CHAPTER clxxv.

An Act to confirm a Provisional Order under the Public Health (Scotland) Act, 1867, and Acts amending the same, relating to Linlithgow Water. [26th August 1889.] A.D. 1889.

WHEREAS Her Majesty's Secretary for Scotland has made the Provisional Order set forth in the schedule hereunto annexed under the provisions of the Public Health (Scotland) Act, 1867, and Acts amending the same: 30 & 31 Vict. c. 101.

And whereas it is necessary 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 as amended and set out in the schedule hereto annexed shall be and the same is hereby confirmed. Order in schedule confirmed.

2. This Act may be cited as the Linlithgow Water Supply Confirmation Act, 1889. Short title.

A.D. 1889.

Linlithgow Water.

SCHEDULE.

LINLITHGOW WATER.

(Public Health (Scotland) Act, 1867, and Acts amending the same.)

PROVISIONAL ORDER.

Whereas by the Public Health (Scotland) Act, 1867, it is, inter alia, enacted, section eighty-nine, that, with respect to the improvement of burghs having a population of less than ten thousand according to the census last taken, and not having a local Act for police purposes, "the Local Authority, if they think it expedient so "to do, may acquire and provide or arrange for a supply of water for the domestic "use of the inhabitants, and for that purpose may conduct water from any "lake, river or stream, may dig wells, make and maintain reservoirs, may "purchase, take upon lease, hire, construct, lay down and maintain such water-"works, pipes and premises, and do and execute all such works, matters and "things as shall be necessary and proper for the aforesaid purpose, and may "themselves furnish a supply of water, or contract or arrange with any other "person to furnish the same; and for the purposes aforesaid the Local Autho-"rity shall be held to have all the powers and rights given to promoters of "undertakings by the Lands Clauses Acts: Provided always, that they shall "make reasonable compensation for the water so taken by them, and for the "damage which may be done to any lands by reason of the exercise of the "powers hereby conferred in terms of the said Acts;" And that the Local Authority, if they have any surplus water after fully supplying what is required for domestic purposes, may supply water from such surplus to any public baths and washhouses or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the Local Authority and the persons desirous of being so supplied:

And whereas it is further provided by the said Act, section ninety, 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 lands 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 such land, 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 upon 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 situated, 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 Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement or any of them:

And whereas by the Secretary for Scotland Act, 1885, all powers and duties vested or imposed on the said Secretary of State by the Public Health (Scotland) Act, 1867, and Acts amending the same, were transferred to, vested in and imposed on the Secretary for Scotland:

And whereas the Police Commissioners of the burgh of Linlithgow, in the parish and county of Linlithgow, acting under the General Police and Improvement (Scotland) Act, 1862, which is in force within the said burgh, are the Local Authority within the said burgh under the said Public Health (Scotland) Act, 1867 (who are herein-after called "the Commissioners"), and which burgh contains less than ten thousand inhabitants, and has no local Act for police purposes:

And whereas a petition under the provisions of the Public Health (Scotland) Act, 1867, and the Public Health (Scotland) Amendment Act, 1871, and the Public Health (Scotland) Act (1867) Amendment Act, 1882, has been presented to me, as Secretary for Scotland, by the Commissioners, as the Local Authority aforesaid, setting forth, among other things, that the population of the said burgh of Linlithgow is about four thousand five hundred, and that the present supply of water to the said burgh is insufficient, and that it would be of great advantage to the inhabitants of the said burgh if the petitioners were authorised to obtain an additional supply of water for domestic use of the said inhabitants, and for trading and manufacturing and other purposes, under the provisions of the first-recited Act; and that the petitioners propose to construct works for the purpose of affording such additional supply of water, and to purchase and take, 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, the lands and water required for the purposes of the said water supply and the said works, all which lands, water and works are or will be situate in the parishes of Linlithgow and Torphichen, in the county of Linlithgow, and that the petitioners had published the advertisements and deposited the Plans, Sections and Book of Reference, and served the notices required by the ninetieth section of the first-recited Act; and the said petition prayed that a Provisional Order might be made, empowering the petitioners to put in force, with reference to the lands and water before-mentioned, the powers of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement:

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; and a Plan describing the works to be constructed and the lands and water intended to be taken for the purposes thereof and of the said water supply, 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 and water, have been signed by me with reference to this Order, and will be deposited with the Sheriff Clerk of the county of Linlithgow, at his office in Linlithgow:

Now, therefore, in pursuance of the powers contained in the Public Health (Scotland) Act, 1867, and transferred to and vested in me by the Secretary for Scotland Act, 1885, I, as Secretary for Scotland, do by this Provisional Order

A.D. 1889.

Linlithgow Water.

under my hand direct that from and after the passing of any Act of Parliament confirming the same:—

1. The expression "the special Act" in the Lands Clauses Acts and in the provisions of the Waterworks Clauses Act, 1863, hereinafter incorporated, shall mean and include this Order; and the expression "the Promoters of the undertaking" in the Lands Clauses Acts shall, with reference to this Order, mean the Commissioners; and the word "lands" in this Order shall have the meaning assigned to it in the Lands Clauses Acts, and shall include water and the right thereto.

2. The provisions of the Waterworks Clauses Act, 1863, with respect to the security of the reservoirs constructed by the Undertakers, are hereby incorporated with this Order.

3. The Commissioners may put in force, with reference to the lands and water described on the said Plan, and in the said Book of Reference, the provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement.

4. 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 shall not, in the exercise of the power of lateral deviation hereby given, construct any embankment or retaining wall of the reservoir hereby authorised of a greater height above the general surface of the ground than that shown on the deposited Plans, and five feet in addition: Provided also, that if they shall exercise the powers of vertical deviation hereby granted, they shall construct such embankment of such additional thickness at the base as shall be equal to five feet for every foot of additional height and shall make a corresponding addition to the strength of any retaining wall: Provided also that they may erect any water tower, stand pipe, or other light work of any height, which for the time being may be necessary or proper for the purposes of this Order.

5. 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.

6. Any works to be constructed in laying down, altering, replacing, or repairing any main sewer or branch sewer, aqueduct, conduit, or line of pipes by the Commissioners in the exercise of the powers conferred by this Order upon, across, or under, or in any way affecting any railway or canal belonging to the North British Railway Company or any of the bridges or works thereof, or any lands or property belonging to that Company, shall be done under the superintendence and to the reasonable satisfaction of the principal engineer for the time being of that Company, and according to plans to be reasonably approved by him before any such works are begun, but in all things at the expense of the Commissioners, and so as to cause as little injury as possible to any such railway, canal, bridges, banks, works, lands, or property, or interruption to the passage or conduct of traffic over or upon any such railway or canal, and if in consequence of the laying or keeping laid of any main sewer or branch sewer, aqueduct, conduit, or line of pipes authorised by this Order, any injury be caused to any such railway, canal, bridges, banks, works, lands, or property, or any interruption be caused to

such traffic, the Commissioners shall make full compensation to the said Company in respect of such injury or interruption, and the amount of such compensation shall be recoverable with full costs from the Commissioners by all and the same means as a simple contract debt is recoverable.

7. As full compensation to the lower riparian proprietors for the water of Preston to be abstracted under this Order, the Commissioners shall, during every day of twenty-four hours, provide and send down the Back Burn in the Little Glen of Preston, a preferential supply of thirty-five thousand gallons of water in a continuous and uniform stream. A sufficient gauge or sill, through or over which the said quantity of thirty-five thousand gallons shall be discharged, shall be provided in the said Back Burn in the Little Glen of Preston at a point to be fixed by Patrick Baron Seton, of Preston, and shall be constructed in the mode to be approved of by the said Patrick Baron Seton, and at the sight and to the satisfaction of Alexander Leslie, Civil Engineer, Edinburgh, and the said gauge or sill shall be erected and in all time hereafter maintained in good and efficient order and repair at the expense of the Commissioners who shall also bear the expense of all necessary inspections thereof by the said Alexander Leslie, whom failing, of an engineer to be appointed by the Sheriff of the Lothians and Peebles, or any of his substitutes, and the said gauge or sill shall be open to such inspection and examination only as is provided for in the third article of the Minute of Agreement third mentioned in the next immediately succeeding section of this Order, and subject to the conditions therein contained.

8. This Order is made and granted subject to the terms and conditions of:—

First. A Minute of Agreement between the said Commissioners of Police of Linlithgow on the first part, Andrew Francis Craig Gilmour, of Hiltly, on the second part, and Patrick Baron Seton, of Preston, on the third part, dated seventeenth, twentieth, and twenty-fifth days of May one thousand eight hundred and eighty-nine;

Second. A Minute of Agreement between the said Patrick Baron Seton on the first part, and the said Commissioners of Police on the second part, also dated seventeenth, twentieth, and twenty-fifth days of May one thousand eight hundred and eighty-nine; and

Third. A Minute of Agreement between Andrew Gilmour, Provost of the said Burgh, as representing the said Commissioners, and the said Andrew Francis Craig Gilmour, on the first part, and William Horn Henderson, as Factor and Commissioner for and on behalf of the said Patrick Baron Seton, on the second part, dated eighteenth May one thousand eight hundred and eighty-nine, and the whole rights, privileges, and interests of the said Patrick Baron Seton, as proprietor of the lands and estate of Preston and Hiltly, which are saved and reserved to him by the said agreements, shall be saved and reserved to him under this Order, and the Commissioners shall not be entitled to put in force any of the provisions of this Order, or of the Lands Clauses Acts, which shall affect the said rights, privileges, and interests of the said Patrick Baron Seton, except in so far as these rights, privileges, and interests have been acquired by the said Commissioners under and in terms of the said Minutes of Agreement.

A.D. 1889.

Linlithgow Water.

9. The Commissioners shall discharge or allow to flow from the Hiltly springs down the Haugh Burn during every day of twenty-four hours a preferential supply of seven thousand gallons of water in a continuous and uniform stream as compensation for the appropriating by them of the water from the Hiltly springs. A sufficient gauge shall be provided at the sight and to the satisfaction of the said Alexander Leslie at a point in the lands of Hiltly on the conduit or line of pipes marked on the deposited Plans, "Work No. 6 of Notice" and 400 yards or thereby from the commencement thereof through which the said quantity of seven thousand gallons shall be discharged, which shall be open to the inspection and examination of the several persons interested therein. Further, the Commissioners shall erect a watering trough in the westmost field of Hillhouse and shall give and maintain a supply to such trough at all times sufficient for the watering of cattle or other bestial in said field.

10. Nothing contained in this Order or in the Act confirming the same shall prejudice or affect the rights and interests of William Horn Henderson, of Nether Parkley, Linlithgow, in a lease entered into between Patrick Baron Seton, of Preston, and him, dated twenty-eighth March and third April, one thousand eight hundred and eighty-nine, whereby the said Patrick Baron Seton let to the said William Horn Henderson for ninety-nine years from Whit-Sunday, one thousand eight hundred and eighty-seven, the springs situated in the Upper Glen Plantation of Preston, with right to lead the same to Nether Parkley (subject always to the rights of Thomas Ford to take a certain amount of the water thereof to his house at Rivalsgreen), and also the said William Horn Henderson's right and interest in the said springs, and in the tanks, cisterns, pipes, and other appliances for storing of the said water, and for carrying the same from the said springs to the house of Nether Parkley; and the said Commissioners shall not be entitled to put in force any of the provisions of this Order, or of the Lands Clauses Acts, which shall affect the said rights and interests of the said William Horn Henderson.

11. The Commissioners shall be bound to save and reserve always and leave unaffected the whole right and interest of Thomas Ford of Rivalsgreen in a long lease entered into between Patrick Baron Seton of Preston and him dated 15th September and 9th October 1886, and the spring situated in the Upper Glen Plantation of Preston thereby let to the said Thomas Ford for 99 years from Whit-Sunday 1887, and the tanks, cisterns, pipes and other appliances used in carrying the water supply from the said spring to the house of Rivalsgreen, and the said Commissioners shall not impede in any way the powers of the said Thomas Ford of making and maintaining the said appliances, and they shall not be entitled to put in force any of the provisions of this Provisional Order or of the Lands Clauses Acts which shall affect the said rights and interests of the said Thomas Ford.

12. This Order is further made and granted subject to the terms of a Minute of Agreement between the Linlithgow District Committee of the County Road Trustees of the county of Linlithgow on the first part, and the said Police Commissioners on the second part, signed by the said Police Commissioners on the eighth day of July, one thousand eight hundred and eighty-nine, and the Commissioners shall not be entitled to put in force any of the provisions

of this Order, or of the Lands Clauses Acts which shall affect the rights and interests of the said County Road Trustees, except in accordance with the terms of the said Minute of Agreement.

13. The Commissioners shall not under the powers of this Order, without the consent of the Secretary for Scotland, purchase or acquire in any district within the meaning of the Public Health (Scotland) Act, 1867, ten or more houses which, after the passing of the Act confirming this Order, have been, or on the fifteenth day of December last were, occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers.

For the purposes of this section the expression "labouring class" includes mechanics, artisans, labourers, and others working for wages, hawkers, costermongers, persons not working for wages but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants whose income does not exceed an average of thirty shillings a week, and the families of any such persons who may be residing with them.

Given under my hand and seal at Whitehall this twentieth day of June one thousand eight hundred and eighty-nine.

Lothian.

(L.S.)

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