ANNO NONO

GEORGII IV. REGIS.

Cap. lviii.

An Act for maintaining, enlarging, improving, and regulating the Harbour of the Burgh of *Kirkwall* in *Orkney*. [23d *May* 1828.]

WHEREAS the Harbour of the Burgh of *Kirkwall* in the County of *Orkney* requires to be enlarged, improved, and kept in Repair; and there being no sufficient Funds or Means applicable to these Purposes, it is necessary to make Provision for repairing, enlarging, improving, and keeping in Repair and regulating the said Harbour; and as these Ends cannot be attained without the Aid and Authority of Parliament, May it therefore please Your Majesty that it may be enacted; and be it enacted by the King'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, That the following Persons shall be Trustees for carrying this Act into Execution; that is to say, *Samuel Laing* of *Papdale*, present Provost of the Burgh of *Kirkwall*, and *James Spence*, *John Baikie*, *Andrew Henderson*, *Patrick Fotheringham*, *Oliver Scott*, and *Robert Borwick*, being Six Members of the present Town Council of the said Burgh, together with *James Drever*, *William Traill*, and *John Tait*, being Three registered Owners of Ships trading to and from and belonging to the said Burgh of *Kirkwall*, and Captain *William Balfour* of *Elwick*, *William Traill* of *Woodwick*, and *James Baikie* of *Jankerness*, being Three Land Owners of the County of *Orkney*, shall be Trustees until other Trustees shall be elected, and act in the Manner hereinafter provided; and thereafter the Provost of the said Burgh of *Kirkwall* for the Time being, and Six other Members of the Town Council of the said Burgh, Trustees.

Burgh, together with Three registered Owners of Ships trading to and from and belonging to the said Burgh, and Three Land Owners of the County of *Orkney*, to be nominated and elected in Manner after mentioned, shall be Trustees for carrying this Act into Execution, with Power to them and the Trustees herein first named respectively, from and after the passing thereof, to repair, improve, and enlarge the said Harbour, and to maintain and uphold the same, with the Wharfs, Piers, and Basin thereof, in such Manner as they shall think proper, and also to erect, build, and make all proper and necessary Piers, Abutments, Pillars, Ramparts, Walls, and other Works, for the Use, Support, Preservation, Extension, and Improvement of the said Harbour, and also to improve the Access and Avenues to the said Harbour.

Annual Election of Trustees.

II. And be it further enacted, That from and after the Expiration of Twelve Months from and after the passing of this Act, Six Persons, being Members of the said Town Council, shall be elected and chosen by the Magistrates and Town Council assembled at the First Meeting of Council after *Michaelmas* yearly; and Three Persons, being registered Owners of Ships trading to and from and belonging to the said Burgh, shall be elected by Owners of Ships trading to and from and belonging to the said Burgh, at a Meeting to be held at *Kirkwall* on the Second *Tuesday* of *November* annually, of which Ten Days previous Notice shall be given by the Clerk of the said Trustees, by public Advertisement, or Hand Bills posted in the Streets of *Kirkwall*, in which Notice shall be specified the precise Time and Place of such Meeting; and Three Persons, being Landholders of the County of *Orkney*, shall be elected yearly by the Freeholders assembled at the *Michaelmas* Head Court of the said County; such Persons so annually elected to be, with the Provost of *Kirkwall* for the Time being, Trustees for carrying this Act into Execution.

Quorum of Trustees.

III. And be it enacted, That any Five of the Trustees above named, or elected pursuant to this Act, shall be a Quorum, for carrying the Purposes of this Act into Execution; but no Alterations shall be made in any of the Rates and Duties hereby imposed, nor any Clerk, Treasurer, or other Officer appointed, nor their Salaries fixed, by virtue of this Act, except at a Meeting where Nine of the said Trustees shall at least be present.

First Meeting of Trustees.

IV. And be it further enacted, That the Trustees named in this Act shall hold their First Meeting within the Town Hall of *Kirkwall* on the Fourth *Tuesday* after the passing of this Act, at Twelve o'Clock Noon, for the Purpose of putting this Act into Execution, at which Meeting the Provost of *Kirkwall* shall preside; and the said Trustees, and their Successors in Office as Trustees under this Act, shall hold a stated General Meeting on the Second *Tuesday* after *Michaelmas* in every Year, for putting this Act and the Powers herein committed to them into Execution, at which Meeting the Provost of *Kirkwall*, and in his Absence the Trustee whose Name shall stand at the Top of the List of Trustees for the Time, and who shall be present at such Meeting, shall act and officiate as Preses; and the Preses, besides his own deliberative Vote in common with the other Trustees, shall, in all Cases of Equality of Votes, have also a casting Vote in every Matter or Question that may come before the said

Stated Meeting to be held annually.

said Meeting: Provided always, that the Order in which the Twelve Trustees elected annually, as hereinbefore directed, shall take Precedence of each other, shall be determined at the First Meeting under this Act, by the Provost of *Kirkwall*, by casting Lots in the Presence of the said Meeting; and the Order of Precedence shall be ascertained in the same Manner, by the Clerk, at the First Ordinary Meeting to be held after the annual Election of Trustees.

Order of Precedence of Trustees.

V. And be it further enacted, That besides the yearly stated Meeting before mentioned, the said Trustees shall have full Power to hold Meetings from Time to Time, as they may find necessary, for the due Execution of this Act, and such Meetings may be called either by the Preses of the said Trustees, or by any Three of their Number: Provided always, that before any Meeting, either stated or special, shall take place, previous Notice, written or printed, of at least Twenty-four Hours, shall be given to each of the said Trustees for the Time being, by Order of the Preses; and such Notice shall be delivered to the said Trustees personally, or left at their usual Places of Business or Abode within the Burgh of *Kirkwall*; and providing further, that in case the Preses shall delay or refuse to give such Order, when required to do so by any Three or more of the said Trustees acting for the Time, the said Three or more Trustees shall be and they are hereby empowered to order the Clerk to call such Meeting; and the said Clerk shall be obliged thereupon to give Notice in Writing of the Time and Place of such Meeting, to every One of the said Trustees, at least Four Days previous to such Meeting; and a Certificate under the Hand of the said Clerk, that such Notice has been given by Letters duly addressed and left at their usual Places of Business or Abode within the Burgh of *Kirkwall*, shall be sufficient Evidence of the Legality of said Meeting.

Trustees may hold other Meetings.

VI. Provided always, and be it enacted, That in case of the Death or Refusal to act of any of the said elected Trustees, it shall and may be lawful to and for the other remaining Trustees to elect any One or more Trustees, qualified as aforesaid, to supply the Vacancies in their Number occasioned by Death or Refusal; and which Trustee or Trustees so to be elected shall continue in Office, and supply such Vacancy, and take the Place in regard to Seniority and in all other Respects of the Person whose Vacancy he shall have been elected to supply, until the next ordinary Election of Trustees; or if any such Vacancy shall not be supplied before the ordinary Time for the Election of Trustees, such Vacancy shall then be supplied by the Election of a Trustee to fill up such Vacancy in the same Manner as the other Trustees shall then be elected.

Vacancies among the Trustees to be filled up by the Trustees.

VII. And be it further enacted, That if the said Town Council, Ship Owners, or Landholders shall at any Time neglect or refuse to appoint and elect the Trustees, or any of them, whom they are respectively hereinbefore directed to appoint and elect, or in case any of the Trustees appointed or elected by the said Town Council, Ship Owners, and Landholders shall refuse to act, or shall depart this Life, it shall nevertheless be lawful for the other Trustees to carry this Act into Execution.

Act may be carried into Execution, although all the Trustees may not be appointed.

VIII. And

Trustees to appoint a Treasurer, Clerk, and other Officers.

VIII. And be it further enacted, That it shall and may be lawful to and for the said Trustees to nominate and appoint a Treasurer, Clerk, and Harbour Master, and such other Officers and Servants as they shall judge necessary to be employed under them, for carrying this Act into Execution, and from Time to Time to remove such Treasurer, Clerk, Harbour Master, Officers, and Servants, and to appoint others in their Stead, and to settle such reasonable Salaries to be paid to them as shall appear to the said Trustees to be just and proper; and the Treasurer, Clerk, or other Person to be appointed to receive the Rates and Duties to be levied under this Act, shall give good and sufficient Security to the said Trustees for all and every their respective Intromissions with the Monies, Funds, and Revenues aforesaid, and for the just and faithful Execution of their respective Offices; and all and every Treasurer or Treasurers, Collector or Collectors, or other Person or Persons whomsoever, so concerned or to be concerned in the Receipt of the said Monies, Rates, Duties, or Revenues, who shall secrete or misapply the same, or any Part thereof, shall forfeit double the Sum so secreted or misapplied, with full Costs of Suit; which Forfeiture shall be recovered by the said Trustees by Action before the Court of Session against such Treasurer or Treasurers, Collector or Collectors, or other Person or Persons, and his or their Surety or Sureties as aforesaid, or his or their respective Heirs and Representatives.

Clerk not to act as Treasurer, and vice versâ.

IX. And be it further enacted, That it shall not be lawful for the said Trustees to appoint any Person who has been or may be appointed their Clerk, or the Partner of any such Clerk, or the Clerk of any Person in the Service or Employ of any such Clerk or of the Partner of any such Clerk, to be the Treasurer for the Purposes of this Act, or to appoint any Person who has been or may be the appointed Treasurer, or the Partner of any such Treasurer, or the Clerk or any Person in the Service or Employ of any such Treasurer or of the Partner of any such Treasurer, to be the Clerk for the Purposes of this Act; and if any Person shall act in both the Capacities of Clerk and Treasurer for the Purposes of this Act, or if any Person being the Partner of any such Clerk, or the Clerk or any other Person in the Service or Employ of any such Clerk or of the Partner of any such Clerk, shall act as Treasurer, or shall act as Deputy of the Treasurer, or in any Manner officiate for the Treasurer, or being the Partner of any such Treasurer, or the Clerk or any other Person in the Service or Employ of any such Treasurer or of his Partner, shall accept the Office of Clerk, or shall act as Deputy of the Clerk, or in any Manner officiate for the Clerk in the Execution of this Act, or if any such Treasurer shall hold any Place or Office of Profit or Trust under the said Trustees other than that of Treasurer, every such Person so offending shall, for every such Offence, forfeit and pay the Sum of Fifty Pounds to any Person or Persons who shall sue for the same, to be recovered, with full Costs of Suit, by ordinary Action either before the Court of Session in *Scotland* or before the Sheriff Court of *Orkney*.

Trustees may sue and be sued in the Name of "The Trus-

X. And be it further enacted, That the said Trustees may sue and be sued by the Style and Name of "The Trustees of the Harbour of *Kirkwall*," or in the Name of the Provost of *Kirkwall* for the Time being, or in the Name or Names of any One or more of the said Trustees, or of their

their Clerk for the Time being; and no Action or Suit to be brought or commenced by or against the said Trustees shall fall or be discontinued by the Death, Removal, or Default of the said Provost, Trustee, or Clerk, in whose Name or Names the same shall have been brought, or against whom the same shall have been brought: Provided always, that all Costs and Expence to be incurred in prosecuting or defending any Action or Suit touching the Execution of this Act shall be defrayed out of the Rates to be collected and levied under the Provisions of this Act; and provided also, that such Trustee or Trustees, or Clerk, in whose Name or Names such Prosecutions may be carried on, shall not on that Account be deemed an inadmissible Witness or Witnesses in any such Action or Suit, except only in such Action or Suit as shall be on his or their own personal Account.

tees of the Harbour of Kirkwall," &c.

XI. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to charge with any of the said Rates and Duties any of His Majesty's Ships of War, or any Ship, Transport, or Vessel employed in or upon His Majesty's Service, in the Conveyance of any Officers or Soldiers, or any Horses, Arms, or Ammunition, or Baggage to them or any of them belonging, or of any Ordnance Stores, or to any Vessel in the Service or Employ of the Ordnance, Customs, or Excise, or any of His Majesty's Postmaster General.

Exempting Vessels in His Majesty's Service, &c. from Rates.

XII. And be it further enacted, That from and after the passing of this Act the Rates and Duties at present levied at the said Harbour under the Authority of the Magistrates of the Burgh of *Kirkwall* shall cease and determine, and in lieu thereof it shall be lawful for the said Trustees, and such Person or Persons as shall be duly authorized by them, to ask, demand, and recover of and from the Masters, or from the Owners or Managers of any Ship or Ships, Vessel or Vessels, Barks and Boats, trading to and from the said Harbour, and from the Owners and Proprietors of all Goods, Merchandize, Wares, and Commodities whatever, which shall be imported into or exported out of the said Harbour of *Kirkwall*, in any Ship, Vessel, Bark, Boat, or Lighter, the several Rates and Duties specified in the Schedule (A.) hereunto annexed; and such Master, Owners, or Managers of Vessels, and all such Proprietors of Goods, Merchandize, Wares, and Commodities, shall be jointly and severally liable for the said Rates and Duties.

Present Rates to cease, and those specified in Schedule (A.) to be levied.

XIII. And be it further enacted, That the Harbour of *Kirkwall* shall be deemed and construed and taken to extend, and shall for the Purposes of this Act extend, along the Shore, from the Point of the Peninsula called the *Ayre* on the West, and Eastward as far as the Royalty of the Burgh extends; and all Vessels, Lighters, Boats, and other Craft loading or unloading within that Space, or passing through the Opening called the *Oyce Mouth*, at the Point or Western Extremity of the *Ayre*, or peninsular Piece of Ground aforesaid, for the Purpose of landing Goods within any Part of the Royalty of the aforesaid Burgh, shall be deemed to use the said Harbour, and shall be subject to the same Rates and Duties as if they had entered the same; provided that no Goods, Wares, or Merchandize which have paid such Rates or Duties at unloading shall be charged any Rates or Duties upon Export, if in the same Packages.

Boundary of the Harbour.

Improvements to be made in conformity with Map deposited at Parliament Office.

XIV. And whereas a Map or Plan showing the Improvements intended to be made upon the said Harbour of *Kirkwall* has been deposited at the Office of the Clerk of the Parliaments; be it enacted, That the Improvement authorized by this Act shall be made in conformity to such Map or Plan; and such Map or Plan shall remain at the said Office of the Clerk of the Parliaments, and all Persons at all seasonable Times shall have Liberty to inspect and peruse the same.

Tonnage Duty on Vessels using the Harbour.

XV. And be it further enacted, That the said Trustees, or such Person or Persons as they shall appoint, shall have Power, and they are hereby authorized and empowered, from Time to Time and at all Times, to ask, demand, take, receive, collect, and recover, to and for the Purposes of this Act, from all and every the Owners or Masters of any Ships, Vessels, Barks, Boats, and Lighters, of whatsoever Description, which shall come into or use the said Harbour, the several Tonnage Duties and Rates specified in the Schedule (B.) hereunto annexed.

Tonnage Duty to be paid but once during the Voyage.

XVI. Provided always, and be it enacted, That where the Tonnage Duty exigible by this Act shall have been once paid for any Ship or Vessel, Bark, Boat, or Lighter, the same shall not be payable a Second Time, in case any such Vessel shall be put back or return into the Harbour for Safety during the Voyage for which the Tonnage Duty was so paid; and provided further, that Tonnage Duty shall only be once exigible upon a Vessel entering the said Harbour, notwithstanding that such Vessel may unload one Cargo and load another.

Rates how to be recovered.

XVII. And be it further enacted, That in case any Owner or Owners, or Master, or other Person or Persons having the Command of any Vessel charged or chargeable with any of the Rates or Duties granted by this Act, or any Proprietor or Proprietors, Consignee or Consignees of any Goods, Wares, or Merchandize or other Cargo, shall refuse or neglect to pay the same, then and in every such Case it shall be lawful for the Collector or Collectors appointed to receive the same to go on board of such Vessel, and to demand, collect, and receive such Rates or Duties, and on Nonpayment thereof to seize, take, and detain all or any Part of her Tackle, Apparel, and Furniture, or the Goods, Wares, and Merchandize or other Cargo of such Vessel, or any Part thereof, and to detain the same until the respective Rates or Duties shall be satisfied and paid; and in case of Neglect, Refusal, or Delay in such Payment, for the Space of Three Days after such seizing, taking, and detaining, it shall and may be lawful for the said Trustees, and to and for the Person or Persons appointed and authorized by them as aforesaid, or either of them, to cause the same to be appraised by Two or more sufficient Persons not interested therein, and afterwards to sell and dispose of the Goods or other Effects taken and appraised as aforesaid, and therewith to satisfy and pay the Rates and Duties so neglected or refused to be paid, together with the Charges incurred in seizing, taking, keeping, appraising, and selling such Goods and Effects, (as the same shall be ascertained and certified upon Oath by the Sellers,) rendering the Overplus (if any), on Demand, to the Master, Owner or Owners of such Vessel, or the Proprietor or Proprietors, Consignee or Consignees of such Goods, Wares, and Merchandize respectively.

XVIII. And

For settling Disputes respecting the Amount of Rates.

XVIII. And be it further enacted, That in case any Dispute shall arise regarding the Amount of the Rates or Duties hereby granted, or the Charges of recovering the same, in manner foresaid, it shall be lawful for the Trustees, or the Person seizing or selling such Goods and Effects as aforesaid, to retain the same, or the Money arising from the Sale thereof, as the Case may happen, until the Amount of the Rates due, and the Charges of recovering the same, shall be ascertained by the Sheriff Depute of the County of *Orkney* and *Shetland*, or his Substitute for *Orkney*, who, upon Application made to him for that Purpose, shall examine into the Matter in a summary Manner, and shall determine the Amount of the Rates and Charges due and incurred, and shall award such Expences of Plea to either Party as to him shall appear right and proper; all which Expences of Plea shall and may be recovered summarily by poinding and distraining, by Warrant under the Hand of the said Sheriff Depute or Substitute, in case of Nonpayment, and which Warrant such Sheriff is hereby authorized and required to grant; and it shall be lawful to execute such Warrant within any Part of the Jurisdiction of the Vice Admiral of *Orkney*, and without any previous Charge to make Payment.

How Tonnage of Vessels shall be ascertained.

XIX. And be it further enacted, That the Master or Commander of any Ship or Vessel liable to the Rates and Duties aforesaid shall and he is hereby required to produce and show, on Demand, to the Person or Persons appointed to collect the said Rates and Duties, the Custom House Register of the Burthen or Tonnage of such Ship or Vessel; and in case of Refusal, Failure, or Delay in producing and showing the same, or in case there be no such Register, or in case the said Trustees, or such Person or Persons appointed to collect the Rates and Duties aforesaid, shall not be satisfied therewith, or shall entertain any Doubt of the Correctness thereof in regard to the Tonnage of such Ship or Vessel, it shall and may be lawful for him to detain, and to enter, either alone or with any Person or Persons for his or their Assistance, into such Ship or Vessel, and admeasure the same in Manner directed by an Act passed in the Sixth Year of the Reign of His present Majesty, intituled *An Act for the registering of British Vessels*, and which shall be deemed to give the true Contents of the Tonnage, according to which Rule or Method all Ships and Vessels liable to the Rates and Duties aforesaid shall be measured, for computing, ascertaining, and collecting the said Rates and Duties, any Custom, Practice, or Usage to the contrary thereof notwithstanding; and in case the same shall, upon such weighing, measuring, or gauging, appear to be of greater Tonnage than shall be set forth and contained in the Account which shall have been given thereof, then the Master or Person giving in such Account shall pay the Costs and Charges of such weighing, measuring, or gauging; all which such Costs and Charges, upon Refusal of Payment thereof, on Demand, shall and may be recovered and levied by such Ways and Means, and in such Manner as the said Rates and Duties are hereby appointed to be recovered and levied; but if any such Ship or Vessel shall be found to be of the same or of less Tonnage than the same shall by such Account appear to be of, then the said Collector or Collectors, or such other Person or Persons respectively, shall pay the Costs and Charges of such weighing, measuring, or gauging, and shall pay such further Damages as shall appear to the Sheriff Depute of the County of *Orkney* and *Shetland*, or his Substitute for *Orkney*, on the Oath of any credible

6 G. 4. c. 110.

credible Witness, to have arisen from such Detention; and in default of immediate Payment thereof by the Collector or Collectors of such Rates and Duties, the same shall and may be recovered from the said Trustees by Distress and Sale of the Goods and Effects of the said Trustees or of their Collector or Collectors; and if any Master, Commander, or other Officer of any Ship or Vessel, or any other Person or Persons, shall obstruct or hinder any Person or Persons so employed from weighing, measuring, or gauging any Ship or Vessel in pursuance of this Act, every such Master, Commander, or other Person shall for every such Offence forfeit any Sum not exceeding One Pound, over and above the said Rates and Duties.

Vessels not to be cleared at the Custom House until Duties are paid.

XX. And for the more effectually preventing Delay or Evasion in the Payment of the Rates and Duties aforesaid, be it further enacted, That the Collector of His Majesty's Customs, or other Officer of Customs at the said Port of *Kirkwall*, shall be authorized to refuse to clear any Ship or Vessel outwards or inwards, or indorse any Clearance, until there shall be produced and shown to him, by or on behalf of the Person or Persons liable in the Payment of the Rates and Duties by this Act imposed and made payable on account of such Ship or Vessel or her Cargo, either a sufficient Voucher of the Payment of the said Rates and Duties under the Hand of the Person appointed to receive the same, or a Certificate under the Hand of the Clerk to the Trustees, that the Sum demanded on that Account has been consigned and lodged in his Hands, with sufficient Security by the Consigner for the Payment of all Damages, Costs, or Expences which the Collector or Tacksman of the said Rates may sustain or incur, in consequence of Delay or Refusal of Payment, as the same shall afterwards be ascertained and determined in the Manner before directed; with respective Vouchers or Certificates the Person or Persons appointed under the Authority of this Act to receive the said Rates or Duties, and the Clerk to the said Trustees, are required to sign and give accordingly, without Fee or Reward, upon pain of forfeiting a Penalty not exceeding Five Pounds, together with full Costs of Suit, to be recovered as any Debt may be sued for and recovered in *Scotland*.

Rates may be leased.

XXI. And be it further enacted, That it shall be lawful for the said Trustees, and they are hereby authorized and empowered, to let to farm the Rates or Duties hereby made payable, unto any Person or Persons, for any Time or Term they shall think proper, not exceeding Three Years from the Commencement of any Lease; and every such Lease shall be valid and effectual; and the Lessee or Lessees, and also such Person or Persons as such Lessee or Lessees shall appoint to collect and receive the Rates so let, shall during the Continuance of every such Lease be deemed Collectors of the Rates so let, and shall have the same Power and Authority for collecting and recovering the same as if they had been appointed for that Purpose by the said Trustees, provided Public Notice of the Intention to let the said Rates be given by the said Trustees by Advertisements affixed at the Place where such Rates or Duties are collected, at least Thirty Days prior to the Time at which the same are proposed to be let as aforesaid.

Rates may be reduced and raised again.

XXII. And be it further enacted, That it shall be lawful for the said Trustees to lower or reduce all or any of the said Rates or Duties, and

and again to raise the same to such Sum or Sums of Money as they shall think proper, not exceeding the Sums before mentioned.

Application of Rates.

XXIII. And be it further enacted, That the whole of the Rates and Duties to be levied and received under the Authority of this Act, and the Sums to be borrowed on the Security of the said Rates and Duties, as after mentioned, shall be applied by the said Trustees in Manner following; *videlicet*, in the first place, in paying the Expence of Plans and Estimates, and the whole other Expences connected with the preparing, procuring, and passing of this Act; in the second place, to the keeping and maintaining in Order and sufficient Repair the present Piers and other Works of the said Harbour, so far as the same shall be retained, and in defraying the Expence of Management incident to the Execution of this Act, including Salaries to the Clerk, Treasurer, and other Officers and Servants to be appointed as aforesaid; in the third place, in paying the Annual Interest of the Monies to be borrowed under the Authority of this Act for the Purposes thereof; in the fourth place, towards the Formation of a Sinking Fund, as after mentioned, for the Liquidation of the Sums so to be borrowed; and, lastly, in paying the Expence of extending, enlarging, improving, and deepening the foresaid Harbour and other Works connected therewith, improving and repairing the Access and Avenues thereto, and of keeping and maintaining in good Order and sufficient Repair, and paving and lighting, the Piers, Quays, and Jetties of the foresaid Harbour, and the Avenues thereto, and to no other Purpose whatever.

Trustees may remove Obstructions in the Harbour.

XXIV. And be it further enacted, That it shall be lawful for the said Trustees, by themselves, or others to be employed by them, to remove any Wood, Timber, Anchors, old Ships and Boats, or other Obstructions or Impediments that may be found in the said Harbour, or upon the Works connected therewith; and in case the Owners of such Wood, Timber, Anchors, old Ships and Boats, or other Obstructions, or the Person making or causing any such Obstructions or Impediments so removed by the said Trustees, or others employed by them, shall refuse or neglect to pay the Costs or Charges attending such Removal, for the Space of Three Days after Demand, the same shall and may be recovered in the same Manner as any Penalties and Forfeitures are by this Act directed to be recovered.

Penalty on Persons emptying Rubbish into the Harbour.

XXV. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any Person or Persons to throw or empty any Ballast, Rubbish, Gravel, Stones, or other Things into the said Harbour, or the Entrance thereto, or into the Roadstead connected therewith, or to dig or take away any Ballast, Gravel, Stones, or other Things therefrom, so as to injure the said Harbour, or the Piers or other Works thereof, under a Penalty not exceeding Five Pounds Sterling for every such Offence, to be recovered, with Costs of Suit, as any other Penalty or Damages may be recovered under this Act, besides taking away and removing all such Ballast, Rubbish, Gravel, Stones, and other Things, and repairing the Damage occasioned by such Default, which the Trustees are hereby empowered to do, at the Expence of the Defaulter or Defaulters.

Owners of Ships and Boats to be accountable in certain Cases for Damages done to the Harbour, &c.

XXVI. And be it further enacted, That every Master, Owner, or other Person having the Rule or Command of any Ship or Vessel entering into or departing from, or lying or being in the said Harbour, or having the Charge or Care of any Boat, Barge, or other Vessel navigating in or using the said Harbour, shall be and is hereby made answerable for any Damage, Spoil, or Mischief that shall be done to the said Harbour, or any of the Works thereof, through wilful Unskilfulness or Negligence of him, or by any of the Mariners, Boatmen, Servants, or Crew on board of or employed in or about the same, or by or in the navigating, loading, or unloading of such Ship, Boat, or other Vessel, or by any other Means whatsoever, and also for any Trespass, Damage, Spoil, or Mischief which may be done by him, or by any such Person and Persons as aforesaid, to the Owner or Owners, Proprietor or Proprietors, Occupier or Occupiers of any Buildings or other Erections, Lands, Tenements, or Hereditaments adjoining to the said Harbour or other Works, or to any of them; and all such Damage, in case the Amount thereof so claimed shall not exceed the Sum of Twenty Pounds, shall be recoverable before the Sheriff Depute of the County of *Orkney* and *Shetland*, or his Substitute for *Orkney*, who is hereby authorized and empowered to summon such Master or other Person having the Command or Charge of such Ship, Vessel, or Boat, doing such wilful, unskilful, or negligent Damage as aforesaid, and hear and determine the same, and ascertain such Damage; and if Judgment shall be given by him against such Master or other Person, then it shall be lawful for such Sheriff, and he is hereby authorized, by Warrant under his Hand to levy or cause to be levied the Sum or Sums awarded by him as the Amount of such Damage, and for that Purpose to seize and distrain the Ship, Vessel, or Boat doing such Damage as aforesaid, and any Tackle, Apparel, and Furniture thereto belonging, or any Part thereof, and the same to detain until the Sum of Money so awarded as aforesaid shall be paid; and in case the same shall not be paid for the Space of Six Days after any Distress or Distresses so made or taken, then it shall be lawful to sell the same, or any Stores, Articles, or Things belonging to the same, which may be sufficient in Value, and therewith to pay and satisfy the Money so awarded, together with the reasonable Costs and Charges of taking, keeping, and selling the same, rendering the Overplus, if any, to the Master or other Person entitled to the same, on Demand; and in case the Money cannot be levied as aforesaid, then by Warrant to cause or permit such Master or other Person as aforesaid to be imprisoned in the Common Gaol of the Burgh of *Kirkwall*, there to remain for any Time not exceeding Three Calendar Months, unless the Sum of Money so awarded shall be sooner paid; and the same, when levied in Manner aforesaid, shall go and be paid to the Treasurer of the said Trustees, to be applied for the Purposes of this Act.

Masters to recover from their Servants any Sums paid for their Default.

XXVII. And be it further enacted, That in case the Master or Owner of any Ship, Vessel, or Boat shall be compelled to pay any Penalty, or make any Satisfaction for any Damages, by reason of any Neglect or Default done or committed by his or their Seamen, Boatmen, or others, contrary to the Provisions of this Act, such Seamen, Boatmen, or others, and each and every of them, shall be liable to repay such Penalty or Damages, with the Costs thereof, to such Master or Owner; and in case of Nonpayment thereof upon Demand, and Oath made before the said Sheriff

Sheriff Depute or Substitute by such Master or Owner, of the Payment made by him or them of such Penalty or Damages, and that the same, and the Costs thereof, have not been repaid to him or them by such Seamen, Boatmen, or others, or any of them, or on their Behalf, although demanded, the Amount thereof shall be recovered in like Manner as any Penalty or Forfeiture is hereby directed to be recovered.

Trustees to make Regulations for the Preservation of the Harbour, and appoint a Harbour Master to carry them into Effect.

XXVIII. And be it further enacted, That it shall be lawful for the said Trustees, from Time to Time and at all Times after the passing of this Act, to make and afterwards to alter such Rules, Orders, and Regulations as to them shall seem proper, for the due Preservation of the said Harbour, and the Shipping therein, and for the loading and unloading of all Vessels resorting thereto, and to appoint a Harbour Master and Assistants for carrying all such Rules, Orders, and Regulations into Effect; and also to regulate the Charges exigible by Lightermen, Boatmen, Carters, Porters, and others, within the said Burgh, who may be employed to land or convey Goods, Wares, Merchandize, Ballast, or other Commodities, to and from such Vessels: Provided always, that such Orders and Regulations shall not be repugnant to the Law of *Scotland* or this Act, and shall previously be recorded in the Sederunt Books of the said Trustees, and shall be affixed and continue legibly painted on Boards on some conspicuous Places of the said Harbour, for the due Information of all Persons required to conform thereto, and shall, when worn out, defaced, or obliterated, be from Time to Time repainted and renewed.

Harbour Master's Duties.

XXIX. And be it enacted, That every Harbour Master who may be from Time to Time appointed in pursuance of this Act shall have the Direction of the anchoring and mooring of all Ships, Vessels, Barks, Lighters, and Boats entering the said Harbour, as well as of pointing out to the Masters or others having the Command or Charge of such Ships, Vessels, and Boats, where to take in or land their Cargoes or Ballast, and likewise to remove any Ship, Vessel, Bark, Lighter, and Boat, to give necessary Room for any other or others; and the Masters or others having the Command or Charge of all such Ships, Vessels, Barks, Lighters, and Boats, shall be obliged to obey every such Harbour Master in all legal Orders which they may receive from him under the Authority of this Act, under a Penalty not exceeding Twenty Pounds Sterling for each Act of Disobedience, to be recovered and applied in manner after mentioned.

Trustees may borrow Money upon Assignment of the Rates, which may be transferred.

XXX. And be it further enacted, That it shall be lawful for the said Trustees to borrow Money for the Purposes of this Act upon the Credit of the said Rates or Duties, not exceeding in the whole the Sum of Five thousand Pounds, and to grant, assign, and set over the said Rates or Duties in Security of the Money to be so borrowed, which Assignment shall be transferrable from Hand to Hand, by a simple Indorsation upon the Back thereof, or by a Transfer upon a Paper apart, by the Creditor or Holder thereof; and all Persons to whom such Assignment shall be made or transferred shall be equally entitled, one with the other, to the Proportion of the said Rates and Duties according to their respective Sums in such Assignments mentioned to be advanced, without any Preference by reason of the Priority of any such Assignments, or on any other Account; and a Copy of every such Assignment shall within

within Twenty-one Days from the Date thereof be entered in a Book to be kept by the Clerk to the said Trustees, which Book shall and may be perused at all seasonable Times by any of the said Trustees or Creditors of the said Harbour, or any other Person interested therein, without Fee or Reward; and every Person to whom any Transfer of any such Assignment shall be made shall, within Thirty Days after the Date thereof, produce the same to the Clerk to the said Trustees, who shall enter such Transfer in like Manner as the original Assignment in the Book to be kept by him for that Purpose; and every such Entry shall from thenceforth entitle the Person or Persons to whom the Transfer is made, and his or their Executors or Assignees, to the full Benefit of the original Assignment, and it shall not from thenceforth be in the Power of any Person or Persons who shall have made any such Transfer to demand, uplift, receive, or discharge the Sums of Money due by the original Assignment, or any Part thereof; and all which Assignments shall be granted under the Hands of the said Trustees, or any Five of them; and the same, with the Transfer thereof, shall be in the Form or to the Effect specified in Schedule (C.) hereunto annexed.

Trustees not to be personally liable.

XXXI. And be it further enacted, That the said Trustees shall not be held or adjudged to have rendered themselves personally liable for the Repayment of any Money borrowed as aforesaid, or the Interest thereof, by reason of having signed the said Bonds and Assignments; and the same are to be held as granted on the sole Credit and Security of the said Harbour, and Rates and Duties; nor shall any Trustee be held personally liable, upon any Pretext, for the Payment of any Sum which he shall not have bound himself to pay personally, as an Individual, independently of his Office as a Trustee under this Act.

Interest to be paid regularly.

XXXII. And be it further enacted, That out of the Monies to arise by virtue of this Act the said Trustees, or their Treasurer for the Time being, shall pay, and they are hereby required regularly to pay the Interest which shall become due upon each of the said Bonds and Assignments, to the Person or Persons having Right to the same for the Time being, and to mark the Payment of such Interest on the Back of such Assignments, and in the Book or Books to be kept as after mentioned.

Power to reduce Rates, although assigned.

XXXIII. And be it further enacted, That notwithstanding the Assignment of the said Rates as aforesaid, it shall be lawful for the said Trustees, from Time to Time, to lessen and reduce the Rates or Duties hereby granted, and again to advance or increase the same, so as not to exceed the Rates or Duties hereby imposed; provided that no such Reduction shall take place without the Consent in Writing of Three Fourths of the Creditors in Value to whom the said Rates or Duties may have been assigned in Security of any Money advanced by such Creditors on the Credit of the said Rates and Duties.

Sinking Fund to be formed for paying off the Debt.

XXXIV. And be it further enacted, That when the aforesaid Sum of Five thousand Pounds or any Part thereof shall be borrowed, a Sum equal to at least Five *per Centum per Annum* of the Sum so borrowed shall be laid aside annually as a Sinking Fund, to be applied in Liquidation of the Sum so to be borrowed; and which Sinking Fund the said Trustees are hereby required to set apart every Year, and to lodge the same in the Office of some Bank in *Edin-*

Edinburgh, upon a Note payable to the said Trustees, bearing the highest Interest allowed by such Bank at the Time, and to renew such Annual Notes, adding the Interest to the Principal, until the Fund shall equal the Sum borrowed, when the Debt shall be paid off: Provided nevertheless, that it shall be lawful for the said Trustees to apply the Accumulation of such Sinking Fund, from Time to Time as they shall see proper, towards the progressive Liquidation of the Debt, until the whole is extinguished.

Accounts to be kept, and to be open to the Inspection of the Creditors.

XXXV. And be it further enacted, That the said Trustees shall and they are hereby required to order and direct a Book or Books to be provided by their Clerk for the Time being, in which Book or Books such Clerk shall enter or cause to be entered true and regular Accounts of all Sums of Money received, paid, laid out, and expended for or on account of the said Harbour, and of the several Articles, Matters, and Things for which such Sums of Money shall have been paid, laid out, and expended; which Book or Books shall at all seasonable Times be open to the Inspection of the said Trustees, or any Creditor or Creditors on the Rates and Duties hereby granted, without Fee or Reward; and the said Trustees or Creditors, or any of them, shall and may take Copies of or Extracts from the said Book or Books, or any Part or Parts thereof, without paying any thing for the same; and in case the said Clerk shall refuse to permit or shall not permit the said Trustees or Creditors, or any of them, to inspect the same, or take such Copies or Extracts as aforesaid, such Clerk shall forfeit and pay any Sum of Money not exceeding Five Pounds, to be levied and recovered in Manner hereinafter mentioned.

Clerk to make up a Statement of the Harbour Funds annually.

XXXVI. And be it further enacted, That the Clerk of the said Trustees shall in every Year, Fourteen Days before the stated Annual Meeting of Trustees, make up, from the Book or Books to be kept by him as aforesaid, a Statement of his Accounts and Intromissions, with the Rates and Duties and other Funds belonging to or vested in the said Trustees; and which Statement shall be laid before them at their stated Meeting, for the Purpose of being audited and settled by the Trustees; and the said Statement, when so revised and approved of by the said Trustees, shall be lodged with the Town Clerk of *Kirkwall*, and shall remain in his Hands for the Space of Thirty Days, for the Inspection of all Persons liable in Payment of the Rates and Duties hereby granted, to whom the same shall be open and patent without any Fee; provided always, that Notice shall be given by the Clerk of the said Trustees, by written or printed Advertisements, posted in the Town of *Kirkwall*, of the Day on which the Statement of his Accounts is lodged as aforesaid.

Recovery and Application of Penalties.

XXXVII. And be it further enacted, That it shall and may be lawful to and for the said Trustees, or any Collector, Treasurer, or Clerk appointed by them, to prosecute for and recover the several Fines, Penalties, and Damages by this Act imposed, by summary Action or Complaint, within Six Months after the Offence is committed, before the Sheriff Depute of *Orkney* and *Shetland*, or his Substitute for *Orkney* for the Time being, who shall proceed to the Trial of such Offences in a summary Way, and upon Conviction of the Offenders, either by their own Confession, or by the Oath of any One or more credible Witnesses, shall award and give Orders, Judgments, and Decrees therein as to him

shall seem most agreeable to the true Intent and Meaning of this Act; and in default of Payment of the several Fines, Penalties, Forfeitures, and Damages, and Costs of Suit awarded, the Person or Persons shall and may be committed to the Gaol of *Kirkwall*, there to be detained for such Time as the said Sheriff Depute or his Substitute shall direct, not exceeding Three Calendar Months; and the whole Fines, Penalties, and Forfeitures aforesaid, after Deduction of the necessary Charges of recovering them, shall be applied towards the building, erecting, and maintaining of the Works of the said Harbour, and to no other Use or Purpose whatever:

Power to mitigate Penalties.

Provided always, that it shall and may be lawful to and for the said Sheriff Depute or his Substitute, by whom such Judgment, Sentence, or Determination shall be given, to mitigate or lessen any of the Penalties aforesaid as he shall think fit; and every such Mitigation shall be a sufficient Discharge to the Person or Persons offending, for so much of the said Penalties and Forfeitures as may be so mitigated or remitted; and the Decision of the said Sheriff Depute or Substitute respectively shall be final and conclusive, without being subject to the Review of any superior Court, by Suspension, Advocation, or Reduction, or to any Stay or Challenge by any other Process of Law whatsoever; neither shall the Decisions, Warrants, or Orders pronounced by the Sheriff Substitute be subject to Review, either by himself upon a Reclaimer, or by Appeal to the Sheriff Depute, except upon sufficient Caution for the Penalties, Fines, Damages, and Expences awarded, and for the Expences which may be incurred in consequence of such Reclaimer or Appeal; any Law or Practice to the contrary notwithstanding; and all such Decisions, Warrants, and Orders shall and may be carried into Effect and executed within any Part of the Jurisdiction of the Vice Admiral of *Orkney*.

Committees may be appointed.

XXXVIII. And be it further enacted, That the said Trustees shall have Power, and they are hereby authorized from Time to Time, to appoint a Committee of their Number, consisting of not less than Three, with Power to execute any of the Purposes of this Act which it may be deemed expedient to commit to their Charge.

Expences of Act.

XXXIX. And be it further enacted, That the Charges and Expences of procuring and passing this Act shall be paid and defrayed out of the first and readiest of the Funds of the said Harbour.

Public Act.

XL. And be it further enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by all Judges, Justices, and others, without being specially pleaded.

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SCHEDULE (A.) referred to in the Bill.

Rates on Goods.	£	s.	d.
Butter, per Barrel	0	0	2
Bent, per Thrave	0	0	0½
Cattle, viz^{t} Black Cattle, each	0	0	3
Calves	0	0	0½
Horses	0	0	6
Sheep	0	0	1½
Lambs	0	0	0½
Swine	0	0	1½
Coals, per Barrel, containing Twenty-seven Imperial Gallons, streaked Measure	0	0	1½
Corn, viz^{t} Barley and Bigg, per Boll	0	0	2
Malt, per Boll	0	0	2
Oats, ditto	0	0	2
Oat Meal and Bear Meal, per Ten Stones	0	0	1½
Pease, per Boll	0	0	2
Flour, per Sack	0	0	3
Fish, salted, per Hundred Weight	0	0	1
dried or scrae, per Barrel Bulk	0	0	1
Herrings, per Barrel	0	0	2
Hides, each	0	0	0½
Iron and Steel of every Description, per Hundred Weight	0	0	1½
Kelp, per ditto	0	0	1
Lime, per Barrel	0	0	1½
Ploughs, each	0	0	2
Potatoes, per Barrel	0	0	1
Ropes and Cables, per Hundred Weight	0	0	1½
Salt, per Ton	0	0	6
Slates, viz^{t} large, the Thousand	0	2	0
Ditto, small, ditto	0	1	0
Stones, viz^{t} Free Stones, per Ton	0	0	2
all other Stones	0	0	1½
or, per Boat Load	0	1	0
Tow and Flax, per Hundred Weight	0	0	2
Wood of all Kinds, whether in Logs, Deals, Planks, Staves, or any other way whatever, and whether Foreign or Home, per Pound Value	0	0	3

	£	s.	d.
All Goods not particularly enumerated, per Barrel Bulk -	0		3
Fresh Fish, Vegetables, and Poultry, brought for Sale, if landed and sold within the Limits of the Harbour, for every Shilling in Value - - - -	0	0	0½
Exemptions.			
All fresh Fish, Vegetables, and Poultry, if carried to the Public Market Place of the Burgh for Sale.			
Stones, Slates, and Peats or Turf for Fuel, if landed outside the Piers of the Harbour.			

SCHEDULE (B.) referred to in the Bill.

	£	s.	d.
Tonnage Duties.			
All Ships and Vessels entering the Harbour of *Kirkwall*, whether for Safety or with a Cargo, or in Ballast, per Ton -	0	0	4
All decked or open Boats above Three Tons, employed in the Navigation among the *Orkney* Islands, entering the said Harbour, per Ton - - -	0	0	4
or, in lieu thereof, a yearly Composition after the Rate of One Shilling per Ton.			
But all such Boats or Vessels carrying a Cargo to or from any Port out of the County of *Orkney* to pay at the above Rate of Four-pence per Ton.			
Boats under Three Tons, each Time they enter the Harbour -	0	0	2
or a yearly Composition for each Boat of - -	0	1	0
Vessels continuing longer than Three Months at one Time in the Harbour to pay Tonnage Duties again, and so on for every Three Month during which they may continue in the Harbour.			
Exemptions.			
All Ships, Vessels, and Boats belonging to His Majesty, or employed in any Department of the Public Service.			
All Ships Boats and Boats with fresh Fish, carrying no other Cargo, or any Passengers.			

SCHEDULE (C.) referred to in the Bill.

No. I. — *Form of Assignment.*

BY virtue of an Act passed in the Ninth Year of the Reign of His Majesty King *George* the Fourth, intituled [*here set forth the Title of this Act*], We whose Names are hereunto subscribed, being a Quorum of the Trustees for the said Harbour of *Kirkwall*, in consideration of the Sum of advanced and lent to us for the Purposes of this Act by do hereby sell, assign, and make over to the said his [*or* her] Heirs, Executors, and Assignees, the aforesaid Harbour of *Kirkwall* and Works thereof, together with all and sundry the Rates and Duties payable to us as Trustees for the said Harbour, in virtue of the said Act of Parliament, and all our Right, Title, and Interest in and to the same, to be held by the said and his [*or* her] Foresaids, in Security of and for Payment of the said Sum of until the same, with the legal Interest thereof, shall be fully satisfied and paid. In witness whereof these Presents, written by are subscribed by us at *Kirkwall* the Day of before these Witnesses,

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No. II. — *Form of Transfer on the Back of the Assignment.*

I within designed, do hereby transfer the within Assignment made to me by the Trustees of the Harbour of *Kirkwall* to and in favour of his Heirs, Executors, and Assignees, with the Principal Sum therein contained, and all Interest now due or to become due thereon, and all Right and Property therein competent to me in virtue of the said Assignment. In witness whereof I have subscribed these Presents, written on the Back of the said Assignment by at the Day of before these Witnesses,

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No. III. — *Form of Transfer on a Paper apart.*

I make over from me and my Heirs and Executors, do hereby transfer and to and in favour of his Heirs, Executors, and Assignees, all and whole the Sum of contained in an Assignment granted to me by the Trustees of the Harbour of *Kirkwall*, bearing Date the Day of and all Interest due and to become due thereon, together with the said Assignment itself, and all Claim of Right and Property competent to me in virtue thereof. In witness whereof I have subscribed these Presents, written by at the Day of before these Witnesses.

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