

ANNO DECIMO & UNDECIMO

VICTORIÆ REGINÆ.

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C A P. CXIII.

An Act to facilitate the Drainage of Lands in *Scotland*. [23d *July* 1847.]

WHEREAS an Act was passed in the last Session of Parliament, intituled *An Act to authorize the Advance of public Money to a limited Amount, to promote the Improvement of Land in* Great Britain *and* Ireland *by Works of Drainage:* And whereas another Act was passed in the present Session of Parliament, intituled *An Act to explain and amend the Act authorizing the Advance of Money for the Improvement of Land by Drainage in* Great Britain: And whereas it is expedient to render the Provisions of the said recited Acts more operative and effectual, and to facilitate and promote the Drainage of Lands in *Scotland* by making Provision for the Improvement of Outfalls: 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, That where any Land shall be capable of being drained or improved by Drainage, by means of Works to be executed on the same and other Lands for obtaining or improving the Outfall or otherwise, it shall be lawful for any Persons interested in the Lands so capable of being drained or improved, and who shall be desirous for

9 & 10 Vict. c. 101.

10 & 11 Vict. c. 11.

Persons desirous of draining Land may apply to the Sheriff

for Authority to effect the same.

for that Purpose to execute all or any of the Works herein-after mentioned, and shall be unable to execute such Works by reason of the Objection, Absence, or Disability of any Person whose Land, Property, or Rights would be entered upon, cut through, interfered with, or affected by or for the Purpose of such Works, to make Application to the Sheriff of the County within which the Lands, Property, or Rights so to be entered upon, cut through, interfered with, or affected are situated, or, in the event of such Lands, Property, or Rights being situated in more Counties than One, to the Sheriff of that County in which the Portion of such Lands, Property, or Rights most contiguous to the Lands to be drained and improved shall be situated, showing the Means by which such Drainage or Improvement may be effected, and praying for Authority to effect the same, under the Provisions of this Act; and to such Application shall be annexed a Map or Plan, showing the Land to which such Application shall relate, and the Land and Property required to be entered upon, cut through, or interfered with for the Purposes of such Drainage or Improvement, or likely to be affected by the proposed Works, and also the Rivers, Watercourses, Ditches, and Drains intended to be cleared, scoured, deepened, or embanked, and the proposed Variations, Divisions, Abridgments, or Enlargements of the same, and the new Cuts, Embankments, Drains, Watercourses, and other Works proposed to be made, and the Dams, Sluices, Weirs, or Floodgates to be lowered, altered, or removed, and the Engines and Machinery proposed to be erected for the Purposes of such Drainage or Improvement, and also Schedules showing the reputed Proprietors, Lessees, and Occupiers of the Lands proposed to be drained and improved, and the Lands and Property required to be entered upon, cut through, or interfered with respectively for the Purposes of such Drainage or Improvement, and also an Estimate of the Expence of the proposed Works, Engines, and Machinery, including the probable Amount of Money payable as Purchase and Compensation Money in respect of the Land and Property or Rights required to be entered upon, cut through, interfered with, or affected, and also a Statement of the actual Condition of the Lands proposed to be drained or improved, and of the probable increased Value of the Land consequent upon the Execution of the proposed Works; or, in case it shall appear to the Sheriff that a correct Judgment can be formed on the proposed Means of Drainage or Improvement without a Map or Plan and Estimates, including the whole of the Land to which such Application shall relate, then a Map or Plan showing only the proposed Works, or such other Map or Plan as the Sheriff shall think necessary; and the Persons by whom such Application shall be made shall, upon the Request of the Sheriff, furnish such further Details in respect of the said Map or Plan, Schedules, Estimates, and Statements, or any of them, as the Sheriff shall think fit for his Guidance in the Matter of the Application; and the Persons by whom such Application shall be made shall cause Copies of the said Application, Map or Plan, Schedules, Estimates, and Statements, or of such of them as shall have been furnished to the Sheriff under the Provisions herein-before contained, to be deposited in such convenient Place or Places as the Sheriff shall approve, within or adjoining to the Parish or One of the Parishes in which the Land to which such

Map or Plan to be annexed to such Application;

also an Estimate of the Expence, and a Statement of the actual Condition of the Lands.

Copies of Application, Map, &c. to be deposited, and to be open to Inspection.

Application shall relate shall be situate, there to remain open for public Inspection for a Period of Two Months; and the Deposit of such Copies shall be certified to the Sheriff in such Manner as he shall require; and all Persons shall be at liberty to inspect and make Copies of or Extracts from the said Application, Map or Plan, Schedules, Estimates, and Statement, or any of them, and Copies thereof or Extracts therefrom shall be made by such Person as the Sheriff shall direct for any Person who shall require the same, on Payment of the Expences of making such Copies or Extracts.

8 & 9 Vict. c. 19., with respect to Service of Notices on Owners, &c., incorporated with this Act.

II. And be it enacted, That the Clauses of the Lands Clauses Consolidation (*Scotland*) Act, 1845, with respect to the Service of Notices on Owners and Occupiers of Land, shall be incorporated with this Act, and that Notice, as therein provided for, shall be given of such Application having been presented, and of the Parishes in which Works are by such Application proposed to be executed, and of the Places in which Copies of the said Application, Map or Plan, Schedules, Estimates, and Statements have been deposited as aforesaid; and by such Notice all Parties interested, or in any way affected by the proposed Works, shall be required, on or before a Day to be therein named, not sooner than Six Weeks and not later than Eight Weeks from such Publication and Service as aforesaid of such Notice, to transmit in Writing to the Sheriff all Objections which such Parties shall think fit to make with respect to any thing by the said Application proposed to be done under the Provisions of this Act.

Objections to be sent to the Sheriff in Writing.

The Sheriff, before he proceeds to act, may require Security for Payment of Expences.

III. And be it enacted, That the Sheriff may in every Case, before he shall proceed to act or inquire on or in relation to any such Application as aforesaid, require such Provision or Security to be made or given as he shall think fit, for the Payment, by the Parties making the Application, of all Expences incident to or to be occasioned by the Inquiries and Proceedings in relation thereto.

Where Objections to any thing proposed to be done have been sent to the Sheriff, he shall appoint a qualified Person to inspect the Lands, &c.

IV. And be it enacted, That in every Case in which there shall have been transmitted to the Sheriff Objections to any thing by the said Application proposed to be done, the Sheriff shall appoint a properly qualified Person to inspect the Lands proposed to be drained or improved, and the Lands, Property, or Rights intended to be entered upon, cut through, interfered with, or affected by the Works in such Application mentioned, and to report to him the comparative Amount of Benefit to be derived and Damage to be done thereby, and whether in his Opinion the Lands proposed to be drained might be drained in any other Way than by the Works in such Application mentioned, and the comparative Advantages and Disadvantages of such several Ways of Drainage; and the Sheriff shall, if he shall think necessary, require the Parties interested in such Lands, Property, and Rights, or likely to be affected by any of the Works proposed to be executed for such Drainage or Improvement, to attend him, or the Person so to be appointed by him, at such Time as he shall fix subsequent to the Expiration of such Period of Six Weeks, and at such convenient Place or Places within the Parish or one of the Parishes wherein such Land so to be drained or improved shall be situate, or in the Vicinity thereof, as the said Sheriff

Sheriff shall specify in a Notice to be given Twenty-one Days at the least before the Time of such Meeting, by Advertisement in One or more Newspapers circulated in the County in which such Works are proposed to be executed; and at the Time and Place named in such Notice as aforesaid the Sheriff, or the Person so appointed by him as aforesaid, shall attend, and shall have Power to adjourn any Meeting from Time to Time, or hold any new Meeting as he may find necessary, and shall inquire into the Correctness of the Schedules containing the Names of such reputed Proprietors, Lessees, and Occupiers as aforesaid, and shall inquire whether the Notices by the Act required shall have been duly given and served, and shall hear and inquire into all such Objections as shall have been or shall be then and there made by any Person or Persons interested in any Land likely to be affected by any thing by such Application proposed to be done; and the said Sheriff, or Person appointed by him as aforesaid, shall receive and hear all such Evidence as may be offered to him in relation to the several Matters aforesaid.

If, after Inquiry, the Sheriff thinks that the Benefit derived from Drainage outweighs the Damage, he may authorize the Execution of the Works.

V. And be it enacted, That if after such Inquiry shall have been concluded the Sheriff shall be of opinion that the Benefit to be derived from such Drainage or Improvement outweighs the Damage to be done thereby, and the proposed Method of Drainage is in the whole Circumstances the best, and that such Drainage or Improvement may be effected without material Detriment to the Lands, Property, or Rights proposed to be entered upon, cut through, interfered with, or affected, and that the Damage to the Lands, Property, or Rights so proposed to be entered upon, cut through, interfered with, or affected may be adequately and effectually compensated under the Provisions of this Act, he may allow such Works, according to the Proposal in such Application contained, or with such Alterations therein as he may think fit; and it shall be lawful for him to authorize the Persons by whom such Application shall have been made, or any of them, or any other Person or Persons to be named or described by him in an Order to be issued by him, to execute the proposed Works, as the same shall have been allowed as aforesaid, within a Time to be limited in such Order; and such Order shall specify or describe directly, or by Reference to a Plan thereunto annexed, the Works thereby authorized to be executed; and the Person or Persons authorized in this Behalf by such Order, or the Person or Persons who shall be authorized by any supplementary Order of the Sheriff, shall have full Power to execute the Works in such Order specified and authorized, according to the Terms and Intent of such Order, and to maintain such Works for ever thereafter, subject nevertheless to the Provisions herein-after contained, and making Compensation, to be ascertained in manner herein-after mentioned, to all Persons, for any Damage occasioned to them by the Exercise of the Powers granted by such Order, or any of them: Provided always, that no such Order shall be made for allowing any Works to be executed in any Park, Policy, Garden, Pleasure Garden, or planted Walk, or the Avenue to any Mansion House, without the Consent in Writing of the Proprietor and Occupier thereof, and that every such Order of the Sheriff shall be subject to Review by the Court of Session according to the ordinary Forms of Law.

VI. And

Sheriff may award Costs in certain Cases.

VI. And be it enacted, That in the Case of Objections lodged before the Sheriff the Expences attending the Proceedings which may take place in consequence of such Objections shall be borne by the Persons by whom the Application is made, unless the Sheriff shall decide that any Objection is frivolous and vexatious, in which Case it shall be in the Power of the Sheriff to award such Part of the Expences as he shall think just to be paid by the Objector.

If no Objections lodged, Sheriff may authorize Works to be executed under Superintendence.

VII. Provided always, and be it enacted, That if no Objections shall be lodged as aforesaid the Sheriff shall, if he shall think fit, authorize the Works so applied for, or so much thereof as he shall think fit, to be executed according to the Plan or Description lodged with such Application, or with and under such Modifications and Alterations as shall appear to him to be proper, under the Inspection and Superintendence of a competent Person, to be appointed by him, and subject to the Restrictions and Exceptions herein-before contained.

Persons authorized to execute Works may enter upon Lands specified in Sheriff's Order, not being a Park, &c.

Nothing to supersede the present Law as to cleansing Streams, &c.

VIII. And be it enacted, That it shall be lawful for any Person authorized by the Sheriff as aforesaid to enter in and upon any Land specified in the Order of the Sheriff, not being a Park, Policy, Garden, Pleasure Ground, or planted Walk, or the Avenue to any Mansion House, and in Terms of such Order, but not otherwise, to widen, straighten, deepen, divert, scour, or cleanse any River, Stream, Ditch, Drain, Brook, Pool, or Watercourse, and to make, open, and cut any new Watercourse, Side-cut, Ditch or Drain, and to make or erect any Bank, Dam, Weir, Sluice, Flood Gate, Ditch, Drain, Tunnel, or other Works necessary or convenient for Drainage: Provided always, that nothing herein contained shall interfere with or be held to supersede the present Law authorizing and regulating the cleaning, scouring, and maintaining of Streams and Watercourses throughout their whole Length by the different Proprietors thereon, according to their respective Rights and Interests therein, and for recovering the Expences thereby incurred.

Obstructions on Rivers, &c. may be removed by Order of Sheriff.

IX. And be it enacted, That where the Drainage Outfall of any Lands is prevented or obstructed by the damming up of any River or Stream by any Weir, Dam, Sluice, or other Obstruction, it shall be lawful for any Person authorized by the Sheriff as aforesaid, and in Terms of his Order, but not otherwise, to enter in and upon the Lands where such Weir, Dam, Sluice, or other Obstruction is situated, except as herein-before excepted, and to remove, alter, lower, or otherwise interfere with the same, or with the Watercourses connected therewith, as shall be necessary or convenient for the Purposes of the Outfall: Provided always, that where such Weir, Dam, Sluice, or other Obstruction is for the Use of any Factory or Bleachwork, or of any Mill, it shall not be lawful to diminish the actual working Water Power of such Factory or Bleachwork, or of such Mill, without the Consent of the Proprietor or Occupier thereof, until a Steam Engine, or other Engine or Machinery of equal Power, shall have been erected for the Use of such Factory, Bleachwork, or Mill, and full Compensation paid to the Proprietor and Occupier thereof for the Difference in the Expence of using and maintaining such Steam Power, or other

Power or Machinery, as compared with the Expence of the Water Power theretofore enjoyed by them respectively.

For the Protection of Fisheries, Mills, and Houses.

X. Provided always, and be it enacted, That nothing herein contained shall authorize the Removal of any Obstruction in any River or Stream so as to occasion Injury to any Salmon Fishery, and that in all Cases where it shall be necessary to remove any Obstruction required for the Supply of Water to any Mill, the Proprietor of such Mill shall be entitled to require of the Person making the Application as aforesaid to purchase such Mill, and make full Compensation therefor in the Manner directed by this and the said Lands Clauses Consolidation (*Scotland*) Act, 1845, or such Proprietor may determine that the diminished Supply of Water Power shall be compensated as herein-before provided; and in such Case he shall be entitled to decide whether such Compensation shall be effected by Steam Power or by other Machinery or Power; and no Steam Engine shall be erected in or upon the Bank of any River or Stream in any Situation in which the same shall be a Nuisance or shall injure the Amenity of any Dwelling House, without the Consent in Writing of the Proprietor of such River or Stream and of the Owner and Occupier of such Dwelling House first had and obtained thereto.

Ornamental Waters not to be affected.

XI. And be it enacted, That no Order of the Sheriff under this Act shall authorize any Work whereby any Spring, Brook, or Stream supplying any Mansion, House, or Offices with Water, or contributing to the Amenity or Ornament of any Mansion, House, Park, Policy, Garden, or Pleasure Ground, shall be diverted or affected, without the Consent in Writing of the several Proprietors thereof.

No Entry to be made on Lands until Compensation is agreed upon.

XII. And be it enacted, That no Entry shall be made on any Land for the Purpose of executing any of the Works authorized as aforesaid, except with the Consent in Writing of the Proprietors thereof, until the Amount of Compensation for the Damage to be occasioned by such Entry, and by the Execution and Maintenance of the Works authorized as aforesaid, shall have been agreed upon or ascertained, as the Case may be, and paid, under the Provisions herein-after contained.

So much of 8 & 9 Vict. c. 19. as to Compensation, &c., incorporated with this Act.

XIII. And be it enacted, That the Compensation to be paid for the Damage or Injury to any Lands, Property, or Rights which may be entered upon, cut through, interfered with, or affected under any such Order of the Sheriff as aforesaid, may be agreed upon with the Persons and in the Manner provided by "The Lands Clauses Consolidation (*Scotland*) Act, 1845," with respect to the Purchase of Land otherwise than by Agreement; and all the Provisions of "The Lands Clauses Consolidation (*Scotland*) Act, 1845," in so far as the same are not inconsistent with this Act, shall be incorporated with this Act, and shall apply thereto, and to the Works and Purchases to be authorized by the Sheriff, in such and the same Manner as if the Works and Purchases which shall be authorized by the Sheriff had been set forth and authorized to be executed and made by this Act; and the Persons making the Application to the Sheriff shall be deemed the Promoters of the Undertaking: Provided always,

that in estimating the Amount of any Compensation to be paid as aforesaid it shall be lawful to take into account the Benefit which, in consequence of the Operations authorized to be executed, may accrue to the Party claiming Compensation, or to the Lands, Property, or Rights proposed to be interfered with or affected.

Power to Sheriff, on Application, to give Authority to enter upon Lands for the Purpose of upholding Works.

XIV. And be it enacted, That for the Purpose of maintaining, repairing, and upholding in an efficient State any Works authorized to be executed under the Authority of this Act it shall be lawful for the Sheriff, on the Application of any Person interested, to give Authority to enter from Time to Time upon the Lands where such Works have been executed, and to perform such Operations as may be necessary for maintaining, repairing, and upholding as aforesaid; and it shall be lawful for the Sheriff to allocate the Expence of such Operations among the Persons deriving Benefit therefrom in such Proportions as to him shall seem just.

Copies of Orders of Sheriff authorizing Works to be executed, to be made and deposited, and be open to Inspection.

XV. And be it enacted, That Two Copies of every Order of the Sheriff by which he shall authorize the Execution of Works under the Provisions of this Act shall be made, and one such Copy shall be deposited with the Sheriff Clerk of the County in which that Part of the Lands, Property, or Rights authorized to be entered upon, cut through, interfered with, or affected most contiguous to the Lands proposed to be drained and improved shall be situated, who is hereby required to deposit and keep the same among the Records of the said County, so that recourse may be had thereto by any Person interested in the Premises, and the other Copy shall be deposited with the Parish Schoolmaster for the Time being of the Parish in which the said Land, Property, or Rights shall be situated, to be kept by him and his Successors in Office with the public Books, Writings, and Papers of the Parish, or shall be deposited with such other fit Persons as the Sheriff shall approve; and all Persons interested therein may have Access to and be furnished with Copies of or Extracts from any such Copy, on giving reasonable Notice to the Person having Custody of the same, and on Payment of Two Shillings and Sixpence for such Inspection, and after the Rate of Three-pence for every Seventy-two Words contained in such Copy or Extract; and all such Copies of and Extracts from any such Copy of any such Order as aforesaid as shall be furnished by the Sheriff Clerk shall be signed by the Sheriff Clerk, purporting the same to be a true Copy or Extract; and every such Copy and Extract, so signed, shall be received in Evidence without further Proof thereof.

Navigable Rivers and Canals not to be altered, &c. without Consent of the Admiralty.

XVI. Provided always, and be it enacted, That it shall not be lawful for any Person acting or pretending to act under this Act to make or construct, alter or extend, on the Shore of the Sea, or of any Creek, Bay, or Arm of the Sea, or any navigable River communicating therewith, where and so far up the same as the Tide flows, any Work which might not have been lawfully made or constructed in case this Act had not been passed, without the previous Consent of the Lord High Admiral of the United Kingdom of *Great Britain* and *Ireland*, or the Commissioners for executing the Office of Lord High

High Admiral of the United Kingdom aforesaid, for the Time being, to be signified in Writing under the Hand of the Secretary of the Admiralty, and then only according to such Plan and under such Restrictions and Regulations as the said Lord High Admiral, or Commissioners for executing the Office of Lord High Admiral aforesaid, may approve of, such Approval being signified as last aforesaid; and if any such Work shall be commenced or completed contrary to the Provisions of this Act, it shall be lawful for the said Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral aforesaid, at his or their Discretion, to abate and to remove the same, and to restore the Site thereof to its former Condition, at the Cost of the Person or of any One or more of the Persons by whom the same shall have been so commenced or completed; and nothing herein contained shall authorize or enable any Person acting or pretending to act under this Act to make or construct any Work affecting any navigable River or Canal, or any River within the Provisions of any Act of Parliament, without the Consent of the Trustees or Proprietors of such River or Canal, and of Her Majesty's Commissioners of Woods and Forests, or to use or occupy Land between High or Low Water Mark, without the Consent of Her Majesty's Commissioners of Woods and Forests.

Definition of Terms in this Act.

XVII. And be it enacted, That in the Construction of this Act (except where the Nature of the Provision or the Context of the Act is repugnant to such Construction) "the Sheriff" shall mean the Sheriff or his Substitute; and the Word "Plan" shall extend to Drawings and Sections; and the Word "River" shall extend to all Rivers, Rivulets, Lakes, Canals, Streams, and Estuaries; and the Word "Person" and the Word "Proprietor" shall extend to the Queen's Majesty, and to all Bodies Politic, Corporate, or Collegiate; and every Word importing the Singular Number only shall extend and be applied to several Persons or Things as well as one Person or Thing; and every Word importing the Plural Number shall extend and be applied to one Person or Thing as well as several Persons or Things; and every Word importing the Masculine Gender only shall extend and be applied to a Female as well as a Male.

Act may be amended, &c.

XVIII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

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