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Cap. lxx.

An Act for incorporating the *Scottish* Drainage and Improvement Company, and to afford greater Facilities for the Improvement of Land in *Scotland*. [7th *July* 1856.]

WHEREAS the Improvement and Reclamation of Land by draining, irrigating, warping, embanking, and inclosing, the making of Roads, the Erection and Improvement of Farm Buildings, Engine Houses, and other Machinery, trenching and clearing of Land, and planting for the Purpose of Shelter and otherwise, and the Construction and Improvement of Jetties or Landing Places on the Sea Coast or on the Banks of Rivers and Lakes, will materially benefit Agriculture, and will be of great public and local Advantage: And whereas the several Persons herein-after named, with others, are willing to undertake and assist in the Execution of such Works and Improvements in *Scotland*, and it is expedient to incorporate them as a Company, with such Powers and Authorities as are by this Act granted, and that such Provisions for facilitating the Execution of such Works and Improvements, and for carrying into effect the Purposes of the said Company, as are herein-after contained, should be made; but these Objects 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:

Short Title.

I. In citing this Act for any Purpose whatsoever, it shall be sufficient to use the Expression "The *Scottish* Drainage and Improvement Company's Act, 1856."

8 & 9 Vict. c. 17. and certain Provisions of 8 & 9 Vict. c. 19. incorporated with Act.

II. "The Companies Clauses Consolidation (*Scotland*) Act, 1845," and the Provisions of "The Lands Clauses Consolidation (*Scotland*) Act, 1845," with respect to the Purchase of Lands by Agreement, shall apply to and be incorporated with this Act; and the Word "Owner" in the said Lands Clauses Consolidation (*Scotland*) Act, 1845, shall, in applying the Provisions of that Act to this Act, be read as denoting "a Landowner" as used in this Act; and the Expression "the Promoters of the Undertaking" used in that Act shall, in applying the aforesaid Provisions, in respect of such Purchase of Lands, be read as denoting the Company hereby incorporated.

Interpretation of Terms.

III. In the Construction of this Act the following Words and Expressions, unless there be something in the Subject or Context repugnant to such Construction, shall have the following Meanings assigned to them respectively; (that is to say,)

The Expression "the Company" shall denote the Company hereby incorporated:

The Expressions "the Inclosure Commissioners" or "the Commissioners" shall denote the Inclosure Commissioners for *England* and *Wales*:

The Expression "the Board of Trade" shall denote the Lords of the Committee of Her Majesty's Privy Council for Trade and Plantations:

The Word "Landowner" shall denote or include every Person being a Fiar, Liferenter, Heir of Entail, or having a limited but not less than a Life Interest in the Land, and the Husband, Tutor, Curator, or other Guardian or Trustee of any such Person, and every Trustee having or acting for or representing a Person having a like Interest in the Land, which Persons respectively shall be in the actual Possession of the Land, or in Receipt of the Rents payable on the Tacks, Leases, or Tenancies of the Tenants in the actual Possession thereof:

The Word "Person" shall denote and include any Body Corporate, whether Lay, Ecclesiastical, or Collegiate, as well as an Individual, and Commissioners acting for special Purposes under the Authority of Parliament:

The Word "Lands" shall be held to include Land and Sands covered by the Sea, Waste and Moor Land, and every other Description of Property under the Term "Lands" used in the said "Lands Clauses Consolidation (*Scotland*) Act, 1845:"

The Word "Improvements" shall mean and include all Improvements which may be made under the Provisions of this Act as herein-after mentioned:

The Word "Works" shall include such Works as in the Judgment of the Inclosure Commissioners may be necessary for carrying into effect any such Improvements.

Improvements authorized to be made.

IV. The Improvements which may be made under the Provisions of this Act shall be in respect of One or more of the following Matters, of which the Inclosure Commissioners shall approve; (that is to say,)

First, The Drainage of Lands:

Second, The Irrigation and Warping of Lands:

Third, The embanking of Land from the Sea or tidal Waters, or from Lakes, Rivers, or Streams, in a permanent Manner:

Fourth, The inclosing any Land, or improving Drains, Streams, or Watercourses of the Land:

Fifth, The Reclamation of any Land lying waste:

Sixth, The making of permanent Farm Roads:

Seventh, The clearing of Land:

Eighth, The Erection of Farmhouses and other Buildings required for Farm Purposes, and the Improvement of and Additions to Farmhouses and other Buildings for Farm Purposes already erected, to the Extent of Three Fourths of the Outlay, so as such Improvements or Additions be of a permanent Nature:

Ninth, The planting for Shelter or for periodical Cuttings, which will increase the permanent Value of the Land:

Tenth, The Construction or Erection of any Engine Houses, Water Wheels, Mills, Kilns, Shafts, Wells, Tanks, Reservoirs, Dams, Leads, Pipes, Conduits, Watercourses, Bridges, Weirs, Sluices, Floodgates, and Hatches, which will increase the Value of any Land for agricultural or farming Purposes:

Eleventh, The Erection of any Engines or Machinery of a permanent Nature, in connexion with and in the effecting any Drainage Works or Improvements in Drainage by this Act authorized:

Twelfth, The Construction or Improvement of Jetties or Landing Places on the Sea Coast or on the Banks of navigable Rivers or Lakes for the Transport of Cattle, Sheep, or other agricultural Stock and Produce, provided such Works add to the permanent Value of the adjoining Lands belonging to the Person in whose Behalf the Work is undertaken to an Extent proportioned to the Expense thereof.

V. For

Improvements to include the working of Stone, &c.

V. For the Purpose of effecting any Improvement under this Act, it shall be lawful to get and work Freestone, Limestone, Clay, Sand, and any other Mineral or Substance out of the Land to be improved or charged, and to make Tramroads and other Ways, and to burn and make Bricks, Tiles, and other Things to be used in effecting such Improvements, and also for the same Purpose to cut down and use any Timber and Trees not planted or serving for Shelter or Ornament.

Incorporation of Company.

VI. Sir *John Stuart Forbes* Baronet, Sir *William Alexander Maxwell* Baronet, Sir *Archibald Hope* Baronet, Sir *James Ramsay* Baronet, *Robert Grandberry Baillie*, *George Paterson*, *James Morgan*, *David Wight*, *William Bell*, *William Skinner*, *John Maxton*, *John Ronald*, *Robert Marshall*, *Alexander Aitken*, *William Ritchie*, and *George Clark*, and all other Persons who have subscribed or shall subscribe any Portion of the Capital of the Company, and their respective Successors, Executors, and Assignees, shall be and are hereby united into a Company for carrying this Act into execution, and for such Purposes shall be a Body Corporate by the Name of "The *Scottish* Drainage and Improvement Company," and by such Name shall have perpetual Succession and a Common Seal, and may sue and be sued, and may purchase, take, hold, sell, and dispose of Lands and all other Property, heritable or moveable; provided, that the Company shall not at any one and the same Time hold for permanent Purposes any Quantity of Land beyond Fifty Acres; but such Restriction shall not operate, by way of Condition or otherwise, so as to prejudice any Purchaser or other Person claiming under or through this Act.

Domicile of Company.

VII. The Domicile of the Company shall be at *Edinburgh*.

First Ordinary Meeting.

VIII. The First Ordinary Meeting of the Company shall be held within Twelve Months next after the passing of this Act.

Requisition for Extraordinary Meeting.

IX. Ten Shareholders at least, holding in the aggregate not less than One hundred Shares, may require the Directors to call an Extraordinary Meeting.

Quorum for General Meeting.

X. The Quorum for every General Meeting shall be Ten Shareholders, holding in the aggregate not less than One hundred Shares.

General Meeting may remove Directors and Auditors.

XI. Any General Meeting, convened with Notice of the Purpose, may remove from his Office any Director and any Auditor for Misconduct, Negligence, or other Cause deemed by such Meeting sufficient, but so that a qualified Shareholder be at the same Meeting appointed to fill his Place; and the Shareholder so appointed shall

continue in Office as a Director or Auditor so long only as the Person in whose Place he is appointed would have been entitled to continue had he remained in Office.

Number and Qualification of Directors.

XII. The Number of Directors shall be Six, and the Qualification of a Director shall be his holding in his own Right not less than Five hundred Pounds of the Stock of the Company.

First Directors.

XIII. *Robert Grandberry Baillie*, *George Paterson*, *James Morgan*, *William Skinner*, *John Maxton*, and *John Ronald*, shall be the First Directors of the Company, and shall continue in Office from the passing of this Act until the First Ordinary Meeting of the Company, at which Meeting Directors shall be chosen and appointed by the Shareholders.

Directors to appoint Officers.

XIV. The Directors shall appoint and discharge all the Officers of the Company, except the Auditors, and shall from Time to Time determine their respective Remuneration, Duties, and Regulations.

Quorum of Directors.

XV. The Quorum of a Meeting of Directors shall be Three.

Committee of Directors.

XVI. The Quorum of a Committee of Directors shall be Two.

Auditors.

XVII. It shall not be necessary that an Auditor be a Shareholder of the Company.

Periods for balancing Books.

XVIII. The Books of the Company shall be balanced on the Thirtieth Day of *June* and the Thirty-first Day of *December* in every Year.

Capital.

XIX. The Capital of the Company shall consist of One hundred thousand Pounds in Five thousand Shares of Twenty Pounds each.

Company may raise additional Capital by Creation of new Shares.

XX. The Company may from Time to Time, with the Consent of Three Fourths of the Votes of the Shareholders present, in Person or by Proxy, at any General Meeting of the Company convened with Notice of the Purpose, create any further Capital not exceeding, together with the Capital then existing, Two hundred thousand Pounds in the whole, by the Creation and Issue of new Shares of such Denomination, and on such Terms and Conditions, and at such Time and Times respectively, as may be determined by such Meeting, or as such Meeting by such Vote may authorize the Directors to determine; provided, that no such new Shares shall bear or be entitled to any Privilege or Preference over the then existing Shares.

Calls.

XXI. No Call upon the Shares shall exceed Two Pounds upon each Share, nor shall be made at less than an Interval of Two

Months from the last preceding Call, and no more than One Half of the total Amount of any Share shall be called thereon in any One Year.

Reserved Fund may be created.

XXII. The Directors may from Time to Time, before apportioning the net Profits available for Dividend, if they shall think fit, deduct and set apart any Sum or Sums for creating a Reserve or Contingent Fund, not exceeding in the whole Twenty-five thousand Pounds, and may apply and use any Portion of such Reserve Fund as Capital of the Company, provided that no greater Amount in the whole of such Reserve than Ten thousand Pounds shall be applied as Capital without the Consent of the Proprietors at a General Meeting.

Capital for Works.

XXIII. Provided always, That the Company shall not apply for the Execution by them of any Works by this Act authorized any Part exceeding Forty thousand Pounds of the Capital, and the Company shall keep separate and distinct Accounts of the Monies so applied by them.

Receipts of Guardian, &c. sufficient.

XXIV. When any Money is payable to any Shareholder, being a Minor or Idiot, furious or fatuous Person, the Receipt of the Guardian, Tutor, or Curator of such Minor, or of the Committee or Curator of such Idiot, Lunatic, or furious or fatuous Person, shall be a sufficient Discharge to the Company for such Money.

Provision for Cases of Bankruptcy or Insolvency.

XXV. If any Person against whom the Company shall have any Claim or Demand shall become subject, either voluntarily or involuntarily, to the Operation of any Act relating to Bankrupts or Insolvent Debtors, or to Sequestrations or Cessio bonorum, the Secretary or Managing Director may, in all Proceedings against the Estate of such Person, represent the Company and act in their Behalf in all respects.

Newspapers for Advertisements.

XXVI. The Newspapers in which Advertisements relating to the Affairs of the Company shall be inserted shall, except by this Act otherwise specially provided, be such Newspaper or Newspapers published in *Scotland* or elsewhere as the Directors shall from Time to Time determine, with the Sanction of the Inclosure Commissioners.

Company may advance Money for effecting Improvements of Lands.

XXVII. The Company may from Time to Time make Advances for the executing or aiding the Execution of Improvements of Lands on such Securities upon or affecting Lands or the Rents and Profits of Lands, or on such Securities being partly Securities upon or affecting Lands or the Rents and Profits of Lands and partly Assurances on Lives or Survivorships, and with such Provisions for the Repayment of such Advances, either in gross or by way of Annuity or other periodical Payment, as the Directors may think fit.

XXVIII. The

Company may contract with Public Bodies for executing Works.

XXVIII. The Company may from Time to Time contract with any Commissioners of Towns, Local Board of Health, Corporation, Trustees, or other Body having under any Act Authority to make Contracts for any Improvements or Works, for the Execution by the Company of any such Improvements or Works, and may execute the same accordingly.

Certain Provisions of the Act 9 & 10 Vict. c. 101. to extend to Proceedings under this Act.

XXIX. All the Provisions of the Act of the Ninth and Tenth Years of the Reign of Her present Majesty, 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 of any and every other Act for the Time being in force relating to the Inclosure Commissioners, so far as the same concern or are auxiliary to the Proceedings and Inquiries of the said Commissioners under the Authority of such Acts, or any of them, and the Authentication of Instruments, shall, except as in this Act otherwise provided, extend and be applicable to their Proceedings and Inquiries and the Authentication of Instruments under this Act.

Assistant Commissioner may take Declaration and examine Witnesses.

XXX. Every Assistant Inclosure Commissioner acting by the Authority and in the Execution of this Act may receive Declarations and Statements, and examine upon Declaration all such Persons as may attend before him on the Matter, Inquiry, or Proceeding under the Authority of this Act.

Attorneys may be appointed by Persons interested.

XXXI. Any Landowner may, by a Power of Attorney given in Writing under his Hand, appoint any Person to be an Agent to act for him for the Purposes of this Act, and all Things which by this Act shall or may be done by or with relation to any such Landowner may be done by or with relation to the Agent so duly authorized by such Landowner; and every such Agent shall have full Power, in the Name and on behalf of his Principal, to act in all respects for the Purposes of this Act, and every Person shall be bound by the Acts of any such Agent, according to the Authority committed to him, as fully as if the Principal of such Agent had so acted; and the Power of Attorney under which the Agent acts, or a Copy thereof, authenticated by the Signatures of Two Witnesses, shall be deposited in the Office of the Commissioners; and every such Power of Attorney shall be in the Form in Schedule (A.) to this Act annexed, or to the like Effect.

Inclosure Commissioners to frame Forms of Application, &c.

XXXII. The Inclosure Commissioners may from Time to Time frame or sanction, and, at the Expense of the Company, cause to be printed and circulated, as the Commissioners see Occasion, Forms indicating the Particulars of the Information to be furnished to the Commissioners for the Purposes of this Act by Landowners or by the Company,

Company, and such other Forms as the said Commissioners deem expedient for facilitating any Proceedings under this Act.

Landowners may contract with Company for the Improvement of Land.

XXXIII. Any Landowner may enter into a provisional Contract with the Company for the Execution by the Company of any of the said Improvements on any Land in which he is interested; and the Money or Contract Sum for which the Company shall agree to execute such Improvements may, with such Assent of the Inclosure Commissioners as herein-after provided, be charged as an Improvement Loan on such Land, in the Manner by this Act provided for charging Lands with Loans for Improvement by the Company; or any Landowner may enter into a like provisional Contract with the Company for the Execution by such Landowner, under the Superintendence of the Company, of any of the said Improvements on Lands in which he is interested, by means of Money to be advanced by the Company to the Landowner; and any such Sum of Money so advanced by the Company shall, together with such Commission as shall be approved of by the Inclosure Commissioners, be in like Manner charged as an Improvement Loan on such Lands; and any Landowner may enter into any provisional Contract with the Company for the Improvement by the Company of the Land in which he is interested, or any Part thereof, and for the Execution by the Company of such Works as may be thought proper for such Improvement; and may from Time to Time enter into any Contract with the Company with reference to such Improvement, or any additional or other Improvement, and the Works thought proper for such additional or other Improvement; and such Landowner and the Company, or other Parties to the Contract, may from Time to Time, prior to the Order of the Commissioners sanctioning any such Improvement, alter or rescind any such provisional Contract.

Landowner may join in Contract with Company.

XXXIV. Any Two or more Landowners, with the Consent of the Inclosure Commissioners, may join in entering into any such provisional Contract as aforesaid with the Company for the Improvement of the Lands of such Landowners respectively, and the Sum expended in the Improvement executed under any such joint Contract, or the Charge to be made in respect thereof, shall be apportioned so that a separate and distinct Sum or Charge may become charged upon the Land of each Landowner in the Manner herein-after specified; provided that, in the Case of any such joint Contract, the Improvement so contracted for shall be executed by the Company, and not by the Landowners so contracting, or any of them.

In Contracts with absolute Owners, Advertisements

XXXV. The Company may contract with and take a Charge or other Security for any Improvement by this Act authorized from any Landowner, being the absolute Owner of Land not subject to any Incumbrance,

Incumbrance, without any Advertisement or Assent thereto by the Inclosure Commissioners; but in such Case the Company shall not issue any Mortgage Debenture founded upon such Contract, Charge, or Security, provided that such Charge or Security shall be repaid within any Period not exceeding Twenty-five Years.

or Assent of Commissioners not required.

XXXVI. When any Landowner has entered into a provisional Contract with the Company for Improvements by the Company upon any Land in which he is interested, such Landowner or the Company, or the Landowner and Company jointly, may make Application to the Inclosure Commissioners to sanction the proposed Improvements; and such Application shall contain such Particulars of the Land proposed to be improved, the proposed Manner of effecting such Improvements, the estimated Expense of effecting the same, the annual Value of such Land, and the estimated Increase of the Value of such Land to be produced by such Improvements, as may enable the Commissioners to judge of the Expediency of investigating or further proceeding upon such Application; and every such Application shall specify the Right or Interest of or claimed by the Landowner in the Land to which such Application relates.

Landowner or Company may make Application to Inclosure Commissioners to sanction proposed Improvements.

XXXVII. The Inclosure Commissioners may require Security, by Bond or otherwise, on such Terms as they may think fit, by the Landowner or the Company respectively, or by the Landowner and the Company jointly, making such Application, for the Payment to the Commissioners of such Sum as the Commissioners shall, according to the Provisions of this Act, order to be paid in respect of the Investigation, on any such Application, and (if they shall issue a Provisional Order) of the Expenses of inspecting and ascertaining the due Execution of the Works; and unless the Commissioners shall issue a Provisional Order, such Payment shall be made by such Landowner or by the Company, and shall not be a Charge on the Land to which such Application relates.

Inclosure Commissioners may require Security for Expenses of Investigation.

XXXVIII. If the Inclosure Commissioners think fit to entertain the Application made to them, they may cause the Land, and the Plan, Estimate, and Specification of the proposed Improvements, to be inspected and examined by an Assistant Commissioner or an Engineer, who shall report his Opinion thereon, and on the Statements contained in the Application; and if he shall report that the proposed Improvements will effect a permanent Increase of the yearly Value of the Land which will exceed the yearly Amount proposed to be charged thereon under this Act in respect of the Improvements applied for, and that the Improvements as proposed to be effected under the Plan and Specification will be effected in a substantial and durable Manner, and, as to Farm Buildings, shall also report that

Inspection of Lands to be made by an Assistant Commissioner or Engineer, who shall report his Opinion on the same.

the same, or the Improvements of or Additions to the same, will be suitable to the Locality where they are to be erected, he shall annex to his Report the Plan, Estimate, and Specification, or a Duplicate thereof, and the Commissioners may by themselves, or any Assistant Commissioner or Engineer, make such other Inquiries in relation to any such Application as they think fit; provided that, as respects Planting, the Requirements as to increased annual Value shall not apply to the Outlay to be made upon or in respect of such Planting only: Provided also, that when such Improvements, or such a Proportion thereof as that the Outlay thereon will be equal to at least One Third Part of the total Outlay, are not intended to be executed within Two Years from the Time of the making of the provisional Order by the Commissioners, it shall be Competent to the Commissioners to permit that the Plan and Specification to be prepared by the Landowner may, as to such Improvements as are not intended to be executed within the said Period of Two Years, be in such general Form as they shall be willing to accept; and such general Plan and Specification shall be annexed to such Report, in the same Manner as the detailed Plan as to the Improvements (if any) to be made within Two Years; and it shall be sufficient if at any Time before the Commencement thereof a further and detailed Plan and Specification of the Improvements to be made in any Year after the first Two Years be delivered to the Commissioners, and so in like Manner, if the Landowner shall so think fit, in each successive Year; and every Plan and Specification so from Time to Time delivered shall be inspected, examined, reported on, and approved by such Assistant Commissioner or Engineer, and such detailed Plan and Specification, or Duplicates thereof, shall be respectively annexed to such further Report respectively; but until such Delivery of such detailed Plans and Specifications respectively, and such Approval thereof, no Provisional Order made by the Commissioners shall be of any Force or Effect in sanctioning the Improvement as to which no detailed Plan or Specification shall have been delivered, and no Charge in respect thereof shall be made on the Land.

Inclosure Commissioners, if satisfied, to sanction by Order the proposed Improvement.

XXXIX. If the Commissioners shall be of opinion that the proposed Improvements, or any Part thereof, would effect such a permanent Increase of the yearly Value of the Lands proposed to be improved, or any Part thereof, as will render the Amount proposed to be charged thereon under this Act in respect of the Expenses of the Improvements applied for a provident and beneficial Outlay, the Commissioners, by Order under their Hands and Seal, shall sanction the proposed Improvements, or such Part thereof as they think expedient, and shall set forth, either expressly or by reference to the provisional Contract with the Company for the Execution of the proposed Improvements, and the Report thereon, or either of them, or otherwise

otherwise as the Commissioners think fit, the Terms and Conditions on which the proposed Improvements, or the Part thereof sanctioned by them, should be executed; and they shall have Power to make such Alterations in or Modification of the provisional Contract, or the proposed Mode of Execution, or the Terms and Conditions generally, as they shall think expedient; and after such Sanction is so given the provisional Contract, subject to and in accordance with the Terms and Conditions of such Sanction, or as modified thereby, shall become an absolute Contract, and shall from the Date of such Order be binding on the Landowner and the Company, and any such absolute Contract may be carried into effect accordingly; provided, that in case any such Alteration or Modification shall be made by the Commissioners in the provisional Contract, or the Terms and Conditions thereof as aforesaid, the Commissioners may, if they shall so think fit, require that the Consent of the Landowner contracting shall be given to such Alteration or Modification, to be evidenced by an Indorsement on the Order for sanctioning such Contract; and that, in case of such Requirement by them, the Contract shall not be absolute and binding, until such Assent shall have been so given.

Notice of Application to be given to Commissioners, &c. in case of Rivers, Canals, &c. being affected.

XL. Before making Application to the Inclosure Commissioners for their Sanction to an Improvement which would affect any navigable River, Canal, Watercourse, or Waterworks respectively vested in or under the Management or Control of any Commissioners, Trustees, Company, or other Body or Person, or the Banks or other Works or Conveniences thereof, or would occasion the Flow or Discharge into such River, Canal, Watercourse, or Waterworks of any Drainage or other Matter, the Company shall give Notice in Writing of the intended Application to such last-mentioned Commissioners, Trustees, Company, or other Body or Person; and in case such Commissioners, Trustees, Company, or other Body or Person shall, within One Month after the Receipt of such Notice, signify in Writing to the Inclosure Commissioners their Dissent from such Application, and state the Nature of their Interest in or Authority over such River, Canal, Watercourse, or Waterworks, the Inclosure Commissioners shall certify such Dissent to the Landowner by whom the Application was made, and also to the Company, and shall not sanction the Improvement unless or until such Dissent be withdrawn, reserving to such Landowner any Rights which he may have at Common Law: Provided always, that where it is intended in making any such Improvements to take and use Water from any River or Stream (not being a navigable River, Canal, Watercourse, or Waterworks vested in Commissioners, Trustees, Company, or other Body or Person as last above mentioned), the Inclosure Commissioners shall order Notice of such Intention to be given to such Persons interested in such River or

or Stream as in their Opinion may be prejudicially affected by any such Operations.

Applications to the Inclosure Commissioners to sanction additional Improvements.

XLI. When any Landowner has entered into a provisional Contract with the Company for the Improvement of any Land, and the Sanction of the Inclosure Commissioners to the proposed Improvements or any Part thereof has been obtained, such Landowner and the Company, or other the Persons contracting, may from Time to Time thereafter make Application to the Commissioners to sanction, with respect to such Land or any Part thereof, any further or additional Improvements; and the Commissioners may if they think fit, and after such further Inquiries, if any, as they think fit, sanction such proposed additional Improvements, or any Part thereof, as in the Case of an original Application for the Sanction of the Commissioners to a proposed Improvement, and subject to the same Conditions and Regulations as are hereby required in the Case of the original Improvements so previously sanctioned.

Inclosure Commissioners to make Provisional Order.

XLII. When the Sanction of the Inclosure Commissioners shall be given to any such proposed Improvements they shall, upon the Application of the Landowner or the Company, before the Commencement of the Works, execute under their Hands and Seal, and deliver to the Company, an Order in the Form in the Schedule (B.) to this Act annexed, or as near thereto as the Circumstances will admit; and such Order shall be called a Provisional Order, and such Provisional Order shall be conclusive Proof of such Contract and Sanction to all Parties interested, and for all Purposes whatsoever.

Provisional Order not to be made until Notice of Application has been given.

XLIII. Before any such Provisional Order as aforesaid shall be made by the Inclosure Commissioners Notice shall be given of the Application for the same by Advertisement inserted in Two successive Weeks in some Newspaper or Newspapers published in *Scotland* or elsewhere, as the Commissioners may direct, and by a Notice in Writing given to the nearest Heir or Heirs of Entail or of Destination of the Lands proposed to be improved, not exceeding Three, or to the Person next entitled to succeed after any Liferenter, Widow, or other Person having a limited Interest in such Lands, and to the Holders of every heritable Security on such Lands appearing upon the Records; and in such Advertisements and Notices respectively shall be stated the maximum Amount which it is proposed to apply to such Improvements, and the greatest and least Term over which it is proposed that the Rentcharge should be spread; and the Inclosure Commissioners shall not make such Provisional Order until Two Months shall have elapsed from the Publication of the Second of such Advertisements and the Service of such Notices respectively; and in

case any Person having any Right in or Charge or Security on such Land shall within such Two Months signify in Writing to the Commissioners his Dissent from such Application, stating therein the Nature of his Interest in or Charge or Security on such Land, the Commissioners shall certify under their Hands and Seal such Dissent to the Landowner by whom the Application was made, and also to the Company, and shall not make such Provisional Order unless or until such Dissent be withdrawn, or an Order be made by the Court of Session, in Manner by this Act provided, authorizing the Commissioners to make such Provisional Order.

Consent of Presbytery and Patron to be had in case of Church Land.

XLIV. When the Land to which the Application for a Provisional Order relates is Land held in right of any Church, Chapel, or other Ecclesiastical Benefice, the Commissioners shall not proceed thereon unless and until the Presbytery of the Bounds and the Patron of such Benefice consent to such Application, and signify such Consent by Writing under their Hands respectively to the Commissioners.

In case of Dissent Application may be made to the Court of Session.

XLV. If and when any Dissent to any such Application to the Inclosure Commissioners for their Sanction of the Improvements shall have been notified in Writing to the Commissioners by a Party interested in the Lands proposed to be improved (not being Lands held in right of any Church, Chapel, or other Ecclesiastical Benefice), the Landowner desiring such Improvements and the Company, or either of them, may apply to the Court of Session for an Order of such Court, authorizing the Inclosure Commissioners to entertain and proceed upon the Application for such Improvements, notwithstanding such Dissent; and such Application shall be made to either Division of the Court of Session in Time of Session, or to the Lord Ordinary sitting on the Bills in Time of Vacation, by summary Petition; and the Court or single Judge, as the Case may be, to whom such Application shall be made, shall hear and determine such Application, and for that Purpose shall have Power to make or direct to be made all such Inquiries, and receive and entertain all such Statements and Evidence on Oath or by Affidavit, as the Court or Judge may consider necessary or desirable, or as may be produced before them or him; and if upon a Review or Consideration of all the Circumstances the Court or Judge shall be of opinion that the Inclosure Commissioners should entertain and proceed upon such Application, an Order shall be made authorizing and requiring them to proceed thereon, and to deal with the same according to the Provisions of this Act authorizing them on that Behalf, notwithstanding such Dissent as aforesaid; provided, that if at any Time after Notification of such Dissent, and before any such Order shall have been applied for and made as aforesaid, such Dissent shall be withdrawn by a like Notification in Writing, it shall not be necessary to make or

proceed with such Application or to obtain such Order: Provided also, that any Interlocutor or Order pronounced by the Lord Ordinary on the Bills as aforesaid shall be subject to Review in either Division of the Court.

Proceedings on and Costs of Application to the Court.

XLVI. On any such Application Service may be made on the Company in manner provided by the said "Companies Clauses Consolidation (*Scotland*) Act, 1845," and on the Inclosure Commissioners, and any Party dissenting, whether within or out of the Jurisdiction of the Court, in like Manner as is herein-after provided, or in such other Manner as the Court or Judge may think fit; and upon Proof to the Satisfaction of the Court or Judge that such Party has had actual Notice within a reasonable Time of such intended Application, it shall be lawful for the Court or Judge thereupon to hear and determine such Application, and the Costs of and attending every such Application shall be in the Discretion of the Court or Judge who shall hear the same; and the Court or Judge may make such Order thereon as shall be thought fit, and in particular may order that the same or any Part thereof to be settled by the Court or Judge, or to be taxed according to the Course of the Court, shall be deemed to be Part of the Expenses of or incident to the proposed Improvements, and may be added thereto accordingly: Provided always, that the Party dissenting shall, if such Dissent be sustained, be entitled to have his reasonable Costs awarded by the Court, and paid to him.

Empowering Guardians and others to act.

XLVII. All Husbands, Guardians, Tutors, Curators, Factors appointed by the Court of Session on behalf of Minors, Lunatics, Idiots, furious or fatuous Persons, and all Trustees, Executors, and married Women with Consent of their Husbands, or Trustees acting and appointed for them, shall respectively have the same Rights and Powers of making Applications and signifying Dissents, and taking other Proceedings under this Act, as such Minors, Lunatics, and Idiots, furious and fatuous Persons, and married Women respectively would have if free from Disability, or as such Trustees or Executors respectively would have if the Estates, Charges, or Interests of which they are such Trustees, or which are vested in them as such Executors, were vested in them in their own Right; but any such Guardian, Tutor, Curator, Factor, Trustee, Executor, or married Woman shall not be in anywise compelled or obliged to signify a Dissent to any Application under this Act, or be in anywise responsible for the Consequences of such Application, or of any Charge made in pursuance thereof.

Inclosure Commissioners to cause

XLVIII. The Inclosure Commissioners shall, if and as they see Occasion, cause the Works to which any Provisional Order relates to be inspected by a Commissioner or Assistant Commissioner, or an Engineer,

Engineer, to ascertain the due Execution of such Works according to the Contract made between the Landowner and the Company.

Works to be inspected.

XLIX. When a Provisional Order for charging any Lands to be improved has been made, and the Commissioners are satisfied that the Works of Improvement contracted to be executed, or some Part of such Works, have been properly executed, the Commissioners shall execute a Charge, under their Hands and Seal, upon the Fee of the Lands improved or to be improved, or some sufficient Part thereof, for the whole Amount by the Contract agreed to be charged on the Land to be improved if all the Works contracted for are so executed, or a proportional Part of such Amount if Part only of such Works are executed, as the Case may be, to be paid with Interest to the Company; and every such Charge shall be by way of periodical Payments extending over a Term of Years to be fixed by the Commissioners, and to commence from the Time when the Works in respect of which the same was granted shall have been executed to the Satisfaction of the said Commissioners, and shall not in any Case endure for any Term of Years exceeding Twenty-five Years; and such periodical Payment shall be and shall be expressed to be, as to Part thereof, a Repayment of a proportionate Part of the Money so lent, according to the Length of such Term, and as to the Remainder thereof a Payment of Interest upon such Loan; and such Charge shall be made according to the Form in the Schedule (C.) to this Act annexed, or as near thereto as the Circumstances of the Case will admit, and shall be duly stamped for denoting Payment of the proper *ad-valorem* Stamp Duty which would be payable on a Mortgage for securing the like Amount as the Principal Money thereby charged, and shall be called an absolute Order; and a Copy of every such Charge shall be authenticated by the Seal of the Commissioners, and shall be kept by them; and such Copy, and any Copy thereof authenticated by their Seal, shall be Evidence of the Contents and Purport of the original Charge.

Expenses of Improvement may be charged on the Fee of Lands improved, with the Approval of the Commissioners.

L. If the Landowner is desirous that the Fee of the Lands to be improved should be charged with the Expenses of and incident to the Contracts, the Commissioners, on the Application of such Landowner, or of the Company, may ascertain the Amount of the Costs, Charges, and Expenses properly incurred preparatory to, for, in relation to, and consequent on the Contract and the Application to the Commissioners, and charge the Fee of such Lands, or of some sufficient Part thereof in or by such Charge specified, with the Amount of such Costs, Charges, and Expenses, and of the settled or taxed Costs, if any, which the Court or Judge shall have ordered as aforesaid, to be deemed and taken to be Part of the Expenses of and incident to the Application for Improvements, or with such Part thereof as the Commissioners think fit, by

Inclosure Commissioners may declare that the Fee of Lands improved is charged with Expense of Contracts.

by including such Amount in the Charge made for Improvements, but provided that the Charge for such Expenses shall be repaid and shall terminate at the same time as the Charge for Improvements.

Total Charge not to exceed Value of the durable Improvements.

LI. Provided, That the total Amount of the Monies to be charged on the Lands improved under the Provisions of this Act shall in all Cases be less than the Amount by which, in the Opinion of the Commissioners, the Fee of the Lands improved is or will be durably benefited by the Execution of the Improvements, and the Rental to be obtained when the Works are complete, and the Charge commences, will, in the Opinion of the Commissioners, be adequate to meet the whole then existing Charges on the Lands improved.

Company to have a Charge on the Lands for the Principal Money charged and Interest.

LII. When the Fee of any Land is in pursuance of this Act charged with any Money the Company shall be entitled to and shall have from the Time from which such Rentcharge shall commence and take effect a Charge upon such Land for the Money ascertained and approved by the Commissioners as aforesaid, with such Interest as contracted for, not exceeding Five Pounds *per Centum per Annum*, or, if there be not any Contract as to the Interest thereon, at the Rate of Five Pounds *per Centum per Annum*; and such Lands shall thenceforth be and continue liable to the Payment of such Charge, and such Charge shall have Priority over every other then existing and future Charge and Incumbrance whatsoever upon or affecting such Lands, except Feu Duties, Ground Annuals, and other Charges incident to Tenure, Teinds, and any Charges created or to be created under any Act authorizing Advances of Public Money for Drainage, and any Charges previously created under the Provisions of any Act of Parliament authorizing the charging of Lands with the Expense of and incident to the Improvement of Lands by or under the Sanction of the Inclosure Commissioners respectively, if any; provided, that in case a Part only of the Land charged is subject to any Heritable Security or other Incumbrance, the Charge created under the Authority of this Act shall have Priority over such Incumbrance only to the Extent of a due Proportion of such Charge, when and so soon as the same shall be ascertained as herein provided.

Charge not to preclude Trustees from investing Money in Purchase or on Security of Land charged.

LIII. Any Charge on Land made by virtue of this Act shall not be deemed such an Incumbrance as shall necessarily preclude a Trustee of Money held in Trust, and with Power to be invested in the Purchase of Land or on Heritable Security, from investing the same in a Purchase of or upon the Security of such Land so charged, unless the Terms of such Trust or Power expressly provide that the Land to be so purchased or taken in Security be not subject to any prior Charge.

LIV. The

Commissioners Approval to be absolute Evidence of the Validity of Charge.

LIV. The Execution by the Commissioners of any Charge on Lands in pursuance of this Act shall be conclusive Evidence to all Intents and Purposes of the Contract to which such Charge relates having been duly entered into by the proper Parties, and of all Acts and Proceedings by this Act directed with reference to or consequent on such Contract having been duly had and done, and of such Charge having been duly made and executed, and being a valid Charge under this Act on the Fee of the Lands appearing to be subject thereto.

Registry of Rentcharges, &c.

LV. Every absolute Order of the Inclosure Commissioners whereby a Rentcharge is executed, and any Deed or Certificate of Apportionment of any Rentcharge, and every Assignation or Conveyance of such Rentcharges or Apportionments thereof, shall be registered in the general or particular Register of Sasines; provided, that such Rentcharges shall in all Cases have Priority as herein-before declared, any Law or Usage to the contrary notwithstanding; and every Discharge of any such Rentcharge shall be prepared and recorded at the Expense of the Landowner.

Heir of Entail may avail himself of Benefit of Act.

LVI. No Proprietor of an Entailed Estate shall be held to have contravened the Conditions of the Entail by reason of having availed himself of the Provisions of this Act; and no Rentcharge imposed or created on any Entailed Lands under the Authority of this Act shall be made use of as a Ground for adjudging, selling, or evicting such Lands, or any Part thereof, contrary to the Provisions and Conditions of the Entail, but every such Rentcharge shall be a good and effectual Charge upon and against such Entailed Lands to every other Effect, and upon and against the Rents and Profits thereof.

The Company may, with the Approval of the Inclosure Commissioners, issue Mortgage Debentures.

LVII. The Company may, with the Approval of the Inclosure Commissioners, to be signified by an Endorsement under their Hands and Seal upon the Charges to be effected thereby, indicating that such Charges respectively had been appropriated as herein-after mentioned, appropriate or set apart any Charge or Charges payable to the Company under this Act as the Fund for the Payment of a Series of Mortgage Debentures to be founded on and secured by such appropriated Charge or Charges; and every such Appropriation shall be distinguished by a particular Number, and the Charge or Charges comprised therein shall be duly registered by the Company, and a Duplicate Copy of such Registry shall be delivered to the Inclosure Commissioners; and when any such Appropriation has been made the Company may, with the Approval of the Inclosure Commissioners, issue a Series of Mortgage Debentures founded on each Appropriation of Charges, and according to the Form set forth in Schedule (D.) to this Act annexed, or as near thereto as Circumstances will admit; and every Series of Mortgage Debentures shall be numbered in arithmetical

tical Progression, beginning with No. 1, and each Debenture shall have its proper Number written thereon, and shall be made payable by the Company on a Day and at a Place to be stated therein, with Interest half-yearly in the meantime after the Rate to be specified in such Debenture; and each Series of Debentures shall be so divided and arranged, that no greater Sum shall be payable in any One Year in respect of the whole Series for Principal Money and Interest together than the Amount payable by the Landowner or Landowners during the same Year in respect of the appropriated Charge or Charges on which such Series of Debentures is founded; and every Sum payable on any Mortgage Debenture issued by the Company shall be made payable at least Fourteen Days next before the Time at which the Charge or Charges appropriated to the Payment of such Debentures are to be paid by the Landowner or Landowners; and such Debentures may be assigned by Endorsement under Hand only in the Form set forth in Schedule (E.) to this Act annexed, or as near thereto as Circumstances will admit; and every such Debenture and Assignation shall be subject to the same Stamp Duty as a Mortgage and Transfer of a Mortgage respectively, and as regards the Holder thereof shall be deemed to be Moveable Estate: Provided always, that it shall not be lawful for the Company to issue any such Mortgage Debentures unless and until they shall have shown to the Satisfaction of the Board of Trade that the Sum of One hundred thousand Pounds in the Capital Stock of the Company has been *bonâ fide* subscribed for, and the Board of Trade shall have certified the same; and provided also, that if at any Time hereafter the Board of Trade shall think it desirable that a further Sum of Twenty-five thousand Pounds of the authorized Capital Stock of the Company should be subscribed for, and shall give Notice thereof to the Company, then unless such further Sum of Twenty-five thousand Pounds beyond the said Sum of One hundred thousand Pounds shall have been already *bonâ fide* subscribed for, it shall not thereafter be lawful for the Company to issue any such Mortgage Debentures until they shall in like Manner have shown to the Satisfaction of the Board of Trade that such further Sum of Twenty-five thousand Pounds has been *bonâ fide* subscribed for, and a similar Certificate shall have been given in respect thereof.

In case of Nonpayment of Debentures, a Judicial Factor may be appointed, who shall have Power to recover.

LVIII. If the Company shall omit to make any Payment of Principal or Interest when due upon any Mortgage Debenture, the Payee or Holder of such Debenture shall be entitled to recover the Sum so due from the Company by Action, or may apply by summary Petition to either Division of the Court of Session, or in Time of Vacation to the Lord Ordinary on the Bills, for the Appointment of a Judicial Factor for receiving and collecting all the Payments then due, or thereafter to accrue due, on the Charge or Charges appropriated

priated as aforesaid as the Fund for Payment of the Series of Mortgage Debentures, of which any Debenture omitted to be paid as aforesaid may form Part, and the Summons or Notice of such Petition, as the Case may be, shall be served on the Company; and thereupon the Court of Session or Lord Ordinary, as the Case may be, if they or he shall think fit, shall appoint some proper Person to be such Judicial Factor, according to the Course of the Court, and shall apply the Money to be received in respect of such Charge or Charges in satisfaction of the Arrears then due on such Series of Debentures, and shall pay over the Surplus, if any, after Payment of all Costs, Charges, and Expenses, including the Charges of recovering and collecting the same, and of the Judicial Factor, to the Company; and in case the Money received by such Factor shall not be sufficient to satisfy the Arrears then due on such Series of Debentures, and the Costs, Charges, and Expenses, such Factor may and shall demand and recover the same from the Company as a Debt due to him from them in an Action brought in his own Name, and shall apply the Money so received and recovered by him in the same Manner as the Money received by him in respect of such Charge or Charges; provided, that after Notice of such Nonpayment by the Company shall have been given to the Landowner liable to any Charge appropriated as aforesaid, such Landowner shall not, in case such Factor shall be appointed, make any further Payment to the Company, and thereupon the Powers of the Company in respect of such Charge shall cease, so long as the Appointment and Powers of such Factor shall continue.

Interest not recoverable for more than Six Months Arrear of Charge.

LIX. If any Charge payable under this Act to the Company shall be in arrear, the same shall not bear Interest for a longer Period than Six Months, but Interest at Five Pounds *per Centum per Annum* in respect of such Arrear, for any Period not exceeding Six Months, may be recovered in the same Manner as the Sum in arrear.

Form and Effect of Assignation by the Company of Charges.

LX. The Company may assign any Charge not appropriated for the Payment of a Series of Mortgage Debentures issued by the Company by a Deed under the Common Seal of the Company, and under the Hands of Three of the Directors of the Company, and duly stamped, and wherein the Consideration is truly stated, and such Assignation may be according to the Form in the Schedule (F.) to this Act annexed, or to the like Effect; and all Assignations made in such Form, or as near thereto as the Circumstances of the Case will admit, shall be effectual to vest both at Law and in Equity the Charge thereby assigned, and all the Powers, Authorities, Rights, and Remedies of the Company with reference to such Charge, in the Assignee, his Heirs, Successors, Executors, and Assignees respectively.

LXI. Every

Charges recoverable as Feu Duties, &c.

LXI. Every Charge on Land by virtue of this Act may be recovered by the Company, or the Person for the Time being entitled to the same, by the same Means and in like Manner in all respects as any Feu Duties, or Rent, or annual Rent, or other Payment out of the same Lands, would be recoverable in *Scotland*.

Registers of Charges, Debentures, &c. to be kept by the Company.

LXII. The Company shall cause their Secretary or Managing Director to keep Registers of all Contracts made by Landowners with the Company, and of the Provisional Orders and Absolute Orders for charging the Fee of Lands, specifying the Lands comprised in each Contract and Order, and of the Debentures founded on any Charge or Series of Charges, and of Assignations by the Company of such Charges; and such Registers respectively may be perused at all reasonable Times by any Shareholder of the Company, or by any Debenture Holder, or by any Person interested in the Lands charged or in any Charge, without Fee or Reward; and any such Person may take a Copy or Extract of so much of such Register as relates to the Subject Matter in which he is interested.

Owners of adjoining Land may sell or grant Servitudes, &c.

LXIII. All Persons interested in any Land adjoining or near to the Land improved or proposed to be improved, and being by the Provisions of "The Lands Clauses Consolidation (*Scotland*) Act, 1845," enabled to sell and dispose of such Lands so adjoining or near, or any Right or Interest therein, may, for the Purposes of the Improvements authorized by this Act, sell and convey or grant the same, or any Part thereof, or any Servitude, Authority, or Right in, through, over, and affecting such Lands so adjoining or near to the Landowner whose Land is or is proposed to be improved; and any such Land, Servitude, Authority, or Right so sold and conveyed or granted shall thereupon become and thenceforth be held with or as a Part or Pertinent of the Lands improved or proposed so to be, and with reference to the Improvements whereof the same was purchased; and also may make any Agreement with the Company, or the other Party to the Contract for such Improvement, or their respective Agents, with reference to entering on, cutting through or into, or prejudicially affecting such Lands so adjoining or near; and every such Sale, Conveyance, Grant, and Agreement shall be valid and effectual accordingly, and the Price or Consideration shall be settled and disposed of and applied in manner provided by "The Lands Clauses Consolidation (*Scotland*) Act, 1845:" Provided always, that no such Servitude, Authority, or Right shall be granted so as to prejudice or injure the Residence or ornamental Grounds of the Grantee of the same.

Company may, for executing Im-

LXIV. Subject to the Provisions and for the Purposes of this Act, the Company, and their Engineers, Surveyors, Contractors, Servants, Workmen,

Workmen, and Agents, may enter upon the Lands to be improved, and any Lands so adjoining or near as to which any such Agreement shall have been made as aforesaid, and, with the Sanction of the Commissioners, but not otherwise, may execute in and upon the same all the Improvements contracted for, and do, execute, and use all such Acts, Works, and Conveniences as are proper for making, maintaining, and using such Improvements.

provements, enter on Lands to be improved.

LXV. And with respect to Lands to be improved under the Provisions of this Act by Drainage or Warping, as to which it shall be necessary, or, in the Judgment of the Commissioners, expedient, in order to the obtaining or improving the Outfall, for such Purposes or otherwise, to enter and execute any Works upon any Land adjoining or near to the Land proposed to be improved, where, by reason of the Objection or Disability of any Owner, Lessee, or Occupier of such Land, such Works could not be executed, the Works so to be executed shall be deemed to be Works to be executed under the Provisions of the Act of the Tenth and Eleventh Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, intituled *An Act to facilitate the Drainage of Lands in* Scotland, and the Provisions of such Act shall apply to the Works to be so executed, provided that the Acts therein required or authorized to be done by the Person interested in the Lands so to be drained or improved may be done either by such Person or by the Company instead of such Person.

Where necessary for the Execution of Works to enter upon adjoining Lands, such Works may be deemed Works under 10 & 11 Vict. c. 113.

LXVI. Where in the Judgment of the Commissioners it shall be necessary, for effecting any of the Works or Improvements by this Act authorized, to carry any Pipes, Drains, Culverts, Conduits, or Watercourses across or along any Highway, Lane, Road, Street, or public Passage, Place, or Thoroughfare, it shall be in the Power of the Company, with the Sanction of the Sheriff of the County within which the Work required to be done is situated, to open or break up such Highway, Lane, Road, Street, or public Passage, Place, or Thoroughfare, and to construct and make Drains, Culverts, and Conduits, or to lay Pipes, or to carry Water or covered Watercourses across or along such Highway, Lane, Road, Street or public Passage, Place, or Thoroughfare; and the Sheriff shall, before granting Authority for such Operations, or any of them, and as soon as an Application is made to him by the Company, direct Notice to be given to the Persons under whose Control or Management any such Highway, Lane, Road, Street, or public Passage, Place, or Thoroughfare may be, or to their Clerk, Surveyor, or other Officer, in order that they may be heard in reference to the Mode by and the Time within which such Operations are to be performed: Provided always, that such Operations shall be done so as to cause as little Damage as

Power to break up Roads, &c. and to make Drains, &c. by Warrant of the Sheriff.

possible, and that the Company shall at their own Expense, on such Operations being completed, repair and restore such Highway, Lane, Road, Street, or public Passage, Place, or Thoroughfare, in such Manner and within such reasonable Time as the Sheriff may direct.

Company may deviate from original Plans, but not in adjacent Lands without Consent.

LXVII. The Company may, in the Execution of the Improvements, make such Alterations and Deviations of and from the original Plans for the same as by the Inclosure Commissioners shall be thought proper, provided that if such Alteration or Deviation be made in or affect the Lands of any Person not being a Party to the Contract, such Alteration or Deviation be with the Consent of some Person by this Act enabled to sell and convey such Land or grant Servitudes thereon.

Liferenter to keep down Rentcharges.

LXVIII. Every Landowner on whose Land a Charge shall have been made under this Act, and every Heir of Entail or of Destination, or Liferenter, and other Person having a limited Interest in the Land so charged, shall, as between such Person and the Persons next entitled to succeed, be bound to pay the yearly or other periodical Payments of such Charge which become payable during the Continuance of his Interest, and in case he be in the actual Occupation of or entitled to an apportioned Part of the Rents and Profits of such Land up to the Time of the Termination of his Interest, shall also be bound to pay an apportioned Part of the yearly Rent or other periodical Payment of such Charge which becomes due next after the Termination of his Interest, proportioned to the Time which elapsed between the Day for the previous Payment and the Day of such Termination; provided, that any such Person entitled to succeed, and becoming entitled in possession, shall not be liable to pay any Arrears of the Charge remaining unpaid at the Time of his Succession or Right to succeed, exceeding the Amount of One Year's Payment of such Charge: Provided also, that the Amount paid by such Person in respect of such Arrears, and any Costs occasioned by Nonpayment thereof, shall be a Debt from the Person who in the first instance ought to have paid the same, or from his Estate, heritable or moveable, to the Person who paid the same, and shall be recoverable accordingly.

Improvements to be maintained.

LXIX. So long as any Land shall continue burdened with any such Charge, the Person for the Time being bound to pay the yearly or other periodical Payments of such Charge shall be bound to uphold the Improvements and Works on account of which the Land is charged therewith, and to keep clear and open the Outfalls and Watercourses of all the Drains, if any, and to insure against Damage by Fire all such Improvements, if any, as are susceptible of Damage by Fire; and such Person shall, if required, once in every Year, certify to the Commissioners the State of such Improvements and Works, and of such

such Drains and Outfalls, if any, and produce to them the Receipts for the Premiums of Insurance; and in default of so keeping and upholding such Improvements and Works, and such Drains and Outfalls, if any, or if such Person shall fell, or cause or knowingly permit to be felled, except in proper thinning, any Trees planted under the Authority of this Act as an Improvement, such Person shall be liable to an Action for the Damage thereby occasioned at the Suit of any Person entitled to succeed to such Lands; provided that such yearly Certificate may be made by the Company instead of by such Person in any Case in which the Company contract with the Landowner to make the same.

Tenant may deduct Rentcharge, except where he has agreed to pay the same.

LXX. If any Tenant or Occupier at a Rent join in the Application for an Improvement, or by Writing under his Hand signify to the Commissioners, or to any Assistant Commissioner or Engineer, his Consent to become charged with the Charge or an apportioned Part thereof as herein-after mentioned, such Tenant or Occupier shall during his Tenancy or Occupation be liable to pay the Charge or an apportioned Part thereof as herein-after mentioned; and in case the Application be made for a Charge in respect of the Improvement as well of other Land as of the Land included in such Tenancy or Occupation, the Commissioners may, upon such Concurrence or Consent of such Tenant or Occupier in the absolute Order, declare what Portion of the whole Charge payable in respect of the Improvement shall be payable by such Tenant or Occupier during his Tenancy or Occupancy in respect of the probable Improvement of the Land included in his Tenancy or Occupation; but, except as aforesaid, every Tenant or Occupier who pays such Charge shall be entitled to deduct the Amount thereof from the Rent payable by him to the Landowner, and shall be allowed the same in account with him.

Rentcharges may be apportioned.

LXXI. If it be at any Time represented to the Commissioners that the Land charged under this Act is occupied in separate Farms or other Holdings, or has become the Property of separate Owners, or that the Owner thereof is entitled thereto under separate Titles, or for distinct and separate Interests, or is desirous to sell or dispose of a Part of such Land, or that Part only of such Land is subject to any Heritable Security or other Incumbrance, or that for any other Reason it would be desirable that such Charge should be apportioned, the Commissioners may, with the Consent of the Landowner and of the Company, or other the Party for the Time being entitled to the Charge, or the Husband, Guardian, Tutor, Curator, or Trustee of such Party (if a married Woman, Minor, Lunatic or Idiot, furious or fatuous Person), and of such other Parties (if any) as the Commissioners think right, by Order under the Seal of the Commissioners, apportion such Charge, so that a separate and distinct Charge may become

become charged on each separate Farm or Holding, or on the Land of each Landowner, or on the Land held under each separate Title, or for each distinct and separate Interest, or on the Part or each Part which the Landowner is desirous to sell or dispose of, or on the Part subject to such Security or other Incumbrance, and the Part intended to be retained by him, or on other separate Parts of the Lands, but so that any Charge charged under such Apportionment shall not be less than Twenty Shillings; and every such apportioned Charge shall be recoverable in the Manner as if the same had been originally charged under this Act on the Land on which the same is charged by such Order, and shall for other the Purposes of this Act be deemed an original Charge on such Land; and after any such Apportionment the Land charged with an apportioned Part of the original Charge shall not be liable to any other Part of the original Charge; provided that in any Case in which the Person entitled to any such Security or other Incumbrance shall satisfy the Commissioners that he would be prejudiced unless such Apportionment were made, the Commissioners may, if they think right, make such Apportionment without any such Consent.

Power to enter on neighbouring Lands for Repair of Works.

LXXII. The Company, and any Person for the Time being entitled in possession to any Lands improved under this Act, may respectively from Time to Time, after the making of the Improvements, by themselves, their Engineers, Surveyors, Agents, Servants, and Workmen, enter upon any Lands in, through, and upon which any of the Works are executed, to ascertain the Condition of the Works, and to maintain and repair the same; nevertheless, paying to the Person for the Time being enabled by this Act to sell or grant any Servitude on such Lands, in case the Parties differ about the same, such Compensation as shall be determined by the Sheriff, as provided by "The Lands Clauses Consolidation (*Scotland*) Act, 1845," for Settlement by Sheriffs of Questions of disputed Compensation; provided, that as to any Land adjoining or near the Land improved, to which the Provisions of the Act of the Tenth and Eleventh Years of the Reign of Her present Majesty, Chapter One hundred and thirteen, are herein-before expressly made applicable, the Powers of Entry upon such Lands for any of the Purposes aforesaid shall be subject to and be regulated by the Provisions of that Act.

Contracts and Agreements with Company not to be prejudiced.

LXXIII. After any Person has under this Act entered into any Contract or Agreement with the Company, such Contract or Agreement shall not be in any way prejudicially affected by any subsequent Change of the Ownership of or Interest in any Land to which such Contract or Agreement relates.

LXXIV. Any

Service of Notices, &c. on Inclosure Commissioners.

LXXIV. Any Summons or Notice, or any legal Proceedings requiring to be served upon the Inclosure Commissioners, may be served by the same being left at or transmitted through the Post by registered Letter, directed to the principal Office or One of the principal Offices of the Commissioners.

Service of Notices on other Persons.

LXXV. In all Cases in which it shall be necessary, under the Provisions of this Act, to serve any Notice upon any Person, it shall be sufficient to send such Notice in a registered Post Letter, directed to such Person at his then or last known Place of Residence or of Business, unless the Letter containing such Notice shall be returned from the Post Office as undelivered; and if such Person shall not have any Place of Residence or of Business within *Great Britain* or *Ireland*, or if the Place of Business or of Residence of any such Person cannot with due Diligence be ascertained, then such Notice may be served upon such other Person as the Representative of such Person, or be given in such other Manner as the Commissioners shall in such Case direct or approve.

Punishment of Persons giving false Evidence.

LXXVI. If any Person under the Provisions of this Act shall wilfully give false Evidence, or shall make or subscribe a false Statement or Declaration for the Purposes of this Act, such Person so offending shall be deemed guilty of an Offence, and shall be punished accordingly.

Saving the Rights of the Crown.

LXXVII. Nothing in this Act contained shall authorize the Company to purchase, take, use, or interfere with any Land, Soil, or Water, or any Right in respect thereof belonging to Her Majesty in Right of Her Crown, without the previous Consent in Writing of the Commissioners for the Time being of Her Majesty's Woods, Forests, and Land Revenues, or, if the Property shall be under the Management or Control of the Commissioners of Her Majesty's Works and Public Buildings, without the Consent in Writing of such last-mentioned Commissioners, and which Consent such Commissioners, or any One of them respectively, are or is hereby authorized to give, or to take away, lessen, prejudice, or alter any of the Rights, Privileges, Powers, or Authorities vested in or enjoyed by Her Majesty, Her Heirs or Successors.

Saving the Rights of the Admiralty.

LXXVIII. Nothing in this Act contained shall authorize the Company to purchase, take, use, or interfere with any Land, Soil, or Water, or any Right in respect thereof, or to take away, lessen, prejudice, or alter any of the Rights, Privileges, Powers, or Authorities vested in or enjoyed by the Lord High Admiral, or the Commissioners for the Time being for executing the Office of Lord High Admiral, without the previous Consent of the Lord High Admiral or

of the same Commissioners, or any Two of them, signified in Writing under the Hand of the Secretary of the Admiralty, and which Consent the Lord High Admiral, or the same Commissioners, or any Two of them, are hereby authorized to give.

Admiralty may order local Survey at Expense of Landowner.

LXXIX. If at any Time or Times it shall be deemed expedient by the Lord High Admiral of the United Kingdom, or the Commissioners for executing the Office of Lord High Admiral, to order a local Survey and Examination of any Embankment, Work, or Improvement commenced or constructed, or proposed to be constructed under the Powers of this Act, in, over, or affecting any tidal or navigable Water or River, so far as the Tide flows or reflows, or of the intended Site thereof, the Landowner shall defray the Costs of every such local Survey and Examination, and the Amount thereof shall be a Debt due to Her Majesty from the Landowner, and if not paid upon Demand may be recovered as a Debt due to the Crown with Costs of Suit, or may be recovered with Costs as a Penalty is or may be recoverable from the Landowner.

Works abandoned, &c. may be removed by the Admiralty at Expense of Landowner.

LXXX. If any Embankment, Work, or Improvement constructed under the Powers of this Act in, under, over, through, or across any tidal Water or navigable River, or if any Portion of any Embankment, Work, or Improvement which affects or may affect any such Water or River, or Access thereto, shall be abandoned or suffered to fall into Disuse or Decay, it shall be lawful for the Lord High Admiral, or the Commissioners for executing the Office of Lord High Admiral, to abate and remove the same, or such Part or Parts thereof as he or they may at any Time or Times deem fit and proper, and to restore the Site thereof to its former Condition, at the Cost and Charge of the Landowner, and the Amount thereof shall be a Debt due from the Landowner to the Crown, and be recoverable accordingly with Costs of Suit.

Consent of the Admiralty and the Commissioners of Woods, &c. requisite for Works affecting tidal and navigable Waters.

LXXXI. No Person acting under or by virtue of this Act shall make, extend, or alter, on the Shore of the Sea, or of any Creek, Bay, or Arm of the Sea, or in, under, or over any tidal or navigable Water, any Work or Improvement without the previous Consent of the Lord High Admiral, or of the Commissioners for the Time being for executing the Office of Lord High Admiral, or of any Two of them, signified in Writing under the Hand of the Secretary of the Admiralty, and the previous Consent in Writing of the Commissioners for the Time being of Her Majesty's Woods, Forests, and Land Revenues, or any One of them, and which respective Consents such Officers respectively are hereby authorized to give, and then only according to such Plan and under such Restrictions and Regulations as the Lord High Admiral, or the Commissioners for the Time being for executing

executing the Office of Lord High Admiral, or any Two of them, and the Commissioners for the Time being of Her Majesty's Woods, Forests, and Land Revenues, or any One of them, approve, such Approvals respectively being signified as aforesaid; and if any such Work or Improvement be completed, commenced, altered, or extended contrary to the Provisions of this Act, the Lord High Admiral, or the Commissioners for the Time being for executing the Office of Lord High Admiral, or the Commissioners for the Time being of Her Majesty's Woods, Forests, and Land Revenues, at his or their Discretion, may abate and remove the same, and restore the Site thereof to its former Condition, at the Cost of the Company, and nothing in this Act contained shall authorize any Person acting or pretending to act under this Act to make or construct any Work or Improvement 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.

Company not exempt from Provisions of General Acts.

LXXXII. This Act, or anything therein contained, shall not exempt the Company or their Undertaking from the Provisions of any General Act relating to this Act, or to Improvements specified in the Fourth Section of this Act, or any of them, which may pass in the present or any future Session of Parliament.

Extent of Act.

LXXXIII. This Act shall not extend to *England* or *Wales*, or to *Ireland*.

Expenses of Act.

LXXXIV. The Expenses of preparing and passing this Act, and preparatory and incident thereto, shall be paid by the Company.

The SCHEDULES to which the foregoing Act refers.

N.B.—Every Form used in the Matter of the same Improvement is to have the like Heading, such Heading, except when otherwise directed, being as follows, or to the like Effect : "Scottish Drainage and Improvement Company," County of , and Parish of , and No. , [*giving the Number by which the Contract and Improvement Loan Charge are denoted in the Company's Registers, and giving also a short Title to the Improvement, including the Owner's Name or Description*]; *for Example*, County of Edinburgh, Parish of Saint Cuthbert, No. 53, James Smith's Drainage Improvement.

SCHEDULE (A.)

Form of Power of Attorney.

[*Proper Heading.*]

I, *A.B.*, of , in pursuance of "The Scottish Drainage and Improvement Company's Act, 1856," do hereby appoint *C.D.*, of, *&c.* to be my Attorney for all the Purposes of such Act.

In witness whereof, *&c.* [*insert a Testing Clause, and execute the Deed in the Scotch Form.*]

SCHEDULE (B.)

Provisional Order.

[*Proper Heading.*]

THE Inclosure Commissioners for England and Wales, in pursuance of the Powers and Provisions of "The Scottish Drainage and Improvement Company's Act, 1856," in this Behalf, do, by this Order under their Hand and Seal, sanction the proposed Improvements mentioned or specified in the Schedule to a Provisional Contract, dated, *&c.*, and entered into by *A.B.*, of, *&c.* with "The Scottish Drainage and Improvement Company" (*or as varied by the Schedule to this Order*), upon the Terms and Conditions that such Improvements respectively be executed by or under the Superintendence of the said Scottish Drainage and Improvement Company (*as the Case may be*) in the Manner mentioned or specified in the said Schedule, and at an Expense not exceeding the Sum of ; and do hereby declare and provisionally order, that it is right and proper, and for the Benefit of the Parties interested in the Lands mentioned in the Schedule hereto, that the Fee of such Land should be charged with the Monies contracted to be paid for the Execution of certain Improvements, Expenses preparatory or in relation thereto and consequent thereon, together with the Costs, Charges, and Expenses preparatory or in relation to and consequent on such Contract, and that

that the same should, to the whole Amount of such respective Monies [*or* "should to any Amount not exceeding ," *as the Case may be*] be charged in the Manner following; (that is to say,) [*here express how the Amount is to be repaid with Interest*].

In witness whereof, they have hereunto affixed their Hands and Seal, this Day of One thousand eight hundred and .

(*L.S.*)

SCHEDULE of LANDS provisionally charged.

Name, &c. of Lands.	Landowners.	Occupier.	Parish.	Total Acreage.	County.

SCHEDULE (C.)

Scottish Drainage and Improvement Company.

County of Parish of

No.

Improvement Loan Charge.

[*Here insert Name of Landowner*] of

[*here insert Address*] Loan of

Pounds for the Improvement of the Lands of

in the Parish of in the County of .

The Inclosure Commissioners for England and Wales, in pursuance of "The Scottish Drainage and Improvement Company's Act, 1856," do, by this Absolute Order under their Hands and Seal, charge the Fee of the Lands mentioned in the Schedule annexed hereto with the Payment to the Scottish Drainage and Improvement Company, their Successors and Assignees, of the yearly Sum of Pounds Shillings and Pence, payable half-yearly on the Day of and the Day of in every Year, for the Term of Years, and being a proportionate Repayment, according to the Table annexed, of the Capital Sum of Pounds, with Interest at per Centum per Annum, the First half-yearly Payment to be made on the Day of .

In witness whereof they have hereunto affixed their Hands and Seal, this Day of One thousand eight hundred and .

(*L.S.*)

SCHEDULE of LANDS charged.

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	County.	Total Acreage.	Total Rental.

TABLE.

Half-yearly Payments.	Proportionate Repayments of the Loan.	Interest at £ per Cent. per Annum.

SCHEDULE (D.)

Form of Debenture.

Scottish Drainage and Improvement Company.

Improvement Loan Charges, Nos. ( ).

Mortgage Debenture, No. [ ].

Series No. 1 to [ ].

£ [*the Principal Sum payable on the Debenture.*] { This Mortgage Debenture is No. in the Series of the Improvement Loan Charges, No. , and bears Interest at the Rate of £ per Centum per Annum.

The Scottish Drainage and Improvement Company, in pursuance of "The Scottish Drainage and Improvement Company's Act, 1856," with the Approval of the Inclosure Commissioners for England and Wales (testified by their Hands and Seal affixed hereto), do assign and bind and oblige the Company to pay to (*A. B.*), his Heirs, Executors, or Assignees, the Sum of £ (the Principal Sum payable on the Debenture), to be paid by the Company at on the Day of 18 , with Interest in the meantime at the Rate of £ per Centum per Annum, payable half-yearly on the Day of , and the

Day

Day of in each Year, the First half-yearly Payment of Interest to be made on the Day of .

In witness whereof, *&c.* [*Testing Clause in Scotch Form*].

Seal of the (*L.S.*) Company. *A.B.*, *C.D.*, *E.F.* } Directors.

Approved by the Inclosure Commissioners for England and Wales as the Mortgage Debenture, No. of the Improvement Loan Charges, Nos. issued pursuant to "The Scottish Drainage and Improvement Company's Act, 1856."

Dated this Day of 18 .

(*Seal.*)

SCHEDULE (E.)

Form of Assignation of Debenture.

I, *A.B.*, of , *&c.* hereby assign unto *C.D.* of *&c.*, his Heirs, Executors, and Assignees, the within-written Debenture, and the Monies thereby secured, and all my Interest therein.

In witness whereof, *&c.* [*Testing Clause in Scotch Form*].

(Signed) *A.B.*

SCHEDULE (F.)

Assignation by the Company of a Charge.

[*Proper Heading.*]

The Scottish Drainage and Improvement Company, in pursuance of "The Scottish Drainage and Improvement Company's Act, 1856," hereby, in consideration of [*state the Consideration,*] assign to *A.B.* of, *&c.*, his Heirs, Executors, and Assignees, the Charge of the Sum of £ , and Interest at the Rate of, *&c.* [*or* "the Charge of," *&c., as the Case may be*], which by virtue of the Improvement Loan Charge, No. [ ] [*or the Mortgage, No.*] approved by the Inclosure Commissioners for England and Wales, dated, *&c.* is an absolute Charge on the Fee of the Lands mentioned in the Schedule hereto; and all the Powers, Authorities, Rights, and Remedies of the Company with reference to such Charge [*here add such Clauses and Provisions, if any, as are agreed on between the Company and A.B.*]

In witness whereof [*Testing Clause in Scotch Form*].

(*L.S.*) *L.M.*, *N.O.*, *P.Q.* } Three of the Directors.

The Scottish Drainage and Improvement Company's Act, 1856.

SCHEDULE of the LANDS charged.

Name, &c. of Lands.	Landowner.	Occupier.	Parish.	Total Acreage.	County.

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