CHAPTER xliv.

An Act for better supplying Enniskillen in the county of Fermanagh with Gas. [30th June 1874.]

A.D. 1874.

WHEREAS the borough of Enniskillen in the county of Fermanagh is now and has been for many years supplied with gas by means of works now and for some time past the property or reputed to be the property of George Dunbar Malam, the Reverend William Malam, and Elizabeth Dunbar Moore (the wife of William Henry Moore):

And whereas the works could be more efficiently carried on if they were in the hands of a company, and if "The Gasworks Clauses Acts, 1847 and 1871," were extended to the existing undertaking, and if the other powers herein-after contained were conferred upon the company: 10 & 11 Vict. c. 15. 34 & 35 Vict. c. 41.

And whereas it is expedient that the company should have power to acquire the lands upon which the existing gasworks have been erected:

And whereas plans showing the said lands, and a book of reference containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of those lands, have been deposited with the clerk of the peace for the county of Fermanagh, and are herein-after referred to as the deposited plans and book of reference:

And whereas it is expedient that the commissioners of the borough of Enniskillen should be authorised to purchase the gas undertaking:

And whereas the objects aforesaid cannot be accomplished 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,)

A.D. 1874.

Short title.

1. This Act may be cited as "The Enniskillen Gas Act, 1874."

Provisions of certain general Acts incorporated.

2. "The Companies Clauses Consolidation Act, 1845," Parts I. (cancellation and surrender of shares) and III. (debenture stock) of "The Companies Clauses Act, 1863," "The Companies Clauses Act, 1869," "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869," and "The Gasworks Clauses Act, 1847," are (except where expressly varied by this Act) incorporated with and form part of this Act, and "The Gasworks Clauses Act, 1871," shall apply to the existing undertaking as if the same were hereby authorised; and for the purposes of this Act the word "lands" in "The Lands Clauses Consolidation Act, 1845," shall extend to and include the undertaking by this Act authorised to be acquired.

Interpretation clause.

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 expression "the Company" means the Company incorporated by this Act:

The expression "the works," or "the gasworks," or "the undertaking" respectively mean and include the gasworks and works connected therewith by this Act vested in the Company, and any improvement thereof which they may make under the powers of this Act, and the lands, buildings, estate, right, title, property, privileges, effects, and undertaking of the Company and every part thereof respectively:

The expression "the commissioners" means the commissioners of the borough of Enniskillen.

Limits of Act.

4. The limits of this Act shall be the borough of Enniskillen.

Company incorporated.

5. Samuel Brothers Darwin, Abraham Malam, and Charles Edward Robinson, and all other persons and corporations who have subscribed to or shall hereafter become proprietors in the undertaking of the Company, and their executors, administrators, successors, and assigns respectively, shall be and they are hereby united into a company for the purpose herein-after mentioned, and shall be incorporated by the name of "The Enniskillen Gas Company," and by that name shall be a body corporate, with perpetual succession and a common seal, with power to purchase, take, hold, and dispose of lands and other property for the purposes of this Act.

General powers of the Company.

6. The Company shall be established for the purpose of manufacturing gas and of supplying gas within the limits of this Act, and

they may convert, manufacture, sell, and dispose of coke, coal tar, pitch, asphaltum, and ammoniacal liquor, oil, and all other products, refuse, or residuum arising, remaining, produced by, or obtained from the manufacture of gas or the materials used therein, and may manufacture and sell such articles as can be produced from or by means of the several matters and things aforesaid, and may, but only for the purposes of the Company within the limits of this Act, contract or take and use any leave, license, or authority to work, use, exercise, or put in practice any invention or inventions under any letters patent at any time heretofore made or hereafter to be made granting any right or privilege of working, using, exercising, or vending any invention in relation to the manufacture and distribution of gas, or the utilization of the residual products arising from the manufacture of gas, or otherwise in relation thereto, but not so as to acquire an exclusive right to the working, use, exercise, or putting in practice of any such invention or inventions, and may also manufacture, and sell, let, or deal in gas fittings, tubes, meters, pipes, and all other articles and things in any way connected with gasworks or with the supply of gas to the consumers thereof, in such manner as the Company may think proper, and generally carry on the business usually carried on by gas companies or which is or may become incident thereto.

Purchase of existing gasworks.

7. Within three months after the passing of this Act the said George Dunbar Malam, William Malam, William Henry Moore, and Elizabeth Dunbar Moore shall sell, and the Company shall purchase, all the undertaking, rights, estate, and interest of the said George Dunbar Malam, William Malam, William Henry Moore, and Elizabeth Dunbar Moore in the existing gasworks and in the lands used in connection therewith, and in the mains, pipes, and other works and apparatus connected with the said works, for such price and upon such terms and conditions as have been or may be agreed upon, or as in case of difference shall be settled by arbitration in the manner provided by "The Lands Clauses Consolidation Act, 1845," for the settlement by arbitration of questions of disputed compensation.

Company to take and perform existing contracts.

8. From and after the completion by the Company of the purchase of the existing gasworks (which completion shall be evidenced by a deed of assignment and conveyance under the hand and seal of the said George Dunbar Malam, William Malam, Elizabeth Dunbar Moore, William Henry Moore, or their respective representatives, and all other persons or corporations having any rights or interests therein, herein-after called the vendors, in which the consideration money for such purchase shall be fully and truly stated and set forth, and which deed shall be duly stamped for de-

A.D. 1874.

noting the full and proper stamp duty payable by law thereon) the Company shall be entitled to the benefit of and may have and enjoy all contracts for supplying gas, agreements, arrangements, leases, authorities, rights, privileges, and advantages whatsoever to which at the time of the purchase the vendors shall for any purposes of or connected with the gasworks or the supplying of gas be entitled, and shall perform and observe all the terms, conditions, obligations, and liabilities whatsoever of or incident to the same, and indemnify them and their representatives against all future liabilities, claims, and demands in respect thereof.

Gasworks vested in Company.

9. Subject to the provisions of this Act, all the lands, gasworks, erections, buildings, rights, and easements to be acquired by the Company under this Act, and all mains and pipes, plant, plugs, lamps, retorts, gauges, meters, lamp posts, syphons, apparatus, stock, effects, matters, and things which have been by the vendors purchased, provided, laid down, erected, or placed in any place or house within the limits of this Act for the purposes and in connection with the gas undertaking, and the benefit of all contracts and engagements entered into, by, or on behalf of the vendors with respect to the gasworks, shall be and the same are from the completion of the purchase by the Company hereby vested in the Company to the same extent and for the same estate and interest as the same were previously to the passing of this Act vested in the vendors, and may according to the provisions of this Act be held and enjoyed, sued for, and recovered, maintained, altered, discontinued, removed, dealt with, and disposed of by the Company as they think fit.

Capital.

10. The capital of the Company shall be sixteen thousand pounds, divided into sixteen hundred shares of ten pounds each.

Shares not to issue until one fifth paid up.

11. The Company shall not issue any share created under the authority of this Act, nor shall any such share vest in the person or corporation accepting the same, unless and until a sum not being less than one fifth of the amount of such share is paid in respect thereof.

Calls.

12. One fifth of the amount of a share shall be the greatest amount of a call, and three months at least shall be the interval between successive calls, and three fourths of the amount of a share shall be the utmost aggregate amount of the calls made in any year upon any share.

Power to borrow on mortgage.

13. The Company may from time to time borrow on mortgage any sum not exceeding in the whole four thousand pounds, but no part thereof shall be borrowed until the whole capital of sixteen

thousand pounds is issued and accepted and one half thereof is 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 the whole of such capital has been issued and accepted and that one half thereof has been paid up, and that not less than one fifth part of the amount of each separate share in such capital has been paid on account thereof before or at the time of the issue or acceptance thereof, and that such capital was issued bonâ fide, and is held by the persons or corporations to whom the same was issued, or their executors, administrators, successors, or assigns, and that such persons or corporations, their executors, administrators, successors, or assigns, are legally liable for the same; 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 shall be sufficient evidence thereof.

Debenture stock.

14. The Company may create and issue debenture stock, subject to the provisions of Part III. of "The Companies Clauses Act, 1863;" but, notwithstanding anything therein contained, the interest of all debenture stock created and issued by the Company shall rank pari passu with the interest of all mortgages granted by the Company, and shall have priority over all principal moneys secured by such mortgages.

Application of moneys.

15. All moneys raised under this Act, whether by shares, debenture stock, or borrowing, shall be applied for the purposes of this Act only.

First ordinary meeting.

16. The first ordinary meeting of the Company shall be held within six months after the passing of this Act.

Quorum of general meetings.

17. The quorum of general meeting (whether ordinary or extraordinary) of the Company shall be three shareholders present in person or by proxy, holding in the aggregate not less than five hundred pounds in the capital of the Company.

Extraordinary meetings may be convened by shareholders.

18. The number of shareholders who may convene extraordinary meetings of the Company shall not be less than five, holding together not less than five hundred pounds in the capital of the Company.

Scale of voting.

19. Every shareholder shall have one vote for every share held by him.

Number of directors.

20. The number of directors shall be five, but the Company may from time to time reduce the number, provided that the number be not less than three.

A.D. 1874.

Qualification of directors.

21. The qualification of a director shall be the possession in his own right of not less than ten shares.

Quorum.

22. The quorum of a meeting of directors shall be three so long as the number of directors shall be five, and two when their number is less than five.

First directors.

23. Samuel Brothers Darwin, Abraham Malam, Charles Edward Robinson, and two persons to be nominated by them or the majority of them, and consenting to such nomination, shall be the first directors of the Company, and shall continue in office until the first ordinary meeting held after the passing of this Act. At that meeting the shareholders present in person or by proxy may either continue in office the directors appointed by this Act or nominated as aforesaid, or any of them, or may elect a new body of directors, or directors to supply the place of those not continued in office, the directors appointed by this Act or nominated as aforesaid being, if qualified, eligible for re-election; and at the first ordinary meeting to be held in every year after the first ordinary meeting the shareholders present in person or by proxy shall (subject to the power herein-before contained for reducing the number of directors) elect persons to supply the places of the directors then retiring from office, agreeably to the provisions of "The Companies Clauses Consolidation Act, 1845," and the several persons elected at any such meeting, being neither removed nor disqualified, nor having died or resigned, shall continue to be directors until others are elected in their stead in manner provided by the same Act.

Election of directors.

Auditors need not hold shares.

24. The auditors need not hold shares in the Company.

Power to purchase certain lands.

25. Subject to the provisions of this Act, the Company may enter upon, take, and use the lands delineated upon the deposited plans and described in the deposited book of reference.

Power to purchase lands by agreement.

Gas not to be manufactured except on lands scheduled.

26. The Company may, for the purposes of their undertaking, purchase, take, and hold (by agreement, but not otherwise), in addition to the lands described in the schedule to this Act, any lands and hereditaments, not exceeding in the whole two acres, which the Company may from time to time require for the purposes of their works and undertaking but no lands shall be used by the Company for the purpose of manufacturing gas or residual products except the lands described in the schedule to this Act.

Power to lay pipes against buildings.

27. The Company, with the consent of the owner and occupier of any building, may lay any pipe, branch, or any other necessary apparatus from any main or branch pipe into, through, or against such building for the purpose of lighting it, and may, with the like consent, provide and set up any apparatus necessary for securing to

such building a proper and complete supply of gas, and for measuring and ascertaining the extent of such supply, and may from time to time, with the like consent, repair, replace, alter, discontinue, and remove any such pipe, branch, or apparatus.

Limiting price of gas.

28. The price to be charged by the Company for gas supplied by them to persons who shall consume the same by meter shall not at any time exceed eight shillings per one thousand cubic feet.

Pressure of gas.

29. All gas supplied by the Company to any consumer of gas shall be supplied at such pressure as to balance a column of water from midnight to sunset not less than six tenths of an inch, and from sunset to midnight not less than eight tenths of an inch in height at the main, as near as may be to the junction therewith of the service pipe supplying such consumer; and any gas examiner appointed under "The Gasworks Clauses Act, 1871," may, subject to the terms of his appointment, from time to time test the pressure at which the gas is supplied, and may for that purpose open any street, road, passage, or place vested in or under the control of any local or road authority, and the provisions of "The Gasworks Clauses Act, 1871," with reference to testing of gas and to penalties, shall, mutatis mutandis, apply to such testing of pressure, and two hours previous notice shall be given to the Company of the time and place at which such testing shall be conducted.

Quality of gas.

30. The prescribed number of candles shall be fourteen.

Testing place.

31. Within six months from the passing of this Act a testing place shall be provided at the works or office of the Company.

Burner.

32. The prescribed burner shall be Sugg's London argand burner, number one, with a six-inch by one-and-three-quarter-inch glass chimney, but if at any time and so long as the gas flame tail over the top of that glass a six-inch by two-inch chimney shall be used.

Company to pay interest on money deposited as security for gas meter, &c.

33. If any person is required by the Company to give to them security for the payment of the price or rent of a meter, the Company shall pay interest after the rate of five pounds per centum per annum on every sum of ten shillings deposited by way of such security for every six months during which the same remains in their hands.

Company may sell undertaking to Commissioners.

34. The Company may sell and transfer to and the commissioners may purchase the undertaking, lands, and property of the Company (all which premises are herein-after included in the word undertaking), in consideration of a gross sum, or upon such other

A.D. 1874.

terms and conditions as may be mutually agreed upon between them: Provided always, that if within twelve months after the passing of this Act the commissioners shall give notice in writing under their common seal to the Company of their intention to acquire the undertaking, then the Company shall be bound to sell and the commissioners to purchase that undertaking upon payment of a sum equal to sixteen and two third years purchase, calculated upon the average net profits of the years 1872 and 1873, and upon payment to the Company of all costs, charges, and expenses (to be taxed by the taxing officer of the House of Lords) incurred in obtaining and passing this Act, and any question which may arise under this enactment shall be referred to and determined by Robert Paulson Spice and George Wilson Stevenson, both of the city of Westminster, or, failing agreement between them, an umpire to be appointed by them, and except as aforesaid such arbitration shall be conducted in manner provided by "The Lands Clauses Consolidation Act, 1845," for the settlement by arbitration of questions of disputed compensation.

Transfer to be by deed.

35. Such transfer shall be by deed duly stamped, in which the consideration shall be fully set forth.

Undertaking to vest in commissioners on sale.

36. At the time agreed on for such transfer taking effect, or if no time be specified for the purpose, then upon and from the date of the transfer, the undertaking shall vest in the commissioners, subject to all contracts, debts, obligations, and liabilities of the Company then subsisting and affecting the same.

Receipt of directors a discharge.

37. The receipt of three directors of the Company for the purchase money of the undertaking shall be a sufficient discharge to the commissioners for the same, and the commissioners shall not be bound to see to the application or be answerable for misapplication or nonapplication thereof.

When gasworks are vested in commissioners they may exercise powers of Company.

38. Upon the vesting of the undertaking in the commissioners, all the powers, authorities, regulations, and provisions contained in this Act (except the provisions of "The Gasworks Clauses Act, 1847," relating to the amount of profit to be received by the undertakers when the gasworks are carried on for their benefit) shall extend to and be vested in the commissioners, and may be exercised and put in force by or against the commissioners in the same manner as if they had throughout this Act been named instead of the Company.

Commissioners to be primarily liable for

39. If at any time after the transfer any claim is lawfully made for any debt, rent, rate, charge, or sum of money which at the time of the transfer is due or owing from the Company, but is not paid or

discharged by them, the commissioners shall be primarily liable to satisfy such claim, without prejudice to any remedy over against the Company under any security given by the Company to the commissioners.

Company's debts unpaid.

40. Except as is by this Act otherwise specially provided, all purchases, sales, leases, mortgages, conveyances, grants, assurances, deeds, contracts, bonds, securities, and agreements entered into or made before the transfer by, to, or with the Company or any trustees or persons acting on behalf of the Company, or by, to, or with any other person to whose rights and liabilities they have succeeded, and now in force, shall be as binding and of as full force and effect in every respect against or in favour of the commissioners, and may be enforced as fully and effectually, as if the commissioners instead of the Company, or the trustees or persons acting on behalf of the Company, had been parties thereto.

Contracts prior to Act to be binding.

41. If at the time of the transfer any action, suit, or proceeding is pending by or against the Company, the same shall not abate or be discontinued by reason of the transfer or of anything in this Act, but the same may be continued and prosecuted against or by the commissioners as and when it might have been continued and prosecuted by or against the Company if the transfer had not been effected, but not further or otherwise, without prejudice to any remedy over against the Company under any security given by them to the commissioners or otherwise.

Pending actions, &c. against Company.

42. All books and documents which if the transfer had not been made would have been evidence in respect of any matter for or against the Company shall be admitted in evidence in respect of the same or the like matter for or against the commissioners.

Documents, &c. continued as evidence.

43. The Company shall hold the purchase money received for the same when paid, and all other money for the time being belonging to them, upon trust to pay and discharge thereout all their debts and liabilities, and to distribute the residue among the shareholders of the Company, their executors, administrators, or assigns, rateably according to their respective rights and interests in the undertaking, and the directors of the Company may exercise all powers necessary for paying and discharging the debts and liabilities, distributing the assets and winding up the affairs of the Company.

Application of purchase money.

44. The persons who appear in the books of the Company to be proprietors of shares in the capital of the Company shall, unless the contrary is proved to the satisfaction of the directors of the

Books evidence as to shareholders.

A.D. 1874.

Company, be considered to be shareholders of the Company for the purposes of the distribution of the Company's assets.

Receipt clause in case of persons not sui juris.

45. If any money be payable to a shareholder of the Company being a minor, idiot, or lunatic, the receipt of the guardian or committee of his estate shall be a sufficient discharge to the Company.

Payment into court by Company.

46. If for twelve months after the period for the payment of any money under the powers of this Act to any shareholder, the directors of the Company are unable after inquiry to ascertain the person to whom any such money ought to be paid, or where any such money is payable to a person who, or whose committee or guardian, cannot give an effectual receipt for the same, the directors of the Company may pay the same into the Court of Chancery in Ireland under any Act for the time being in force for the relief of trustees.

Company to be dissolved after transfer of the undertaking.

47. So soon as the assets of the Company have been distributed and their affairs have been wound up, the Company shall be by virtue of this Act dissolved.

Power to commissioners to borrow.

48. The commissioners may from time to time borrow the moneys required for all or any of the purposes of this Act on mortgage of the undertaking and the gas rents and other income derivable by them under this Act, and also of the borough fund.

10 & 11 Vict. c. 16. incorporated.

49. From and after the transfer, and for the purposes thereof, the provisions of "The Commissioners Clauses Act, 1847," with respect to the following matters,—

With respect to the contracts to be entered into and the deeds to be executed by the commissioners;

With respect to the appointment and accountability of the officers of the commissioners;

With respect to mortgages to be executed by the commissioners;

With respect to the making of byelaws; and

With respect to proof of debts in bankruptcy, and tender of amends;

shall be incorporated with this Act.

Expenses of Act.

50. All the costs, charges, and expenses of and incident to the passing of this Act, and preparatory thereto, shall be paid by the Company.

SCHEDULE referred to in the foregoing Act.

The lands in the occupation of Horatio Brothers and George Dunbar Malam on which the existing works stand, and now used for the purposes of those works, and which said lands are situate in Tonystick in the said borough of Enniskillen and in the parish of Enniskillen, and are bounded as follows:—on the north in the one part by a portion of Quay Lane, and in the other part by land belonging or reputed to belong to the Commissioners for the Borough of Enniskillen; on the south by the Quay on the side of Lough Erne; on the east in the one part by lands belonging or reputed to belong to the Commissioners for the Borough of Enniskillen, and in the other part by the Quay on the side of Lough Erne; and on the west by a portion of Quay Lane.

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