



CHAPTER xcvi.

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1899 relating to Portsoy Harbour. A.D. 1932.
[17th November 1932.]

WHEREAS the Provisional Order set forth in the schedule hereunto annexed has after inquiry held before Commissioners been made by one of His Majesty's Principal Secretaries of State under the provisions of the Private Legislation Procedure (Scotland) Act 1899 as read with the Secretaries of State Act 1926 and it is requisite that the said Order should be confirmed by Parliament:

62 & 63 Vict
c. 47.
16 & 17
Geo. 5. c. 18.

Be it therefore enacted by the King'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:—

1. The Provisional Order contained in the schedule hereunto annexed is hereby confirmed.

Confirmation
of Order in
schedule.

2. This Act may be cited as the Portsoy Harbour Order Confirmation Act 1932.

Short title.

A.D. 1932.

SCHEDULE.

PORTSOY HARBOUR.

Provisional Order to transfer the harbour of Portsoy to the provost magistrates and councillors of the burgh of Portsoy and confer upon them powers with reference thereto to authorise the said provost magistrates and councillors to borrow money to provide for the application of moneys arising from the late Alexander Rainy's Bequest and for other purposes.

WHEREAS by the Portsoy Harbour Act 1882 (hereinafter referred to as "the Act of 1882") the Portsoy Harbour Company (hereinafter referred to as "the Company") were incorporated and under the powers contained in that Act and the agreement set forth in Schedule A thereto the harbour of Portsoy (hereinafter referred to as "the harbour") was transferred from its then owner the Right Honourable Sir Ian Charles Grant-Ogilvie of Grant baronet Earl of Seafield to and vested in the Company and the Company were authorised to construct works and to improve and maintain the harbour :

And whereas the Company were by the Act of 1882 empowered to raise share capital to the amount of twelve thousand pounds and to borrow on mortgage a sum not exceeding six thousand pounds :

And whereas the Company created and issued nine hundred shares of ten pounds each the whole of which were fully paid :

And whereas the revenue of the harbour has for some years past been insufficient for the payment of the expenses of the management and maintenance thereof and the Company had at the thirty-first day of March nineteen hundred and thirty-one debts and liabilities outstanding amounting to upwards of twenty-one thousand three hundred and thirty pounds :

And whereas the Company are unable owing to their want of resources to continue to maintain the harbour :

And whereas the burgh of Portsoy (hereinafter referred to as "the burgh") in the county of Banff is under

the government for municipal purposes of the provost magistrates and councillors of the burgh (hereinafter referred to as "the Town Council") and the inhabitants of the burgh are largely interested in the maintenance and development of the facilities of the harbour : A.D. 1932.

And whereas it is expedient having regard to the importance to the burgh of the maintenance and development of the harbour that the Town Council should be empowered to take over the harbour undertaking :

And whereas the Town Council have agreed to acquire the harbour undertaking on the terms and conditions specified in the agreement set forth in the schedule to this Order and it is expedient that the said agreement should be confirmed :

And whereas it is expedient to constitute the Town Council the harbour and pilotage authority for the harbour and to confer upon the Town Council the powers hereinafter in this Order contained and to provide for the maintenance management and administration of the harbour and the works lands and other subjects connected with the harbour undertaking and matters relating thereto in manner hereinafter set forth :

And whereas Alexander Rainy of Boyne factor to the then Earl of Seafield by his trust disposition and settlement dated the twenty-fifth day of February eighteen hundred and fifty-two left five shares of the capital stock of the Commercial Bank of Scotland to be expended or allowed for repairs or improvements on the harbour as a lasting benefit to the town of Portsoy and declared it to be his wish and directed that the said five shares should not be disposed of but that the one-half of the annual dividends or produce thereof should be allowed by his trustees in the repairs or improvements of the harbour on being satisfied that the amount had annually been expended by the Earl of Seafield or his factor and the said capital stock and other half of the annual dividends or produce thereof should be allowed to accumulate until his trustees should think fit to allow the Earl of Seafield or his heirs a part of the same for being expended in the building of or some permanent repair or improvement upon the harbour and that the remainder of what might not be expended (which should never be allowed to fall below one thousand pounds) should be kept up as an accumulating fund and the

A.D. 1932. — produce thereof should be from time to time allowed for or expended on repairs or improvements upon the harbour by his trustees as they might think judicious and proper it being his desire that although the town of Portsoy should have the convenience of the bequest the Earl of Seafield or his heirs should have the benefit of the outlay and that the bequest should always be carried into effect by his trustees with the consent and approbation of the said earl or his heirs :

And whereas by a codicil to his said trust disposition and settlement dated the third day of March eighteen hundred and fifty-two the said Alexander Rainy altered that part of his said trust disposition and settlement relative to the bequest for making repairs and improvements upon the harbour and instead of his trustees carrying out his intentions as expressed in his said trust disposition and settlement directed that the said five shares should be laid aside by his trustees for the purpose of making additions to or improvements upon the harbour as follows (namely) the amount of the said shares should be allowed to accumulate at compound interest until it reached the sum of three thousand pounds when his trustees were authorised and enjoined to expend a sum of two thousand pounds upon additions to or improvements upon the harbour according to a plan and specifications to be approved of by the possessor of the Seafield Estates for the time being or his factor and the remaining one thousand pounds were directed to be allowed to go on accumulating as before until it reached the sum of two thousand pounds when or so soon thereafter as demanded by the possessor of the Seafield Estates his trustees were authorised and enjoined to expend on additions to and improvements on the harbour on the approval of a plan and specifications as before any sum not less than one thousand pounds always leaving the said sum of one thousand pounds which he directed should be kept up in all time coming as an accumulating reserve fund :

And whereas the said Alexander Rainy died upon the second day of July eighteen hundred and fifty-two and his said trust disposition and settlement and codicil were duly confirmed by the commissary of the commissariat of the county of Banff on the first day of December eighteen hundred and fifty-two ;

And whereas by section 22 of the Act of 1882 it was enacted that on the passing of that Act the then surviving and acting trustee under the said trust disposition and settlement and relative codicil should pay the sum then available from the said bequest to the Company to be expended by them in making and constructing the works by that Act authorised and that the future accumulations of money as the same should arise from the said bequest in terms of the said codicil should be paid by the said trustee to the Company and that the Company should from time to time and subject to the provisions of that Act expend the same on additions to and improvements in the harbour :

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And whereas there have from time to time been paid to the Company in terms of section 22 of the Act of 1882 out of moneys arising from the said bequest sums amounting in all to five thousand pounds and there is remaining in the hands of the trustees presently acting under the said trust disposition and settlement and relative codicil (hereinafter referred to as "the Rainy Trustees") the sum of two thousand three hundred pounds :

And whereas the Rainy Trustees have agreed that the Town Council should become the beneficiaries of the moneys arising from the said bequest and it is expedient that the provisions in that behalf in this Order contained should be enacted :

And whereas it is expedient to authorise the Town Council to borrow money for the purposes of this Order and to impose and levy the assessment hereinafter in this Order referred to and to apply the same for the purposes of the harbour undertaking :

And whereas it is expedient that the other provisions contained in this Order should be enacted :

And whereas the purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1899 :

Now therefore in pursuance of the powers contained in the last-mentioned Act as read with the Secretaries of State Act 1926 the Secretary of State orders as follows :—

1.—(1) This Order may be cited as the Portsoy Harbour Order 1932.

Short title
and citation.

A.D. 1932.

(2) The Act of 1882 and this Order may be cited together as the Portsoy Harbour Acts 1882 and 1932.

Com-
mencement
of Order.

2. This Order shall (except as otherwise in this Order provided) commence and have effect on and from the date of the passing of the Act confirming the same which date is in this Order referred to as "the commencement of this Order."

Division of
Order into
Parts.

3. This Order is divided into Parts as follows :—

Part I.—Preliminary.

Part II.—Transfer of harbour &c. to Town Council.

Part III.—Additional harbour powers.

Part IV.—Rates.

Part V.—Powers of sale and leasing.

Part VI.—Finance.

Part VII.—Byelaws.

Part VIII.—Life-saving apparatus.

Part IX.—Miscellaneous.

PART I.

PRELIMINARY.

Incorporation of
Acts.

4.—(1) The following Acts and parts of Acts so far as the same respectively are applicable for the purposes of and are not varied by or inconsistent with the provisions of this Order are hereby incorporated with and form part of this Order (that is to say):—

The Lands Clauses Acts (except so much thereof as relates to the purchase and taking of lands otherwise than by agreement and to the entry upon lands by the promoters of the undertaking);

The Harbours Clauses Act 1847 with the exception of sections 6 to 13 16 to 19 (unless the Town Council are required by the Board of Trade to provide and maintain a life-boat a tide or weather-gauge or a barometer) and except sections 23 25 26 77 to 80 84 85 93 95 and 101 of that Act.

(2) In the application to this Order of the Harbours Clauses Act 1847 the expressions "packet boat" or "Post Office packet" and "Post Office bag of letters"

used in that Act shall mean respectively a vessel employed by or under the Post Office or the Admiralty for the conveyance under contract of postal packets as defined by the Post Office Act 1908 and a mail bag as defined by the same Act. Provided that nothing in the Harbours Clauses Act 1847 or in this Order shall exempt from rates duties regulation or control any such vessel as aforesaid if she also conveys passengers or goods for hire. A.D. 1932.

(3) This Order shall be deemed a special Act within the meaning of the Acts wholly or partially incorporated herewith.

5. In this Order unless there be something in the subject or context repugnant to such construction— Interpreta-
tion.

(a) The several words and expressions to which meanings are assigned by the Act of 1882 or the Acts wholly or partially incorporated with this Order shall subject to the provisions of this Order have the same respective meanings; and

(b) The following words and expressions shall have the meanings assigned to them in this section (that is to say) :—

“ The burgh ” means the burgh of Portsoy ;

“ The Town Council ” means the provost magistrates and councillors of the burgh ;

“ The town clerk ” means the town clerk of the burgh and includes any depute acting for him ;

“ The Harbours Clauses Act 1847 ” means the Harbours Docks and Piers Clauses Act 1847 ;

“ The Police Acts ” means the Burgh Police (Scotland) Acts 1892 to 1911 and any Act amending the same ;

“ The Act of 1882 ” means the Portsoy Harbour Act 1882 ;

“ The harbour ” means the harbour of Portsoy and all works powers privileges and things within the limits of the harbour and includes the lands buildings plant and conveniences connected therewith ;

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“The harbour undertaking” means and includes the harbour and the offices works and conveniences connected therewith and the accesses from and to the same respectively and all other property and pertinents to be used or held by the Town Council in connection therewith and the right to levy rates duties and charges and all other powers rights authorities and privileges relating thereto conferred on or vested in the Town Council by this Order and the entire undertaking of the Town Council in connection with the harbour;

“The limits of the harbour” means the limits of the harbour as defined by section 9 of the Act of 1882;

“Authorised rates” or “authorised rate” mean respectively the rates or rate which the Town Council are for the time being authorised to levy demand and recover in pursuance of the Act of 1882 and this Order;

“The harbour assessment” means the assessment which the Town Council are by this Order authorised to impose and levy;

“The harbour revenue” means and includes the rates tolls duties rents and other moneys and receipts which may be taken and received by way of income from or in respect of the harbour and the harbour undertaking under the authority of the Act of 1882 and this Order and moneys paid by the Rainy Trustees to the Town Council from the Rainy Bequest but does not include the harbour assessment;

“The works” means and includes the piers jetties quays roads buildings and works and all conveniences connected therewith transferred to the Town Council or constructed purchased or otherwise acquired by the Town Council under the powers of this Order;

“The said will and codicil” means the trust disposition and settlement of the late Alexander Rainy and relative codicil;

“The Rainy Bequest” means the bequest arising under the said will and codicil; A.D. 1932.

“The Rainy Trustees” means the trustees presently acting under the said will and codicil;

“The Seafield Trustees” means the trustees of the late Right Honourable Caroline Countess Dowager of Seafield;

“The Company” means the Portsoy Harbour Company incorporated by the Act of 1882;

“The scheduled agreement” means the agreement between the Town Council the Company the Rainy Trustees the Seafield Trustees and the North of Scotland Bank Limited as scheduled to and confirmed by this Order;

“The date of transfer” means the first day of April nineteen hundred and thirty-two.

PART II.

TRANSFER OF HARBOUR &C. TO TOWN COUNCIL.

6. The scheduled agreement is hereby confirmed and made binding on the parties thereto respectively and the said parties are hereby respectively empowered to carry the same into effect. Confirmation of scheduled agreement.

7. On the commencement of this Order the harbour and all the estate and interest of the Company in the lands within the limits of the harbour the buildings thereon and the harbour pertinents and the whole undertaking and all the powers rights and privileges vested in or belonging to the Company in relation to or in connection with the harbour (including the powers of the Company of collecting levying and recovering rates duties and charges) shall subject to and in accordance with the provisions of the scheduled agreement be deemed to have been transferred to and be vested in the Town Council as from the date of transfer and may and shall subject to the provisions of this Order be held maintained used exercised and enjoyed by the Town Council as from the date of transfer freed and discharged from all debts and liabilities in relation thereto or in connection therewith. Transfer of harbour.

A.D. 1932.
Completion
of title of
Town
Council.

8. Without prejudice to anything in this Order hereinbefore contained it is hereby provided that for the purpose of enabling the Town Council to complete a title to the harbour and the harbour undertaking and the property and rights of the Company vested in them by virtue of this Order by expeding a notarial instrument or notice of title or otherwise this Order shall be deemed to be and may be used as a general disposition or assignation as the case may be of the harbour and the harbour undertaking and such property and rights of the Company in favour of the Town Council as on the date of transfer.

Cesser of
powers and
dissolution
of Company.

9.—(1) As from the date of transfer the Company shall be freed and discharged from all obligations and liabilities in respect of the harbour and the land and other property hereby transferred to the Town Council arising after that date.

(2) The Company shall with the exception of the debts and liabilities provided for in the scheduled agreement discharge all debts and liabilities of the Company outstanding at the date of transfer and thereupon the Company shall be and is hereby dissolved and shall cease to exist.

Saving
rights of
action.

10. Nothing in this Order contained shall be held to prejudice or affect any right or cause of action or suit or any remedy which immediately before the commencement of this Order the Company had against any person but all such rights causes suits and remedies may be enforced or prosecuted by the Town Council in lieu of and in substitution for the Company.

Documents
&c. to be
evidence.

11. All documents books and writings of the Company may be used and referred to by the Town Council for the purposes of this Order and those which if the Act confirming this Order had not been passed would have been receivable in evidence shall be admitted as evidence in all courts of law and elsewhere.

Moneys due
to Company
to be paid
to Town
Council.

12. Any person who before the commencement of this Order owed any moneys to the Company or to any person on their behalf shall pay the same with all interest (if any) due or accruing in respect thereof to the Town Council and such moneys may be recovered and all

remedies in respect thereof be enforced by the Town Council accordingly. A.D. 1932.

13. The Act of 1882 shall subject to the provisions of this Order remain in full force and all powers authorities privileges rights jurisdictions obligations and exemptions including the powers of collecting levying and recovering tolls rates duties and charges thereby conferred on and vested in the Company may be held used exercised and enjoyed by the Town Council in relation to the harbour and the harbour undertaking and all matters to be done continued or completed or which but for the transfer of the harbour and harbour undertaking might or could be done continued or completed by the Company or their officers or servants under or by virtue of the Act of 1882 may be done continued or completed by the Town Council or their officers and servants as the case may be and the Act of 1882 shall subject to the provisions of this Order be read and construed as if the name of the Town Council had been used therein instead of the name of the Company.

Application
of Act of
1882 to
Town
Council.

14. All conveyances grants and assignations and current leases agreements and contracts (other than mortgages bonds or securities for money advanced to the Company) which have been executed made or entered into by or with the Company in relation to the harbour or harbour undertaking and which are in force at the date of transfer shall after the date of transfer be as valid and as of full force and effect in favour of or against the Town Council as if the same had been executed made or entered into by or with the Town Council.

Convey-
ances
contracts
&c.

15. All officers servants and pilots in the employment of the Company in connection with the harbour and harbour undertaking shall as from the date of transfer become officers servants or pilots as the case may be of the Town Council with the same rights and subject to the same obligations and incidents in respect of such employment as they would have had or been subject to as the officers servants or pilots of the Company in connection with the harbour and harbour undertaking and shall so continue unless and until they respectively are duly removed from such employment by the Town Council or until the terms of their employment are duly altered by the Town Council.

Officers &c.
of Company
to be
officers of
Town
Council.

A.D. 1932.

PART III.

ADDITIONAL HARBOUR POWERS.

Power to
maintain
and improve
works.

16.—(1) Subject to the provisions of this Order the Town Council may maintain restore reconstruct repair alter improve enlarge and extend the harbour and may in connection with the harbour construct maintain alter improve and enlarge embankments landing places piers quays jetties weirs bridges slips wharves beaches for hauling boats buoys moorings cranes lights beacons roads sewers drains watercourses gas and water pipes electric light and power and other works and conveniences which may be found necessary for the accommodation of vessels and traffic and may also from time to time lay down and maintain rails tramways sidings and turntables on and along the piers quays and other harbour works of the Town Council and lands connected therewith and may provide motive power for tramways.

(2) No line of rails or tramway constructed under the powers of this Order shall be used for the public conveyance of passengers unless and until it has been inspected and certified by the Minister of Transport to be fit for that use.

(3) Any electric light and power or other apparatus constructed and maintained under this Order shall be so constructed and maintained as to prevent any interference with telegraphic communication by means of any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General.

(4) Nothing in this Order shall extend to or authorise any interference with any works of any undertakers within the meaning of the Electricity (Supply) Acts 1882 to 1928 to which the provisions of section 15 of the Electric Lighting Act 1882 apply except in accordance with and subject to the provisions of that section.

Discon-
tinuance of
portion of
jetty.

17. The Town Council may discontinue the use of and remove so much of the jetty known as Tom's jetty as lies between its termination and a point eighteen yards or thereabouts therefrom.

Power to
reclaim
lands.

18. Subject to the provisions of this Order the Town Council may with the consent in writing of the Board of Trade construct and carry out such works as may be

necessary for reclaiming or filling in any portion of the foreshore within the limits of the harbour and may dredge from the bed of the sea the material required for filling up such reclaimed land. Provided that such dredging shall only be carried out in accordance with such restrictions and regulations as may be prescribed by the Board of Trade. A.D. 1932.
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19. Subject to the provisions of this Order the Town Council may by agreement purchase and hold for the purposes of the Act of 1882 and this Order any additional lands not exceeding in the whole ten acres but with respect to such additional lands nothing in the Act of 1882 or this Order or in the Acts incorporated therewith shall exempt the Town Council from any proceedings for nuisance in the event of any nuisance being caused or permitted by them thereon. Power to take lands by agreement.

20. Persons empowered by the Lands Clauses Acts to sell and convey or release lands may if they think fit subject to the provisions of those Acts and this Order grant any servitude right or privilege (not being a servitude right or privilege of water in which other persons than the grantors have an interest) required for the purposes of this Order in over or affecting any such lands and the provisions of the said Acts with respect to lands and feu-duties or ground annuals so far as the same are applicable in this behalf shall extend and apply to such grants and to such servitudes rights and privileges as aforesaid respectively. Power to take servitudes &c. by agreement.

21.—(1) Notwithstanding anything in the Lands Clauses Acts or in any other Act to the contrary the Town Council may retain hold and use for such time as they may think fit or may sell feu let lease exchange or otherwise dispose of in such manner and for such consideration and purpose and on such terms and conditions as they may think fit and in case of sale either in consideration of the execution of works or of the payment of a gross sum or of an annual feu-duty or rent or of any payment in any other form any lands and premises or any interest therein vested in them or acquired by them under this Order which may not be required for the purposes of the Act of 1882 and this Order and may sell exchange or dispose of any feu-duties created or rents reserved on the sale exchange lease or other Power to retain and sell lands.

A.D. 1932. — disposition of such lands and premises and may make do and execute any deed act or thing proper for effectuating any such sale feu lease exchange or other disposition and on any exchange may give or take any money for equality of exchange.

(2) Any land sold feued or leased by the Town Council under the provisions of this section shall be sold feued or leased at the best price or for the best feu-duty or rent that can reasonably be obtained.

Power to dredge.

22.—(1) The Town Council may deepen dredge scour and excavate any portion of the foreshore and bed of the sea to the extent necessary to secure a sufficient waterway and approach to the harbour for vessels using the same.

(2) All sand mud and other materials dredged up or removed for the purposes and to the extent aforesaid shall be the property of the Town Council and they may sell or otherwise dispose of or remove or deposit the same as they think fit Provided that no sand mud or other material shall be laid down or deposited in any place below high-water mark without the consent in writing of the Board of Trade having been first obtained :

Provided also that the powers of the Town Council under this section shall be exerciseable subject to the provisions of the section of this Order of which the marginal note is " Crown rights " and in particular and without prejudice to that general limitation any consent given to the exercise of such powers by the Commissioners of Crown Lands or the Board of Trade on behalf of His Majesty may be given subject to such restrictions and conditions including the payment by the Town Council to the Commissioners of Crown Lands or the Board of Trade of royalties rents or sums of money in respect of materials raised from any place below high-water mark and sold by the Town Council under this section or in respect of any place below high-water mark upon which materials may be deposited as may be fixed by the Commissioners of Crown Lands or the Board of Trade as the case may be.

(3) All money arising from any sale or other disposition of sand mud and other materials under this section after payment of the expenses connected therewith shall be applied in the same manner as the harbour revenue under this Order is to be applied.

23. The Town Council shall not under the powers of this Order construct on under or over the shore or bed of the sea or of any creek bay arm of the sea or navigable river communicating therewith below high-water mark of ordinary spring tides any work without the previous consent of the Board of Trade to be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade and then only according to such plan and under such restrictions and regulations as the Board of Trade may approve of in writing under hand as last aforesaid and where any such work may have been constructed the Town Council shall not at any time alter or extend the same without obtaining previously to making any alteration or extension the like consent or approval. If any work be commenced altered extended or completed contrary to the provisions of this section the Board of Trade may abate and remove the same and restore the site thereof to its former condition at the cost and charge of the Town Council and the amount of such costs and charges shall be a debt due from the Town Council to the Crown and shall be recoverable either as a debt due to the Crown or summarily as a civil debt.

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Works below high-water mark not to be constructed without consent of Board of Trade.

PART IV.

RATES.

24.—(1) If it is represented by application in writing to the Minister of Transport (in this section referred to as “the Minister”)—

Revision of authorised rates.

(a) by any chamber of commerce or shipping or any representative body of traders or any person who in the opinion of the Minister is a proper person for the purpose; or

(b) by the Town Council;

that in the circumstances then existing the authorised rates or any of them should be revised the Minister if he thinks fit may make an order revising the authorised rates referred to in the application or any of them and may fix the date as from which such order shall take effect and thenceforth such order shall remain in force until the same expires or is revoked or modified by a further order of the Minister made in pursuance of this

A.D. 1932. section Provided that before making an order under this section the Minister shall cause an inquiry to be held with reference thereto in pursuance of the Board of Trade Arbitrations &c. Act 1874 as applied by this section.

(2) Where upon an application for revision of authorised rates or an authorised rate an order has been made or the Minister has decided not to make an order no further application for a revision of the rates or rate to which the application related shall be made within twelve months from the date of such order or decision as the case may be.

(3) The provisions of Part I of the Board of Trade Arbitrations &c. Act 1874 shall apply for the purposes of this section—

(a) as if the Minister were referred to therein in lieu of the Board of Trade;

(b) as if the person or persons duly authorised to hold any inquiry thereunder were the rates advisory committee constituted under the Ministry of Transport Act 1919 or any sub-committee thereof to which the said advisory committee may under section 2 of the Harbours Docks and Piers (Temporary Increase of Charges) Act 1920 have delegated their powers or in the event of the said advisory committee ceasing to exist some persons with similar qualifications to be appointed for the purpose by an order of the Minister under section 2 of the said Act of 1874; and

(c) as if in section 4 of the said Act of 1874 the words "under the seal of the Minister of Transport" were substituted for the words "by writing under the hand of the President or of one of the secretaries of the Board."

(4) An application made to the Minister under this section shall be accompanied by such information and particulars as the Minister may consider relevant certified in such manner as he may require and the Minister and the body or persons holding an inquiry for the purposes of this section may call for such documents and accounts as they may consider relevant and may hear such witnesses as they shall think fit and shall

have power to take evidence on oath and for that purpose may administer oaths. A.D. 1932.

25. The Town Council may confer vary or extinguish exemptions from and compound with any person with respect to the payment of any authorised rates but so that no preference be in any case given to any person over any other person using the harbour in the like circumstances and that anything done under this section shall not prejudice the other provisions of this Order. Power to vary exemptions and compound for rates.

26.—(1) The Town Council shall have exclusive control over the supplying of ballast to and the discharging and removal of ballast from vessels within the limits of the harbour. Ballast for vessels.

(2) The Town Council may supply and remove ballast for the accommodation of vessels within the limits of the harbour on payment to the Town Council of such reasonable rates as they shall think fit but no material shall be taken from the foreshore or sea bed under the provisions of this section without the approval of the Board of Trade.

PART V.

POWERS OF SALE AND LEASING.

27.—(1) The Town Council at any time may with the previous consent in writing of and upon such terms conditions and restrictions as may be sanctioned by the Minister of Transport sell the harbour undertaking and the purchaser to the extent authorised by his conveyance shall have and may exercise all or any of the powers conferred upon the Town Council by or under the Act of 1882 and this Order or which the Town Council have or might exercise thereunder except the powers to levy the harbour assessment to borrow money and to sell or to lease the undertaking and shall be subject to all the liabilities and obligations to which the Town Council are subject and shall perform all the duties of the Town Council under the Act of 1882 and this Order. Power to sell.

(2) The Town Council shall within one month after the date of any conveyance made under this section deposit a certified copy thereof with the Minister of Transport and shall upon failure to do so be liable to a penalty not exceeding twenty pounds.

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Power to
lease under-
taking or
rates.

28.—(1) The Town Council may with the previous consent in writing of and upon such terms conditions and restrictions and for such period as may be sanctioned by the Minister of Transport lease to any company corporation or person (a) the entire harbour undertaking or (b) the right to collect and retain the authorised rates.

(2) As from the date of any lease made under the last preceding subsection the lessee during the continuance of and to the extent provided in his lease shall have and may exercise all or any of the powers conferred upon the Town Council by the Act of 1882 and this Order which the Town Council have or might exercise under this Order except the powers to levy the harbour assessment to borrow money and to sell or to lease the undertaking and shall be subject to all the liabilities and obligations to which the Town Council are subject and shall perform all the duties of the Town Council under the Act of 1882 and this Order.

(3) No lease made under subsection (1) of this section shall be assignable without the previous consent in writing of the Minister of Transport and the provisions of this Order with respect to such lease or to the lessee shall apply to any such assignment or to the assignee respectively.

(4) The Town Council shall within one month after the date of any lease made under this section deposit a certified copy thereof with the Minister of Transport and shall upon failure to do so be liable to a penalty not exceeding twenty pounds.

(5) No lease made under this section shall be made in consideration or part consideration of any fine premium or other capital sum.

(6) Nothing in this section shall exempt the Town Council from their obligation to keep and render accounts and as from the date of any lease made under this section all the provisions of the Acts incorporated with this Order and of this Order as to the keeping delivery and audit of accounts shall apply to and be binding upon as well the lessees as the Town Council and all moneys received by the Town Council under or in respect of any such lease shall be deemed to be moneys levied by virtue of and income received under this Order.

29. In addition to any general power in this Order contained the Town Council may let for hire or lease for any term not exceeding seven years any sheds warehouses or other lands and heritages separately from any other part of the harbour undertaking to any company corporation or person upon such terms pecuniary or otherwise and under such restrictions and conditions as they think fit.

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Power to
lease ware-
houses &c.

PART VI.

FINANCE.

30. The Town Council may and shall provide such moneys as may become necessary for the purposes of this Order or any of them and of the harbour and the harbour undertaking and the maintenance management and improvement thereof and the payment of expenses in connection therewith (in so far as the said purposes are properly chargeable to revenue account) out of the harbour revenue or if that shall be insufficient then to the extent of such insufficiency out of the moneys to be raised by means of the harbour assessment.

Power to
Town
Council to
provide
moneys for
purposes of
Order.

31.—(1) Subject to the provisions of this Order the Town Council may in each year after the fifteenth day of May nineteen hundred and thirty-two if and so far as may be necessary for the purposes mentioned in the last preceding section of this Order or any of such purposes and for the purpose of paying any expense of and connected with the provision of the moneys therein referred to charge in equal proportions all owners and occupiers of lands and heritages within the burgh with an assessment of such amount as shall be required for the said purposes which assessment shall be levied and recovered in the same manner as the general improvement rate authorised by the Police Acts is levied and recovered and all the provisions of those Acts (other than the limitation of rate) with respect to the mode of imposing levying and recovering the general improvement rate shall mutatis mutandis extend and apply to the said assessment hereby authorised.

Power to
Town
Council to
impose and
levy assess-
ment.

(2) The said assessment so leviable shall be in addition to any assessments levied by the Town Council under statutory authority but shall not except with the

A.D. 1932. consent of the Secretary of State exceed one shilling in the pound on the rateable value of lands and heritages in the burgh.

Power to accept contributions.

32. The Town Council may accept and apply towards the purposes of the harbour and the harbour undertaking any moneys which may be granted or contributed to them for those purposes or any of them.

Payment of sums arising from Rainy's Bequest to Town Council.

33.—(1) Notwithstanding anything contained in the said will and codicil—

(a) The capital of the trust fund shall consist of the sum of two thousand pounds which sum shall remain under the control of the Rainy Trustees in all time coming;

(b) The balance of the accumulated income available from the Rainy Bequest after setting aside the said capital sum of two thousand pounds shall on the commencement of this Order be paid by the Rainy Trustees to the Town Council;

(c) The free annual income of the said capital sum of two thousand pounds shall in each year be paid by the Rainy Trustees to the Town Council;

(d) All moneys paid by the Rainy Trustees to the Town Council shall be applied by the Town Council as they in their sole discretion may think proper towards the expenses incurred by them in the maintenance repair improvement or extension of the harbour.

(2) A receipt in writing signed by the town clerk for any moneys paid to the Town Council by the Rainy Trustees as provided by this section shall form a good and valid discharge and release to the Rainy Trustees for the same and from all liabilities claims and demands in respect thereof.

Application of harbour revenue.

34. The Town Council shall apply the harbour revenue and all moneys received for or in respect of the harbour assessment for the purposes and in the order following and not otherwise (that is to say):—

(1) In paying the costs of and connected with the preparation obtaining and confirming of this Order so far as those costs are not paid out of money borrowed under this Order:

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—
- (2) In paying any feu-duties and rents payable in respect of lands and property belonging to or leased by the Town Council in connection with the harbour and the harbour undertaking :
 - (3) In paying the expenses properly chargeable to revenue of conducting managing repairing and maintaining the harbour and the harbour undertaking including the purchasing of the necessary appliances therefor :
 - (4) In paying year by year the interest on moneys borrowed under this Order :
 - (5) In paying the instalments as they become due in discharge of any moneys borrowed under this Order and repayable by instalments and in forming a sinking fund in accordance with this Order for payment of principal moneys borrowed under this Order :
 - (6) In making such payments (if any) as the Town Council think fit into a contingency fund established under the provisions of this Order :
 - (7) In repaying to the burgh all sums which have been provided by means or out of the harbour assessment and have been applied for the purposes of the harbour undertaking whether in respect of money borrowed or otherwise.

The surplus (if any) after providing for the purposes aforesaid shall be applied by the Town Council in the improvement of the harbour or harbour undertaking.

35.—(1) The Town Council may from time to time borrow— Power to borrow.

- (a) for payment to the creditors of the Company under the scheduled agreement the sum of one thousand nine hundred pounds ;
- (b) for restoring and improving the works such sum or sums as may be required for that purpose not exceeding in the aggregate two hundred and twelve pounds ten shillings ;
- (c) for dredging the harbour such sum or sums as may be required for that purpose not exceeding in the aggregate one thousand pounds ;

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(d) with the consent of the Secretary of State such further sum or sums as may from time to time be required for the purposes of the harbour or the harbour undertaking; and

(e) for paying the costs charges and expenses of this Order the sum requisite for that purpose.

(2) The Secretary of State shall have and may exercise in relation to any such consent as aforesaid all the powers of section 93 of the Local Government (Scotland) Act 1889 :

Provided that for the purposes of this subsection the sum of five guineas shall be substituted for the sum of three guineas in that section mentioned.

Power to borrow temporarily.

36. In the application to the burgh of section 49 (Power to borrow temporarily) of the Burgh Police (Scotland) Act 1903 the expression "any public general Act" shall be deemed to include this Order.

Periods for repayment of borrowed money.

37. All moneys borrowed by the Town Council under this Order shall be repaid within the respective periods following (in this Order referred to as "the prescribed periods") (that is to say):—

(a) As to the moneys borrowed under paragraph (a) of subsection (1) of the section of this Order the marginal note whereof is "Power to borrow" within forty years from the date or dates of borrowing the same;

(b) As to moneys borrowed under paragraph (b) of the said subsection within thirty-five years from the date or dates of borrowing the same;

(c) As to moneys borrowed under paragraph (c) of the said subsection within fifteen years from the date or dates of borrowing the same;

(d) As to moneys borrowed under paragraph (d) of the said subsection within such period from the date or dates of borrowing the same and by such method as the Secretary of State may prescribe;

(e) As to the money borrowed under paragraph (e) of the said subsection within five years from the commencement of this Order.

38. All moneys borrowed by the Town Council under the powers of this Order shall be applied only to the purposes for which such moneys are authorised to be borrowed and to which capital is properly applicable.

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Application
of moneys
borrowed.

39.—(1) The Town Council shall have power—

Power to
re-borrow.

- (a) to borrow for the purpose of paying off any moneys previously borrowed under this Order which are intended to be forthwith repaid; or
- (b) to borrow in order to replace moneys which during the previous twelve months have been temporarily applied from other funds of the Town Council in repaying moneys previously borrowed under this Order and which at the time of such repayment it was intended to replace by borrowed moneys.

(2) Any moneys borrowed under this section shall for the purposes of repayment be deemed to form part of the original loan and shall be repaid within that portion of the period prescribed for the repayment of that loan which remains unexpired and the provisions which are for the time being applicable to the original loan shall apply to the moneys borrowed under this section.

(3) The Town Council shall not have power to borrow for the purpose of making any payment to a sinking fund or of paying any instalment or making any annual payment which has or may become due in respect of borrowed moneys.

(4) The Town Council shall not have power to borrow in order to replace any moneys previously borrowed which have been repaid—

- (a) by instalments or annual payments; or
- (b) by means of a sinking fund; or
- (c) out of moneys derived from the sale of land; or
- (d) out of any capital moneys properly applicable to the purpose of the repayment other than moneys borrowed for that purpose.

40. The provisions of the Police Acts as to the borrowing of money for the general purposes of those Acts shall in so far as applicable and not inconsistent

Incorporation of provisions of Police Acts.

A.D. 1932. with the provisions of this Order be incorporated with this Order and shall so far as aforesaid apply to the borrowing by the Town Council of the money which they are by this Order authorised to borrow and the mortgages or bonds to be granted by the Town Council for the purposes of this Order shall refer to the title of this Order. Provided that in the event of repayment of money borrowed being made by way of instalments the annual instalments shall be sufficient to pay off the whole of such moneys so borrowed within the prescribed periods.

Mode of repayment of borrowed moneys.

41. The Town Council shall pay off all moneys borrowed by them (other than moneys borrowed for current expenses) under this Order either by means of a sinking fund formed under the provisions of this Order or by equal yearly or half-yearly instalments of principal or of principal and interest combined or partly by one of those methods and partly by another or others of them.

Sinking fund.

42.—(1) If the Town Council determine to repay by means of a sinking fund any moneys borrowed under this Order the sinking fund shall be formed and maintained either—

(a) by payment to the fund throughout the prescribed period of such equal annual sums as will together amount to the moneys for the repayment of which the sinking fund is formed. A sinking fund so formed is hereinafter called a non-accumulating sinking fund; or

(b) by payment to the fund throughout the prescribed period of such equal annual sums as with accumulations by way of compound interest at a rate not exceeding four pounds per centum per annum will be sufficient to pay off within the prescribed period the moneys for the repayment of which the sinking fund is formed. A sinking fund so formed is hereinafter called an accumulating sinking fund.

(2) Every sum paid to a sinking fund and in the case of an accumulating sinking fund the interest on the investments of the sinking fund shall unless applied in repayment of the loan in respect of which the sinking fund is formed be immediately deposited in

some joint stock bank of issue in Scotland to be increased by accumulation in the way of compound interest or otherwise invested in securities in which trustees in Scotland may lawfully invest trust moneys (not being securities of the Town Council) and the Town Council shall be at liberty from time to time to vary and transpose the investments.

(3) In the case of a non-accumulating sinking fund the interest on the investments of the fund may be applied by the Town Council towards the equal annual payments to the fund.

(4) The Town Council may at any time apply the whole or any part of any sinking fund in or towards the discharge of the moneys for the repayment of which the fund is formed. Provided that in the case of an accumulating sinking fund the Town Council shall pay into the fund each year and accumulate during the residue of the prescribed period a sum equal to the interest which would have been produced by the sinking fund or the part thereof so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based.

(5) (a) If and so often as the income of an accumulating sinking fund is not equal to the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the equal annual payments to the fund are based any deficiency shall be made good by the Town Council.

(b) If and so often as the income of an accumulating sinking fund is in excess of the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the equal annual payments to the fund are based any such excess may be applied towards such annual payments.

(6) Any expenses connected with the formation maintenance investment application or management of or otherwise in relation to any sinking fund under this Order shall be paid by the Town Council in addition to the payments provided for by this Order.

(7) If it appears to the Town Council at any time that the amount in the sinking fund with the future payments thereto in accordance with the provisions of

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this Order together with (in the case of an accumulating sinking fund) the probable accumulations thereon will not be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed it shall be the duty of the Town Council to make such increased payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose. Provided that if it appears to the Secretary of State that any such increase is necessary the Town Council shall increase the payments to such extent as the said Secretary may direct.

(8) If the Town Council desire to accelerate the repayment of any loan they may with the approval of the Secretary of State increase the amounts payable to any sinking fund.

(9) If the amount in any sinking fund with the future payments thereto in accordance with the provisions of this Order together with (in the case of an accumulating sinking fund) the probable accumulations thereon will in the opinion of the Secretary of State be more than sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed the Town Council may reduce the payments to be made to the sinking fund either temporarily or permanently to such an extent as the said Secretary shall approve.

(10) If the amount in any sinking fund at any time together with (in the case of an accumulating sinking fund) the probable accumulations thereon will in the opinion of the Secretary of State be sufficient without any further payments thereto to repay the loan in respect of which it is formed within the prescribed period the Town Council may with the consent of the said Secretary discontinue the equal annual payments to the sinking fund until the said Secretary shall otherwise direct.

(11) Any surplus of any sinking fund remaining after the discharge of the whole of the moneys for the repayment of which it was formed shall be applied to such purpose or purposes as the Town Council with the consent of the Secretary of State may determine.

(12) The period at which the payments into the sinking fund shall commence shall be within one year from the date or dates of borrowing.

43. The proceeds of sale of any lands of the Town Council under the powers of this Order and all other moneys received on capital account not being borrowed moneys shall be distinguished as capital in the accounts of the Town Council and shall be applied in discharge of moneys borrowed by the Town Council under this Order. Provided that such proceeds when used to pay off borrowed moneys shall not be applicable to the payment of instalments or to payments into the sinking fund except to such extent and upon such terms as may be approved by the Secretary of State.

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—
Proceeds of sale of lands to be treated as capital.

44. A person lending money to the Town Council under this Order shall not be concerned to inquire as to the observance by the Town Council of any of the provisions of the Police Acts or this Order or be bound to see to the application or be answerable for any loss or non-application of the money lent or any part thereof.

Protection of lenders from inquiry.

45. The Town Council may if they think fit for the purpose of forming and maintaining a contingency fund not exceeding at any time the sum of five thousand pounds to meet any extraordinary claim or demand or any unforeseen accident or extraordinary damage which may happen or be caused to the harbour appropriate and set apart subject to the provisions of this Order as to the application of the harbour revenue any amount which they think fit in any year out of the harbour revenue and shall deposit any such amount in some joint stock bank of issue in Scotland to be increased by accumulation in the way of compound interest or otherwise or shall invest the same in securities in which trustees in Scotland may lawfully invest trust money (but not in securities of the Town Council) until required for any of the aforesaid purposes.

Contingency fund.

46.—(1) The Town Council shall keep an account of the harbour undertaking separate from the other accounts of the burgh showing all moneys received on account of the harbour undertaking and all moneys expended thereon or in connection therewith.

Separate account for harbour undertaking.

(2) In the application of section 15 of and the Third Schedule to the Local Government (Scotland) Act 1929 to such separate account as forming part of the yearly account of the Town Council the expression

A.D. 1932. — “ratepayer” occurring therein shall be deemed to include any person interested in such separate account.

Annual account to be sent to Minister of Transport.

47.—(1) The Town Council shall within one month after their annual account is certified by the auditor thereof in accordance with the Third Schedule to the Local Government (Scotland) Act 1929 send to the Minister of Transport a copy of the separate account by the last preceding section of this Order required to be kept and section 16 of the General Pier and Harbour Act 1861 Amendment Act 1862 shall apply to and include the Town Council and any and every such separate account.

(2) The Town Council shall as from the expiration of the said period of one month be liable to a penalty not exceeding twenty pounds for each week or part of a week during which they refuse or neglect to comply with this section.

(3) The accounts referred to in this section and in section 50 of the Harbours Clauses Act 1847 respectively shall be made up to the end of the fifteenth day of May in each year.

PART VII.

BYELAWS.

Byelaws to remain in force.

48. All the byelaws rules and regulations of the Company relating to the management use or control of the harbour and the harbour undertaking shall continue to be in force and applicable to and in respect of the harbour and the harbour undertaking and shall and may be enforced by and be available to the Town Council in their own name as well for the recovery of penalties as for all other purposes as if the same respectively had been originally made by the Town Council until other byelaws rules and regulations are duly made by the Town Council in their stead.

Byelaws respecting harbour.

49.—(1) In addition to the powers of making byelaws contained in the Harbours Clauses Act 1847 the Town Council may subject to the provisions of this Order make such byelaws as they shall think fit for all or any of the following purposes (that is to say):—

- (a) For the protection of the harbour and harbour undertaking and the buildings accommodations machinery and appliances connected therewith

and for regulating the use thereof and the conduct of persons frequenting or using the same; A.D. 1932.
—

(b) For the regulation and control of vessels and boats within the harbour limits and the fishermen and others frequenting resorting to or employed at the harbour within the harbour limits;

(c) For the regulation of the embarking disembarking loading and unloading of any goods or traffic at the harbour or within the harbour limits.

(2) The byelaws may provide for imposing a penalty not exceeding five pounds for the breach or non-observance of any byelaw :

Provided that no byelaws to be made by the Town Council under the Harbours Clauses Act 1847 or under this Order with reference to the harbour and harbour undertaking shall come into operation unless and until the same have been confirmed by the Minister of Transport and that confirmation shall be sufficient for all purposes :

Provided also that in the case of any byelaw which the said Minister in consultation with the Board of Trade shall deem primarily to concern the interests of navigation the provisions of this section shall apply as if the said Board were substituted for the said Minister and the allowance and confirmation of any such byelaw by the Minister of Transport or the Board of Trade respectively shall be sufficient evidence of compliance with the provisions of this section.

PART VIII.

LIFE-SAVING APPARATUS.

50. The officers of the coastguard and all other persons for the time being actually employed in connection with the life-boat or the apparatus for saving life may either permanently or temporarily without payment attach or cause to be attached to any part of the harbour spars and other apparatus for saving life and may also either in course of using or of exercising the apparatus for saving life fire rockets over the harbour. Life-saving apparatus may be attached to harbour.

51. The Town Council shall at all times keep at convenient places in the harbour and in obedience to any Lifebuoys to be kept.

A.D. 1932. requirements which may be made by the Board of Trade
— lifebuoys and lifelines in good order and fit and ready
for use.

PART IX.

MISCELLANEOUS.

Removal
of sunk
stranded or
abandoned
vessels.

52.—(1) Whenever any vessel is sunk stranded or abandoned in the harbour or in or near any approach thereto from the sea the Town Council may cause that vessel to be raised or removed or to be blown up or otherwise destroyed so as to clear the harbour and its approaches therefrom.

(2) The Town Council may cause any such vessel and the furniture tackle and apparel thereof or any part thereof respectively which shall be raised or saved and also all or any part of the cargo goods chattels and effects which may be raised or saved from any such vessel to be sold in such manner as they think fit (subject to such notice being given of the intended sale as is prescribed by the first proviso to section 530 of the Merchant Shipping Act 1894) and out of the proceeds of sale may reimburse themselves for the expenses incurred by them under this section and also for any expenses incurred by them in marking buoying watching lighting or otherwise controlling the vessel and shall hold the surplus (if any) of the proceeds of sale in trust for the persons entitled thereto :

Provided that the Town Council shall before selling any such cargo goods chattels or effects as aforesaid pay all duties which may be payable to His Majesty in respect of the cargo goods chattels or effects to be sold and they may retain the amount of the duties so paid out of the proceeds arising from the sale of such cargo goods chattels or effects.

(3) If the proceeds of sale are insufficient to reimburse the Town Council for the aforesaid expenses and duties the Town Council may recover the deficiency or in case of an appeal under subsection (4) of this section such sum as is awarded by the arbiter to be payable in respect of the deficiency from the person who at the time of the sinking stranding or abandonment of the vessel was the registered owner thereof or from the executors or administrators of such owner as a debt either summarily as a civil debt or in any court of competent jurisdiction.

(4) If on demand being made under this section for payment of any deficiency the person on whom the demand is made is dissatisfied with the amount demanded he may within fourteen days after the receipt of the demand appeal to the Board of Trade who shall appoint an arbiter to determine and award whether any and (if so) what sum is payable in respect of the deficiency and the award of the arbiter appointed by the Board of Trade that no sum is payable or as to the sum payable (as the case may be) shall be conclusive and binding on both parties. The costs of the appeal and the award shall be in the absolute discretion of the arbiter and he shall award and order how those costs are to be borne and paid and any costs so awarded and ordered to be paid by either party may be recovered by the other party in the same manner as the sum payable in respect of the deficiency is recoverable under subsection (3) of this section.

(5) The powers given to the Town Council under subsection (1) of this section shall not be exercised in respect of a vessel if the registered owner thereof within twenty-four hours after the sinking stranding or abandonment of the vessel takes such steps as may in the opinion of the harbour-master be necessary for the raising or removal thereof and does all things necessary to raise and remove the vessel as speedily as possible.

(6) The powers conferred by this section on the Town Council shall be in addition to and not in derogation of any other powers exercisable by them for or with respect to the removal of wrecks.

(7) Except for the purpose of removing any obstruction to the harbour nothing in this section shall entitle the Town Council to remove any wreck (as defined by section 510 of the Merchant Shipping Act 1894) to the prejudice or in derogation of the rights with respect to such wreck of the receiver of wreck under the provisions of Part IX of the said Merchant Shipping Act and if the Town Council shall for any such purpose as aforesaid remove any such wreck they shall (without prejudice to the rights of sale conferred upon them by the foregoing provisions of this section) hold and dispose of the same or any such surplus of the proceeds of sale thereof as is referred to in subsection (2) of this section in accordance

A.D. 1932. with such directions (if any) as may be given to them
— by the said receiver.

Further
power to
deal with
unservice-
able
vessels.

53. In addition to the powers conferred on the Town Council and the harbour master by section 57 of the Harbours Clauses Act 1847 and to the powers conferred on the Town Council by the Merchant Shipping Act 1894 the Town Council may on giving notice of their intention by advertisement inserted three times in each of two local newspapers and in writing to the registered owner thereof if ascertainable sell break up or otherwise dispose of or cause to be sold broken up or otherwise disposed of any vessel laid by or neglected as unserviceable in the harbour and may receive the moneys (if any) arising therefrom and may retain out of such moneys any expenses incurred by the Town Council in respect or on account of such vessel and also any charges or expenses incurred by the Town Council or the harbour master under section 57 of the Harbours Clauses Act 1847 or section 530 of the Merchant Shipping Act 1894 rendering the balance (if any) to the owner and if there be no such moneys or if any such moneys be insufficient to cover the expenses or charges the Town Council may recover such expenses or charges or the unsatisfied balance thereof from the owner by proceeding or action in any court of summary or competent jurisdiction.

Appoint-
ment of
officers &c.

54.—(1) The Town Council may appoint and pay and remove at their discretion officers and servants for the purposes of the harbour and the harbour undertaking.

(2) The Town Council may also appoint officers for securing the observance of the byelaws and regulations made by the Town Council under this Order in respect of the harbour and may from time to time procure such officers to be sworn as constables for that purpose but no such officers shall act as constables until so sworn in and unless in uniform or provided with a warrant.

Recovery of
penalties.

55. All penalties under this Order and any byelaws made thereunder shall be recovered and applied as penalties are recoverable and applicable under the Harbours Clauses Act 1847.

Officers
exempt
from rates.

56. Officers of the Board of Trade and Ministry of Transport and police officers acting in the execution of their duty shall at all times have free ingress passage and egress to along and from the harbour without payment.

A.D. 1932.

57. The Town Council shall within the limits of the harbour be a local lighthouse authority for the purposes of the Merchant Shipping Act 1894. Local lighthouse authority.

58. The Town Council shall have the appointment of meters and weighers within the limits of the harbour. Meters and weighers.

59. In respect of the exercise of any powers or duties conferred on the Minister of Transport or the giving by him of any consents under this Order the provisions of Part I of the Board of Trade Arbitrations &c. Act 1874 shall apply as if the Minister of Transport were referred to therein in lieu of the Board of Trade and as if in section 4 of that Act the words "under the seal of the Minister of Transport" were substituted for the words "by writing under the hand of the President or of one of the Secretaries of the Board." Inquiries &c. by Minister of Transport.

60. Nothing in this Order shall affect prejudicially any estate right power privilege or exemption of the Crown and in particular nothing herein contained shall authorise the Town Council 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 land heritages subjects or rights of whatsoever description belonging to His Majesty in right of His Crown and under the management of the Commissioners of Crown Lands or of the Board of Trade respectively without the consent in writing of the Commissioners of Crown Lands or of the Board of Trade as the case may be on behalf of His Majesty first had and obtained for that purpose. Crown rights.

61. Sections 16 to 34 36 37 41 60 71 and 74 of the Act of 1882 are hereby repealed. Repeal.

62. All costs charges and expenses of or incidental to the preparing for obtaining and confirming of this Order or otherwise in relation thereto shall be paid by the Town Council out of moneys to be borrowed under the powers of this Order or out of the harbour assessment or out of any of their funds but shall be ultimately charged to the account of the harbour undertaking. Costs of Order.

A.D. 1932. The SCHEDULE referred to in the foregoing Order.

MINUTE OF AGREEMENT between THE PORTSOY HARBOUR COMPANY incorporated by the Portsoy Harbour Act 1882 (hereinafter called "the Company") of the first part GEORGE GREIG McROBIE merchant Portsoy GEORGE DAVID RENNET McROBIE merchant Portsoy and PETER LEITCH DUNCAN bank agent Portsoy the trustees now acting under the trust disposition and settlement of the late Alexander Rainy of Boyne factor to the then Earl of Seafield dated the twenty-fifth day of February eighteen hundred and fifty-two and relative codicil thereto dated the third day of March eighteen hundred and fifty-two (hereinafter called "the Rainy Trustees") of the second part EVAN JAMES CUTHBERTSON writer to the signet Edinburgh as commissioner for and expressly authorised to enter into and subscribe these presents for and on behalf of Alfred Donald Mackintosh of Mackintosh Garden Alexander Duff Esquire formerly of Hatton now of Meldrum the said Evan James Cuthbertson Captain David Baird of Newbyth M.V.O. Sir Reginald MacLeod of MacLeod K.C.B. and Colonel Garden Beauchamp Duff D.S.O. of Hatton the trustees acting under the trust disposition granted by the Right Honourable Caroline Countess Dowager of Seafield now deceased widow of the Right Honourable Sir John Charles Grant Ogilvie of Grant baronet Earl of Seafield K.T. &c. &c. &c. dated the nineteenth day of December eighteen hundred and ninety-one and with ten relative additions and a direction registered in the Books of Council and Session on the twenty-first day of October nineteen hundred and eleven (hereinafter called "the Seafield Trustees") of the third part THE NORTH OF SCOTLAND BANK LIMITED having its registered office at Castle Street Aberdeen (hereinafter called "the Bank") of the fourth part and THE PROVOST MAGISTRATES and COUNCILLORS of the BURGH OF PORTSOY (hereinafter called "the Town Council") of the fifth part.

WHEREAS the Company have administered the harbour of Portsoy since the passing of the Portsoy Harbour Act 1882 but

for many years it has been impossible to carry on without loss : A.D. 1932.

And whereas the Company is insolvent being indebted to the Seafield Trustees and the Bank in considerable sums which they are unable to meet and an arrangement has been come to between the Town Council the Company and the Rainy Trustees subject to the limitation by the Seafield Trustees and the Bank of their claims against the Company whereby the harbour of Portsoy should be transferred to the Town Council :

Now these presents witness that the parties hereto have agreed and hereby agree as follows :—

First The Company hereby agree to transfer to the Town Council and the Town Council hereby agree to take over from the Company without any price being paid therefor and free from all debts but subject to the conditions hereinafter contained all and whole the existing harbour of Portsoy and all the property heritable and moveable of every kind and all the powers authorities privileges rights jurisdictions obligations and exemptions belonging to the Company as at the date of transfer but subject to the obligation to convey and make over the area of ground extending to about one acre and ten decimal or one-hundredth parts of an acre or thereby agreed to be conveyed to the Seafield Trustees as part of the arrangement for the restriction of the debt due by the Company to the Seafield Trustees as contained in clause fourth of this agreement The Town Council shall as from the date of transfer receive the said harbour of Portsoy free from all debts and in particular free from all heritable debt affecting the said harbour the Seafield Trustees agreeing that any heritable securities held by them and affecting the said harbour or its revenue shall as from the date of transfer cease to be valid or to have any force or effect The Town Council shall however be liable to free and relieve the Company of the obligations by the latter to the Seafield Trustees and the Bank and the Company hereby agree to execute and deliver all deeds documents and titles necessary for completing the transfer of the said harbour and the assets of the Company to the Town Council.

Second The Rainy Trustees approve of the transfer to the Town Council and as such trustees bind and oblige themselves to take all necessary steps to secure that the Town Council shall have transferred to them the right to the enjoyment of the Rainy trust funds to which the Company are now entitled The Rainy Trustees also agree to the insertion in the Order hereinafter mentioned to sanction the transfer of the harbour of a clause providing for the alteration of the provisions of the trust deed (1) by fixing the capital of the fund at £2,000 (2) by providing that the free annual

A.D. 1932. — income of the said capital fund shall be paid yearly by the trustees to the Town Council to be expended by the latter as they in their sole discretion may think proper in the maintenance repair improvement or extension of the harbour in all time coming (3) that after the setting aside of the said capital fund of £2,000 the balance above that sum remaining in the hands of the Rainy Trustees shall immediately on the necessary sanction to the transfer of the harbour to the Town Council being obtained be paid over to the Town Council to be held by them and to be expended by the Town Council as in their sole discretion they may think proper in the maintenance repair improvement or extension of the harbour.

Third The said transfer of the harbour of Portsoy shall take effect as from the first day of April nineteen hundred and thirty-two (hereinafter referred to as "the date of transfer").

Fourth The amount to be paid to the Seafield Trustees in settlement of all sums due to them by the Company shall be the sum of one thousand seven hundred and fifty pounds sterling and there shall also be conveyed to the Seafield Trustees all and whole that area of ground situated within the burgh of Portsoy and county of Banff forming part of the existing harbour of Portsoy extending to one acre and ten decimal or one-hundredth parts of an acre or thereby imperial measure and bounded as follows videlicet commencing at a point over the centre line of the Burn of Durn on the bridge carrying the roadway leading from Backgreen to Portsoy along the north side of which roadway the boundary extends in a westerly direction a distance of sixty feet or thereby on the south-south-west and south-west by ground belonging to the Company along which it extends generally in a west-north-westerly and north-westerly direction following the north side of a cart road and following the curves thereof a distance of five hundred and sixty-six feet or thereby till a point is reached in line with the north-west wall of the dwelling-house known as Links Cottage on the north-west also by ground belonging to the Company along which it extends in a north-easterly direction in prolongation of the north-west line of the said dwelling-house a distance of thirty feet or thereby till high-water mark of ordinary spring tides is reached thence in a south-easterly and east-south-easterly direction following the said high-water mark till the centre line of the foresaid Burn of Durn is reached on the east by ground belonging to the Seafield Trustees along which it extends generally in a southerly direction following the centre line of the foresaid Burn a distance of one hundred and ten feet or thereby till the point first mentioned is reached all as delineated and coloured red on the plan hereto annexed and subscribed as relative to this agreement The Company and the Town Council shall be jointly

and severally liable for payment of the said sum of £1,750 and the Town Council as soon as the harbour is vested in them and in any event not later than the thirty-first day of March nineteen hundred and thirty-three shall execute and deliver a formal conveyance of the said area of ground in favour of the Seafield Trustees. A.D. 1932.
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Fifth The amount to be paid to the Bank in settlement of all sums due to them by the Company shall be £150 sterling for which sum the Company and the Town Council shall be jointly and severally liable for payment and which shall be payable on the date of transfer and shall bear interest at the rate of five per cent. per annum from that date until paid the said interest being payable half-yearly on the first day of October and the first day of April beginning the first half-yearly payment on the first day of October nineteen hundred and thirty-two.

Sixth As from the date of transfer to the date of the passing of the Act confirming the Order hereinafter mentioned the Town Council shall free and relieve the Company from all responsibility and liability financial or otherwise in connection with the carrying on of the harbour but the Company shall continue to administer the whole affairs of the harbour The Company shall however take no unusual step and incur no unusual expenditure unless after consultation with and the approval of the Town Council.

Seventh The Town Council hereby agree to apply in March nineteen hundred and thirty-two to the Secretary of State for Scotland for and use their best endeavours to obtain an Order to confirm or give effect to this agreement The said Order shall contain all such clauses and provisions as may be necessary for that purpose which clauses shall be adjusted to the satisfaction of the parties hereto or in the event of difference between them shall be settled by an arbiter to be appointed as hereinafter mentioned.

Eighth The Town Council hereby agree to pay all costs charges and expenses of the whole other parties to this agreement and incidental to the preparation and obtaining of the said Order and the transfer of the said harbour or others or incidental to the matters referred to in this agreement or the carrying through of the matters thereby provided for.

Ninth This agreement is subject to such alterations as may be made therein by the Secretary of State for Scotland or Parliament during the progress of the said Order but if any such alterations be so made which in the opinion of the arbiter to be appointed as hereinafter provided are material it shall be competent to either party to withdraw therefrom.

A.D. 1932.

Tenth In the event of the said Order not being made by the Secretary of State for Scotland and confirmed by Parliament this agreement except clause eighth in so far as applicable shall be void and cease to have effect and no penalty shall be payable by or to any of the parties.

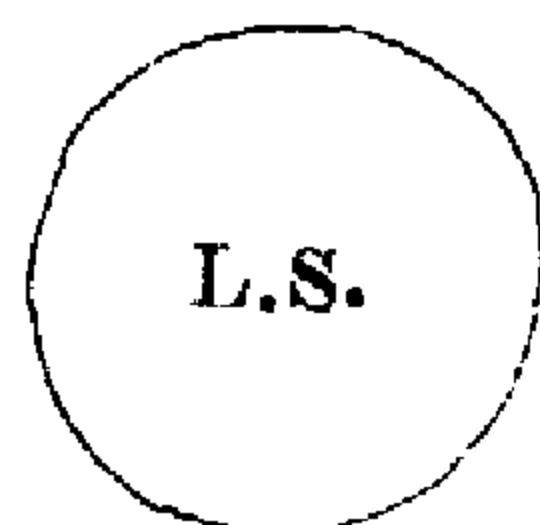
Eleventh Any question or dispute arising between any of the parties hereto under this agreement shall be referred to an arbiter to be mutually chosen by the parties to the dispute or failing agreement to be appointed on the application of any of the parties by the sheriff of the county of Banff.

In witness whereof these presents consisting of this and the four preceding pages (the first whereof being duly stamped) are together with the plan hereto annexed executed as follows namely They are sealed with the common seal of the Town Council of the burgh of Portsoy and are subscribed for and on behalf of the provost magistrates and councillors of the said burgh by William McLean retired schoolmaster Seaview Portsoy provost and by Alexander Bannerman Robb solicitor Portsoy town clerk both at Portsoy on the twenty-first day of March nineteen hundred and thirty-two before these witnesses Robert James Urquhart reporter 49 Bridge Street Banff and John Alexander Bain painter 17 Church Street Portsoy they are sealed with the common seal of the North of Scotland Bank Limited aforesaid and are subscribed for and on behalf of the said Bank by Harvey Hall Smith the general manager thereof at Aberdeen on the twenty-second day of the said month and year last mentioned before these witnesses Charles John Shimmins and Louis Buxton Reid Forsyth both clerks in the employment of the said Bank in Aberdeen they are subscribed by the said George Greig McRobie George David Rennet McRobie and Peter Leitch Duncan as trustees foresaid all at Portsoy on the twenty-third day of the said month and year last mentioned as follows namely By the said George Greig McRobie and George David Rennet McRobie before these witnesses George Allison Scrimgeour solicitor Portsoy and Miss Annie Mair Wood shop assistant 71 Schoolhendry Street Portsoy and by the said Peter Leitch Duncan before these witnesses Douglas Davidson bank accountant and William Gall bank clerk both of the North of Scotland Bank Limited Portsoy they are sealed with the common seal of the Portsoy Harbour Company aforesaid and are subscribed for and on behalf of the said Company by George Greig McRobie merchant Portsoy and James Nicol rope and sail maker Portsoy two of the directors and by the said Alexander Bannerman Robb the secretary of the said Company all at Portsoy on the twenty-fourth day of the said month and year last mentioned before these witnesses George Mitchell hallkeeper Portsoy and George Alexander Robertson clerk to the said Alexander Bannerman Robb and they are subscribed by the said Evan James Cuthbertson as commissioner

[22 & 23 GEO. 5.] *Portsoy Harbour* [Ch. xcvi.]
Order Confirmation Act, 1932.

foresaid at Edinburgh on the twenty-sixth day of the said month A.D. 1932.
and year last mentioned before these witnesses Bertram Hill
Cuthbertson writer to the signet and James Douglas Little
solicitor both of 25 Melville Street Edinburgh.

C. J. SHIMMINS witness.
L. BUXTON R. FORSYTH witness.



HARVEY H. SMITH
general manager.

GEORGE A. SCRIMGEOUR witness.

G. G. McROBIE.

ANNIE M. WOOD witness.

G. D. R. McROBIE.

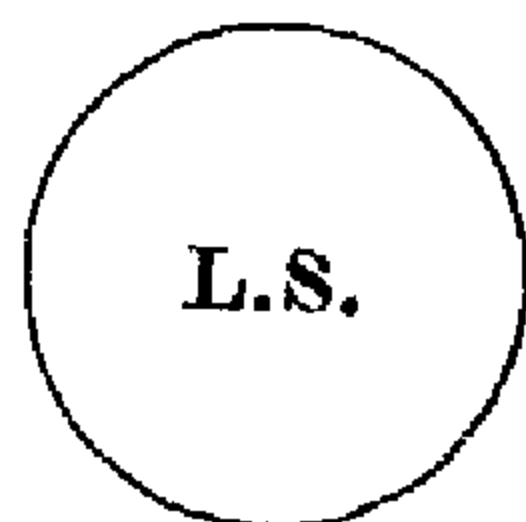
DOUGLAS DAVIDSON witness. }
W. GALL witness. }

P. L. DUNCAN.

B. H. CUTHBERTSON witness. }
J. DOUGLAS LITTLE witness. }

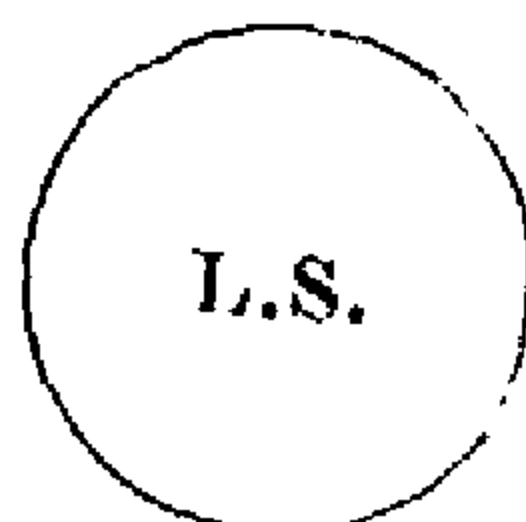
EVAN J. CUTHBERTSON.

GEORGE MITCHELL witness.
G. A. ROBERTSON witness.



G. G. McROBIE director.
JAS. NICOL director.
A. BANNERMAN ROBB secretary.

ROBERT J. URQUHART witness.
JOHN A. BAIN witness.



WILLIAM McLEAN provost.
A. BANNERMAN ROBB town clerk.

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