CHAPTER cxlvii.

An Act to authorise the Lowestoft Water, Gas, and Market Company to make New Service Reservoirs and other Works, and to raise more Money; and for other purposes. [2d August 1877.]

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WHEREAS "The Lowestoft Water, Gas, and Market Act, 1853," (in this Act called "the Act of 1853,") "The Lowestoft Water, Gas, and Market Act, 1857," (in this Act called "the Act of 1857,") and "The Lowestoft Water, Gas, and Market Act, 1863," (in this Act called "the Act of 1863,") relate to the Lowestoft Water, Gas, and Market Company, (in this Act called "the Company,") and the said three Acts are together in this Act referred to as the recited Acts:

16 & 17 Vict. c. xviii. 20 & 21 Vict. c. lvii. 26 & 27 Vict. c. clxix.

And whereas the existing and authorised capital in shares of the Company under the said Acts amounts to the sum of seventy thousand pounds, and consists of twenty-five thousand pounds of ordinary capital and forty-five thousand pounds of preference capital, divided into twenty-five thousand pounds of first preference entitled to preferential dividends at the rate of five pounds ten shillings per centum per annum in priority to the second preference, and twenty thousand pounds of second preference entitled to preferential dividends at the same rate of five pounds ten shillings per centum per annum:

And whereas under the recited Acts the Company have power to borrow on mortgage sums amounting to sixteen thousand five hundred pounds, which power has been exercised:

And whereas the demands upon the Company for water and gas have of late years greatly increased, and it is expedient that the Company should be authorised to acquire additional land, and to construct new tanks or service reservoirs, and enlarge their pumping station, and construct other works in connexion therewith

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respectively, for providing and affording an improved supply of water:

And whereas the Company have laid down gas and water mains or pipes under the harbour and adjacent land at Lowestoft, with the consent of the Great Eastern Railway Company, who are or claim to be owners of that harbour and land, and it is expedient that the Company should be authorised to maintain the said mains or pipes, and to lay down and maintain other mains and pipes under the said harbour, and in other property of the Great Eastern Railway Company adjoining or near thereto:

And whereas a plan and section showing the lines and levels of the works authorised by this Act, and also a book of reference containing the names of the owners and lessees, or reputed owners and lessees, and of the occupiers of the lands required, or which may be taken for the purposes or under the powers of this Act, were duly deposited with the clerk of the peace for the county of Suffolk, and are herein-after respectively referred to as the deposited plan, section, and book of reference:

And whereas it is expedient that the Company should be authorised to raise more money by the creation of shares or stock and by borrowing on mortgage:

And whereas the purposes of this Act cannot be effected without the authority of Parliament:

May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Short title.

1. This Act may be cited as "The Lowestoft Water, Gas, and Market Act, 1877."

Certain provisions of general Acts herein named incorporated.

2. "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869," "The Waterworks Clauses Act, 1847," "The Waterworks Clauses Act, 1863," the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the several matters following; (that is to say,) the distribution of the capital of the Company into shares, the transfer or transmission of shares, the payment of subscriptions and the means of enforcing the payment of calls, the forfeiture of shares for the nonpayment of calls, the remedies of creditors of the Company against the shareholders, the borrowing of money by the Company on mortgage or bond, the conversion of the borrowed money into capital, the consolidation of the shares into stock, the general meetings of the Company

and the exercise of the right of voting by the shareholders, the making of dividends, the giving of notices, and the provision to be made for affording access to the special Act by all parties interested; Parts I., II., and III. of "The Companies Clauses Act, 1863," relating respectively to cancellation and surrender of shares, to additional capital, and to debenture stock; and "The Companies Clauses Act, 1869," shall, except where expressly varied by this Act, be incorporated with and form part of this Act, and the Acts and parts of Acts so incorporated are in this Act referred to as the incorporated Acts.

Interpretation of terms.

3. In this Act—

The several words and expressions to which meanings are assigned by the incorporated Acts shall have the same respective meanings;

In the incorporated Acts and in this Act—

The expression "superior courts," or "courts of competent jurisdiction," or any other like expression, shall be and read have effect as if the debt or demand with respect to which the expression is used was a simple contract debt, and not a debt or demand created by statute;

unless in any of the before-mentioned cases there is something in the subject or context repugnant to such construction.

Power to make works according to deposited plans.

4. Subject to the provisions of this Act, the Company may make and maintain, in the lines and according to the levels shown on the deposited plan and section, the service reservoirs and other works in the county of Suffolk shown on the said plan, amongst which are comprised the following principal works; (that is to say,)

(1.) A service reservoir (No. 1) to be situate in the parish of Lowestoft in or near a certain field called Church Ollands;

(2.) A service reservoir (No. 2) to be situate adjoining or near to the Company's existing service reservoir near Church Lane;

(3.) A line of pipes (No. 1) from the Company's existing main water pipes in the road leading from Lowestoft to Great Yarmouth to service reservoir No. 1;

(4.) A line of pipes (No. 2) from service reservoir No. 1 to the Company's existing main water pipes in Church Lane;

(5.) A line of pipes (No. 3) from the Company's existing main water pipes in the road leading from Lowestoft to Great Yarmouth to service reservoir No. 2;

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(6.) A line of pipes (No. 4) from the Company's existing main water pipes in the London Road, passing thence under the harbour and premises of the Great Eastern Railway Company to the Company's existing main water pipes in Belvedere Road;

(7.) A line of pipes (No. 5) to commence and terminate at or near to the same points as line of pipes No. 4, but by junctions with the existing main gas pipes of the Company;

and may enlarge their pumping-station in the said parish of Lound, and construct all proper filter beds, shafts, wells, tanks, driftways, culverts, tunnels, channels, conduits, pipes, bridges, roads, approaches, sewers, drains, embankments, engines, machinery, valves, works, and conveniences connected with or incident to any of the said works respectively, and may enter upon, take, and use such of the lands delineated on the deposited plan and described in the deposited book of reference as may be required for those purposes; and may take, impound, use, get, and appropriate for the purposes of this Act any water they can obtain by means of the said works; and may maintain and from time to time repair, remove, and relay the water and gas mains laid by them under the said harbour and premises of the Great Eastern Railway Company adjoining or near thereto as if the same had been laid under the powers of this Act, but subject and without prejudice to any agreement for the time being subsisting between the Company and the Great Eastern Railway Company or other the owners of the said harbour and premises with respect to the said mains.

Works at the harbour to be executed under superintendence of Great Eastern Railway Company's engineer, &c.

5. Before commencing any of the works by this Act authorised affecting the said harbour and premises of the Great Eastern Railway Company, the Company shall give fourteen days notice in writing under the hand of their secretary to the Great Eastern Railway Company of their intention to commence such works, and shall not commence such works until the plans thereof have been submitted by the Company to the engineer for the time being of the Great Eastern Railway Company, and approved of by him, within a reasonable time after they have been so submitted to him; and in the event of any difference arising as to the said plans, such difference shall be settled by arbitration in the manner provided by the Companies Clauses Consolidation Act, 1845. The said works shall be executed in accordance with the said plans under the superintendence of the engineer, and to the reasonable satisfaction of the Great Eastern Railway Company: Provided always, that if at the expiration of such fourteen days no objection to the said plans shall have been notified to the Company in writing under the

hand of the engineer for the time being of the Great Eastern Railway Company, such plans shall be deemed to have been duly approved, and if at the time appointed for the commencement, or at any time during the progress of the works, the engineer of the Great Eastern Railway Company shall not attend, the Company during his absence may commence and proceed with the works without such superintendence.

Company to be liable for damages.

6. The Company shall be liable for and keep the Great Eastern Railway Company indemnified from all damages whatsoever arising from the construction of the works of the Company at the said harbour and premises, and shall also repay to the Great Eastern Railway Company the cost of all works which it may be necessary for that Company to execute in consequence of the construction of any works of the Company by this Act authorised.

Limits of lateral and vertical deviation.

7. In the construction of the works authorised by this Act, the Company may deviate laterally from the lines thereof, as shown on the deposited plan and described in the book of reference, to the extent of the limits of lateral deviation marked thereon, and may deviate vertically from the levels shown on the deposited sections, in the case of reservoirs to any extent not exceeding five feet upwards and seven feet downwards, and in the case of other works to any extent not exceeding ten feet either upwards or downwards.

Additional lands.

8. The Company may purchase by agreement for any of the purposes of this Act, in addition to the lands delineated on the deposited plan and referred to in the deposited book of reference, any quantity of land not exceeding in the whole five acres.

Works for the manufacture of gas not to be constructed on land acquired under Act.

9. The Company shall not upon any land which may be acquired by them under the powers of this Act construct any works for the manufacture or conversion of gas or residual products evolved in the manufacture of gas, and they shall not store gas upon any such land without the previous consent in writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the site where such gas is intended to be stored.

Powers for compulsory purchases limited.

10. The powers of the Company for the compulsory purchase of lands for any of the purposes of this Act shall not be exercised after the expiration of three years from the passing of this Act.

Power to take easements, &c. by agreement.

11. Persons empowered by the Lands Clauses Consolidation Act, 1845, to sell and convey or release lands may, if they think fit, subject to the provisions of that Act, and of the Lands Clauses Consolidation Acts Amendment Act, 1860, and of this Act, grant to the Company

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any easement, right, or privilege, not being an easement of water, required for the purposes of this Act, in, over, or affecting any such lands, and the provisions of the said Acts with respect to lands and rentcharges, so far as the same are applicable in this behalf, shall extend and apply to such grants and to such easements, rights, and privileges as aforesaid respectively.

Period for completion of waterworks.

12. If the waterworks by this Act authorised to be constructed shall not be completed within twelve years from the passing of this Act, then on the expiration of that period the powers of the Company under this Act for making the waterworks, or otherwise in relation thereto, shall cease to be exercised, except as to so much as is then completed: Provided always, that, subject to the provisions of this Act, the Company from time to time may alter, enlarge, renew, relay, and extend their engines, machinery, pumps, wells, mains, and pipes in such way and manner as shall be necessary for obtaining and supplying water within the limits of the recited Acts and this Act.

13. With respect to the Post Office telegraph system, the following provisions shall take effect:

Restriction on works affecting Post Office telegraph system.

(A.) The Company shall not by any work or thing interfere with any telegraph post, wire, tube, apparatus, or work of Her Majesty's Postmaster General, or execute or do any work or thing causing or likely to cause any interruption of or impediment to postal telegraphic communication, unless and until the Company have given to the Postmaster General one calendar month's previous notice in writing of their intention to execute or do the proposed work or thing, specifying all necessary and proper particulars relating thereto, and unless and until the Postmaster General has approved of the proposed work or thing by writing delivered to the Company, or has failed to approve or to disapprove of the same for one calendar month after service of such notice and particulars on him: Provided always, that this section shall not be deemed to prevent the Company executing any repairs or other works or things which shall be necessary to prevent accidents, and in any such case the Company shall forthwith give notice to the Postmaster General of any such interference and the reason for the same:

Power for Postmaster General to annex conditions.

(B.) Her Majesty's Postmaster General may annex to his approval under this Act of any work or thing such reasonable terms and conditions as to the time and mode of execution of

any such work or thing as he thinks fit, and the Company shall observe and perform the same:

Power of entry for Postmaster General.

(C.) The engineer and other officers and servants and workmen of Her Majesty's Postmaster General may at and for all reasonable times enter on and into and remain on any of the highways, lands, and works of the Company for the purpose of examining, repairing, altering, or removing any telegraph post, wire, tube, apparatus, or work the property of the Postmaster General being thereon:

Compensation by Company to Postmaster General, and penalty.

(D.) The Company shall from time to time make full compensation to Her Majesty's Postmaster General for any expense, loss, or damage which he is put to or sustains by reason of the Company by any work or thing executed or done by them interfering with any telegraph post, wire, tube, apparatus, or work of the Postmaster General; and if at any time any such work or thing causes an interruption of or impediment to postal telegraphic communication, the Company shall, in addition to making compensation as aforesaid, be liable to forfeit a sum not exceeding twenty pounds for every twenty-four hours during which that interruption or impediment continues; and the amount of any such expense, loss, damage, or forfeiture shall be a debt due from the Company to the Crown, and be recoverable accordingly with costs, or the same may be recovered with costs on behalf of the Postmaster General as a penalty is recoverable from the Company:

(E.) Inasmuch as it is contemplated to introduce a general measure for the better protection of the national telegraphs, and to enlarge the powers of the Postmaster General in relation thereto, this section shall only remain in force for one year from the date of the passing of this Act, and to the end of the then next session of Parliament.

Power to raise additional capital.

14. The Company may, subject to the provisions of Part II. of "The Companies Clauses Act, 1863," raise any additional capital, not exceeding in the whole eighty thousand pounds, by the issue, at their option, of new ordinary shares or stock, or new preference shares or stock, or wholly or partially by any one or more of those modes respectively; but the Company shall not issue any share of less nominal value than ten pounds, nor shall any share vest in the person or corporation accepting the same, unless and until a sum not being less than one fifth of the amount of such share shall have been paid in respect thereof.

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Limiting amount of calls.

15. Twenty per centum shall be the largest amount of a call which the Company may make in respect of any share, and there shall be an interval of not less than three months between any two calls, and the Company shall not call up more than three fourths of the amount of a share in any year.

Except as otherwise provided, new shares or stock to be subject to the same incidents as other shares or stock.

16. Except as by this Act otherwise provided, the capital in new shares or stock created by the Company under this Act, and the new shares or stock therein, and the holders thereof respectively shall be subject and entitled to the same powers, provisions, liabilities, rights, privileges, and incidents whatsoever, in all respects as if that capital were part of the now existing capital of the Company of the same class or description, and the new shares or stock were shares or stock in that capital. The capital in new shares or stock so created shall form part of the capital of the Company.

Dividends on new shares or stock.

17. Every person who becomes entitled to new shares or stock shall in respect of the same be a holder of shares or stock in the Company, and shall be entitled to a dividend with the other holders of shares or stock of the same class or description proportioned to the whole amount from time to time called and paid on such new shares, or to the whole amount of such stock, as the case may be: Provided always, that the prescribed rate of dividend on any ordinary shares or stock created under the powers of this Act shall not exceed seven pounds per centum per annum, and the prescribed rate of dividend on any preference shares or stock created under the powers of this Act shall not exceed six pounds per centum per annum.

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

18. In case in any half year the net revenues of the Company applicable to dividend shall be insufficient to pay the full amount of the prescribed maximum rate of dividend on each class of ordinary stock or shares in the capital of the Company, a rateable deduction shall be made in the dividend of each class.

Power to borrow on mortgage.

19. The Company may, in respect of the additional capital of eighty thousand pounds which they are by this Act authorised to raise from time to time, borrow on mortgage, as herein-after mentioned, such sums as they think fit, not exceeding in the whole twenty thousand pounds, of which sum they may from time to time borrow an equal fourth part in respect of an equal fourth part of that capital, but no part of any such equal fourth part so to be borrowed as aforesaid shall be borrowed until shares for so much of the whole of the respective fourth part of capital in respect of

which it is borrowed as is to be raised by means of shares are issued and accepted, and one half thereof is paid up, and the Company have proved to the justice who is to certify under the fortieth section of "The Companies Clauses Consolidation Act, 1845," before he so certifies, that the whole of such portion of capital has been issued and accepted, and that one half thereof has been paid up, and that not less than one-fifth part of the amount of each separate share in so much of the portion of capital in respect of which the borrowing powers are to be exercised as is to be raised by means of shares has been paid on account thereof before or at the time of the issue or acceptance thereof, and until stock for one half of so much of the same portion of capital as is to be raised by means of stock is fully paid up, and the Company have also proved to such justice as aforesaid, before he so certifies, that such shares or stock, as the case may be, were issued and accepted, and paid up bonâ fide, and are held by the persons or corporations to whom the same were issued, or their executors, administrators, successors, or assigns, and also if any part of the respective capital is raised by shares that such persons or corporations, or their executors, administrators, successors, or assigns, are legally liable for the same; and upon production to such justice of the books of the Company, and of such other evidence as he shall think sufficient, he shall grant a certificate that the proofs aforesaid have been given, which certificate shall be sufficient evidence thereof.

Mortgages not to be converted into capital with dividend above 5 per cent.

20. Notwithstanding anything in "The Companies Clauses Consolidation Act, 1845," contained to the contrary, it shall not be lawful for the Company to raise the money by this Act authorised to be borrowed on mortgage, or any part thereof, by the creation of shares or stock instead of borrowing, or to convert into capital the amount borrowed under the provisions of this Act, or any part thereof, unless in either case all dividends upon the shares or stock are limited to an amount not exceeding the rate of five pounds per centum per annum.

Provisions of recited Acts as to appointment of a receiver repealed.

21. The provisions of the recited Acts authorising the appointment of a receiver for principal or interest moneys due upon any mortgages of the Company are hereby repealed, but subject and without prejudice to any appointment of a receiver or proceedings taken under or by virtue of such provisions, and in force or pending at the time of the passing of this Act.

Arrears may be enforced by appointment of a receiver.

22. The mortgagees of the Company may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages by the appointment of a receiver. In order to

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authorise the appointment of a receiver in respect of arrears of principal, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than three thousand six hundred and fifty pounds in the whole.

Debenture stock.

23. The Company may create and issue debenture stock, subject to the provisions of Part III. of "The Companies Clauses Act, 1863;" but, notwithstanding anything therein contained, the interest of all debenture stock at any time after the passing of this Act created and issued by the Company shall rank pari passu with the interest of all mortgages at any time after the passing of this Act granted by the Company, and shall have priority over all principal moneys secured by such mortgages.

Existing mortgages to have priority.

24. All mortgages granted by the Company in pursuance of the powers of any Act of Parliament before the passing of this Act, and subsisting at the passing thereof, shall, during the continuance of such mortgages and subject to the provisions of the Acts under which such mortgages were respectively granted, have priority over any mortgages granted by virtue of this Act; but nothing in this section contained shall affect any priority of the interest of any debenture stock at any time created and issued by the Company.

Priority of mortgages over other debts.

25. All money raised or to be raised by the Company on mortgage or debenture stock under the provisions of this Act shall have priority against the Company, and the property from time to time of the Company, over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act: Provided always, that this priority shall not affect any claim against the Company or their property in respect of any rent-charge granted or to be granted by them in pursuance of "The Lands Clauses Consolidation Act, 1845," or "The Lands Clauses Consolidation Acts Amendment Act, 1860," or in respect of any rent or sum reserved by or payable under any lease granted or made to the Company in pursuance of any Act relating to the Company which is entitled to rank in priority to or pari passu with the interest on their mortgages or debenture stock, nor shall anything in this section contained affect any claim for land taken, used, or occupied by the Company for the purposes of the Company's undertaking and works, or injuriously affected by the construction thereof, or by the exercise of any powers conferred upon the Company.

Sale of new shares or debenture stock by auction.

26. Notwithstanding anything in this Act, or in any other Act relating to the Company, contained, the Company from time to time, if they so think fit, may sell any new shares or debenture stock created under this Act by public auction, at such times, in

such manner, subject to such conditions, and with or without any reserved biddings, as the directors of the Company think fit: Provided that no such share or debenture stock shall be so disposed of at any sum less than the nominal amount thereof.

Sale to be advertised.

27. The intention of the Company to sell any new shares or debenture stock by auction shall be advertised for two successive weeks in two or more newspapers published in the county of Suffolk.

Premium on sale to be applied as capital, but not to bear dividend.

28. Any sum of money obtained by the Company by way of premium for any new shares or debenture stock sold by them by auction shall be deemed capital, and shall be applied for the purposes of the undertaking of the Company, but shall not be deemed a part of the capital of the Company authorised to be raised by this Act or by any other Act relating to the Company, and no dividend shall be declared or paid by the Company thereon.

Application of money raised under the Act.

29. All moneys which the Company are by this Act authorised to raise by new shares, stock, debenture stock, or mortgage shall be applied only to the purposes of the recited Acts and this Act, or one of them.

Power to reduce number of directors.

30. The Company may from time to time reduce the number of the directors so that the number when reduced be not more than seven or less than five, and when the number is reduced to five the quorum shall be three.

Expenses of Act.

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

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