CHAP. xxxiii.

An Act to constitute a body of commissioners, and to empower them to purchase certain shipping dues from His Royal Highness the Prince of Wales; and also to provide for the alteration and ultimate extinction of such shipping dues, and for raising moneys; and for other purposes. A.D. 1870.

[20th June 1870.]

WHEREAS certain suits have been instituted by the Attorney General of His Royal Highness Albert Edward Prince of Wales against divers merchants for the recovery of certain rates, dues, duties, and imposts (herein-after included in the term "shipping dues") claimed to be leviable by his said Royal Highness in right of his duchy of Cornwall upon ships and upon goods and merchandise carried in ships at Dartmouth, Totnes, Torquay, Paignton, Brixham, and other places on and near the south coast of Devon, between a point called the Ness at the mouth of the River Teign on the east and a headland or promontory called the Start Point on the west, and also between Totnes and Dartmouth on the River Dart:

And whereas, with a view to the settlement of such suits, his said Royal Highness has agreed to transfer to the Right Honourable John Baron Churston, Sir Lawrence Palk, Baronet, Member of Parliament, and other persons interested in the trade and prosperity of the aforesaid places, all the right, title, and interest of himself, his heirs and successors, in and to all manner of shipping dues which have at any time been claimed to be leviable by his said Royal Highness at Dartmouth, Totnes, Torquay, Paignton, Brixham, or any other place within the limits aforesaid:

And whereas it is expedient that a body of commissioners be constituted, and be empowered to carry out the said agreement, and it is also expedient that the said shipping dues should be altered in the manner herein-after mentioned, and that provision should be made for their ultimate extinction by means of the establishment of a sinking fund:

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And whereas the extinction of the said shipping dues would be greatly facilitated if the Public Works Loan Commissioners were authorised to lend money to the commissioners to be incorporated by this Act, in the same manner as they may, under the third section of "The Harbours and Passing Tolls, &c. Act, 1861," advance money to any harbour authority for carrying any shipping purpose into effect:

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:

Incorporation of commissioners.

1. There shall be a body of commissioners, not exceeding twelve in number, for carrying this Act into execution, which commissioners and their successors shall be and are hereby for the purposes of this Act incorporated by the name of "The Torbay and Dartmouth Shipping Dues Commissioners," and by that name shall be one body corporate, with perpetual succession and a common seal, and with power to purchase, take, hold, and dispose of shipping dues for the purposes but subject to the restrictions of this Act. The term "the commissioners," herein-after used, means the Torbay and Dartmouth Shipping Dues Commissioners.

Appointment of the several commissioners.

2. The appointment of the several commissioners shall be regulated as follows:—

George Parker Bidder of Dartmouth, civil engineer, is hereby appointed a commissioner; and whenever a vacancy is caused by the death, resignation, or disqualification of him or of any person succeeding him in the office of commissioner, the mayor, aldermen, and burgesses for the time being of the borough of Dartmouth, acting by the town council of the said borough, shall appoint another person to fill the vacancy, and so on from time to time:

William Froude of Cockington in the said county of Devon, Esquire, and Charles Seale Hayne of King's Wear in the same county, Esquire, are hereby appointed commissioners; and whenever a vacancy is caused by the death, resignation, or disqualification of either of them or of any person succeeding either of them in the office of commissioner, the Dartmouth Harbour Commissioners shall appoint another person to fill the vacancy, and so on from time to time:

John Bowden of Totnes, merchant, is hereby appointed a commissioner; and whenever a vacancy is caused by the death,

resignation, or disqualification of him or of any person succeeding him in the office of commissioner, the mayor, aldermen, and burgesses for the time being of the borough of Totnes, acting by the town council of the said borough, shall appoint another person to fill the vacancy, and so on from time to time:

Sir Lawrence Palk of Haldon House, in the county of Devon, Baronet, Member of Parliament, is hereby appointed a commissioner; and whenever a vacancy is caused by the death, resignation, or disqualification of him or of any person succeeding him in the office of commissioner, the person or persons for the time being authorised to improve, maintain, and regulate the Torquay Harbour shall appoint another person to fill the vacancy, and so on from time to time:

William Kitson of Torquay, gentleman, is hereby appointed a commissioner; and whenever a vacancy is caused by the death, resignation, or disqualification of him or of any person succeeding him in the office of commissioner, the local board of health for the district of Formsham in the county of Devon shall appoint another person to fill the vacancy, and so on from time to time:

De Castro Fisher Lyne of Paignton, Esquire, is hereby appointed a commissioner; and whenever a vacancy is caused by the death, resignation, or disqualification of him or of any person succeeding him in the office of commissioner, the directors of the Paignton Harbour Company shall appoint another person to fill the vacancy, and so on from time to time:

The Right Honourable John Baron Churston of Lupton, in the county of Devon, and Thomas Lakeman of Brixham, brewer, are hereby appointed commissioners; and whenever a vacancy is caused by the death, resignation, or disqualification of either of them or of any person succeeding either of them in the office of commissioner, the commissioners for improving the harbour and market of Brixham shall appoint another person to fill the vacancy, and so on from time to time:

Charles Herbert Mallock the younger, of Cockington in the county of Devon, Esquire, is hereby appointed a commissioner, and the commissioners may by special order (if they think fit) appoint two other persons to be commissioners; and whenever a vacancy is caused by the death, resignation, or disqualification of any one of those three commissioners, or of any person succeeding any one of them in the office of commissioner, the commissioners may, by special order, if they think

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fit, appoint another person to fill the vacancy, and so on from time to time. If at any time a vacancy is caused in the office of any of the commissioners by death, resignation, or otherwise, and the persons or bodies of persons, corporate or unincorporate, having the right to appoint another person to fill the vacancy, shall fail or decline to appoint another person within twenty-one days after having been required so to do by the commissioners, then the commissioners shall be entitled to appoint another person to fill that vacancy.

10 & 11 Vict. c. 16. incorporated.

3. "The Commissioners Clauses Act, 1847," so far as not inconsistent with this Act, shall be and is hereby incorporated with this Act, and shall, so far as the nature and circumstances of the case will admit, apply to the commissioners collectively and severally, subject to the following provisions:

First. Sections six and seven, seventeen to thirty-five inclusive, fifty-four and eighty-four of the said Act, shall not be incorporated with this Act:

Secondly. With reference to sections thirty-six, forty, forty-one, and forty-three of the said Act, the first meeting of the commissioners shall be held in Torquay within three calendar months after the passing of this Act, and an annual meeting of the commissioners shall be held in the month of September in every year thereafter at such place and hour as the commissioners shall from time to time appoint, and in lieu of monthly meetings they shall hold meetings by adjournment or otherwise at such times and places as they shall from time to time appoint:

Thirdly. With reference to section thirty-nine of the said Act, the prescribed number (constituting a quorum) of the commissioners shall be three:

Fourthly. The Board of Trade shall from time to time appoint a permanent auditor of the accounts of the commissioners, and fix the salary to be paid to him accordingly by the commissioners out of the tolls and dues levied under this Act.

Confirmation of agreement.

4. The agreement set forth in the first schedule to this Act is hereby confirmed, and the same shall be carried into effect.

As to payment to the Duchy of Cornwall.

5. The commissioners shall, out of money to be borrowed or raised and out of the tolls and dues to be levied by them under the authority of this Act, pay the sum of two thousand pounds into the Bank of England to the account of the Duchy of Cornwall, and shall pay into the hands of the Receiver General for the time being of the Duchy of Cornwall, or his deputy, interest upon the said sum of two thousand pounds, at the rate of five pounds per centum per annum,

computed from the fifth day of January one thousand eight hundred and sixty-nine until the time of the payment of the said sum of two thousand pounds.

Shipping dues to become vested in commissioners.

6. On payment of the sum of two thousand pounds and interest at the time and in manner specified in the agreement referred to in the first schedule to this Act, all the estate, right, title, and interest of his said Royal Highness, his heirs and successors, in and to all shipping dues, of whatsoever kind, payable to or leviable by, or which may at any time have been levied, received by, or reputed to belong to his said Royal Highness, in right of his Duchy of Cornwall, upon or in respect of ships and goods, and merchandise carried in ships at Dartmouth, Totnes, Torquay, Paignton, and Brixham, and in all creeks and at all other places along the coast between the said point called the Ness at the mouth of the river Teign on the east and the said headland or promontory called the Start Point on the west, and also between Totnes and Dartmouth on the River Dart, shall be vested in the said commissioners: Provided always, that this Act shall not in anywise extend to or affect any shipping dues which may be payable to or leviable by his said Royal Highness, his grantees or lessees, at any place to the west of the said headland or promontory called the Start Point.

Shipping dues heretofore claimed abolished, and substitution of other dues contained in second schedule.

7. From and after the passing of this Act, the said shipping dues heretofore claimed or leviable by his said Royal Highness shall cease and be no longer payable, but in lieu thereof the said commissioners shall have authority to levy all, any, or such portion or part of the tolls and dues not exceeding the maximum sums stated or set forth in the second schedule to this Act annexed upon all such goods and merchandise specified in the said second schedule as shall be brought by sea from any place without and landed or laid on land at any place within the limits defined by this Act; (that is to say,) at any place on the south coast of Devon between the said point called the Ness on the east and the said headland called the Start Point on the west, or between Totnes and Dartmouth on the River Dart.

Extinction of exemptions.

8. From and after the passing of this Act, all exclusive rights or privileges possessed or claimed by the freemen or burgesses of any city, borough, or town corporate, of exemption from payment of any shipping dues which may have been transferred to the said commissioners by his said Royal Highness, or have become vested in the said commissioners under this Act, or of paying a lower rate of tolls and dues than persons not freemen or burgesses, shall cease and determine, and the tolls and dues authorised to be levied under

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this Act shall be at all times charged equally to all persons in respect of the same description of goods.

Application of tolls and income.

9. The commissioners shall apply all money received by them from the tolls and dues authorised by this Act for the purposes following:

First. In paying the said sum of two thousand pounds and interest thereupon agreed to be paid to his said Royal Highness by the said commissioners:

Second. In paying the costs and expenses connected with certain informations and proceedings agreed to be stayed by the said agreement:

Third. In paying the costs and expenses of promoting and obtaining this Act:

Fourth. In paying the costs and expenses of the said commissioners of and in relation to the said agreement, or otherwise incurred in the matter of the said tolls, dues, and payments, and all other costs and expenses of and incidental to the said commission:

Fifth. In paying, year by year, the interest accruing on money borrowed under this Act:

Sixth. The surplus revenue of the commissioners (if any), after providing for the purposes aforesaid, shall be applied in creating a sinking fund for the repayment of the principal moneys borrowed by the said commissioners.

Ultimate extinction of tolls and dues.

10. As soon as the said commissioners shall have repaid the principal moneys borrowed by them for the purposes and under the authority of this Act, and shall have defrayed the interest which may from time to time have accrued upon such principal moneys, and all other costs, charges, and expenses which they are authorised to pay under this Act, the powers and duties of the said commissioners, and the tolls and dues authorised to be levied under this Act, shall forthwith cease and be determined.

Officers of customs may be employed as collectors.

11. It shall be lawful for the said commissioners, with the consent of the Commissioners of Her Majesty's Customs, to employ any officer of Her Majesty's Customs at any harbour or place at which any tolls or dues are leviable under this Act in the collection of such tolls or dues or any part thereof, subject to such remuneration, terms, and conditions as Her Majesty's said commissioners shall approve.

Borrowing powers.

12. The commissioners may from time to time borrow at interest any sum required for the purposes of this Act, not exceeding in the whole the sum of five thousand pounds, on the security of

the rates authorised by this Act, and any money borrowed under this Act, and discharged otherwise than by means of the sinking fund, may be re-borrowed for the purposes of this Act, and so toties quoties.

Appointment of a receiver

13. The mortgagees of the commissioners may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages, by the appointment of a receiver; and in order to authorise the appointment of a receiver in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the application for a receiver is made shall not be less than one thousand pounds in the whole.

Commissioners deemed to be a harbour authority, within meaning of 24 & 25 Vict. c. 47.

14. The commissioners shall be deemed to be a harbour authority within the meaning of the third section of "The Harbours and Passing Tolls, &c. Act, 1861," and the purchase of the said shipping dues under the authority of this Act, and any other the purposes or objects of this Act, shall respectively be deemed to be shipping purposes within the meaning of the said third section.

Moneys to be applied for purposes of Act.

15. Every part of the money borrowed under this Act shall be applied only for the purposes authorised by this Act.

10 & 11 Vict. c. 27. incorporated.

16. Sections twenty-seven to thirty-two inclusive of "The Harbours, Docks, and Piers Clauses Act, 1847," and so much of the said Act as relates to the collection and recovery of rates, namely, sections thirty-four to fifty inclusive, shall be incorporated with this Act.

Short title.

17. This Act may be cited for all purposes as "The Torbay and Dartmouth Shipping Dues Act, 1870."

SCHEDULES to which the foregoing Act refers.

THE FIRST SCHEDULE.

Articles of Agreement made the 1st day of November 1869, between His Royal Highness Albert Edward Prince of Wales, Duke of Saxony, Duke of Cornwall and Rothsay, Earl of Chester, Carrick, and Dublin, Baron of Renfrew, Lord of the Isles, and Great Steward of Scotland, of the one part; and the Right Honourable Lord Churston of Lupton in the county of Devon, Sir Lawrence Palk of Haldon in the same county, Baronet, Member of Parliament, William Froude of Cockington in the same county, Esquire, George Parker Bidder of Dartmouth in the said county, civil engineer, Charles Seale Hayne of Kingswear in the same county, Esquire, John Bowden of Totnes in the said county, corn merchant, Charles Herbert Mallock the younger, of Cockington in the said county, Esquire, De Castro F. Lyne of Paignton in the said county, Esquire, Thomas Lakeman of Brixham in the said county, brewer, and William Kitson of Torquay in the said county, gentleman, herein-after called guarantors, of the other part:

Whereas in the year 1866 certain suits were instituted in the Court of Exchequer by the Attorney General of His Royal Highness, as informant, on behalf of His Royal Highness, against divers merchants, for the recovery of certain dues, tolls, and payments upon goods, merchandise, and shipping, commonly known as and hereafter called "duchy dues," and claimed to be receivable on the part of his said Royal Highness, his heirs and successors, in right of his Duchy of Cornwall, in respect of the water of Dartmouth, parcel of the possessions of the said duchy in the county of Devon:

And whereas orders of a judge at chambers were made in the said suits, with the assent of the parties thereto, in the month of April 1867, whereby it was ordered that all questions raised between the parties in the suits should be stated in special cases for the opinion of the Court of Exchequer, such special cases to be settled by James Hannen, Esquire, now the Honourable Mr. Justice Hannen, as arbitrator:

And whereas, with a view to the settlement of such special cases, various meetings took place, and evidence was adduced before the said arbitrator during the years 1867 and 1868, and before the final settlement of such special cases terms for the settlement of the said suits, and replies on the part of the Duchy of Cornwall thereto, were interchanged between the counsel for the parties in the months of August and December 1868, which said terms and replies thereto are in the words and figures following; (that is to say,)

TERMS proposed for the SETTLEMENT OF SUITS relative to DUES at DARTMOUTH and TORQUAY, with replies of the DUCHY thereto. A.D. 1870.

First. Two thousand pounds to be paid to the duchy to cover all claims for expenses.

First. This the duchy assents to, on condition of the payment being made on the 5th day of January 1869, in default of payment the suits to be proceeded with forthwith.

Secondly. The arbitrator's fees to be equally divided between the duchy and the defendants.

Secondly. These fees to be paid by the duchy and the defendants immediately on the payment of the two thousand pounds being made on the said 5th day of January 1869.

Thirdly. The duchy to stay all proceedings, and by the entering a nolle prosequi, or such other steps as may be effectual, to determine these and all other actions and proceedings which may have been brought against any person for dues, &c., or tolls claimed, under the same title as that under which the claim in these suits is made.

Thirdly. All necessary steps will be taken for the purposes referred to on the two thousand pounds being paid at the time above stated.

Fourthly. No further action to be brought or information laid against any other person for any such tolls, &c.

Fourthly. No further proceedings will be taken against any person for tolls arising within the Dartmouth and Torquay district, provided the payment is made as before stipulated.

Fifthly. Immediately on the assembling of Parliament, the duchy to consent to and as far as possible to promote an Act by which the tolls, &c. within the limits claimed in these suits to be the limits of the port or water of Dartmouth shall be abolished, and all claims of the duchy thereto shall be surrendered; the promoters of the Bill to have the assistance and sanction of the duchy in asking from Parliament any such extension of the right to collect these or similar tolls for the purpose of defraying the costs and recouping themselves the sum so paid, in pursuance of that compromise, either in whole or in part, as Parliament may agree.

Fifthly. The duchy has already full parliamentary powers of selling and making an effectual conveyance or release of any portion of its possessions and rights, and therefore needs no Act of Parliament to effect these purposes; but, provided the rights of the duchy and its lessees to the dues and tolls arising within the Salcombe district are expressly excepted from the operation of any such Act, there would be no objection (the previous conditions as to the payments mentioned in clauses number one and two having been complied with) to give the usual consent on the part of the duchy to any Act which Parliament might sanction for the abolition, alteration, extension, or continuance of the tolls and dues which are the subject of the suits.

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Sixthly. If so advised, the promoters to have the liberty to purchase the claims of the duchy under such title as they have to give.

Seventhly. This arrangement not to affect the rights of either party to the lease from the duchy to the harbour commissioners of Salcombe, which are to be excluded therefrom.

Sixthly. This will depend in some measure upon the party or parties who may be the promoters of such Bill.

Seventhly. This is assented to, of course, and provision for the exception of Salcombe can be made as suggested in the answer of proposal No. 5 in the proposed Bill.

And whereas questions having subsequently arisen as to the method to be pursued for carrying out the said terms of settlement, it was agreed that it should be referred to the Honourable Mr. Justice Hannen to state and determine the proper steps to be taken for giving effect thereto:

And whereas the Honourable Mr. Justice Hannen has recently given his award in writing for that purpose, which said award is in the words and figures following; (that is to say,)

"In the Exchequer.

"Attorney General of the Prince of Wales *v.* Hunt.

"Same *v.* Crossman.

"The counsel for the parties in the references in the above suits having "requested my opinion as to the proper steps to be taken for carrying out "the terms proposed for the settlement of such suits, and having agreed to "be bound thereby, I am of opinion that a proper security should be given "on behalf of the defendants by Lord Churston and Sir Lawrence Palk, or "such other substantial guarantors as may be nominated by them, for the "payment of the sum of two thousand pounds within twelve calendar "months, to be computed from the end of the present session of Parliament, "with interest thereon until payment at the rate of five pounds per centum "per annum from the 5th day of January 1869, being the time named for "the payment of the above-mentioned sum, in the terms of settlement "assented to on the part of the Duchy of Cornwall.

(Signed) "James Hannen."

And whereas the arbitrator's fees, mentioned in the second article of the said terms of settlement, have been duly paid in equal shares and proportions before the day of the date of these presents:

And whereas, for the purpose of giving effect to such terms of settlement, and to the said award in relation thereto, it has been agreed that these presents shall be made and entered into: Now these presents witness, and in consideration of the premises it is hereby agreed and declared on the part of the said guarantors, and the said guarantors, and any two or more of them, do, for themselves, their heirs, executors, administrators, and assigns, and each and every of them doth for himself, his heirs, executors, administrators, and assigns, hereby covenant with his said Royal Highness, his heirs and successors, that they the said guarantors, their executors, administrators, or assigns, will pay the said sum of two thousand pounds into the Bank of England to the account of the Duchy of Cornwall within twelve calendar months, to be computed from the end of the last session of Parliament; and further, will pay into the hands of the Receiver General for the time being of the Duchy of Cornwall, or his deputy, interest upon the said sum of two thousand pounds at the rate of five pounds per centum

per annum, computed from the 5th day of January 1869 until the time of the payment of the said sum of two thousand pounds into the Bank of England as aforesaid: And it is hereby agreed and declared that the conditions stated in articles three and four of the said terms of settlement of the said suits, and the said replies thereto, shall be duly observed and performed: And it is hereby further agreed and declared, that the said sum of two thousand pounds, when paid as herein-before provided, shall, besides covering all claims for expenses, be deemed and taken to be and be accepted as the consideration for the purchase of all the right, title, and interest his said Royal Highness, his heirs and successors, in and to all duchy dues, of whatsoever kind, upon goods, merchandise, and shipping, which may at any time have been levied, received by, or reputed to belong to His Royal Highness, or his predecessors in the said duchy, in respect of the water of Dartmouth, at Dartmouth, Totnes, and Torquay, Paignton, and Brixham, and at all other places within the limits heretofore claimed to be the limits of the water of Dartmouth, except such places as are comprised within the portion of the bailiwick of the water of Dartmouth demised by his said Royal Highness, by an indenture of lease bearing date the 21st day of July 1861, to the persons forming the committee for the improvement of the Kingsbridge and Salcombe harbour and estuary, that is to say, within the district extending from the headland or promontory on the sea coast of Devon called Start Point on the east to the mouth of the River Erme or other the limit of the said water towards the west.

And it is hereby agreed, that His Royal Highness will, by effectual assurances, in consideration of the said sum of two thousand pounds and interest, when paid (if requested by the guarantors so to do at any time within thirty-one years from the passing of "The Duchy of Cornwall Management Act, 1863,"), convey to the said guarantors or their nominees the said duchy dues (subject to such exception as aforesaid), and all his right, title, and interest therein and thereto; and also will cause his sanction and assent to be signified to any bill in Parliament or Order in Council promoted by the guarantors for the purposes mentioned in the fifth proposed term of settlement as modified by the exception aforesaid.

In witness whereof to these presents the seal of the Duchy of Cornwall hath been duly affixed and set, and the said parties hereto of the second part have hereunto set their hands and seals, the day and year first above written.

THE SECOND SCHEDULE.

INWARDS. On Goods and Merchandise brought from without and landed within the limits defined by this Act.

	s.	*d.*
Apples, per ton - - - - - - - -	0	8
Barley and other grain and seeds, per quarter - - - -	0	1
Bricks, per 1,000 - - - - - - - -	0	2
Beer, ale, or porter, per barrel of 36 gallons - - - -	0	2
Blue lias or blue lias stone, or cement or cement stone, per ton - -	0	3

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	s.	d.
Cider, per hogshead	0	2
Coals or culm, per ton	0	6
Fish, dry or cured, per quintal	0	1
Glass, per crate or package	0	1
Iron metal, pig, bar, and bolt, per ton	0	4
Iron castings, per ton	0	8
Iron, wrought or manufactured, per ton	1	0
Ice, per ton	0	6
Lead, pigs of, or sheet, per ton	1	0
Malt, per quarter	0	1
Marble, unworked, per ton of 12 feet	0	2
Ditto, worked ditto	0	6
Manure, artificial, per ton	0	6
Ditto, guano, per ton	0	8
Oats, per quarter	0	1
Oranges and lemons, per chest	0	1
Oil, per tun	0	6
Pipes, glazed, or other sewer, per ton	0	6
Ditto, common or earthenware, per ton	0	4
Potatoes, per ton	0	6
Rum, per tun	2	0
Slates, rag, unwrought, and other, per ton	0	6
Spirits, brandy, gin, or other, per tun	2	0
Stone, flag, rough, per 100 feet	0	2
Ditto, ditto, worked, per 100 feet	0	3
Ditto, freestone, per ton	0	2
Ditto, granite, per ton of 14 feet	0	1
Ditto, Portland, per ton of 12 feet	0	2
Salt, per ton	0	2
Timber, deals, and battens, per load	0	3
Tiles, crease, ridge, or other, per ton	0	2
Wine, per tun	2	0
Ditto in bottles, per dozen	0	1

And so in proportion for any greater or less quantities.

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