CHAPTER clxx.

An Act to empower the Exeter Gaslight and Coke Company to acquire further lands for the extension of their works, and to raise additional Capital; and for other purposes. [22d July 1878.]

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WHEREAS by the Exeter Gas Act, 1865, (in this Act called "the Act of 1865,") the then existing Acts relating to the Exeter Gaslight and Coke Company and to the Exeter Commercial Gaslight and Coke Company respectively were repealed, and a new Company was incorporated, under the name of the Exeter Gaslight and Coke Company, in this Act called "the Company," for lighting with gas the city and county of the city of Exeter, and the whole of the several parishes of Alphington, Heavitree, Saint Leonard, Saint Thomas the Apostle, and Topsham, in the county of Devon, and by the said Act all the undertakings, gasworks, property, and effects of the two first-mentioned Companies were vested in the Company:

28 & 29 Vict. c. cxx.

And whereas the share capital of the Company was by the said Act declared to be forty thousand pounds of stock called original stock, and ten thousand pounds of stock called four pounds per centum preference stock, and the Company were authorised to raise a further sum of twenty thousand pounds, which has been raised by the creation of new shares bearing a preferential dividend at the rate of five pounds per centum per annum:

And whereas the whole of the said share capital, as well as the sum of seven thousand five hundred pounds which by the said Act the Company were empowered to borrow on mortgage, has been raised and expended upon the undertaking of the Company:

And whereas the demand for gas in the district supplied by the Company has increased and is increasing, and it is expedient that the Company should be authorised to acquire further lands for the extension of their works, and to raise additional capital:

And whereas plans showing the lands to be acquired under the powers of this Act, and a book of reference to such plans containing

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the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of such lands, have been deposited with the clerk of the peace for the county of Devon, and are herein-after referred to as the deposited plans and book of reference:

And whereas the objects aforesaid 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 Exeter Gas Act, 1878, and this Act and the Act of 1865 (as amended by this Act) shall be read and have effect together as one Act.

Incorporation of general Acts. 8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18. 10 & 11 Vict. c. 15. 26 & 27 Vict. c. 118. 34 & 35 Vict. c. 41.

2. The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, the Gasworks Clauses Act, 1847, (except the provisions thereof with respect to the amount of profit to be received by the undertakers,) and Part I. (cancellation and surrender of shares), Part II. (additional capital), and Part III. (debenture stock) of the Companies Clauses Act, 1863, are, subject to the provisions of this Act, incorporated with and form part of this Act, and the Gasworks Clauses Act, 1871, shall apply to the undertaking of the Company as if the same had been authorised by this Act.

Certain provisions of 8 & 9 Vict. c. 16. incorporated.

3. Subject to the provisions of this Act, the clauses and provisions of the Companies Clauses Consolidation Act, 1845, with respect to the following matters; (that is to say,)

The distribution of the capital of the Company into shares;

The transfer or transmission of shares;

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

The forfeiture of shares for non-payment of calls;

The remedies of creditors of the Company against the shareholders;

The consolidation of the shares into stock;

The general meetings of the Company, and the exercise of the right of voting by the shareholders;

The making of dividends;

The giving of notices; and

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

shall extend and apply to the Company and to the additional capital which they are by this Act authorised to raise.

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Interpretation of terms.

4. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith shall have the same respective meanings, unless there be something in the subject or context repugnant to such construction; and the expressions "superior courts" or "court of competent jurisdiction," or any other like expression in this Act or any Act wholly or partially incorporated herewith, shall for the purposes of this Act be read and have effect as if the debt or demand in respect of which the expression is used were a common simple contract debt, and not a debt or demand created by statute.

Power to raise additional capital.

5. The Company may from time to time raise (in addition to their present capital) any further capital, not exceeding in the whole one hundred thousand pounds, by the creation and issue of new ordinary shares or stock, or new preference shares or stock, or wholly or partly by one or more of those modes respectively, but the Company shall not issue any share of less nominal value than ten pounds, nor shall any such share or stock vest in the person or corporation accepting the same unless and until the full nominal amount of such share or stock, together with any premium obtained upon the sale thereof, shall have been paid in respect thereof: Provided also, that the Company shall not create and issue within the year following the passing of this Act any greater nominal amount of capital than shall be sufficient to produce in manner aforesaid forty thousand pounds, or within any subsequent year twenty thousand pounds.

If authorised capital for any year not raised, amount may be made up.

6. If in any year or years the Company have not created and issued capital to the full amount herein-before prescribed in relation to such year or years, they may in any subsequent year create and issue, in addition to the amount prescribed for such year, such a nominal amount of capital as shall be sufficient, together with the amount then raised, to produce in manner aforesaid forty thousand pounds in respect of the year following the passing of this Act, and twenty thousand pounds in respect of every subsequent year then expired.

Profits of the Company limited.

7. Except as in this Act provided, the Company shall not in any one year make out of their profits any larger dividend on the additional share capital to be raised under the powers of this Act than seven pounds in respect of every one hundred pounds actually paid up of such capital as shall be issued as ordinary capital, or six pounds in respect of every one hundred pounds actually paid up of such capital as may be issued as preference capital, and the rate of dividend hereby prescribed in respect of the additional capital issued under the powers of this Act as ordinary capital and the rate

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of dividend prescribed by the Act of 1865 in respect of the original stock of forty thousand pounds are in this Act referred to as the standard rates of dividend.

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

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

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

9. Notwithstanding anything in this Act contained, the Company shall, when any shares or stock created under the powers of this Act are to be issued, and before offering the same to the holder of any other shares or stock in the Company, and whether the ordinary shares or ordinary stock of the Company are or is at a premium or not, offer the same for sale by public auction or by tender, in such manner, at such times, and subject to such conditions of sale as the Company shall from time to time determine: Provided that at any such sale no single lot shall comprise more than one hundred pounds nominal value of shares or stock, and that the reserved price put upon such shares or stock shall not be less than the nominal amount thereof, and notice of the amount of such reserved price shall be sent by the Company in a sealed letter to the Board of Trade not less than twenty-four hours before the day of auction or the last day for the reception of tenders, as the case may be, and such letter may be opened after such day of auction or last day for the reception of tenders, and not sooner, and provided that no priority of tender shall be allowed to any holder of shares or stock in the Company: Provided always, that the Company shall not offer for sale the shares or stock which they are authorised to create and issue within the year following the passing of this Act in greater sums than ten thousand pounds at any one time, or at shorter intervals than three months.

Purchase money to be paid within three months.

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

Notice to be given as to sale, &c. of shares or stock.

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

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Shares or stock not sold by auction or by tender to be offered to share or stock holders. 26 & 27 Vict. c. 118.

12. When any shares or stock created under the powers of this Act have been offered for sale by auction or tender, and not sold, the same shall be offered, at the reserved price put upon the same respectively for the purpose of sale by auction or tender, to the holders of ordinary shares or ordinary stock of the Company, in manner provided by the Companies Clauses Act, 1863: Provided always, that any shares or stock so offered and not accepted within the time prescribed by the said Act shall again be offered for sale by public auction or by tender, in the manner and subject to the provisions of this Act with respect to the sale of shares and stock created under the powers of this Act.

Application of premium arising on issue of shares or stock.

13. Any sum of money which shall arise from the issue of any such shares or stock by way of premium, after deducting therefrom the expenses of and incident to such issue, shall not be considered as profits of the Company, but shall be expended in extending or improving the works of the Company, or in paying off money borrowed or owing on mortgage by the Company, and shall not be considered as part of the capital of the Company entitled to dividend.

Limiting price of gas.

14. The standard price to be charged by the Company for the gas supplied by them to persons who shall burn the same by meter shall be four shillings per thousand cubic feet: Provided that the Company may increase or diminish such standard price, subject to a decrease or increase in the standard rates of dividend, to be calculated as follows:

For every penny charged in excess or in diminution of such standard price in any year, the standard rates of dividend shall for such year be reduced or increased by five shillings in the hundred pounds per annum.

If profits exceed amount limited, excess may be invested and form an insurance fund.

15. If the clear profits of the undertaking of the Company in any year amount to a larger sum than is sufficient to pay the standard rates of dividend, the excess beyond the sum necessary for that purpose may from time to time, to the extent of one per centum per annum upon the paid-up capital of the Company, be invested in Government or other securities, and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to a sum equal to one twentieth of the paid-up capital of the Company, which sum shall form an insurance fund to meet any extraordinary claim, demand, or charge which may at any time arise against or fall upon the Company from accident, strikes, or other circumstances which due care and management could not have prevented; and if such

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fund be at any time reduced, it may thereafter be again made up to the said sum, and so from time to time as often as such reduction shall happen: Provided that when and so often as the said fund shall reach one-twentieth part of the paid-up capital, the interest thereon shall be carried to the credit of the fund available for dividend; provided also, that resort may from time to time be had to the insurance fund to meet any extraordinary claim or demand as aforesaid, although such fund may not at the time have reached or may have been reduced below the full amount of one twentieth as aforesaid.

Application of excess of profits.

16. If the clear profits of the undertaking of the Company in any year amount to a larger sum than is sufficient to pay the standard rates of dividend on the ordinary share capital or stock of the Company, the excess or such portion of it as is not carried to the insurance fund shall be carried to the credit of the divisible profits of such undertaking for the next following year.

Power to create a reserve fund out of dividends in excess of standard rates, and application thereof.

17. Where in any year the amount of the standard rates of dividend shall, by reason of a diminution of the standard price charged by the Company in such year, be increased, then, out of the amount of the divisible profits of the Company applicable to the payment of such increase, the Company may in such year set apart such sum as they shall think fit for the purposes and as part of the reserve fund authorised by the Act of 1865, and such reserve fund may be invested in Government or other securities, and the dividends and interest arising from such securities may also be invested in the same or the like securities, in order that the same may accumulate at compound interest, and the fund so formed shall be called "The Reserve Fund," and shall be applicable to the payment of dividend in any year in which the clear profits of the Company shall be insufficient to enable the Company in such year to pay the standard rates of dividend; and, save as in this Act otherwise provided, no sum shall in any year be carried by the Company to any reserve fund.

Reserve fund under Act of 1865 may be recouped.

18. The Company may, out of the capital by this Act authorised to be raised, recoup and repay to the reserve fund any sums taken therefrom prior to the passing of this Act for any purpose to which the capital of the Company is properly applicable.

Power to borrow on mortgage.

19. The Company may from time to time, subject to the provisions of this Act, borrow on mortgage, in respect of the additional capital of one hundred thousand pounds by this Act authorised to be raised by shares or stock, any sums not exceeding in the whole twenty-five thousand pounds, and the Company may, as each sum of twenty thousand pounds of such additional capital has been

issued and accepted, and one half of the amount of each such sum has been paid up, borrow on mortgage in respect of each such sum of twenty thousand pounds any sum or sums not exceeding in the whole five thousand pounds; but in no case shall any part of the said respective sums be borrowed until the Company have proved to the justice who is to certify under the 40th section of the Companies Clauses Consolidation Act, 1845, before he so certifies, that shares for so much of the capital in respect of which such borrowing powers are sought to be exercised as is to be raised by means of shares have been issued and accepted, and that one half of such capital 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 stock for one half of so much of the capital in respect of which such borrowing powers are sought to be exercised as is to be raised by means of stock is fully paid up, and that such shares or stock, as the case may be, were or was issued bonâ fide, and are or is held by the persons or corporations to whom the same were or 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.

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8 & 9 Vict. c. 16.

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

As to conversion of borrowed money into capital.

21. The mortgagees for the time being of the Company may from time to time enforce the payment of arrears of interest or principal, or principal and interest, due to any such mortgagees by the appointment of a receiver. In order to authorise the appointment of a receiver in respect of arrears of principal, the amount owing to the mortgagees by whom application for the appointment of such receiver shall be made shall not be less than four thousand pounds in the whole.

As to appointment of a receiver.

22. All mortgages granted by the Company in pursuance of the powers of the Act of 1865 before the passing of this Act, and subsisting at the passing hereof, shall, during the continuance of such

Existing mortgages to have priority.

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mortgages, and subject to the provisions of the Act of 1865, have priority over any mortgages granted by virtue of this Act; but nothing in this section contained shall affect any priority of the interest of any debenture stock at any time created and issued by the Company.

Debenture stock. 26 & 27 Vict. c. 118.

23. 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 at any time created and issued by the Company shall rank pari passu with the interest of all mortgages at any time after the passing of this Act granted by the Company, and shall have priority over all principal moneys secured by such mortgages.

Priority of mortgages and debenture stock over other debts.

24. All moneys raised on mortgage by the Company under this Act, and the interest due thereon, and the interest due on debenture stock created and issued under this Act, shall have priority against the Company, and the property from time to time of the Company, over all other claims on account of debts incurred or engagements entered into by the Company after the passing of this Act; but this priority shall not affect any claim against the Company in respect of any rentcharge granted or to be granted by them in pursuance of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation Acts Amendment Act, 1860.

8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106.

Application of moneys.

25. All moneys raised under this Act, whether by shares, stock, debenture stock, or borrowing, shall be applied for the purposes of this Act, and for the general purposes of the Company.

Power to purchase lands.

26. Subject to the provisions of this Act, the Company may enter upon, take, and use all or any of the lands delineated on the deposited plans and described in the deposited book of reference and specified in the schedule to this Act.

Period for compulsory purchase of lands.

27. The powers of the Company 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 thereof.

Powers as to construction and maintenance of gasworks, &c.

28. Subject to the provisions of this Act, the Company may from time to time maintain, alter, improve, enlarge, extend, and renew or discontinue their existing gasworks upon the lands on which the same are erected or any part thereof, and which are described in the first part of the schedule to this Act, and also upon the other lands described in the second part of the said schedule, and they may also erect, lay down, provide, and from time to time maintain, alter, improve, enlarge, extend, and renew or discontinue additional and other gasworks, retorts, gasometers, receivers, drains, sewers, mains, pipes, meters, lamps, lamp-posts, burners, stopcocks,

machinery, and other works and apparatus and conveniences, and may do all such acts as they may think proper for making and storing gas, and for supplying gas within the limits of this Act, and may make, store, and supply gas accordingly, and may manufacture, sell, provide, supply, and deal in coal, coke, tar, pitch, asphaltum, ammoniacal oil, and all other products or residuum of any materials employed in or resulting from the manufacture of gas, and also meters, fittings, tubes, pipes, and other articles and things in any way connected with gasworks or with the supply of gas, as they may from time to time think fit.

Power to make viaduct.

29. Subject to the provisions of this Act, the Company may make and maintain, in the line shown on the deposited plans and according to the levels shown on the section accompanying such plans, a viaduct over the road and intervening lands between the Company's existing works and the Exeter Canal Basin, and may enter upon, take, and use such of the lands shown on the deposited plans and described in the deposited book of reference as may be necessary for that purpose, and the Company may lay down rails upon such viaduct, and use the same for the conveyance of coal, coke, and other materials between the said basin and the Company's works: Provided always, that the viaduct shall be carried over the said road with one span of not less than thirty-five feet in width and eighteen feet in height.

Power to lay pipes against buildings.

30. 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.

Pressure of gas

31. 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,

34 & 35 Vict. c. 41.

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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.

32. The prescribed number of candles shall be fourteen.

Testing place.

33. Within twelve months after the passing of this Act a testing place shall be provided by the Company at some convenient place near the centre of the city, to be agreed upon between the Company and the mayor, aldermen, and citizens of the city of Exeter, or in case of difference to be fixed by some person to be appointed for the purpose, on the application of either party, by the Local Government Board.

Burner.

34. 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 rises above 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.

35. 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.

Notice of intention by consumers to discontinue gas supply.

36. Any consumers desiring to discontinue a supply of gas on any premises where a meter has been fixed for their use shall give to the Company twenty-four hours notice in writing of such their intention, and on neglect of giving such notice shall be liable to pay and shall pay to the Company for all gas registered by such meter up to and until the expiry of twenty-four hours from the receipt of such notice.

Expenses of Act.

37. 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. A.D. 1878.

FIRST PART.

Certain lands situate in the parish of Saint Thomas the Apostle, in the county of Devon, bounded on all sides by the lands described in the second part of this schedule and by Water Lane, and containing four acres one rood and eleven perches or thereabouts.

SECOND PART.

Certain lands and buildings lying between and adjoining the north-east side of the Company's existing works and the roadway and wharf on the south-west side of the Exeter Canal Basin.

Certain other lands consisting of a field lying on the south-west side of and adjoining the Company's existing works, and bounded on the north-east side thereof by land belonging or reputed to belong to the mayor, aldermen, and citizens of the city of Exeter, and partly used as a ballast tip, and partly as a garden in the occupation of John Lang, on the south-east by another field belonging or reputed to belong to William Charles Newberry and let out in allotment gardens, and on the south-west by the field next herein-after described.

Certain other lands consisting of a field lying on the south-west side of and adjoining the field lastly herein-before described and the Company's existing works, and bounded on the south-east side thereof in part by the said field belonging or reputed to belong to William Charles Newberry, and in part by another field lying between the said field and the road called Water Lane, on the south-west side thereof by the said Water Lane, and on the north-west by part of the lands described in the first part of this schedule.

Certain other lands consisting of so much of the several properties or enclosures adjoining the north-west side of the Company's existing works and land as lies between the said works and land and a line drawn from a point twenty feet or thereabouts south-west from Water Lane, parallel to and fifty feet from the present north-west boundary of such works and land, so far as the same extends, and thence continued in a straight line to the said Wharf Road, on the south-west side of the Exeter Canal Basin.

All the lands described in the second part of this schedule are situate in the said parish of Saint Thomas the Apostle, in the county of Devon, and contain five acres three roods and thirteen perches or thereabouts.

LONDON : Printed by George Edward Eyre and William Spottiswoode,
Printers to the Queen's most Excellent Majesty. 1878.