CHAPTER lii.

An Act to improve and enlarge the present Market Place, and to erect a new Covered Market, Buildings, and Conveniences in the town and parish of Whitby, in the county of York; and for other purposes. [27th June 1872.]

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WHEREAS the present market house and market place in the town and parish of Whitby are small and inadequate for the requirements and wants of the town and neighbourhood, and for the convenient sale of goods, wares, and other commodities usually sold in the said market, and in consequence thereof goods, wares, and other commodities have long been and continue to be sold in the streets and thoroughfares adjoining to and near the said market place:

And whereas the town of Whitby and the neighbourhood thereof have of late years greatly increased in population, and by reason of the said market being partially held in the streets, many of the streets and thoroughfares adjoining and near to the said market place are incommoded and obstructed:

And whereas Charles William Strickland is or claims to be the lord of the manor of Whitby and liberty of Whitby Strand, with the rights, members, and appurtenances thereof, and entitled during his life to the tolls and profits of the present market, market place, and market house, sometimes called the Town hall or Toll Booth:

And whereas the said Charles William Strickland is willing to extend and enlarge the present market place, and to erect at his own expense a commodious market house or covered market, and other conveniences connected with the market; and the local authority of the said town are desirous that the market should be extended and enlarged as herein-after provided:

And whereas it would be of great advantage to the inhabitants of the said town of Whitby and the neighbourhood thereof, and to

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the frequenters of the existing market, if the same were put upon a permanent footing, with proper regulations and rules for the conduct and management thereof:

And whereas a plan of the lands and houses to be taken compulsorily under this Act, with a book of reference thereto, have been deposited with the clerk of the peace for the North Riding of the county of York, which plan and book of reference are hereafter in this Act referred to as the deposited plan and book of reference:

And whereas all the persons entitled to the lands and houses shown on the deposited plan (except the persons entitled to the lands and houses numbered thereon 5 and 12 respectively, and certain lessees for terms not exceeding one year) have assented to the application to Parliament for this Act:

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

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

Short title.

1. This Act may be cited for all purposes as "The Whitby Market Act, 1872."

Provisions of Acts herein named incorporated.

2. The following Acts and parts of Acts (so far as the same are applicable to the purposes and are not inconsistent with the provisions of this Act) are hereby incorporated with this Act, namely, "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869," and "The Markets and Fairs Clauses Act, 1847," subject to the following provisions; (that is to say,)

1. With reference to the provisions of "The Markets and Fairs Clauses Act, 1847," hereafter in this Act called the general Act, with respect to weighing goods and carts, it shall not be obligatory on the market owner, as herein-after defined, to provide weighing houses or places for weighing or measuring commodities, unless and until and so far as the market owner shall consider that the nature or quantity of the commodities sold in the market is such as to require such weighing houses or places to be provided:
2. With reference to section 42 of the general Act, any writing thereby required to be under the hands and seals of two of the undertakers (if not a body corporate) may be under the hand and seal of the market owner:
3. Sections 12, 13, and 50 of the general Act shall not be incorporated with this Act.

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Interpretation of terms.

3. With respect to the interpretation of terms in and for the purposes of this Act the following provisions shall have effect; namely,

1. In this Act, and in any Act incorporated wholly or in part with this Act, the term "court of competent jurisdiction" shall have effect as if the debt or demand with respect to which that term is used was an ordinary simple contract debt, and not a debt or demand created by statute; and the term "superior courts" shall be taken to include any court of competent jurisdiction within the meaning of this Act:
2. The term "market owner," when used in this Act, shall mean the said Charles William Strickland, or other the person or persons for the time being entitled to the receipt of the tolls and profits of the market:
3. The expression "the local authority," when used in this Act, shall mean the commissioners for the time being acting in the execution of "The Whitby Improvement Act," (7 William IV. cap. 10.), or the local board for the Whitby district, or the local board or other body or persons who are for the time being the governing body or persons having the control of any place or district within the said town and liberty:
4. The expression "the covered market" shall mean the market house or covered market by this Act authorised:
5. The expression "open market place" shall mean and include the place or places within the limits of this Act in or upon which the market owner has heretofore of right taken market tolls other than the site of the covered market:
6. Subject to the foregoing provisions, the several terms to which meanings are assigned in any Act incorporated wholly or in part with this Act, or which have therein special meanings, have in this Act the same respective meanings.

Limits of Act.

4. The limits of this Act shall be co-extensive with the limits of the town of Whitby and the liberty of Whitby Strand.

Power to pull down the present market house, &c.

5. The market owner may close the present market house and buildings, market place, or such parts thereof as may be deemed necessary, and may pull down and remove the present market house and other buildings and works belonging thereto, and, subject to the provisions of this Act, may construct upon the site thereof, and upon the lands shown on the deposited plan and described in the deposited book of reference, or on any of such

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lands, a covered market and market place, with all necessary shops, houses, and buildings, works, approaches, and conveniences connected therewith or incident thereto, and may enter upon, take, and use such of the lands and buildings delineated on the plan, and described in the deposited book of reference, as may be necessary for those purposes: Provided always, that in constructing the covered market by this Act authorised, the public way or place leading from the northern end of Sandgate to a certain street or way called the Fish Ghaut or Brewster Lane shall be arched over, subject to the following conditions:

The present level of the said way or place shall be preserved:

If the arched or covered road be not more than forty feet in length, the roadway shall not be less than nine feet in width throughout:

If the arched or covered road be more than forty feet in length, the roadway shall not be less than ten feet in width throughout:

In no case shall the clear height from the level of the roadway be less than twelve feet throughout.

Power to enlarge markets.

6. If at any time or times hereafter the covered market should be found to be not sufficiently capacious, or if the situation thereof should not be found to be convenient for the purposes of the said market, it shall be lawful for the market owner to enlarge and improve the same from time to time, and to construct any covered market and market place in addition to the covered market by this Act authorised; and all and singular the powers and provisions of this Act (except the powers for the purchase and taking of and entering upon lands and property otherwise than by agreement) shall be applicable for the purpose of such enlargement and improvement, and for regulating and maintaining the same when enlarged and improved.

Power to acquire easements by agreement.

7. The market owner may for the purposes of this Act, and for the purposes of this Act only, acquire by agreement any easement, liberty, privilege, power, or authority in or over the lands described on the deposited plan; and the provisions of "The Lands Clauses Consolidation Acts, 1845, 1860, and 1869," with respect to lands and rentcharges, as far as the same are applicable in this behalf, shall extend to such easements, liberties, privileges, powers, and authorities.

Limit of time for compulsory purchase.

8. The powers for the compulsory purchase and taking of lands and property shall not be exercised after the expiration of three years from the passing of this Act.

Days for holding market.

9. The said market shall be held weekly on Saturday throughout the year, but it shall be lawful for the market owner when and so often as Saturday shall happen to be Christmas Day, or shall be appointed as a day of public fast or thanksgiving, by notice thereof to be affixed in a conspicuous position in the open market place and covered market eight days previously, to appoint another day on which the said market shall be held, and the same shall be held on such substituted day accordingly, any law or custom to the contrary notwithstanding.

Power to levy market tolls.

10. When and so soon as the covered market shall be certified, under section 32 of the general Act, to be completed and fit for public use, the market owner or his lessee may from time to time demand and take from any person occupying and using any shop, stall, stand, bench, or ground space within the covered market or in the open market place, and from such other persons as are mentioned in the First Schedule to this Act, such tolls or rents as the market owner or his lessee may from time to time appoint, not exceeding the several tolls specified in the said First Schedule, and according to the terms thereof, and such tolls shall be in lieu of and substitution for all market rents and tolls whatsoever theretofore demanded or taken within the limits of this Act; but until the covered market shall as aforesaid be certified to be completed the market owner or his lessee may demand and take from any person occupying and using any stall, stand, bench, or ground space in the open market place such tolls as he may from time to time appoint, not exceeding the tolls specified in the Second Schedule to this Act, and the several tolls specified in the said schedules may be demanded and taken whether the animals or things be sold or only exposed for sale.

Exemption from penalties.

11. Nothing in this Act contained shall subject to any penalty or toll whatever any person who shall publicly expose or offer for sale in the open market place any commodities, articles, matters, or things in respect of which tolls are payable for the use of the covered market, in case such person shall on the day on which such exposing or offering for sale shall take place have previously thereto applied for and been unable to obtain sufficient accommodation in the covered market, nor shall such person so resorting to the open market place be subject to any penalty imposed by the said "Whitby Improvement Act," or the "Local Government Act, 1858," or any other Act of Parliament now in force for protecting the free and convenient use of the public streets or places, or by any byelaw to be made by virtue of the same Acts or any of them, unless the local authority or their surveyor shall think fit to institute pro-

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ceedings against such person with a view to the imposition of such penalty, or shall approve of the institution of such proceedings by some other person.

Slaughter-houses.

12. The market owner shall not, by virtue of this Act, or of the reference to slaughter-house tolls in the said schedule, or either of them, be deemed to be empowered to provide slaughter-houses within the meaning of the general Act.

Tolls payable by successive occupiers.

13. The several tolls payable in respect of the occupation or use of any shop, stall, stand, bench, or ground space in the covered market or in the open market place shall be paid not only by the original taker or occupier thereof for part of a day if he do not occupy it the whole day, but also by any subsequent taker or occupier of the same for any subsequent part of the same day.

Penalty for selling elsewhere than in the markets.

14. When and so soon as the covered market shall be certified as aforesaid to be completed and fit for public use, no market for the sale of any carcases, fish, fruit, vegetables, meat, poultry, or other provisions, corn, grain, seeds, goods, wares, merchandise, and other commodities, articles, matters, or things, shall be held within the limits of this Act, except the markets by this Act authorised; and every person who, after the covered market shall be certified as aforesaid to be completed, shall, within the limits of this Act, publicly expose or offer for sale any such commodities, articles, matters, or things as aforesaid, in respect of which toll is payable for the use of the covered market, shall for every such offence be liable to a penalty not exceeding forty shillings: Provided always, that nothing in this Act shall subject any person to any penalty or toll for exposing or offering for sale any commodities, articles, matters, or things in or upon his own dwelling-house, shop, warehouse, or other premises, or for offering the same for sale from door to door, or from street to street, whether the same be carried in a cart or otherwise, nor shall anything in this Act contained affect any person selling fish by auction, or offering the same for sale in that manner on any of the quays or public places within the limits of this Act.

Application of receipts.

15. The market owner shall be entitled for his own use to all money received from any rents and tolls by this Act authorised.

Power to erect dwelling-houses and shops.

16. The market owner may erect shops, houses, and other buildings on the frontage or other portion of the property by this Act authorised to be acquired for the purposes of the said market, and may sell or let the same to any corporation, person or persons, upon such conditions and for such rent as shall be mutually agreed upon.

Leases of markets, &c., and assignments thereof.

17. The market owner may from time to time let the markets by this Act authorised, and the shops, stalls, stands, and other conveniences, and the tolls, rents, and stallages, or any of them, for any period not exceeding seven years, upon such terms and conditions as may be mutually agreed upon, but subject always to the provisions of this Act.

Lessee to have the same powers, &c. as the market owner.

18. Every lessee during the term of his lease (subject to the exceptions or restrictions thereof) shall have and enjoy such rents and tolls authorised to be taken by this Act, or by virtue of any rule, order, or byelaw made in pursuance thereof, as the market owner would have had or been entitled to if such lease had not been made, and shall also during the term of his lease have and enjoy all the powers of collecting and receiving rents and tolls, and all other powers, privileges, and advantages, and be subject to the same obligations in respect of the premises comprised in his lease, as the market owner would have had and enjoyed or been subject to by virtue of this Act or otherwise if such lease had not been made.

Recovery of rents and tolls by distress.

19. All rents and tolls, and other moneys, damages, costs, and expenses payable under this Act to the market owner may be levied by distress, and any justice, on application by the market owner, his lessee or agent, shall issue his warrant accordingly, the party proceeded against being first duly summoned.

Costs of distress.

20. The justice who issues a warrant of distress for the recovery of any money payable under this Act may order that the costs of the proceedings for the recovery of the money be paid by the person liable to pay the money, and the costs shall be ascertained by the justice and included in the warrant of distress for the recovery of the money.

Recovery of rents or tolls otherwise than by distress.

21. Nothing in this Act contained shall prevent the market owner from recovering any rent, toll, or other money payable to him in any court of competent jurisdiction, or by any other lawful means.

Several names in one warrant, &c.

22. Any warrant of distress, summons, or notice issued under this Act may comprise in the body thereof, or in a schedule thereto, several names and several sums.

For keeping order in the market.

23. It shall be lawful for any inspector or other officers appointed by the market owner to keep order in the market and the approaches thereto; and any person causing or creating any nuisance or obstruction in the market or approaches shall be liable to a penalty not exceeding forty shillings.

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Repair of market approaches.

24. The open space or roadway fronting the covered market, and leading from Church Street to Sandgate, shall be of the width throughout of twenty-two feet at the least, and shall be formed into a street or road by and at the expense of the market owner before the opening for the public use of the covered market; and when such street or road shall be completed and fit for the public use (of which completion and fitness a certificate under the hands of two justices delivered to the clerk for the time being of the local authority shall be for all purposes conclusive evidence), the same street or road shall become, and shall thenceforth remain and be, a public street and thoroughfare, and shall be under the sole management and control of the local authority.

Saving for local authority.

25. Save as in this Act expressly provided, nothing herein contained shall alter or take away any of the rights, powers, or authorities vested in the local authority.

Saving rights of owner.

26. Except as is by this Act expressly provided, nothing in this Act shall take away, lessen, prejudice, or alter any franchise, estate, right, interest, power, authority, or privilege of or belonging to Charles William Strickland, or other the lord of the manor of Whitby and liberty of Whitby Strand.

Expenses of Act.

27. The costs, charges, and expenses preliminary to, and of and incidental to the preparing, applying for, obtaining, and passing of this Act shall be paid by the market owner.

The SCHEDULES to which the foregoing Act refers. A.D. 1872.

FIRST SCHEDULE.

STALLAGES, RENTS, AND TOLLS.

Part I.

Covered Market Tolls.

To be levied in the covered market only, on any day of the week:—

	s.	*d.*
For every stall or space for the sale of any article, matter, or thing not herein otherwise specially provided for, for every superficial foot - - - - - - - -	0	1½
For every wheelbarrow of fruit or vegetables, other than potatoes -	0	3
For every bag or other quantity of potatoes, for every 112 pounds in weight, and for any fractional part of 112 pounds - -	0	1
For every 25 pounds in weight of butter, and for any fractional part of 25 pounds - - - - - - -	0	1
For every pannier, box, bag, barrel, or basket, containing any marketable commodity, except butter, potatoes, and other articles otherwise charged, for every two cubic feet of such commodity, and for any fractional part of two cubic feet - - - -	0	2
For every person showing samples of any description of grain -	0	6

Part II.

Open Market Tolls.

To be levied in the open market place only, and on market days only:—

CATTLE.

	s.	*d.*
For every bull, ox, cow, heifer, steer, stirk, or bullock - -	0	3
For every horse, mare, or gelding, mule or ass - - -	0	6
For every sheep, lamb, goat, or kid - - - -	0	1½
For every hog or pig - - - - - -	0	1½
For every calf - - - - - - -	0	2
For every stallion shown - - - - - -	2	0

GENERAL TOLLS.

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	s.	d.
For every wheelbarrow of fruit or vegetables - - -	0	3
For every cart-load of potatoes, fruit, vegetables, or other thing not herein otherwise specially provided for, sold from the cart -	0	6
For every waggon-load of potatoes, fruit, vegetables, or other thing not herein otherwise specially provided for, sold from the waggon - - - - - - -	1	0
For every person selling, offering or exposing for sale any manufactured article whatever, in or from any cart or other vehicle -	5	0

Part III.

Slaughter-house Tolls.

To be levied for cattle, beasts, sheep, or swine slaughtered in the slaughter-house to the said market, on any day of the week:

	s.	d.
For every bull or cow, heifer, steer, stirk, or bullock - -	1	0
For every calf - - - - - - -	0	6
For every sheep or pig - - - - - -	0	3

Part IV.

Tolls for Weighing and Measuring.

To be levied on any day of the week:—

	s.	d.
For any weight not exceeding 20 pounds - - - -	0	0½
For any weight exceeding 20 pounds but not exceeding 240 pounds - - - - - - - -	0	1
For any weight exceeding 240 pounds - - - -	0	2
For all things sold by measure, for every bushel or less quantity -	0	0½

SECOND SCHEDULE.

Tolls to be levied in the open market place only, on market and fair days only:—

	s.	d.
For every stall, bench, or stand for the sale of any article, matter, or thing whatsoever (such stall, bench, or stand not to exceed 4 feet in width), for every foot in length - - - -	0	1

	s.	*d.*
For every space of ground occupied for the sale of pottery or other articles whatsoever not sold from a stall, bench, or stand, and not herein otherwise charged, for every superficial foot - -	0	0¼
For every cart-load of potatoes, fruit, vegetables, or other article, matter, or thing whatsoever, sold from the cart - - -	0	3
For every waggon-load of potatoes, fruit, vegetables, or other article, matter, or thing whatsoever, sold from the waggon - -	0	4
For every pannier, box, bag, barrel, or basket, containing butter, fowls, eggs, or any other marketable commodity - - -	0	1
For every bull, ox, cow, heifer, steer, stirk, bullock, horse, mare, or gelding, mule or ass - - - - - -	0	3
For every score of sheep, lambs, goats, or kids, and for every fractional part of a score - - - - - - -	1	0
For every pen or space used for the sale of pigs, such pen or space being 4 feet square - - - - - -	0	3

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