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An Act for making additional provision for the Supply of Water to the Burgh of Dundee and Suburbs thereof, and places adjacent; and for amending and extending the Acts relating to such supply; and for other purposes.

[13th July 1871.]

WHEREAS the Dundee Water Company was in the year 1845 incorporated with power to construct works and to supply the burgh of Dundee and suburbs thereof with water, and works were from time to time and under several Acts of Parliament constructed by the said company, and water supplied thereby:

And whereas the undertaking and rights and privileges of the Dundee Water Company, and the power of supplying water to Dundee and suburbs and places adjacent, were vested in and undertaken by the Dundee Water Commissioners (herein-after called the Commissioners), incorporated in and acting under "The Dundee Water Act, 1869," (herein-after called the recited Act):

And whereas the supply of water to the said burgh and suburbs thereof, and places adjacent within the limits of the recited Act (herein-after called district), is inadequate and insufficient for the wants and convenience of the present and rapidly increasing population, trade, and manufactures of the district:

And whereas it is necessary for the health, comfort, and convenience of the inhabitants of the district that a more abundant supply of water should be afforded to the district, and the Commissioners are desirous, and it would be of public advantage that they should be authorised to take and introduce such additional supply from the river or water of Melgum or Melgam, adjoining the loch of Lintrathen, and from the river or water or burn of Inzion, adjoining said loch, and from the said loch and the affluents of said rivers or waters and loch, all in the county of Forfar, as well as to supply water in bulk, in certain cases, beyond

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the limits of their ordinary supply, and to provide a supply to the persons presently interested in the waters to be taken; and for these purposes to make and maintain additional reservoirs, aqueducts, and other works:

And whereas it is expedient that the Commissioners should be empowered to raise further money for the purposes of the works authorised by this Act and for the general purposes of their undertaking, and that further powers should be conferred upon them to enable them to provide the said additional supply of water; and it is also expedient to amend, extend, and alter the recited Act:

And whereas plans and sections, describing the lands, houses, waters, streams, and other property intended to be taken for the purposes of this Act, and the lines, situations, and levels of the several works intended to be made and maintained under the authority of this Act, and the lands in or through which the same are so intended to be made and maintained, with a book of reference to the said plans, containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, houses, waters, streams, and other property, have been deposited for public inspection in the offices at Forfar and Dundee respectively of the principal sheriff-clerk of the county of Forfar, and in the offices at Perth and Dunblane respectively of the principal sheriff-clerk of the county of Perth, and which are in this Act referred to as the deposited plans, sections, and book of reference:

And whereas the objects aforesaid cannot be attained 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 Dundee Water Extension Act, 1871."

Incorporation of general Acts.

2. The following Acts and parts of Acts (as far as the same respectively are applicable for the purposes and are not inconsistent with the provisions of this Act) are hereby incorporated with this Act:

"The Lands Clauses Consolidation (Scotland) Act, 1845:"

"The Lands Clauses Consolidation Acts Amendment Act, 1860:"

"The Waterworks Clauses Act, 1847," except the provisions with respect to the communication pipes to be laid by the

undertakers, and also the provisions with respect to the amount of profit to be received by the undertakers, when the waterworks are carried on for their benefit, and also with the exception of clauses 68, 70, and 72:

"The Waterworks Clauses Act, 1863:"

The clauses and provisions of "The Railways Clauses Consolidation (Scotland) Act, 1845," with respect to the temporary occupation of lands near the railway during the construction thereof.

Interpretation clause.

3. The several words and expressions to which by the Acts wholly or partly incorporated herewith meanings are assigned shall in this Act have the same respective meanings, unless there be something in the subject or context repugnant to such construction.

Power to make works and take lands, &c.

4. Subject to the provisions of this Act, the Commissioners may make and maintain in the lines or situations, and according to the levels shown on the deposited plans and sections, the reservoirs, aqueducts, conduits, or lines of pipes, cut or drain, roads, and diversions and alterations of roads, and other works shown on the deposited plans, with all proper approaches, works, and conveniences connected therewith, and may enter on, take, and use such of the lands described in the deposited plans and book of reference as they require for the purposes of their undertaking; and, subject to the provisions of this Act, may take, use, get, and appropriate for such purposes the waters specially mentioned in this Act, and all waters found in and under or on any of the lands taken by them, and may stop up all roads within the limits of deviation defined on the deposited plans, which are shown thereon as intended to be stopped up.

The works herein-before referred to and authorised by this Act are:

1. A reservoir on the river or water known as the Melgum or Melgam (herein-after called the Melgum), and on the river or water known as the Inzion Burn (herein-after called the Inzion Burn), and on the loch of Lintrathen, and on the lands adjacent thereto, all within the parish of Lintrathen and county of Forfar:
2. A road in the said parish of Lintrathen and county of Forfar, leading from the public road from Kirriemuir to Glenisla to the public road from Alyth by Milnacraig to and beyond Bridgend of Lintrathen:
3. A road in the aforesaid parish of Lintrathen and county of Forfar, leading from the public road called the Lochside

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Road to the said public road from Alyth to and beyond Bridgend of Lintrathen:

4. A cut or drain in the said parish of Lintrathen and county of Forfar, in the wood known as Craigyloch Wood:

5. A road in the said parish of Lintrathen and county of Forfar, leading from the said public road from Alyth to and beyond Bridgend of Lintrathen to the public road leading from Bridgend of Lintrathen southwards by Bridge of Lundies into the parish of Airlie:

6. The raising of a portion of the said public road known as the Lochside Road in the aforesaid parish of Lintrathen and county of Forfar, such raising embracing a new bridge over the Melgum in place of the existing ford and adjoining foot bridge, and which new bridge shall be thirty feet wide at the least:

7. The raising of a portion of the said public road from Alyth to and beyond Bridgend of Lintrathen in the aforesaid parish of Lintrathen and county of Forfar:

8. An aqueduct, conduit, or line of pipes commencing in the parish of Lintrathen and county of Forfar, in and out of the intended reservoir firstly before described, and terminating within the parish of Monikie and county of Forfar in the south side of the old course of the burn known as the Crombie Burn, within the existing reservoir of the Commissioners known as the Crombie Reservoir:

9. An aqueduct, conduit, or line of pipes in the parish of Monikie and county of Forfar, commencing in and out of the aqueduct, conduit, or line of pipes eighthly herein specified, near its termination, and terminating in the existing watercourse of the Commissioners which conveys the water from their existing Crombie reservoir to their existing reservoirs at Craigton of Monikie:

10. An aqueduct, conduit, or line of pipes commencing within the parish of Carmyllie and county of Forfar in the burn known as the Hyndcastle Burn, and terminating within the parish of Monikie and county of Forfar in the waste watercourse of the existing Crombie reservoir of the Commissioners:

11. An aqueduct, conduit, or line of pipes commencing in the parish of Carmyllie and county of Forfar, at the northern boundary of the land belonging to the Commissioners at the Crombie reservoir, and terminating in the parish of Monikie

and county of Forfar by a junction with the existing water-course of the Commissioners at or near to the foot of the outer slope of the existing Crombie reservoir embankment:

12. An aqueduct, conduit, or line of pipes in the parish of Monikie and county of Forfar, commencing in and out of the Commissioners aqueduct called the Little Aqueduct, at or near to Craigton of Monikie, and terminating in the straining well in the north-westerly corner of the clear-water basin at Craigton of Monikie:

13. A reservoir in the parish of Dundee and county of Forfar on the easterly slope of Dundee Law:

14. An aqueduct, conduit, or line of pipes, commencing within the parish of Murroes and county of Forfar, in and out of the existing well of the Commissioners, known as Gagie Well, and terminating within the parish of Dundee and county of Forfar, in the intended reservoir thirteenthly before described:

15. An aqueduct, conduit, or line of pipes, in the parish of Dundee and county of Forfar, commencing in and out of the reservoir thirteenthly before described, and terminating in Hill Street, Dundee.

Power to erect and maintain all necessary connexion works, and to maintain and improve existing works.

5. The Commissioners may, in connexion with the works or any of them authorised by this Act, make, lay, erect, and maintain such embankments, dams, weirs, channels, sluices, catchwater drains, culverts, cuts, aqueducts, tunnels, bridges, roads, cisterns, gauges, main and distributing pipes, houses, buildings, and all other works and conveniences which may be necessary or expedient for effecting or carrying out the objects or purposes of this Act, or any of them; as also the Commissioners may from time to time, on or within any of their lands, or on or over any lands on or over which they by agreement have or may acquire right so to do, alter, replace, increase, and enlarge their existing works, conduits, aqueducts, mains, and pipes, or any of them, and the works, conduits, aqueducts, mains, and pipes authorised by this Act, and may from time to time alter, replace, enlarge, and increase the number and size of the works, mains, and pipes from time to time in use for conveying and distributing water for the purposes of this Act.

Reservoir to be enclosed by wire fences.

6. The said reservoir firstly before described shall be enclosed by proper and sufficient wire fences and gates, to be erected and maintained by the Commissioners.

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Power to erect and maintain telegraphs for works.

7. The Commissioners may from time to time erect and maintain upon the lands and works from time to time belonging to or vested in the Commissioners, or over which they have or may acquire right so to do, all such telegraph posts and wires as the Commissioners may consider necessary or proper, and they may acquire by agreement all or any wayleaves which may be requisite for these purposes: Provided always, that such telegraph wires shall be used for the Commissioners purposes only.

Construction of new roads shown on plans.

8. The Commissioners shall construct the new or diverted roads secondly, thirdly, and fifthly before specified, as shown on the deposited plans, and every such road shall be solidly and well constructed, and in connexion with every such road the Commissioners, at their own expense, shall construct all necessary or proper side drains and culverts for carrying off the surface water, and the Commissioners shall, to the satisfaction of the surveyor for the time being to the Statute Labour Road Trustees of the Forfar district of the county of Forfar, properly fence off every such road; and on the completion of the said new or diverted roads, (1) that portion of the foresaid public road known by the name of the Lochside Road, commencing at a point on the said road five hundred and fifty-one yards, or thereabouts, measured in a southerly direction along the same, from the centre of the ford in the Melgum of said road, and terminating at the point, at or near Bridgend of Lintrathen, where the said Lochside road joins the foresaid public road leading from Alyth to and beyond Bridgend of Lintrathen; (2) the public road leading from the said Lochside road round the westerly side of the loch of Lintrathen to and joining the said public road leading from Alyth to and beyond Bridgend of Lintrathen; and (3) that portion of the said public road leading from Alyth to and beyond Bridgend of Lintrathen which lies between the point where the intended road fifthly before described commences and a point on the said public road ninety-five yards or thereabouts, measured in a south-westerly direction along said road, from the centre of the bridge by which it is carried over the Melgum at Bridgend of Lintrathen,—shall, in so far as not taken or appropriated for said new or diverted roads, cease to be or be used as public roads, and the sites and soil thereof shall, in so far as not so taken and appropriated, be and are hereby absolutely vested in the Commissioners, freed and discharged from all public and other rights of way, and all other rights, interests, charges, and incumbrances then affecting the same.

Maintenance of new roads.

9. Every road constructed as aforesaid, and the drains, culverts, and fences thereof, shall be maintained by and at the cost of the

Commissioners for one year after the completion of the same respectively, of which completion a certificate of two justices of the peace for the county of Forfar shall be conclusive evidence (which certificate two justices shall give on such completion being proved to their satisfaction); and on the expiration of the aforesaid period of one year each such road shall become and the same shall thenceforth be a public road, and shall be maintainable as such accordingly. A.D. 1871.

Limits of lateral deviation.

10. Where the line of any work shown on the deposited plans passes along any road, and limits of lateral deviation are not marked thereon, the Commissioners may, in constructing the works, deviate laterally from the line thereof as laid down on those plans to the extent of the boundaries of the road, and elsewhere the Commissioners may in constructing the works by this Act authorised deviate laterally from the lines thereof, as shown on the deposited plans, to the extent of the limits of lateral deviation shown thereon, but not further in either case, except with the consent of the owner of the lands through or in which the deviation is made; and where any of the said works are intended to pass under or over any railway authorised by Act of Parliament the same shall be executed so as not to obstruct or interfere with the free, uninterrupted, and safe use thereof.

Limits of vertical deviation.

11. In the construction of the works authorised by this Act the Commissioners may deviate vertically from the levels shown on the deposited sections in the case of reservoirs to any extent not exceeding five feet, and in the case of other works to any extent not extending five feet upwards or seven feet downwards.

Temporary occupation of lands.

12. The provisions with respect to the temporary occupation of lands incorporated with this Act shall apply only to the reservoirs authorised by this Act and the works immediately connected therewith; and for the purposes of this Act those provisions shall be read as if "reservoirs and works" were therein mentioned instead of "the railway," and "the boundaries of reservoirs and works" instead of "the centre of the railway," and "the Commissioners" instead of "the Company."

Lands for extraordinary purposes.

13. The Commissioners may from time to time, for the purposes of this Act, purchase by agreement, in addition to lands hereby authorised to be taken by compulsion, any additional lands not exceeding in the whole fifty acres.

Power to divert and impound water.

14. Subject to the provisions herein-after contained, it shall be lawful for the Commissioners to take and divert into, and to im-

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Quantity of water to be discharged as compensation water.

15. The Commissioners shall cause to flow from and out of the reservoir firstly before described, for the supply of mills, factories, works, lands, buildings, and others, on the rivers Melgum and Isla, below the said reservoir, and for the benefit of all parties interested in the water of the said rivers, a constant quantity of not less than fifteen cubic feet of water per second, as full compensation to such mills, factories, works, lands, buildings, and others, and to the owners, lessees, and occupiers thereof, and to all other parties interested as aforesaid, for the taking, diverting, impounding, and appropriating of the respective waters by this Act authorised to be taken, diverted, impounded, and appropriated.

Gauges to be provided by the Commissioners.

16. Before taking or diverting any water from the reservoir firstly before described the Commissioners shall, and they are hereby required, at their own cost, to make and construct, and for ever thereafter maintain, such and so many gauges as may be necessary for the purpose of ascertaining the actual quantity of compensation water passing out of the said reservoir, as herein-before provided, and such gauges shall at all times be open to the inspection and examination of all owners, lessees, and occupiers of mills, factories, works, lands, and buildings on the rivers Melgum and Isla below the said reservoir, and other parties interested in the water of the said rivers.

Penalty for failure in supply of compensation water.

17. In case the Commissioners shall wilfully, or after written notice negligently, fail to cause to flow from and out of the reservoir firstly before described the quantity of water to be discharged from and out of the same as herein-before provided, the Commissioners

shall, for and during every day on which such failure shall occur, forfeit and pay the sum of two pounds by way of penalty to the occupier of any mill, factory, or work which shall be affected thereby, and the occupier of which shall actually have received damage and incurred loss by reason of such failure (such mill, factory, or work not being lower down the stream than the point of junction of the Dean water with the river Isla), and the Commissioners shall, in addition, make compensation for any loss or damage sustained by such occupier which such penalties may be inadequate to meet, and such penalties may be recovered in the manner in which penalties are directed to be recovered by "The Waterworks Clauses Act, 1847."

Power to agree for easements, &c.

18. The Commissioners may take by agreement, and any person by "The Lands Clauses Consolidation (Scotland) Act, 1845," or "The Lands Clauses Consolidation Acts Amendment Act, 1860," or otherwise, enabled to sell lands, may grant to them any estate, easement, servitude, interest, right, or privilege, not of water, in, over, affecting, or belonging to lands, at a price or yearly rent, feu duty, or otherwise; but in the case of a person not enabled otherwise than by the said Acts to sell lands, then subject and according to the provisions relative to the taking of lands by agreement contained in the said Acts; and for the purposes of this section any such estate, easement, servitude, interest, right, or privilege shall be deemed to be lands within the meaning of those Acts.

Agreement with Lord Airlie confirmed.

19. Subject to the provisions of this Act the agreement between the Commissioners and the Right Honourable David Graham Drummond Ogilvy Earl of Airlie, dated the thirty-first day of March and third day of April one thousand eight hundred and seventy-one, and set forth in the Schedule to this Act annexed, is hereby confirmed, and shall be carried into effect by the said parties thereto respectively.

Reservation of right of sporting on reservoirs to Earl of Airlie.

20. The said Earl of Airlie and his heirs and successors in the lands and barony of Lintrathen shall have the exclusive right of fishing, shooting, and sporting in or over the reservoir firstly before described, and of keeping and using boats thereon for the purposes aforesaid, and of taking ice therefrom; and such rights may be exercised and enjoyed by the said earl and his heirs and successors in the said lands and barony, by himself or themselves, or by any person having his or their written permission or authority; and the said earl and his heirs and successors in the said lands and barony shall also be entitled to construct and maintain a shed or

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boathouse and an icehouse at any proper places on or near to the bank or side of the said reservoir, without making any payment to the Commissioners for or in respect of the sites thereof: Provided always, that in the exercise of the powers in this section mentioned, the said earl and his heirs and successors in the said lands and barony, or any person having his or their permission or authority as aforesaid, shall not injure any part of the embankments of the said reservoir or the works connected therewith, or interfere with the construction or maintenance of such works, or do any act whereby the water therein will be fouled: Provided also, that nothing herein contained shall prevent the Commissioners from using and appropriating the water of and in the said reservoir for the purposes of this Act, or from reducing the water in or emptying the said reservoir for the purpose of cleansing the same, or for the purpose of alterations or repairs: Provided further, that the Commissioners shall, notwithstanding of the rights aforesaid to the said earl and his foresaids, have full power and liberty, by themselves, their manager and servants, to keep and use a boat upon the said reservoir, for the purpose of examining, inspecting, repairing, and maintaining the same, and the embankments thereof, at all times they may think proper.

As to claims consequent on construction of works.

21. The Commissioners shall be responsible for all just and legal claims which may be made against them in consequence of the construction of the reservoir firstly herein-before described, or any of the other works by this Act authorised, and shall free and relieve the said Earl of Airlie and his heirs and successors from all such claims.

Supply of water to houses and buildings on the Earl of Airlie's estate.

22. The Commissioners shall supply water free of charge to all houses and buildings within the parish of Lintrathen belonging to the said Earl of Airlie the supply of water to which may be cut off by the works authorised by this Act, and also (if desired by the said earl, or his heirs or successors) to Airlie castle, in the parish of Airlie; but this provision shall not apply to any houses or buildings which cannot be supplied by gravitation from the works authorised by this Act; and the necessary pipes, cranes, ballcocks, and other appurtenances shall be laid down, supplied, and maintained at the expense of the said earl or his heirs or successors, and the necessary wayleave shall be given or provided and maintained by him or them.

Saving certain rights under recited Act.

23. Nothing contained in this Act shall prejudice or affect section twenty-three of the recited Act, or the rights or provisions thereby saved and conferred.

As to Kingswell.

24. It shall not be lawful for the Commissioners, or any party coming in their right, to execute any works under this Act which shall have the effect of abstracting, lessening, or interrupting the present and future yield or flow of water from Kingswell, which well is or is claimed to be the property of the Earl of Dalhousie, and affords at present a supply of water to his mansion house and offices of Panmure, nor to abstract or divert any of the tributaries, sources, or affluents of the said well so as to lessen or interrupt such yield or flow of water, and the pipe used for conveying such supply shall, where it passes through the property of the Commissioners, be at all times accessible to the proprietors of the house of Panmure for the time being, and be laid of new when required by the said proprietors, and in all time maintained by the Commissioners, or the parties foresaid, in good order. And if in the execution of any of the works authorised by this Act the present yield or flow of water from Kingswell or the water of Hyndcastle burn, in so far as it may be a source, or affluent, or tributary of Kingswell, shall be in any ways abstracted, interfered with, interrupted, or lessened, the Commissioners shall be bound to restore to the said earl, or the proprietors for the time being of the house of Panmure, and to maintain thereafter a yield and flow from said Kingswell of water of equal quantity and quality; and in case of any difference or dispute the same shall be settled by the sheriff of the county of Forfar for the time being; and the whole yield and flow of water from said Kingswell shall be gauged at least once a week for a period of not less than twelve months from and after the expiration of one calendar month from the passing of this Act by an engineer or other competent person to be appointed by the sheriff of the county, and the minimum yield or flow from the Kingswell, as declared by said engineer or other person to be shown by said gaugings, shall be taken to be the present minimum yield and flow of the said well, and the expense of said gaugings and apparatus necessary therefor and all expenses incident thereto shall be borne by the Commissioners; and the Commissioners shall not commence any operations under this Act within half a mile in any direction of the Kingswell until the present yield and flow of water from the Kingswell shall have been ascertained as aforesaid, and they shall be bound always to maintain a yield and flow of water from the said Kingswell not less than the minimum yield and flow thereof ascertained as aforesaid.

Limiting time for exercise of compulsory powers of purchase.

25. The powers of the Commissioners 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.

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Period for completion of works.

26. If the works authorised by this Act are not completed within ten years from the passing of this Act, then, on the expiration of that period, the powers by this Act granted to the Commissioners for executing any reservoir or work not so completed, or in relation thereto, shall cease to be exercised except as to so much thereof as is then completed; but nothing herein contained shall restrict the Commissioners from extending, enlarging, altering, replacing, or removing any of their engines, machinery, conduits, aqueducts, mains, or pipes, or improving their supply of water at any time and from time to time as occasion requires.

Commissioners may draw off water for repairs and cleaning of reservoirs.

27. It shall be lawful for the Commissioners from time to time to cause the water to be drawn or let off from any of their reservoirs for the purpose of repairing or inspecting the state of such reservoirs, or any of the dams, banks, tanks, channels, water-gates, pipes, or other works appertaining thereto, or for the purpose of cleaning out such reservoirs, or any part thereof; but in any such case the Commissioners shall use all convenient speed in making such repairs or in executing such cleaning.

Rent for water may be ascertained by meter.

28. The Commissioners may agree with any person for supplying him with water by measure, and may require any person supplied with water for other than domestic purposes to take and pay for his supply by measure; in both cases a meter for ascertaining the quantity consumed shall be provided by the Commissioners at a reasonable rent.

Power to Commissioners and local boards to agree as to supply of water.

29. Whereas various towns, persons, and districts in Forfarshire may require an additional water supply, and the power herein-after given might operate to the mutual benefit of the Commissioners and such towns, persons, and districts: It shall be lawful to the Commissioners, by contract as after mentioned, to supply water in bulk to any owners and occupiers of lands and heritages, and to any local board of health, police commissioners, parochial board, or other public authority within the county of Forfar or county of Fife, and that by branch pipes or conduits from any of the main conduits or pipes of the Commissioners, or from any of the reservoirs of the Commissioners, or otherwise; and the Commissioners and all or any such persons and bodies are hereby empowered to contract with each other for such supply upon such terms and conditions and for such period or periods of time as they may mutually agree upon: Provided always, that such supply shall not prejudicially affect or restrict the supply of water from time to time required within the limits of this Act.

Power to borrow for waterworks.

30. In addition to any money which the Commissioners have borrowed or are authorised to borrow under the recited Act the Commissioners may from time to time, under the authority of this Act, borrow all such sums as they think requisite for the purposes of this Act and of their undertaking, not exceeding the sum of two hundred and fifty thousand pounds, on the security of the property and works forming their undertaking and of the several rates and charges leviable by them under the provisions of the recited Act and this Act; and if, after having borrowed the said sums, or any part thereof, the Commissioners pay off the same, except by means of the sinking fund after mentioned, it shall be lawful for them again to borrow the amount so paid off, and so from time to time.

Security for borrowed money.

31. The money authorised to be borrowed by this Act may be secured by mortgages, in terms of and as provided for in the recited Act with regard to the money thereby authorised to be borrowed; and all the powers, forms, and provisions of the recited Act with regard to the borrowing of money thereby authorised, and with regard to the funding of borrowed money, shall apply to the money by this Act authorised to be borrowed, and to the transfer of the same and of all mortgages or certificates of funded debt granted for the same, or any part thereof; but providing that the deeds or certificates to be granted for the money hereby authorised to be borrowed or funded shall declare that they are so granted by virtue or by and under the powers of this Act: Provided also, that all mortgages or certificates of funded debt granted or to be granted by the Commissioners in pursuance of the recited Act shall have priority over any mortgages or certificates to be granted in virtue of this Act: Provided further, that nothing contained in or done or suffered under this Act shall prejudice or affect the preference and priority of the perpetual annuities mentioned in the recited Act, and conferred by that Act; and every judicial factor who may be appointed and acting under the provisions of sections seventy-five and seventy-six of the recited Act shall apply and pay over the balance of the sums received by him, as such judicial factor, to the several parties entitled to payment out of the said rates and charges and other income of the Commissioners, according to their respective rights and priorities herein-before prescribed.

Estimates to be made up by the Commissioners.

32. The estimate to be made up by the Commissioners under section forty-four of the recited Act, and the assessments and rates authorised and required to be levied under section forty-five of the said Act, shall not only include and be sufficient, with the other rates and income of the Commissioners, for the purpose of defraying the annual sums or expenditure specified in said section forty-four,

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but also the interest or annuity of any money borrowed or raised under the provisions of this Act, and the payment to the sinking fund, and the expense of maintaining and managing the additional works hereby authorised, and all other annual expenditure arising out of or consequent on the works hereby authorised.

Application of rates and charges.

33. The rates and charges levied or leviable under the authority of the recited Act, and the other income of the Commissioners, whether arising under the recited Act or this Act, shall be applied in the following order of priority; that is to say, (first) in defraying the expenses of the management and maintenance of the undertaking of the Commissioners under the recited Act and this Act, including the salaries and other payments to the officers and servants of the Commissioners, and the annual costs, charges, and expenses of providing and supplying water, and in payment of any feu duties, and ground annuals, and other annual payments exigible in respect of any lands, streams, or property forming part of the said undertaking; (secondly) in payment of the perpetual annuities by section twenty-four of the recited Act required to be paid, and of the interest on any moneys, not exceeding in the whole the sum of eighty thousand pounds, now or hereafter borrowed under the authority of that Act, and of the annuity on any funded debt now or hereafter issued under the authority of that Act in respect of the said sum of eighty thousand pounds, or of any portion thereof; (thirdly) in payment of the interest of money which may be borrowed and of the annuity on the funded debt which may be issued under the authority of this Act; (fourthly) in payment of the sums by the recited Act and this Act directed to be set apart as a sinking fund; and (lastly) in payment of such portion of the cost of enlarging or increasing and renewing the number of mains and pipes, and of extending the works, mains, and pipes from time to time, as the Commissioners shall think it reasonable to charge against the revenue for the year, and of any other necessary annual expenditure.

Application of borrowed money.

34. The several sums borrowed by the Commissioners on mortgage, or raised by means of certificates of funded debt under the authority of this Act, shall be applied in terms and for the purposes of this Act only: Provided always, that no part thereof shall be applied to purposes for which the annual revenue of the Commissioners is applicable.

Sinking fund.

35. Section eighty-one of the recited Act is hereby suspended for ten years from the passing of this Act; but on the expiration of said period of ten years from the passing of this Act, the Com-

missioners shall, in addition to the sums provided to be set apart annually as a sinking fund by said section eighty-one of the recited Act, set apart or pay over annually to the sinking fund thereby provided a sum equal to one per centum on the whole amount of money borrowed by them under the authority of this Act, and the said sinking fund shall be from time to time applicable to the redemption of mortgages created by this Act as well as by the recited Act, or to the other purposes specified in said section as the Commissioners think proper, and to no other purposes whatever, and shall be lodged, dealt with, and applied as therein provided.

Costs of Act.

36. All costs, charges, and expenses of and incidental to the preparing for, obtaining, and passing of this Act, or otherwise in relation thereto, shall be paid by the Commissioners out of the moneys to be raised under the authority of this Act.

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SCHEDULE referred to in the foregoing Act.

AGREEMENT between the Dundee Water Commissioners, incorporated by "The Dundee Water Act, 1869," herein-after called "the Commissioners," of the first part, and the Right Honourable David Graham Drummond Ogilvy Earl of Airlie, heir of entail in possession of the entailed lands and estates of Lintrathen, Alyth, and Cortachy, of the second part.

WHEREAS the Commissioners are promoting a Bill in Parliament, intituled "A Bill for making additional provision for the Supply of Water to the burgh "of Dundee and Suburbs thereof, and places adjacent, and for amending and "extending the Acts relating to such supply, and for other purposes;" and it is proposed by the said Bill to authorise the Commissioners to construct the following works, with all proper approaches, works, and conveniences connected therewith, viz., inter alia:—First, a reservoir on the river or water known as the Melgum or Melgam (herein-after called the Melgum), and on the river or water known as the Inzion Burn (herein-after called the Inzion Burn), and on the loch of Lintrathen, and on the lands adjacent thereto, all within the parish of Lintrathen and county of Forfar: Second, a road in the said parish of Lintrathen, leading from the public road from Kirriemuir to Glenisla to the public road from Alyth by Milnacraig to and beyond Bridgend of Lintrathen: Third, a road in the said parish of Lintrathen, leading from the public road called the Lochside Road to the said public road from Alyth to and beyond Bridgend of Lintrathen: Fourth, a cut or drain in the said parish of Lintrathen, in the wood known as Craigyloch Wood: Fifth, a road in the said parish of Lintrathen, leading from the said public road from Alyth to and beyond Bridgend of Lintrathen to the public road leading from Bridgend of Lintrathen southwards by Bridge of Lundies into the parish of Airlie: Sixth, the raising of a portion of the said public road known as the Lochside road in the said parish of Lintrathen, such raising including a bridge at least thirty feet wide over the Melgum in place of the existing ford and adjoining foot-bridge: Seventh, the raising of a portion of the said public road from Alyth to and beyond Bridgend of Lintrathen, in the said parish of Lintrathen: Eighth, an aqueduct, conduit, or line of pipes, commencing in the said parish of Lintrathen, in the intended reservoir firstly before described, and terminating within the parish of Monikie and county of Forfar in the south side of the old course of the burn known as the Crombie Burn, within the existing reservoir of the Commissioners known as the Crombie Reservoir: And whereas the lands in or through which the said works first, second, third, fourth, and fifth are proposed to be constructed belong to the Earl of Airlie, and the said roads sixth and seventh are public roads passing through his lands, and a portion of the said work eighth will pass through or be constructed on his lands; and by

the said Bill it is also proposed to authorise the Commissioners to take and divert into, and to impound and store up in, the said intended reservoir firstly before described, for the purposes of the intended Act, the waters of the said loch of Lintrathen and affluents thereof, and to intercept, divert, and take into the said reservoir, and therein to impound and store up, for the said purposes, the waters of the Melgum and affluents thereof and of the Inzion burn and affluents thereof and therein, and from thence by the said intended works and by the existing undertaking and works of the Commissioners or one or more of them, to use and appropriate the said several waters for an additional supply of water to the burgh of Dundee, and suburbs and places adjacent, and to the inhabitants thereof, and to provide compensation water to streams and persons whose present supply of water may be affected by or in consequence of the works authorised by the intended Act or any of them, and to supply such other persons, corporations, or public authorities as the Commissioners may think fit: And whereas, with a view of settling all questions of compensation which might arise under the intended Act to follow on the said Bill, the parties hereto have agreed as underwritten, that is to say, the Commissioners and the Earl of Airlie, as heir of entail foresaid, do hereby, subject to the sanction of Parliament being obtained by the intended Act, agree and bind and oblige themselves and himself respectively as follows; viz.,

First. The Commissioners shall pay to the Earl of Airlie the following sums of compensation for lands, water, and other property to be taken and used by them under the powers and for the purposes of the intended Act; viz.,

(First.) The sum of five thousand pounds, as the full and fair worth and value of the said loch of Lintrathen, and banks or shores thereof, situate within the limits described on the plan signed by two of the Commissioners and the Earl of Airlie as relative to this agreement, and of the portions of the Melgum and Inzion burn situate within the limits of deviation described on the plans deposited with the sheriff-clerk of the county of Forfar, with reference to the said Bill, and of the several waters and affluents of the said loch and Melgum and Inzion burn:

(Second.) The sum of three thousand five hundred and seventy pounds, as the full and fair worth and value of all the houses, ponds, buildings, and erections whatsoever, upon or attaching to the said loch, or to the shores or banks thereof, and upon or attaching to the lands to be taken as herein-after mentioned, including in such houses, buildings, and erections the farm-house, farm-steading, and mill of Balnakeilly, with the water-power and lades thereof:

(Third.) The sum of ninety pounds per acre, as and for the full and fair worth and value of all arable and waste lands (other than and except the said loch and the portions of the Melgum and Inzion burn and the waters and affluents respectively herein-before mentioned) shown on the said plans deposited with reference to the said Bill, in so far as the same may be required and taken for the said works first, second, third, and fifth before described, or any of them, with the exception of eight acres of the said lands, and for the said eight acres the sum of forty-five pounds per acre, together with the sum of seventy pounds as for damage by intersection:

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(Fourth.) The sum of forty-five pounds per acre, as and for the full and fair worth and value of all lands planted or covered with wood or timber (other than and except as aforesaid) shown on the said deposited plans, in so far as the same may be required and taken for any of the works before described, and the sum of twenty-five pounds per acre, as and for the full and fair worth and value of the wood or timber growing on the said lands.

Second. The Commissioners shall take and the Earl of Airlie shall grant to them a perpetual easement, servitude, right, and privilege in, over, and affecting the lands shown on the said deposited plans, in so far as the same may be required and taken for constructing and maintaining the said work fourth before mentioned; and for and in respect thereof the Commissioners shall pay to the Earl of Airlie the sum of one hundred and fifty pounds.

Third. The Commissioners shall take and the Earl of Airlie shall grant to them a perpetual easement, servitude, right, and privilege in, over, and affecting the lands shown on the said deposited plans, in so far as the same may be required and taken for constructing and maintaining the said work eighth before mentioned; and for and in respect thereof the Commissioners shall pay to the Earl of Airlie the sum of twenty-five pounds so far as regards so much of the said work eighth as may be constructed or laid in or by way of tunnel, and the sum of fifty-two pounds ten shillings per acre of land taken or used for so much of the said work eighth as may be constructed or laid in cutting or embankment.

Fourth. The several sums before mentioned (with the exception of the sum payable as the worth and value of the said wood or timber) shall be paid and deposited in bank by the Commissioners in terms of sections sixty-seven and seventy-one of "The Lands Clauses Consolidation (Scotland) Act, 1845," in return for a disposition and conveyance of the lands, waters, and other property to be taken and acquired as aforesaid, and which payment and deposit shall be made on or before the term of Whitsunday eighteen hundred and seventy-two.

Fifth. The sum to be ascertained as the worth and value of the wood or timber growing on the lands to be taken as aforesaid shall be paid by the Commissioners to the Earl of Airlie on or before the term of Whitsunday eighteen hundred and seventy-two.

Sixth. The Earl of Airlie shall accept of the foresaid agreed on payments in full of the worth and value aforesaid, and of all claims and demands at his instance, or which might arise to him under the intended Act or the compulsory taking of the foresaid lands, waters, and other property for the purposes of the foresaid intended works.

Seventh. The Earl of Airlie shall not be bound to allow or sustain as a deduction from the foresaid amounts of compensation, or any of them, any rebate or drawback of interest thereon during the currency of any existing leases to tenants of the said lands, or any of them, and (with the exception of the apportionment and deduction of rent to which such tenants may be entitled by virtue of section one hundred and twelve of "The Lands Clauses Consolidation (Scotland) Act, 1845," or by virtue of any agreement with regard to the same heretofore entered into between the Earl of Airlie and any of such tenants, and of any claims for houses, buildings, and erections, including the water-power and lades of Balnakeilly Mill aforesaid, for and in respect of which

the sum herein-before agreed to be paid has been allowed and is to be applied by the Earl of Airlie, and of all which claims he is accordingly to relieve the Commissioners,) the Commissioners shall be bound to free and relieve the Earl of Airlie of all competent and legal claims at the instance of tenants of the said lands, or any of them, for or in respect of or in connexion with the lands let to or occupied by them respectively, in so far as the same may be taken by the Commissioners, or for or in respect of any damage or loss which may be caused or may arise by or in consequence of the execution of the said works, or the taking of the said lands, or any of them.

Eighth. In respect the acquisition of the lands and others foresaid, by the Commissioners, for the purposes of their works, was contemplated when the lease to John Adam of the farm of Balnakeilly and the lease to William Annand of the farm of Inzion were granted, and these leases provide that the Earl of Airlie shall be entitled to resume possession of any part of the said farms required for the said works on giving the notices and paying the amounts of compensation mentioned in the said leases, it is hereby agreed that the Earl of Airlie shall give such notices applicable to and as for Martinmas eighteen hundred and seventy-one, and that the Commissioners shall pay and free and relieve the Earl of Airle from payment of the compensation for unexhausted manures and permanent improvements agreed upon by the said leases, consequent upon the said notices and the resumption of possession thereby arising.

Ninth. Nothing herein contained shall relieve the Earl of Airlie from allowing to the said John Adam and William Annand, and any other of his lordship's tenants of lands to be taken as aforesaid, any deductions from rent to which they may be entitled under their leases or the Lands Clauses Act aforesaid.

Tenth. Nothing contained in this agreement or in the intended Act shall prevent the drainage of the lands belonging to the Earl of Airlie into the said loch of Lintrathen, or the Melgum or Inzion burn, or into any other sufficient outfall existing or which may be constructed by the Commissioners for the purpose, and if by the execution of the works before described, or by the impounding and storing of the water in the said reservoir, any lands belonging to the Earl of Airlie, which are not taken by the Commissioners, are rendered marshy, the Commissioners shall make payment to the Earl of Airlie of such compensation on that account as shall be determined by arbiters, to be mutually appointed by the Commissioners and the Earl of Airlie, or by an oversman to be named by such arbiters.

Eleventh. Any portion of land which shall be left as an island in the loch of Lintrathen shall be planted with trees by and at the expense of the Commissioners, and no house or building shall be erected on such island.

Twelfth. The measurements of the lands and other property to be taken and acquired or used as aforesaid (other than and except the said loch and the said portions of the Melgum and Inzion burn, and the waters and affluents respectively herein-before mentioned) shall be made by Robert Blackadder, land surveyor, Dundee, and shall include the areas or sites of the houses, buildings, and erections on such lands, other than and except as aforesaid (the materials of all which the Earl of Airlie shall be entitled to remove and appropriate), and shall also include the areas of all roads belonging to the Earl of

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Airlie, other than the public roads shown on the said deposited plans and described in the deposited books of reference; and a plan of the said lands and other property with a statement of such measurements shall be furnished by the Commissioners to the Earl of Airlie, who shall be entitled to check the said measurements at the cost and expense of the Commissioners.

Thirteenth. All charges and expenses incurred and to be incurred by the Earl of Airlie with respect to the said Bill and the intended Act and this agreement, and carrying the same respectively into effect, including the charges of any engineers consulted or employed by the Earl of Airlie, shall be borne and paid by the Commissioners.

Fourteenth. The expression "Earl of Airlie" in this agreement shall, unless there be something in the subject or context repugnant to such construction, mean and include the said David Graham Drummond Ogilvy Earl of Airlie and his heirs and successors in the entailed lands and barony of Lintrathen. In witness whereof these presents written on this and the four preceding pages by James Miller, clerk to Pattullo & Thornton, solicitors in Dundee, are duly executed (in duplicate) as follows, viz.,—the same are sealed with the common seal of the Commissioners, and subscribed by James Yeaman, Provost of Dundee, and James Cox, Senior Bailie of Dundee, two of the Commissioners, and by William Hay, town clerk of Dundee, clerk to the Commissioners, all for and in name and on behalf of and as duly authorised by the Commissioners, at Dundee, on the thirty-first day of March eighteen hundred and seventy-one years, before these witnesses, John Carron Jameson and John Macdonald, both clerks to the said William Hay; and the same are also subscribed by the said Earl of Airlie at London, on the third day of April and year last mentioned, before these witnesses, William Park, clerk to Messieurs Loch & Maclaurin, parliamentary agents, Great George Street, Westminster, and Edward Coleman, butler to the said Earl of Airlie, declaring that the word "statement" occurring on the tenth line of Article Twelfth of this duplicate was partly written over an erasure before subscription.

JOHN C. JAMESON, witness.
J. MACDONALD, witness.
WILLIAM PARK, witness.
EDWARD COLEMAN, witness.

Seal of The Dundee Water Commissioners.

JAS. YEAMAN, Provost, Comr.
JAMES COX, Comr.
WILLIAM HAY, Clerk to Dundee Water Commissioners.
AIRLIE.

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