary for defraying and to defray the expense of executing and maintaining the said works in every respect as if the same had been among the works authorised by the Act of 1873, and as if the provisions of that Act had expressly applied to the same: Provided always, that the amount expended by the Commissioners out of money borrowed, and the Dun Drainage Works Rate, in the construction of works and purchasing and acquiring lands and interests therein authorised respectively by the Act of 1873 and this Act, shall not exceed in the aggregate the sum of sixty-four thousand pounds.

Limitation of expenditure on works.

Extension of time for completion of works authorised by 36 & 37 Vict. c. cxcv.

14. The time limited by the Act of 1873 for the construction and completion of the works by that Act authorised is by this Act extended until the twenty-first day of July one thousand eight hundred and eighty-one.

Repeal of certain sections of 36 & 37 Vict. c. cxcv.

15. Sections 10 and 44 and 53 of the Act of 1873 are hereby repealed, and from and after the making of any award under this Act the award made as aforesaid by the Sub-Commissioner in pursuance of the said section 10 of the Act of 1873 shall cease and determine, save and except so far as may be necessary to enforce any outstanding claims or rights thereunder.

Commissioners to fix proportion in which lands shall be assessed.

16. It shall be lawful for the Commissioners from time to time, as they shall judge fit, to fix the proportion in which the several lands intended to be taxed under the Act of 1873 and this Act shall be assessed towards the works and maintenance rates authorised by the Act of 1873 and this Act, graduated according to the different degrees of benefit which in their judgment the said lands will derive from the works by the Act of 1873 and this Act authorised, and the Commissioners shall have power, if they shall so think fit, to exempt entirely any lands which in their opinion will derive no benefit from the said works.

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Appeal.

17. If any owner or occupier of lands think himself aggrieved by any assessment of land to any rate by the Act of 1873 or this Act authorised, or by anything included in or omitted from the assessment, or by the exercise by the Commissioners of the power herein-before conferred upon them to fix the proportion in which the several lands to be taxed shall be assessed towards the works and maintenance rates, and to exempt entirely any lands which in their opinion will derive no benefit from the said works, he may appeal at his option either to the justices of the peace for the west riding of the county of York, sitting in petty sessions at Doncaster, or to the court of quarter sessions for the said west riding, subject to the conditions and regulations following:

(1.) Within fourteen days after the day whereon notice of any assessment is served on him, and fourteen clear days at least before the petty or quarter sessions to which appeal is made, the appellant shall give to the Commissioners notice in writing of his appeal and of the matter and ground thereof, and shall state in such notice whether his appeal is to the said justices of the peace or to the said court of quarter sessions:

(2.) If appeal be made to the court of quarter sessions, then such appeal shall be to the court next holden not less than one month after the day whereon notice of any assessment is served on such owner or occupier; and if appeal be made to the said justices of the peace, such appeal shall be to the justices sitting at some petty sessions to be held within six weeks from the last-mentioned day:

(3.) The justices of the peace or the court of quarter sessions, on proof of such notice, shall in a summary way hear and determine the appeal, and may (if they think fit) adjourn the hearing thereof:

(4.) The justices of the peace or the said court, by their order on the appeal, may affirm the assessment or may amend it, and may make such further or other order respecting the matter of the appeal as seems just, and may, if necessary, issue process for enforcing their judgment: Provided that the justices of the peace or the said court may, if they think fit, state the facts specially for the determination of a superior court:

(5.) The justices of the peace or the said court on the appeal shall have the power of awarding costs to be paid by or to any party and of compelling the payment thereof:

(6.) If such owner or occupier elect to appeal to the court of quarter sessions, then the order or decision of the court on the appeal shall be final and conclusive on all parties:

(7.) If such owner or occupier shall appeal to the justices of the peace sitting in petty sessions, then it shall be lawful for him or for the Commissioners, thinking him or themselves (as the case may be) aggrieved by the order or decision of the justices, to appeal from such order or decision to the next court of quarter sessions for the said west riding, holden not less than one month after the date of such order or decision, subject to the following conditions and regulations:

(*a.*) Within ten days after such order or decision the party appealing shall give to the opposite party notice in writing of the appeal and of the matter and ground thereof;

(*b.*) The court of quarter sessions shall have the same jurisdiction and powers in all respects in and about the premises as if appeal had been made to them in the first instance, instead of to the justices of the peace in petty sessions;

(*c.*) If such appeal shall be made by any owner or occupier as aforesaid, he shall immediately after such last-mentioned notice of appeal enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide by the judgment of the court thereon, and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow;

(*d.*) The order or decision of the court of quarter sessions on such appeal shall be final and conclusive on all parties.

For protection of proprietors of the River Dun and the Stainforth and Keadby Canal and the Manchester, Sheffield, and Lincolnshire Railway Company.

18. Nothing in this Act contained shall authorise the Commissioners to alter in any respect the water level of the River Dun Navigation, nor shall anything in this Act contained extend or be construed to extend so as to prejudice or affect, or to repeal or alter, any of the powers, authorities, rights, and privileges granted to the proprietors of the Navigation of the River Dun, or the Company of Proprietors of the Stainforth and Keadby Canal Navigation, or to the South Yorkshire Railway and River Dun Navigation Company, or the Manchester, Sheffield, and Lincolnshire Railway Company, in and by any Act or Acts of Parliament passed relating to the said

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navigation, canal, and railways respectively, or in any respect to impede, obstruct, prejudice, affect, injure, or damage the said navigation, canal, and railways, or any or either of them respectively, or any of the cuts or canals, banks, culverts, drains, and works belonging thereto, or now or heretofore used or enjoyed therewith.

Power to borrow.

19. And whereas it is expedient that the Commissioners should be empowered to borrow the whole of the sum of sixty-four thousand pounds in the Act of 1873 mentioned, be it enacted that the Act of 1873 shall be and is hereby amended, and shall be read and construed as if the words "sixty-four thousand pounds" were therein inserted in the place of the words "forty thousand pounds" occurring in section 66 of that Act, and the Commissioners are hereby authorised to borrow accordingly; and all the provisions of that Act which relate to or concern in any way the said sum of forty thousand pounds, or the borrowing or re-borrowing or application thereof, shall be construed as relating to and concerning the said sum of sixty-four thousand pounds, and the borrowing or re-borrowing and application thereof: Provided always, that any mortgage or mortgages granted by the Commissioners, in pursuance of the powers of the Act of 1873, before the passing of this Act, and subsisting at the passing hereof, shall during the continuance of such mortgage or mortgages, and subject to the provisions of that Act, have priority over any mortgages granted by virtue of this Act.

Priority of existing mortgages.

Annual publication of accounts. 10 & 11 Vict. c. 16.

20. The Commissioners shall each year, within one month after their accounts have been examined and audited in manner provided for by the Commissioners Clauses Act, 1847, and the Act of 1873, publish an abstract thereof either by advertising the same in a newspaper published in the borough of Doncaster, or by sending a copy thereof to every person assessed under the Act of 1873 or this Act.

Repeal of Rule 2 in fifth schedule of 36 & 37 Vict. c. cxcv.

Retiring Commissioners when to be deemed to be re-elected.

21. Rule 2 of the fifth schedule to the Act of 1873 is hereby repealed, and in the place thereof be it enacted, that a person other than an outgoing Commissioner shall not be eligible at any election unless ten days at least before the day of election he has been proposed by an elector and seconded by another elector by a joint writing under their hands delivered at or sent by a registered letter to the principal office of the Commissioners, and if no person or persons shall have been so proposed and seconded the retiring Commissioners shall be deemed to be re-elected.

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Expenses of Act.

22. The Commissioners may apply any funds carried to their capital account under the provisions of the Act of 1873 in paying the costs, charges, and expenses preliminary to and of and incidental to the preparing of and applying for and the obtaining and passing of this Act.

LONDON: Printed by George Edward Eyre and William Spottiswoode,
Printers to the Queen's most Excellent Majesty. 1879.