CHAPTER v.

An Act for granting further Powers to the Falmouth Waterworks Company. [24th April 1877.]

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WHEREAS by "The Falmouth Waterworks Act, 1862," the former Act passed in 1847, whereby the Falmouth Waterworks Company were incorporated, was repealed, and further and other powers were granted instead thereof, but notwithstanding such repeal it was expressly enacted that the Company were still to remain and continue incorporated by their original name: 25 & 26 Vict. c. xxxiii.

And whereas by the said Act of 1862 the Company were empowered to enlarge their works by the construction of their reservoirs and works therein more particularly described:

And whereas the waterworks of the Company have been long since completed, and thereby water is supplied within the limits of the said Act:

And whereas by that Act the capital of the Company in shares or stock is limited to twenty thousand pounds, with a power to borrow five thousand pounds:

And whereas the whole of the said twenty thousand pounds has long since been raised and fully paid up and expended, and the Company have borrowed and now owe the said sum of five thousand pounds:

And whereas, with a view of meeting the increased and increasing demands upon their resources, it is expedient that the Company should have power to construct another reservoir, and also to raise additional share and loan capital:

And whereas it is expedient that the powers of the Company be in various respects enlarged, and that their existing Act should be in some respects altered and amended:

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

And whereas plans and sections showing the lines, situation, and levels of the intended works, and also a book of reference containing

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the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of the lands required or which may be taken for the purposes thereof, were duly deposited with the clerk of the peace for the county of Cornwall, and are herein-after respectively referred to as the deposited plans, sections, and book of reference:

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 Falmouth Waterworks Act, 1877."

This Act and recited Act to be construed as one Act.

2. The provisions of the recited Act, so far as they are not expressly repealed or varied by or are not inconsistent with the provisions of this Act, shall be incorporated with this Act, and this Act and the recited Act shall (save as aforesaid) be read and construed together as one Act.

Certain provisions of general Acts herein named incorporated.

3. The following Acts and parts of Acts,—

"The Lands Clauses Consolidation Acts, 1845, 1860, and 1869;"

"The Waterworks Clauses Acts, 1847 and 1863," so far as the same are applicable for the purposes of and not inconsistent with the provisions of this Act, are incorporated with and form part of this Act, and shall apply to the whole undertaking of the Company;

And the 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 means of enforcing the payment of calls;

The forfeiture of shares for non-payment of calls;

The remedies of the creditors of the Company against shareholders;

The consolidation of shares into stock;

The general meetings of the Company and the exercise of the right of voting by the shareholders (except section sixty-six, ordinary meetings to be held half-yearly);

The making of dividends;

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

The conversion of the borrowed money into capital;
The giving of notices;
The consolidation of shares into stock; and
The provision to be made for affording access to the special Act by all parties interested;

and Part I. (relating to cancellation and surrender of shares), Part II. (relating to additional capital), and Part III. (relating to debenture stock) of "The Companies Clauses Consolidation Act, 1863," shall, subject to the provisions of this Act, extend and apply to the Company and the additional capital by this Act authorised to be raised.

Interpretation of terms.

4. In this Act the terms to which meanings are assigned in Acts incorporated wholly or in part with this Act, or which have therein special meanings, have in this Act (unless varied thereby) the same respective meanings, and in this Act and (for the purposes of this Act) in Acts incorporated wholly or in part with this Act the expressions "superior courts" or "court of competent jurisdiction," or any other like expression, shall have effect as if the debt or demand with respect to which it is used were a common simple contract debt, and not a debt or demand created by statute.

In "The Railways Clauses Consolidation Act, 1845," for the purposes of this Act,

The expression "the railway" and "the centre of the railway" respectively mean the works and the boundaries of works by this Act authorised.

Power to construct works.

5. Subject to the provisions of this Act the Company, in the lines and situations and upon the lands shown on the deposited plans, and according to the levels shown on the deposited sections, may make and maintain the reservoir and aqueduct shown on the deposited plans; (that is to say,)

A high-level reservoir in the parish of Budock, partly upon land of the Company, partly upon certain waste land the property or reputed property of the Ecclesiastical Commissioners for England, and partly upon two other fields belonging or claimed to belong to the Reverend James Keigwin, and occupied by Henry Geach;

An aqueduct commencing at the said reservoir and terminating in the road leading from Falmouth to Penryn, near the workhouse of the Falmouth Poor Law Union;

together with all needful cuts, channels, tunnels, filter beds, sluices, banks, engines, machinery, apparatus, approaches, works, and conveniences in connexion with or ancillary or subsidiary to the said intended works, and may enter upon, take, and use such of the

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lands described in the deposited plans and book of reference, and any easement, right, or privilege in or over the same, as they require for the purposes of this Act, and may take, use, divert, and appropriate for the purposes of the works authorised by this Act any of the waters which now flow into or which the Company have the right to use or appropriate for the purposes of their existing works: Provided always, that the Company shall not under the powers of this Act take, use, divert, or appropriate any of the said waters unless and until they shall have made the upper reservoir referred to in the 51st section of the said Act of 1862 capable of containing not less than sixty million of gallons of water, and the provision of the 51st section of the said Act of 1862 shall apply to the enlarged reservoir as fully as if by that Act the Company had been directed to make and maintain the upper reservoir so that it shall contain when full not less than sixty million gallons of water.

Limits of deviation.

6. In the construction of the works authorised by this Act the Company may deviate laterally to any extent not exceeding the limits of lateral deviation shown on the deposited plans, and where on any road no such limits are shown the boundaries of such road shall be deemed to be such limits, and they may also deviate vertically from the levels shown on the deposited sections to any extent not exceeding in the case of the reservoir three feet upwards and five feet downwards, and in the case of all other works to any extent not exceeding ten feet; but if it be found necessary or expedient in the construction of the reservoir to alter the situation of any embankment, they may within the limits of deviation in the construction thereof and of the works connected therewith deviate vertically from the levels of such embankment, reservoir, and works to any extent not exceeding twenty feet; provided that the Company shall not construct any embankment or wall of the reservoir of a greater height above the general surface of the ground than that shown on the deposited sections and three feet in addition.

Powers for compulsory purchases limited.

7. 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.

Period for completion of works.

8. If the works authorised by this Act are not completed within five years from the passing of this Act, then on the expiration of the said period the powers by this Act granted to the Company for executing the same, or in relation thereto, shall cease to be exercised, except as to so much thereof as is then completed.

Power to take additional lands

9. The Company may from time to time for the purposes of their undertaking purchase by agreement, in addition to lands which they are authorised to take by compulsion, any lands not exceeding in

the whole five acres, in addition to any lands which they are by the recited Act authorised to purchase by agreement, but none of the lands so purchased by agreement under the powers of this Act shall be built upon.

by agreement.

10. The Company may from time to time, subject to the provisions and for any purpose of this Act or the recited Act, take by agreement, and any person by "The Lands Clauses Consolidation Act, 1845," or otherwise, enabled to convey or release lands, may grant to the Company, any easement, right, or privilege (not being an easement, right, or privilege of water) in, over, affecting, or belonging to any lands within the Company's limits of supply as extended by this Act, at a yearly rent or otherwise; but in case of a person not enabled otherwise than by "The Lands Clauses Consolidation Act, 1845," to sell lands, then subject and according to the provisions relating to the taking of lands by agreement contained in that Act and "The Lands Clauses Consolidation Acts Amendment Act, 1860," for which purpose any such easement, right, or privilege shall be deemed to be land within the meaning of those Acts.

Power to take easements.

11. The Company may from time to time raise in addition to their existing share capital, any further sums not exceeding in the whole fifteen thousand pounds, by the creation and issue of new ordinary shares or stock, or new preference shares or stock, or, at the option of the Company, either wholly or partially by any one or more of those modes, but no share shall be issued of less nominal value than ten pounds.

Power to raise additional capital.

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

Shares not to issue until one-fifth part paid up.

13. The proprietors of any shares or stock to be issued under the authority of this Act shall be entitled to such number of votes in respect thereof as the nominal amount represented thereby would have entitled them to if the same had been original shares or stock of the Company.

As to votes of proprietors of such shares.

14. The Company shall not in respect of any year make out of their profits any larger dividend on the additional share capital to be raised under the powers of this Act than at the rate of 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

Limit of dividend on new capital.

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shall be issued as preference capital, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said sum of seven pounds per centum per annum.

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

15. In case the net revenues of the Company applicable to dividend shall in any year be insufficient to pay the full amount of the maximum dividend to which each class of ordinary stock or shares in the capital of the Company is entitled, a proportionate diminution shall be made for the time being in the rate of the dividend then to be paid in respect of each class.

Power to borrow on mortgage.

16. The Company may, in respect of the additional capital of fifteen thousand pounds which they are by this Act authorised to raise, from time to time borrow on mortgage any sum not exceeding in the whole three thousand seven hundred and fifty pounds, but no part thereof shall be borrowed until shares for so much of the said capital of fifteen thousand pounds as is to be raised by means of shares are 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 shares for the whole of such capital as is to be raised by shares have been issued and accepted, and that one half of such capital has been paid up, and that not less than one fifth of the amount of each separate share has been paid on account thereof before or at the time of the issue or acceptance thereof, and until stock for one half of so much of the said capital as is to be raised by means of stock is fully paid up, and the Company have proved to such justice as aforesaid, before he so certifies, that such shares or stock, as the case may be, were issued and accepted and paid up bonâ fide, and are held by the persons or corporations to whom the same were issued, or their executors, administrators, successors, or assigns, and also, if the said capital is raised wholly or partly by shares, that such persons or corporations, or 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 certificate shall be sufficient evidence thereof.

Respecting existing provisions as to a receiver.

17. The provision in the recited Act with respect to the appointment of a receiver for enforcing payment by the Company of the arrears of principal or interest, or principal and interest, is hereby repealed, but without prejudice to any appointment which may have been made, or to the continuance of any proceedings pending at the passing of this Act under any such provision.

Arrears may be enforced by appointment of a receiver.

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

As to conversion of borrowed money into capital.

19. 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 instead of borrowing, or to convert into capital the amount borrowed under the provisions of this Act, unless in either case all dividends upon such shares are limited to a rate not exceeding five pounds per centum per annum.

Existing mortgages to have priority.

20. All mortgages granted by the Company in pursuance of the powers of the recited Act, and which shall be subsisting at the time of the passing hereof, shall during the continuance of such mortgages have priority over any mortgages to be granted by virtue of this Act, but nothing in this section shall affect the priority of the interest of any debenture stock at any time created and issued by the Company.

Debenture stock.

21. 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 after the passing of this Act created and issued by the Company shall rank pari passu with 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.

Application of sums raised under this Act.

22. All and every part of the sums of money which the Company are by this Act authorised to raise by new shares or stock, or by borrowing, shall be applied only to the purposes of this Act and to the general purposes of their undertaking.

Several sums in one summons.

23. Any summons or warrant issued for any of the purposes of the recited Act, or this Act, may contain in the body thereof, or in a schedule thereto, several names and several sums.

Costs of distress.

24. Any justice who issues any warrant of distress for any of the purposes of the recited Act, or this Act, may order that the costs of the Company of and incident to the recovery of the money to be levied shall be paid by the person liable to pay the money, and the costs shall be ascertained by the justices, and shall be included in the warrant of distress for the recovery of the money.

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Penalties not cumulative.

25. Penalties imposed for one and the same offence by several Acts of Parliament shall not be cumulative, and for this purpose this Act and the incorporated Acts shall be deemed separate Acts.

No justice to be disqualified by being liable to pay water rates.

26. No justice shall be disqualified for acting in the execution of the recited Act, or this Act, by reason of his being liable to payment of any rent or other charge under this Act.

Expenses of Act.

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

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