CHAPTER xix.

An Act to alter the constitution of the Trustees of the Port and Harbour of Whitby in the north riding of the county of York; for better defining the limits of the said Port and Harbour; and for other purposes. [23d May 1879.] A.D. 1879.

WHEREAS by an Act passed in the 7th and 8th years of the reign of His late Majesty King George the 4th, chapter 78, entitled "An Act for the more effectual repairing, maintaining, and "improving the piers and harbour of the town and port of Whitby "in the county of York," (and in this Act called "the recited Act,") whereby the several therein-recited Acts relating to the said piers and harbour were consolidated and amended, certain Trustees, with power to elect their successors, were appointed for managing, maintaining, repairing, and improving the piers and harbour of the said port of Whitby and for carrying into execution the provisions of that Act:

And whereas it is expedient that the constitution and succession of the Trustees should be altered, and that provision should be made for the appointment, election, and retirement of Trustees, as in this Act contained:

And whereas the Trustees have no debt secured upon their revenue, whether by mortgage, debenture, or annuity, under the powers of the recited Act:

And whereas it is expedient that the powers and provisions of the recited Act should be amended and extended, and that the limits of the port and harbour of Whitby should be respectively fixed and defined, and that further powers should be conferred upon the Trustees:

And whereas the purposes aforesaid 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

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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 of this Act and 7 & 8 G. 4. c. lxxviii.

1. This Act may be cited for all purposes as the Whitby Port and Harbour Act, 1879, and the recited Act as the Whitby Port and Harbour Act, 1827.

This Act and recited Act to be read together.

2. This Act and the recited Act, as altered and amended by this Act, shall be read and construed together as one Act.

Interpretation of terms.

3. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there is something in the subject or context repugnant to such interpretation:

The term "the present Trustees" shall mean the Trustees as constituted under the recited Act:

The term "the Trustees" shall mean the Trustees under the recited Act or as newly constituted under this Act, as the case may require:

The term "the local board" shall mean the Whitby District Local Board:

The term "the board of guardians" shall mean the guardians of the poor of the Whitby Union:

The term "the railway company" shall mean the North-eastern Railway Company:

The term "the registered shipowners" or "the shipowners" shall mean shipowners registered at the Custom House at Whitby:

The terms "the port" and "the harbour" shall mean respectively the port of Whitby and the harbour of Whitby as defined by this Act:

The term "person" shall include body corporate.

Incorporating part of 10 & 11 Vict. c. 27.

4. The provisions of the Harbours, Docks, and Piers Clauses Act, 1847, with respect to the construction of the harbour, dock, or pier, with respect to the appointment of harbour-masters, dock-masters, and pier-masters, and their duties (except section 51), with respect to the protection of the harbour, dock, and pier, and the vessels therein, from fire or other injury, with respect to buoys, lighthouses, and beacons, with respect to the byelaws to be made by the undertakers, and with respect to access to the special Act, so far as they are applicable to the purposes of this Act, are hereby incorporated with this Act; and the expression "the harbour, dock, or pier" in that Act shall mean for the purposes of this Act the port, harbour, piers, works, and sea within the jurisdiction of the Trustees; and the expression "the special Act" shall mean and include the recited Act and this Act.

Limits of port.

5. The port of Whitby shall, for all purposes of this and the recited Act and of any other Act relating to the harbour of Whitby, extend over and along the seashore for a distance of one mile and a half westward and one mile eastward from the existing lighthouse on the northern extremity of the west pier of the harbour, and to a distance of two miles seaward from and co-extensive with that portion of the seashore, and shall include all places where the sea flows and reflows within those limits, and all the lands, buildings, and works within or near to those limits from time to time vested in, or belonging to, or under the control of the Trustees.

Limits of harbour.

6. The harbour of Whitby shall, for all purposes of this and the recited Act and of any other Act relating to the harbour of Whitby, comprise and include all parts of the port within and above the existing piers and works, and such piers and works, and all alterations, extensions, and improvements of the existing piers and works, and all such parts of the port as shall hereafter be comprised and included within such alterations, extensions, and improvements.

New Trustees constituted.

7. The present Trustees shall continue in office until the first Tuesday in September one thousand eight hundred and seventy-nine, and then go out of office, and on and from that day the Trustees shall consist of the following persons; (that is to say,)

The lord of the manor of Whitby for the time being:

Four persons to be annually appointed by the local board in manner provided by this Act:

One person to be annually appointed by the board of guardians in manner provided by this Act:

Two persons to be from time to time appointed by the Board of Trade in manner provided by this Act:

One person to be from time to time appointed by the railway company in manner provided by this Act:

Four persons to be annually elected by the registered shipowners in manner provided by this Act.

The Trustees, and their successors as such, under the provisions of this Act, shall be in substitution for the present Trustees, and shall be one body corporate by the name of "The Whitby Port and Harbour Trustees," and by that name shall have perpetual succession with a common seal, and with power to purchase, hold, and dispose of lands and other property, and shall thenceforward constitute the Trustees within the meaning and for the purposes of the recited Act and this Act and of any other Act relating to the port or harbour of Whitby, and shall have, execute, perform, and exercise, within the limits of the port and harbour as defined by this Act, all the

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powers, rights, privileges, duties, and authorities conferred and imposed on the present Trustees by the recited Act, or otherwise howsoever, and all powers, rights, privileges, duties, and authorities conferred and imposed upon them by this Act; and (except as by this Act expressly provided) the provisions of the recited Act shall in all respects continue to operate as if this Act had not been passed.

All the property, real and personal, of the present Trustees, and all deeds, acts, and proceedings made, done, or taken by or against the present Trustees under the authority of the recited Act, shall (except as by this Act expressly provided) remain unaffected by the said substitution, and shall respectively vest in and be exerciseable by, affect, and enure to the benefit of or against, and shall be enforceable by or against, the Trustees appointed and elected by and under the provisions of this Act, in like manner in every respect as if they were the present Trustees and this Act had not been passed.

Annual appointment of Trustees by the local board.

8. The local board shall at an ordinary or special meeting, to be held in the month of August in the year one thousand eight hundred and seventy-nine, and in every subsequent year, appoint four persons to be Trustees under this Act for the term of one year.

Annual appointment of Trustee by the board of guardians.

9. The board of guardians shall at an ordinary or special meeting, to be held in the month of August in the year one thousand eight hundred and seventy-nine, and in every succeeding year, appoint one person to be Trustee under this Act for the term of one year.

Board of Trade may appoint Trustees.

10. The Board of Trade may at any time after the passing of this Act, and from time to time, appoint two persons to be official Trustees under this Act, and may at pleasure remove any person so appointed; and every such appointment and removal shall be made in writing under the hand of one of the Secretaries or Assistant Secretaries for the time being of the Board of Trade, and when made shall be forwarded to the clerk to the Trustees; and an entry of every such appointment and removal shall be made in the minutes of the proceedings of the Trustees.

Appointment of one Trustee by North-eastern Railway Company.

11. The directors of the railway company may from time to time appoint one person to be a Trustee under this Act, and may at pleasure revoke any such appointment; and every such appointment and revocation shall be testified by writing under the hand of the secretary for the time being of the railway company, which shall be forwarded to the clerk to the Trustees, and shall be kept with their records; and an entry of every such appointment and

revocation shall be made in the minutes of the proceedings of the Trustees. A.D. 1879.

For annual election of Trustees by shipowners.

12. The several persons from time to time registered as shipowners at the Custom House at Whitby on the thirtieth day of June one thousand eight hundred and seventy-nine, and on the thirtieth day of June in every succeeding year, shall elect annually in manner herein-after provided four persons to be Trustees under this Act for the term of one year.

Registrar of shipping to make and deliver lists of registered shipowners.

13. In the month of July, and on or before the seventh day of that month, in the year one thousand eight hundred and seventy-nine, and in every subsequent year, the Trustees shall cause application to be made to the registrar of shipping at the Custom House of Whitby for a list containing the names, addresses, and descriptions of the shipowners as registered on the thirtieth day of June immediately preceding such application, with the names, registered tonnage, and parts or shares of the ships in respect of which they are registered; and such registrar shall on or before the twenty-first day of the same month of July, after receiving such application as aforesaid, supply such list on payment of any reasonable expenses which may be incurred in preparing the same.

Clerk to make alphabetical list of persons entitled to vote.

14. On or before the thirty-first day of July in the year one thousand eight hundred and seventy-nine, and in every subsequent year, the clerk to the Trustees shall from the said list make up an alphabetical list of the persons entitled to vote as shipowners at the next election, with the number of votes to which they are respectively entitled, to be ascertained in manner herein-after provided, and on or before the same day shall cause such list to be printed and to be posted on the principal outer doors of the Town Hall and of the Custom House at Whitby, and printed copies of each such list shall be kept at the principal office of the Trustees for public inspection, and on payment of such sum as the Trustees think reasonable, not exceeding sixpence, the Trustees shall deliver a printed copy of each list to every person requiring it.

Scale of votes for shipowners.

15. Every person appearing by any such list to be a registered shipowner to the amount or aggregate amount of thirty tons shall be entitled to one vote for the first or only thirty tons, and to one additional vote for every one hundred tons above the first thirty tons, but not exceeding in the whole three votes.

Votes of owners, joint owners, &c.

16. For the purpose of ascertaining the number of votes for owners of shares of a ship and joint owners, the following rules shall be observed; (that is to say,) In the case of a ship registered in distinct and several shares in the names of more persons than

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one, the tonnage shall be apportioned among the owners as nearly as may be in proportion to their respective shares, and each of such persons shall be deemed to be the owner of the tonnage so apportioned to him; and in the case of a ship or shares of a ship registered jointly without severance of interest in the names of more persons than one, the tonnage shall, if it is sufficient, either alone or together with other tonnage (if any) owned by such joint owners, to give a qualification to each of them, be apportioned equally between the joint owners, and each of such joint owners shall for the purpose of a qualification be deemed to be the owner of the equal share so apportioned to him, but if it is not so sufficient the whole of such tonnage shall be deemed to be owned by such one of the joint owners as is first named on the register; and in making any such apportionment as aforesaid any portion may be struck off so as to obtain a divisible amount, and the whole amount of tonnage so owned by each person, whether in ships or shares of or interests in ships, shall be added together, and if sufficient shall constitute his qualification.

Annual meetings for election of Trustees by shipowners.

17. For the annual election of Trustees under this Act a meeting of the registered shipowners shall be held on the third Tuesday in August in the year one thousand eight hundred and seventy-nine, and in every succeeding year, between the hours of eleven in the forenoon and four in the afternoon, at such place in the town of Whitby as the Trustees appoint, and shall be convened by the clerk to the Trustees by not less than seven nor more than fourteen days notice by advertisement in one or more local newspapers published or circulating in Whitby, and by notice posted on the principal outer doors of the Town Hall and the Custom House, and at the office of the Trustees at Whitby, which advertisement and notice shall specify the time and place and object of the meeting.

Nomination of candidates.

18. At any such meeting as aforesaid any persons having the qualification prescribed by this Act may, if they consent thereto, be nominated by any elector and seconded by any other elector for the office of Trustee: Provided always, that no single elector may nominate more candidates than the number of persons to be elected.

Procedure at meetings of shipowners.

19. At every such meeting the persons present at the commencement of the meeting, and entitled to vote personally or by proxy, appointed as by this Act prescribed, shall forthwith appoint a chairman, and the person so appointed shall call for the nominations of candidates, and receive the votes, and act in all other respects as chairman of the meeting; and the only business to be transacted or discussed at any such meeting shall be the election by the meeting of persons to be elected Trustees thereat.

List of shipowners supplied by registrar of shipping to be conclusive.

20. The clerk to the Trustees shall produce or cause to be produced at each such meeting of shipowners the said list of registered shipowners supplied by the registrar of shipping at the Custom House at Whitby, and such list shall for all purposes of the election be conclusive evidence of the matters therein appearing.

Method of election of Trustees.

21. If at the expiration of half an hour after the time fixed for the holding of any such meeting no more candidates stand nominated than there are vacancies to be filled up, the chairman shall forthwith declare the candidates who may stand nominated to be elected; but if at the expiration of half an hour more candidates stand nominated than there are vacancies to be filled up, the chairman shall forthwith proceed to take the votes of the shipowners present personally or by proxy and entitled to vote at such meeting; and the votes shall be given in writing under the hands of the respective voters or their proxies; and every shipowner may give the whole number of votes to which he is entitled to such one or more of the candidates as he thinks fit, not exceeding the number of persons to be elected; and the election shall be decided by a majority of votes, and in every case of an equality of votes the chairman of the meeting shall, when requisite to decide the election, have an additional or casting vote.

As to failure to elect sufficient number of Trustees.

22. If from any cause whatever at any such election the number of candidates nominated are less than the number to be elected, the persons so nominated shall be deemed to be elected, and the remaining places shall be filled up within fourteen days after such election by the Trustees or Trustee so elected out of qualified persons to be chosen, by agreement among themselves, or in case of disagreement, by a majority of votes; and notice in writing of the persons so chosen, signed by the elected Trustees or Trustee, or the majority of them, shall forthwith be communicated to the clerk to the Trustees, which writing shall be sufficient evidence of the matter therein contained, and the persons so chosen shall in other respects for purposes of this Act be deemed to have been elected at such annual election.

Form and regulations respecting proxies.

23. The appointment of a proxy shall be made by an instrument in writing in the following form, with such variations as circumstances require; (that is to say,)

'The Whitby Port and Harbour Act, 1879.

'I, *A.B.*, of , being entitled to vote at the election of a 'Trustee (*or* Trustees) to represent the shipowners of Whitby at 'the election to be held on the day of 18 ,

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'do by this writing appoint *C.D.* to be my proxy to vote on my 'behalf at that election.

'(Signed) *A.B.*

'Witness,

'*X.Y.*'

Every proxy shall be signed by the appointer, or if the appointer be a body corporate, sealed with the common seal of such body corporate, and in all cases attested by one witness at least.

An instrument appointing a proxy shall not be used at any election unless it has been deposited at the office of the Trustees not less than forty-eight hours before the time appointed for that election.

An instrument appointing a proxy shall not be valid except for the election next after the date of its execution.

No person shall be capable of acting as a proxy except a shipowner, or in case of a body corporate, a member or officer of such body corporate.

Result of appointment or election of Trustees to be communicated to clerk.

24. The result of every appointment of Trustees by the local board and board of guardians, and of every election of Trustees by the shipowners, shall, immediately after the conclusion of the meeting at which it takes place, be communicated in writing signed by the chairman of the meeting to the clerk to the Trustees, which writing shall be sufficient evidence of the due appointment or election, as the case may be, of the persons or person named in such writing.

Penalty for refusal or neglect of duty by clerk.

25. If the clerk to the Trustees refuse or neglect to comply with any enactment of this Act relating to elections, he shall be liable, on summary conviction, to a penalty not exceeding twenty pounds; and any person employed for the purpose of any such election by or under the said clerk who is guilty of any such neglect or refusal shall be liable, on summary conviction, to a penalty not exceeding ten pounds.

Commencement and duration of office of appointed and elected Trustees.

26. The term of office of persons appointed Trustees by the local board and board of guardians and elected by the shipowners under this Act shall respectively commence on and from the first Tuesday in the month of September next following their respective times of appointment and election, and shall (except as herein-after provided) continue for the period of one year from that day, and no longer.

Qualification of and form of declaration by Trustees.

27. Every person to be appointed by the local board, the board of guardians, or the railway company, or elected by the shipowners a Trustee under this Act must have the following qualification; that is to say, he must, either in his own right or in right of his

wife, be in possession or receipt of the rents and profits of messuages, lands, or hereditaments held by him or her for a life or lives, or for years determinable with a life or lives, or for some estate of inheritance of the clear yearly value of twenty-five pounds, or be possessed of personal estate of the value of five hundred pounds over and above what will be sufficient to satisfy all his just debts; and every person shall be incapable of acting as a Trustee (except in administering the following declaration) until he shall have made and subscribed the following declaration (which shall be in substitution for the oath or affirmation prescribed by section 8 of the recited Act) before any two or more of the Trustees, who are hereby authorised and empowered to administer the same in the words or to the effect following:

'I do solemnly declare that I will faithfully and 'impartially, according to the best of my skill and judgment, 'execute all the powers and authorities reposed in me as a Trustee 'by virtue of the Whitby Harbour and Port Act, 1827, and the 'Whitby Harbour and Port Act, 1879, or either of those Acts, or 'otherwise, and that [*here set forth a statement of the possession of 'the qualification required by this Act in the terms thereof*]. As 'witness my hand this day of in the year of 'our Lord .

'Taken before us (Signed) *A.B.*

'*C.D.*, *E.F.*,

'Trustees.'

And every such declaration when made and signed shall forthwith be deposited with the clerk to the Trustees.

False declaration a misdemeanor.

28. Every person who shall falsely or corruptly make and subscribe any such declaration knowing the same to be untrue in any material particular, or who shall knowingly and wilfully act contrary thereto, shall be deemed guilty of a misdemeanor.

Disqualification of Trustees.

29. Every person appointed by the local board, the board of guardians, or the railway company, or elected by the shipowners a Trustee under this Act, and ceasing to have the qualification required by this Act, shall thereupon cease to be a Trustee under this Act.

Filling up of extraordinary vacancies.

30. In every case of a vacancy happening by reason of failure to make and subscribe the prescribed declaration, or by failure to attend any meeting of Trustees for six consecutive months (unless prevented by unavoidable cause), or by death, resignation, disqualification, or incapacity in the office of Trustee appointed by the local board, or the board of guardians, or the railway company, or elected

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by the shipowners under this Act, then, in case such vacancy has occurred in the office of a Trustee appointed by the local board, or by the board of guardians, or by the railway company, the clerk to the Trustees shall with all due diligence after the happening of such vacancy deliver or send by post notice of such vacancy to the clerk to the local board, or to the clerk of the board of guardians, or to the secretary of the railway company (as the case may be), who shall within fourteen days after receipt of such notice proceed to call a meeting of the local board or board of guardians or the directors of the railway company (as the case may be) to appoint a person to supply such vacancy, and the local board, board of guardians, or directors (as the case may be) shall thereupon proceed to supply the vacancy, and in case the vacancy has occurred in the office of Trustee elected by the shipowners under this Act, the Trustees shall convene a meeting of the shipowners for the election of a Trustee to supply such vacancy; and the proceedings for and at all such meetings shall be conducted as nearly as may be in the same manner as the proceedings for and at the meetings for the respective annual appointments or election of the like Trustees respectively; and every person appointed or elected a Trustee under this section shall be entitled to hold office only so long as the Trustee in whose stead he is elected would have been entitled to continue in office.

Retiring Trustee eligible for re-appointment or re-election.

31. Every Trustee appointed by the local board or by the board of guardians or elected by the shipowners under this Act going out of office shall, if qualified, be eligible for re-appointment or re-election, as the case may be.

Acts of Trustees not invalid by reason of irregularity of appointment, &c.

32. The acts of the Trustees shall not be invalidated by reason of any irregularity in the appointment or election of any Trustee under this Act, or by any vacancy in the office of Trustee, or by reason of no appointment or election having been made by any body or persons authorised to make such appointment or election.

Trustees may hold special meetings.

33. The Trustees may hold special meetings, and any three or more of the Trustees may require the clerk to the Trustees to convene a special meeting, but no such meeting shall be held unless three clear days notice thereof at the least be given by the clerk to the Trustees; and all matters and things to be executed and done at any such meeting may be executed and done by the major part of the Trustees present thereat, the number of Trustees present not being less than five, and shall be as valid as if executed or done by all the Trustees for the time being.

Notice of special meetings.

34. Notice of any special meeting of the Trustees, specifying the time, place, and purport of the same, shall be affixed by the clerk to the Trustees on the principal outer doors of the Town Hall and

of the Custom House and at the office of the Trustees at Whitby, and shall be by him also delivered or sent by post or otherwise to the usual place of abode of each of the Trustees three clear days at least previous to such meeting; and no business shall be transacted at any special meeting except such as is stated in the notice, which notice may be in writing or print, or partly in writing and partly in print.

Expenses of elections, &c.

35. The expenses incurred by the Trustees or their clerk of and incidental and preparatory to the obtaining and preparation of the lists and of holding elections directed by this Act, or otherwise relative thereto, shall be paid by the Trustees out of any trust funds in their hands as part of their ordinary expenses.

General powers of Trustees for improving the port and harbour.

36. Subject to the provisions of this Act and the recited Act, the Trustees may and shall deepen, cleanse, scour, enlarge, contract, and otherwise improve the channel or channels of the port and harbour and the approaches thereto, and may repair, support, alter, improve, and maintain the present piers and other works, or any other pier and works to be built or constructed, and may execute all such other works and improvements and do all such other things within the limits of the port as they may consider necessary for protecting, preserving, maintaining, and improving the navigation of the port and harbour and the use thereof, and for altering, deepening, and enlarging the harbour, and rendering the same and the entrance thereof safer and more commodious, and for such purposes may dig, take up, remove, and carry away any rocks, stones, soil, mud, sand, gravel, rubbish, or other gross matter which shall obstruct, prejudice, or hinder the use and navigation of the port and harbour, or the improvement thereof, and may carry, convey, cast, lay, and lodge the same within the port or elsewhere, or may use the same for any of the purposes of this and the recited Act, and also may provide, set up, place, maintain, alter, or remove all such crabs, capstans, chains, dolphins, mooring-posts, moorings, stoops, landing-places, stages, weighing machines, buildings, and erections, and all such other matters and things as they may consider necessary for the purpose of rendering the harbour safe and commodious, or for other the purposes of this Act and the recited Act.

Trustees to exhibit lights.

37. The Trustees shall at the outer extremity of any works which they may construct below high-water mark exhibit and keep burning from sunset to sunrise such lights (if any) as the Corporation of Trinity House shall from time to time direct.

Lights on or near works

38. The Trustees shall, during the whole time of the constructing, altering, or extending of any work on, in, over, through, or across

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during construction thereof.

tidal lands or a tidal water, exhibit and keep burning at their own expense every night from sunset to sunrise such lights (if any) on or near the work as the Board of Trade from time to time requires or approves, and (notwithstanding the enactments for the time being in force respecting lighthouses) shall also, on or near the work when completed, always maintain, exhibit, and keep burning at their own expense every night from sunset to sunrise such lights (if any) for the guidance of ships as the Board of Trade from time to time requires or approves. If the Trustees fail to comply in any respect with the provisions of the present section, they shall for each night in which they so fail be liable to a penalty not exceeding twenty pounds.

Abatement, &c. of abandoned or decayed works.

39. If any of the works constructed by the Trustees on, in, over, through, or across tidal lands or a tidal water are abandoned or suffered to fall into decay, the Board of Trade may abate and remove the same or any part of them, and restore the site thereof to its former condition at the expense of the Trustees, and the amount of such expense shall be a debt due from the Trustees to the Crown, and be recoverable accordingly with costs, or the same may be recovered with costs as a penalty is recoverable from the Trustees.

Survey, &c. of works by Board of Trade.

40. If at any time the Board of Trade deem it expedient for the purposes of this Act to order a survey and examination of a work constructed by the Trustees on, in, over, through, or across tidal lands or a tidal water, or of the intended site of any such work, the Trustees shall defray the expense of the survey and examination, and the amount thereof shall be a debt due from the Trustees to the Crown, and be recoverable accordingly with costs, or the same may be recovered with costs as a penalty is recoverable from the Trustees.

Additional land.

41. Notwithstanding anything contained in section 35 of the recited Act, the Trustees may, for the purposes of this and the recited Act, from time to time purchase by agreement and hold any quantity of land not exceeding in the whole twenty statute acres.

Power to provide dredging vessels, &c.

42. The Trustees may from time to time purchase, hire, contract for the use of, or otherwise provide and employ such dredging vessels, dredging-engines, steam-engines, piling-engines, ballast-lighters, and other vessels, machinery, and apparatus, for the purpose of dredging and deepening the harbour, and for other the purposes of this and the recited Act, as they may think necessary.

Power to employ steam-tugs, &c.

43. The Trustees may undertake the performance of towage service for any vessels or craft entering or leaving or using the port or harbour, and may from time to time purchase, hire, contract

for the use of, or otherwise provide and employ, such steam-tugs and other towing vessels, and do all such other acts and things as may be necessary or proper for the towage of vessels and craft or incidental thereto, and may make such reasonable charges for the use of such tugs and towing vessels as they think fit; and any person requiring or engaging the assistance of any such tug or towing vessel shall pay to the Trustees their charges for the use thereof, notwithstanding it be not actually used, provided the use thereof be actually tendered in consequence of such requisition or engagement.

Former borrowing powers to cease.

44. From and after the passing of this Act all borrowing powers conferred by the recited Act shall cease to be in force and to have effect.

Power to borrow.

45. Subject to the provisions of this Act, the Trustees may, for executing the purposes of the recited Act and this Act, from time to time borrow at interest such sums as they may require, not exceeding in the whole the sum of sixty thousand pounds, and may mortgage all or any of the tolls, rates, and duties which they are empowered to levy for securing the repayment of the moneys borrowed with interest accordingly.

Payment of borrowed money by instalments or sinking fund.

46. The Trustees shall out of the said tolls, rates, and duties make provision, to the satisfaction of the Board of Trade, for paying off all money so borrowed, either by instalments or by means of a sinking fund appropriated and invested, and with the accumulations thereof (if any) from time to time applied for that purpose, so as in either case to extinguish the debt within sixty years after the same is borrowed, but so that it shall not be obligatory on the Trustees to begin to pay off any money by instalments or by means of a sinking fund under this section before the expiration of five years from the passing of this Act.

Annual return to Board of Trade with respect to sinking fund.

47. The clerk to the Trustees shall, within twenty-eight days after the expiration of each year during which any sum is required to be set apart as an instalment or invested for a sinking fund under this Act, transmit to the Board of Trade a return, in such form as may be prescribed by that Board, and verified by statutory declaration if so required by them, showing the amount which has been set apart as such instalment or invested for the purpose of such sinking fund during the year preceding the making of such return, and the description of the securities upon which the same has been invested, and also showing the purposes to which such instalment or any portion of the moneys invested in the sinking fund has been applied during the same period, and the total amount remaining invested at the end of the year; and in the event of any wilful default in making such return such clerk shall be liable to a penalty not exceeding

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twenty pounds. If it appears to the Board of Trade, by such return or otherwise, that the Trustees have failed to set apart the sum required by this Act as an instalment or for the sinking fund, or have applied any portion of the moneys so set apart to any purposes other than those authorised by this Act, the Board of Trade may by order direct that a sum not exceeding double the amount in respect of which such default shall have been made shall be set apart and applied or invested as part of the instalments or sinking fund, and such order shall be enforceable by writ of Mandamus to be obtained by the Board of Trade out of the High Court of Justice.

Provision as to loan by Public Works Loan Commissioners. 24 & 25 Vict. c. 47.

48. Nothing in this Act shall operate to empower the Trustees to borrow any loan from the Public Works Loan Commissioners: Provided that if the Public Works Loan Commissioners advance any loan to the Trustees under the Harbours and Passing Tolls, &c. Act, 1861, and the Acts amending the same,—

(1.) That loan and the security therefor shall not have priority over any loan previously borrowed under this Act, or the security therefor, except so far as the creditors consent to such priority under the Public Works Loans Act, 1875, or otherwise, but shall have priority over any loan subsequently borrowed in pursuance of this Act, and the security therefor; and

38 & 39 Vict. c. 89.

(2.) The amount which the Trustees are authorised by this Act to borrow shall be diminished by the amount of any loan borrowed from the Public Works Loan Commissioners under the Harbours and Passing Tolls, &c. Act, 1861, and the Acts amending the same.

Incorporating part of 10 & 11 Vict. c. 16.

49. The provisions of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the Commissioners, as far as they are applicable for the purposes of and are not varied by or inconsistent with the provisions of this Act, are hereby incorporated with this Act.

Application of moneys borrowed.

50. All moneys borrowed by the Trustees shall be applied for the purposes of the recited Act and this Act for which capital is properly applicable, and not otherwise.

Power to re-borrow.

51. If the Trustees pay off any money borrowed on mortgage under this Act otherwise than by instalments or by means of the sinking fund, they may from time to time re-borrow the same or any less sum on mortgage, subject and according to the provisions of this Act relating to borrowing.

Appointment of receiver.

52. The mortgagees of the Trustees under this Act may enforce payment of the arrears of interest due on their mortgages by the

appointment of a receiver; and the amount of principal owing to mortgagees which shall entitle them to apply for a receiver shall not be less than six thousand pounds. A.D. 1879.

Protection of lenders.

53. Any person lending money to the Trustees under this Act shall not be bound or entitled to inquire respecting the observance by them of any provisions of this Act or of any other Act, or be bound to see to the application of or be answerable for any loss, misapplication, or non-application of the money lent or any part thereof.

Receipts of guardians, &c.

54. If any money is payable under this Act to or for the benefit of an infant or person of unsound mind, so found by inquisition, the receipt of the guardian or committee of his estate shall be a discharge to the Trustees for the same.

Saving rights of the lord of the manor of Whitby.

55. Nothing in this Act contained shall extend or be construed to extend to take away, lessen, alter, or prejudice any of the rights and interests of the lord of the manor of Whitby, except so far as may be by this Act expressly provided.

Saving rights of Crown under 29 & 30 Vict. c. 62.

56. Nothing contained in this Act or to be done under the authority thereof shall in any manner affect the title to any of the subjects or any rights, powers, or authorities mentioned in or reserved by sections twenty, twenty-one, and twenty-two of the Crown Lands Act, 1866, and belonging to or exerciseable on behalf of Her Majesty, her heirs or successors.

Saving rights of the Crown in the foreshore.

57. Nothing contained in this Act shall authorise the Trustees to take, use, or in any manner interfere with any portion of the shore or bed of the sea, or of any river, channel, creek, bay, or estuary, or any right in respect thereof, belonging to the Queen's most Excellent Majesty in right of her Crown, and under the management of the Board of Trade, without the previous consent in writing of the Board of Trade on behalf of Her Majesty (which consent the Board of Trade may give); neither shall anything in this Act contained extend to take away, prejudice, diminish, or alter any of the estates, rights, privileges, powers, or authorities vested in or enjoyed or exerciseable by the Queen's Majesty, her heirs or successors.

Expenses of Act.

58. All the costs, charges, and expenses preliminary and incidental to the preparing of and applying for and the obtaining and passing of this Act shall be paid by the Trustees out of any trust funds in their hands at or which may first come into their hands after the passing of this Act.

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