CHAPTER cix.

An Act to confirm a Provisional Order made under the Public Health (Scotland) Act, 1867, relating to the Burgh of Kirkintilloch. [14th July 1884.]

A.D. 1884.

WHEREAS the Right Honourable Sir William Vernon Harcourt, one of Her Majesty's Principal Secretaries of State, made the Provisional Order set forth in the Schedule to this Act under the provisions of the Public Health (Scotland) Act, 1867: 30 & 31 Vict. c. 101.

And whereas it is requisite that the said Order should be confirmed by Parliament:

Be it therefore 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:

1. The Order set forth in the Schedule to this Act is hereby confirmed. Order in Schedule, confirmed.

2. This Act may be cited as the Kirkintilloch Sewage Confirmation Act, 1884. Short title.

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SCHEDULE.

PROVISIONAL ORDER.

PUBLIC HEALTH (SCOTLAND) ACT, 1867.

(30 & 31 Victoria, c. 101.)

WHEREAS by the Public Health (Scotland) Act, 1867, it is enacted, section 72, that "the local authority may, in terms of the Lands Clauses Acts, acquire the "rights and powers vested in any person to make sewers, or to use any sewer, "with or without the buildings and other things thereto pertaining; provided "that they shall make compensation for the rights so acquired, and shall also "make compensation to the proprietors and occupiers of any lands and heritages "which may be damaged by reason of the exercise of the powers hereby "conferred in terms of the said last-mentioned Acts:"

And whereas it is provided by the said Act, section 73, that "the local "authority shall have the power to construct within their district, and also, "when necessary for the purpose of outfall or distribution of sewage, without "their district, such sewers as they may think necessary for keeping their district "properly cleansed and drained, and may carry such sewers through, across, "or under any turnpike or other road, or any street or place, or under any "cellar or vault which may be under the foot pavement or carriageway of any "street or road, and after reasonable notice in writing (if upon the report of "surveyor it should appear to be necessary), into, through, or under any lands "whatsoever, and from time to time to enlarge, lessen, alter, arch over, or "otherwise improve, or to close up or destroy, all sewers vested in them, pro-"vided no nuisance is created by such operations; and if any person is thereby "deprived of the lawful use of any sewer, the local authority shall provide "another sufficiently effectual for his use. The local authority shall cause their "sewers to be so constructed, kept, and cleansed as not to be a nuisance, and, "for the purpose of cleansing and emptying them, may construct and place "either above or under ground, such reservoirs, sluices, engines, or other works "as may be necessary, and may cause such sewers to communicate with "and be emptied into such places as may be fit and necessary either within "their district, or, if necessary for the purpose of outfall or distribution of "sewage, without their district, and to cause the sewage and refuse therefrom "to be collected for sale or for any purpose whatsoever, but so as not to create a "nuisance;"

And whereas it is further provided by the said Act, section 90, that upon compliance with the provisions therein contained with respect to advertisements and notices, the local authority may present to one of Her Majesty's Principal Secretaries of State a petition stating the land intended to be taken, and the

purposes for which it is required, and the names of the owners, lessees, and occupiers of such land who have assented, dissented, or are neuter in respect of the taking of such land or who have returned no answer to the notice, and praying that the local authority may, with reference to the land so intended to be taken, be allowed to put in force the powers of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and that on the receipt of such petition, and proof of the proper advertisements having been published and notices served, the Secretary of State may direct an inquiry in the district in which the land is situate, or otherwise inquire, as to the propriety of assenting to the prayer of such petition; and after the completion of such inquiry the Secretary of State may, by Provisional Order, empower the local authority to put in force with reference to the land referred to in such order the powers of the said Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as he may think fit:

And whereas the Commissioners of Police of the burgh of Kirkintilloch, in the county of Dumbarton, under the General Police and Improvement (Scotland) Act, 1862, (herein-after called the Commissioners,) are the local authority within the said burgh under the Public Health (Scotland) Act, 1867:

And whereas a petition under the provisions of the Public Health (Scotland) Act, 1867, has been presented to me, as one of Her Majesty's Principal Secretaries of State by the Commissioners, setting forth inter alia that the Commissioners desire to carry out a scheme disposing of and utilising the sewage of the said burgh, which will not only be of great advantage to the inhabitants thereof, but will also prevent further pollution of the streams therein mentioned; that for the disposal and utilisation of said sewage as aforesaid, and the works connected therewith, it would be necessary for the Commissioners to acquire certain lands, springs, streams, waters, roads, and property described on the plan and in the book of reference herein-after mentioned, under the powers and provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, which Acts are herein termed and referred to as the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement; and further that the Commissioners had published the advertisements and deposited a plan, sections, and book of reference, and served the notices required by the 90th section of the said Public Health (Scotland) Act, 1867; and the said petition prayed that a Provisional Order might be made enabling the Commissioners to put in force the said powers of the Lands Clauses Acts with respect to the said lands, springs, streams, waters, roads, and property:

And whereas, due inquiry having been directed and held in respect of the matters mentioned in the said petition, I have resolved to grant the prayer thereof to the extent herein-after mentioned; and a plan describing the drainage and sewage works to be constructed and the lands, springs, streams, waters, roads, and property intended to be taken, for the purposes thereof, and a book of reference to such plan containing the names of the owners or reputed owners, lessees or reputed lessees, and occupiers of such lands, springs, streams, waters, roads, and property, have been signed by me with reference to this Order, and will be deposited with the sheriff clerk of the county of Dumbarton at his office in Dumbarton:

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Now, therefore, in pursuance of the powers vested in me by the Public Health (Scotland) Act, 1867, I, as one of Her Majesty's Principal Secretaries of State, do, by this Provisional Order, under my hand, direct that from and after the passing of any Act of Parliament confirming the same:

1. It shall be lawful for the Commissioners of Police of the said burgh of Kirkintilloch, and, as such, the local authority within the said burgh, to put in force with reference to the lands, springs, streams, waters, roads, and property described on the said plan and in the said book of reference, other than Nos. 1, 2, 3, 4, 5, and 6 in the parish of Cadder, in the county of Lanark, and Nos. 1, 2, 3, 4, and 4a in the parish of Campsie and county of Stirling on said plan, the powers and provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement.

2. The Commissioners, in constructing the works described on the said plan, may deviate laterally from the lines laid down thereon to any extent not exceeding the limits of lateral deviation shown thereon, and may deviate vertically from the levels of the said works as defined on the sections to any extent not exceeding five feet upwards and five feet downwards: Provided always, that they may erect any tower, stand pipe, or other like work of any height which for the time being may be necessary or proper for the purposes of this Order.

3. The Commissioners may in the execution of their works take way-leaves, easements, servitudes, or other limited rights over lands and other property, subject to such conditions as may be agreed on with the persons interested.

4. The agreement dated the sixteenth and seventeenth days of May one thousand eight hundred and eighty-four, entered into between the Commissioners and the Caledonian Railway Company, as set forth in the Schedule to this Order annexed, is hereby sanctioned and confirmed, and shall be as valid and effectual in all respects as if all the provisions thereof had been embodied in and formed part of this Order; and the said Commissioners and the said Caledonian Railway Company respectively shall have and may exercise all the powers and shall be subject to all the obligations which by the said agreement are agreed to be conferred or imposed upon them respectively.

5. With reference to this Order the following expressions in the Lands Clauses Acts shall have the meanings hereby assigned to them, that is to say, the expression "promoters of the undertaking" shall mean the Commissioners, and the expression "the special Act" shall mean this Order and the Act confirming the same, and the word "land," in this Order shall have the meaning assigned to it in the Lands Clauses Acts, and shall include water and the right thereto.

Given under my hand and seal at Whitehall, this twenty-second day of May 1884.

(L.S.) W. V. HARCOURT.

SCHEDULE.

Agreement between the Caledonian Railway Company, of the first part, and the Commissioners of Police of the burgh of Kirkintilloch, in the county of Dumbarton, under the General Police and Improvement (Scotland) Act, 1862, and as such the local authority within the said burgh under the Public Health (Scotland) Act, 1867, of the second part.

Whereas the parties of the second part are prosecuting an application for a Provisional Order under the Public Health (Scotland) Act, 1867, and in carrying out such Provisional Order propose to interfere with the property of the parties of the first part by leading sewers across and under the Forth and Clyde Canal, and works connected therewith, forming part of the undertaking of the said first parties, as follows, viz.:

First, under the canal at the aqueduct bridge at Luggie water;

Second, under the canal Kirkintilloch feeder; and

Third, under the canal by or through the culvert for Park burn;

all of which are herein-after referred to as the crossings.

And whereas the first parties, by the Act 30 & 31 Victoria, cap. 106., vesting in them the undertaking of the said canal, are required at all times to keep the said canals open and navigable for all persons desirous to use and navigate the same, and at all times to keep the canals and works connected therewith well and sufficiently repaired, supported, and maintained in good order and condition, and also at all times to maintain and preserve a sufficient supply of water to the said canals, and are to pay the full amount of damage sustained by any person suffering injury or loss from any obstruction of the navigation: and being apprehensive that the proposed works of the Commissioners, the parties of the second part, might prejudicially interfere with the said canals and works connected therewith, opposed the granting of the said order. And now seeing that the parties of the second part have agreed to carry out the said works under the following conditions: Therefore the parties of the first part have agreed, as they hereby agree, to withdraw their opposition to the granting of such Provisional Order, on these conditions, to which the parties of the second part hereby agree, viz.:

First, all works of the Commissioners at the crossings and through the said culvert, or so near as to be capable of affecting the canal, towing-path, and other works connected therewith, shall be executed in accordance with plans, sections, and working drawings to be approved of previously to the commencement of such works by and carried out to the satisfaction of the engineer in chief for the time being of the parties of the first part, whom failing, of any other civil engineer appointed by them for that purpose.

Second, in constructing such works the Commissioners shall not disturb the masonry or buildings of the said aqueduct bridge or of the said culvert, nor shall they obstruct the passage of the water in the said feeder while the works are going on, nor shall they use any of the water of the said canal or feeder, or their tributaries, for flushing drains or any other purpose, and they shall restore and put in good order any ground they may have disturbed in carrying out the works.

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Third, the said works shall be carried out continuously after the commencement thereof, of which commencement the Commissioners shall give one month's previous notice in writing to the secretary of the Caledonian Company, and shall all be completed within the period of three months after such commencement.

Fourth, the said works and all operations connected therewith shall be carried on, completed, and maintained at the sole risk of the Commissioners, who shall be liable for all damage occasioned to the canal, towing-path, and other works connected therewith, or to the adjoining country, by or in consequence of their works, whensoever such damage may occur; and the canal, towing-path, feeder, culvert, and other works of the Caledonian Company, so far as interfered with by the Commissioners, shall be in all time coming maintained by the Commissioners in a perfect state of repair and free from leakage.

And whereas the said culvert is now, and has hitherto been, sufficient for carrying the water of the Park burn under the canal, but the insertion of the said sewer must lessen the capacity thereof; therefore,

Fifth, the said Commissioners shall be liable for all damages arising from flooding whensoever that may arise from the insufficiency of the said culvert, unless such flooding appear to have been due to other causes than the insertion of said sewer.

Sixth, in the event of the said culvert becoming at any time insufficient in consequence of the existence of said sewer, the Commissioners shall, on the requisition in writing of the secretary of the Caledonian Company, construct at their own expense a substitute culvert, in accordance with plans, sections, and working drawings to be approved of previously to the commencement of such works by and carried out to the satisfaction of the engineer in chief for the time being of the Caledonian Company, whom failing, of any other civil engineer appointed for that purpose by the Caledonian Company, and such substitute culvert shall in all time coming be maintained at the expense and risk of the Commissioners.

Seventh, nothing in this agreement contained shall alter, prejudice, affect, or take away any of the rights, powers, privileges, or authorities of the Caledonian Company, or shall authorise the Commissioners to enter upon or interfere with the lands or works of that company, except to the extent and in the manner herein-before provided, or in any manner to obstruct or impede the use of the canal, or to divert, intercept, cut off, take, use, or diminish any of the water in the canal, or of any stream or other supply of water to which the said company has right.

Eighth, this agreement shall be scheduled to and confirmed by the said Provisional Order, subject to the approval of Parliament. In witness whereof these presents, written on this and the two preceding pages of stamped paper, by Thomas Kerr Nicoll, clerk to the said Caledonian Railway Company, in their solicitor's office in Glasgow, are executed in duplicate as follows, viz.:—They are subscribed on behalf of and by authority of the said Commissioners of Police of the burgh of Kirkintilloch, by John Aitken, James Calder, Charles Stuart, and John Cochrane, four and a quorum of said local authority, and by Richard Reid, their clerk, all at Kirkintilloch, on the sixteenth day of May one thousand eight hundred and eighty-four, before these witnesses, David Murray, inspector of police, and

Norman Stewart, police constable, both in Kirkintilloch and residing there; and they are subscribed by Archibald Gibson, secretary of the said Caledonian Railway Company, for and on behalf of that company, and sealed with the common seal of said company at Glasgow, on the seventeenth day of said last-mentioned month and year, before these witnesses, the said Thomas Kerr Nicoll and John Johnstone Haining, clerk to the said Caledonian Railway Company, in their secretary's office in Glasgow. A.D. 1884.

DAVID MURRAY, Witness.
NORMAN STEWART, Witness.
THO. K. NICOLL, Witness.
JOHN J. HAINING, Witness.

JOHN AITKEN, Magistrate.
JAS. CALDER, Magistrate.
CHARLES STUART, Commissioner.
JOHN COCHRANE, Commissioner.
RICHARD REID, Clerk.
ARCH. GIBSON, Secy.

Seal of Caledonian Railway Company.

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