



ANNO DECIMO SEPTIMO

VICTORIÆ REGINÆ.

Cap. xxxvii.

An Act to enable the Company of Proprietors of
the *Birmingham* Waterworks to raise further
Money. [2d June 1854.]

WHEREAS by the Local and Personal Act passed in the 7 G.4.c. cix.
Seventh Year of the Reign of His Majesty King *George*
the Fourth, Chapter 109, a Company was incorporated by
the Name of "The Company of Proprietors of the *Birmingham*
Waterworks," with a Capital of One hundred and twenty thousand
Pounds, divided into Shares of Twenty-five Pounds each, and with
Power to borrow on Mortgage any further or additional Sum not ex-
ceeding Thirty thousand Pounds, for the Purpose of constructing
Waterworks and supplying with Water the Town of *Birmingham*, and
the several Parishes, Hamlets, and Places of *Birmingham*, *Aston*,
Duddeston, *Duddeston* and *Nechells*, and *Edgbaston*, in the County
of *Warwick*: And whereas the said Company proceeded to put the
said Act into execution, and constructed Waterworks, and are now
supplying Water within the Town, Parishes, and Hamlets or Places
aforesaid, and have raised and expended upon their Undertaking the
whole of their Capital of One hundred and twenty thousand Pounds,
and of the additional Sum of Thirty thousand Pounds which they
were by the said Act authorized to borrow: And whereas since the
passing of the said Act the Population of the said Town, Parishes,
[*Local.*] 6 L and

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and Hamlets or Places, and the Number of Houses, Manufactories, and other Buildings therein, have greatly increased, and in order to meet the increased and increasing Demand for Water therein it is expedient that the said Company should be enabled to raise additional Money for the Purpose of extending their Supply; but that Object cannot be effected without the Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; (that is to say,)

Short Title. I. That this Act may be cited for all Purposes as "*The Birmingham Waterworks (Capital) Act, 1854.*"

Power to raise additional Capital by Creation of new Shares. II. That in addition to the Sum of One hundred and twenty thousand Pounds, the existing Capital of the said Company, the said Company may from Time to Time, by Order of any General or Special General Assembly of the said Company, raise by the Creation of new Shares in their Undertaking any further Sums of Money not exceeding in the whole One hundred and twenty thousand Pounds.

New Shares to be subject to same Provisions as original Shares. III. That the Capital to be raised by the Creation of such new Shares shall be considered as Part of the general Capital of the said Company, and shall be subject to the same Provisions in all respects, whether with reference to the Payment of Calls, or the Forfeiture of Shares on Nonpayment of Calls, or otherwise, as if it had been Part of the original Capital by the said Act authorized to be raised, except as to the Times of making Calls for such Capital, and the Amount of such Calls.

Calls. IV. That no Call to be made upon any new Shares created under the Powers of this Act shall exceed the Rate of Ten Pounds in the Hundred on the Amount of a Share, and the Interval between successive Calls shall be not less than Three Months, and One Month's Notice at least shall be given of all such Calls, in such Manner as is provided for by the recited Act, and not more than One Half of the nominal Amount of a Share shall be called up in any One Year.

If old Shares at a Premium, new Shares to be offered to existing Shareholders. V. That if at the Time of the Creation of any such new Shares the then existing Shares in the Capital of the Company be at a Premium, or of greater actual Value than the nominal Value thereof, then such new Shares shall be of such Number and Amount as will allow the same to be conveniently apportioned among the Proprietors of those existing Shares in proportion to the Number of such existing Shares held by them respectively; and such new Shares shall be offered to them at Par in such Proportion.

VI. That

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VI. That such Offers shall be made by Letter under the Hand of the Clerk of the said Company, given to every Proprietor of such existing Shares, or sent by Post, addressed to him according to his Address in the Books of the said Company, or left for him at his usual or last known Place of Abode in *England*; and every such Offer made by Letter sent by Post shall be considered as made on the Day on which such Letter in the ordinary Course of Delivery ought to reach the Place to which it is addressed, and the new Shares so offered shall vest in and belong to the Proprietors who accept the same.

Mode of making Offers.

VII. That if any Shareholder fail for One Month after such Offer of any new Share or Shares to accept the same, the Directors of the said Company may from Time to Time sell such new Share or new Shares by Public Auction, in such Manner, at such Times, and subject to such Conditions as they shall from Time to Time determine; provided always, that Notice of every such Sale shall be previously given for Two successive Weeks in Two Newspapers published in the Town of *Birmingham*.

Disposition of remaining Shares.

VIII. That any Sum of Money received upon any such Sale by way of Premium shall be applied to the Purposes by this Act and the recited Act authorized, and shall not be considered as Part of the Capital of the said Company entitled to Dividend.

Premiums on Sales not to be entitled to Dividend.

IX. That every Person who becomes entitled to any new Share created under the Powers of this Act shall, in respect of the same, be a Proprietor in the said Company, and shall be entitled to receive Dividends with the other Proprietors in proportion to the whole Amount for the Time being paid up on such Share.

Dividends on new Shares.

X. That every Proprietor of Shares in the Undertaking of the said Company, whether created under the Powers of the recited Act or of this Act or of both Acts, shall be entitled to One Vote for every One hundred and twenty-five Pounds paid up by him thereon, up to Ten Votes; but no Proprietor shall be entitled to more than Ten Votes in respect of any Shares he may hold, whether such Shares be created under the Powers of the recited Act or this Act, or both.

Votes of Shareholders.

XI. That the Profits of the Undertaking of the said Company to be divided among the Shareholders therein in any Year shall not exceed the Rate of Eight Pounds in the Hundred by the Year on the paid-up Capital in the Undertaking, unless a larger Dividend be at any Time necessary to make up the Deficiency of any previous Dividend which shall have fallen short of the said yearly Rate; but no such Deficiency shall be made up at any Time after the Expiration of Ten Years from the Period when the same occurred.

Profits of the Company to be limited.

XII. That

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If Profits exceed the Amount limited, Excess to be invested, and form a reserved Fund.

XII. That if the clear Profits of the said Undertaking in any Year amount to a larger Sum than is sufficient, after making up the Deficiency in the Dividends of any previous Year as aforesaid, to make a Dividend at the Rate aforesaid, the Excess beyond the Sum necessary for such Purpose shall from Time to Time be invested in Government or other Securities, and the Dividends and Interest arising from such Securities shall also be invested in the same or like Securities, in order that the same may accumulate at Compound Interest until the Fund so formed amounts to a Sum equal to One Tenth Part of the nominal Capital of the said Company, which Sum shall form a reserved Fund to answer any Deficiency which may at any Time happen in the Amount of divisible Profits, or to meet any extraordinary Claim or Demand which may at any Time arise against the said Company; and if such Fund be at any Time reduced, it may thereafter be again restored to the said Sum, and so from Time to Time as often as such Reduction shall happen.

Reserved Fund not to be resorted to unless to meet extraordinary Claims.

XIII. Provided always, That no Sum of Money shall be taken from the said Fund for the Purpose of meeting any extraordinary Claim, unless it be first certified by Two Justices that the Sum so proposed to be taken is required for the Purpose of meeting an extraordinary Claim within the Meaning of this Act.

When Fund amounts to prescribed Sum, Interest to be applied to Purposes of the Undertaking.

XIV. That when such Fund shall, by Accumulation or otherwise, amount to One Tenth Part of the nominal Capital, the Interest and Dividends thereon shall no longer be invested, but shall be applied to any of the general Purposes of the Undertaking to which the Profits thereof are applicable.

If Profits are less than the prescribed Rate, a Sum may be taken from reserved Fund to supply Deficiency.

XV. That if in any Year the Profits of the said Undertaking divisible amongst the Shareholders shall not amount to the Rate aforesaid such a Sum may be taken from the reserved Fund as, with the actual divisible Profits of such Year, will enable the said Company to make a Dividend of the Amount aforesaid, and so from Time to Time as often as the Occasion shall require.

If Profits are more than the Amount prescribed, a rateable Reduction to be made in the Price of Water.

XVI. That the Court of Quarter Sessions for the Borough of *Birmingham* may, on the Petition of any Two Water Ratepayers within the Limits of the recited Act, appoint some Accountant or other competent Person, not being a Proprietor of any Waterworks, to examine and ascertain, at the Expense of the said Company, the actual State and Condition of the Concerns of the said Company, and make Report thereof to the said Court at the then present or some following Sessions (the Amount of such Expense to be determined by the said Court); and the said Court may examine any Witnesses upon Oath touching the Truth of the said Accounts, and the Matters therein referred to; and if it thereupon appear to the said Court that the Profits of the said Company for the preceding Year have exceeded the

Rate

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Rate aforesaid, the said Company shall, in case the whole of the said reserved Fund has been and then remains invested as aforesaid, and in case Dividends to the Amount herein-before limited have been paid, make such a rateable Reduction in the Rates for Water to be furnished by them as in the Judgment of the said Court shall be proper, but so as such Rates when reduced shall ensure to the said Shareholders (regard being had to the Amount of Profit before received) a Profit as near as may be to the Rate aforesaid.

XVII. Provided always, That if in the Case of any Petition so presented it appear to the said Court that there was no sufficient Ground for presenting the same, the said Court may, if they think fit, order the Petitioner to pay the whole or any Part of the Costs of or incident to such Petition (the Amount thereof to be determined by the said Court); and the Costs so ordered to be paid shall be recoverable, if not paid within Seven Days after Demand, by Distress of the Goods of the Petitioner; and any Justice of the Peace acting for the County of *Warwick* shall, on Application, issue his Warrant accordingly, and shall include therein the Costs of such Distress.

Court may order Petitioner to pay the Costs of groundless Petition.

XVIII. That if the said Company shall, for Seven Days after being required to produce to the said Court, or to the said Accountant or other Person as aforesaid, any Books of Account, or other Books, Bills, Receipts, Vouchers, or Papers relating to their pecuniary Affairs, refuse or neglect to produce such Books, Bills, Receipts, Vouchers, or Papers, they shall forfeit the Sum of One hundred Pounds for every such Refusal or wilful Neglect, and the further Sum of Ten Pounds for every Day during which such Refusal or wilful Neglect shall continue after the Expiration of the said Seven Days, such respective Penalties to be recovered by any Person who will sue for the same, with full Costs of Suit, in any of the Superior Courts.

Penalty on Company refusing to produce Books, Vouchers, &c.

XIX. That the said Company may from Time to Time (when the whole of the additional Capital for the Time being created under the Powers of this Act shall have been subscribed for, and One Half of the entire Capital for the Time being of the said Company shall have been paid up,) borrow on Mortgage of their Undertaking any further Sums not exceeding in the whole One Fourth Part of the additional Capital so for the Time being created, in addition to the Sum of Thirty thousand Pounds borrowed under the Powers of the recited Act.

Power to borrow on Mortgage

XX. That all the Provisions of the recited Act with reference to Mortgages or Assignments, and Transfers of Mortgages or Assignments, contained in the Clauses of that Act numbered respectively VII., VIII., and IX., shall extend and apply to Mortgages or Assignments for securing Money to be borrowed under the Powers of this Act, and Transfers thereof; and the Forms contained in those Clauses may be used for those Mortgages or Assignments, and Transfers, with such Alterations as Circumstances may require.

Provisions as to Mortgages.

[*Local.*]

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XXI. That

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Former
Mortgages
to have
Priority.

XXI. That all Mortgages granted by the said Company before the passing of this Act, and in force at the Time of the passing of this Act, shall during the Continuance thereof have Priority over all Mortgages to be granted by virtue of this Act.

Application
of Monies.

XXII. That all Monies to be raised under the Powers of this Act, whether by Shares or borrowing, shall be applied only to the Purposes by this Act and the recited Act authorized.

Future
Works of
Company for
Three Years
to be ap-
proved by
Surveyor of
the Borough
of Birming-
ham.

XXIII. And whereas under the Powers of the "*Birmingham Improvement Act, 1851*," the Council of the Borough of *Birmingham*, on the Seventh Day of *March* last, gave Notice to the said Company of their Intention to purchase the said Waterworks at the Expiration of Twelve Calendar Months; and it is expedient that all new Works shall be carried out by the said Company in manner herein-after mentioned: Be it enacted, That during the Period of Three Years from the passing of this Act all new Works shall be carried out by the said Company under the Superintendence of the Engineer of the said Company; but before any new Works shall be commenced the said Company shall give Notice of their Intention to carry into effect such new Works to the Surveyor of the Borough, and it shall be lawful for the Surveyor of the Borough, if he shall disapprove of any such Works, or the Mode of carrying them into effect, to give Notice thereof to the said Company; and in case of any such Disapproval between the said Engineer and the said Surveyor as to the Propriety of any such Works, or the Mode of carrying them into effect, an Application may be made by the said Company or the said Council to the Board of Trade, to appoint an Umpire, whose Decision thereon shall be final, and the Costs, Charges, and Expenses of such Umpire shall be paid as the said Board of Trade shall direct.

As to esti-
mating
Amount of
Purchase
Money for
Waterworks
if Council
shall pur-
chase within
a certain
Period.

XXIV. That if the Council of the Borough of *Birmingham*, under the Powers of "*The Birmingham Improvement Act, 1851*," shall, within Two Years from the Seventh Day of *March* now last past, purchase the said Waterworks, then and in such Case, in estimating the Amount of the Purchase Money for the said Waterworks, the Amount to be paid to the Company in respect of any new Shares to be created under the Powers of this Act shall be estimated as if such new Shares constituted a Stock entitled only to Six Pounds *per Centum per Annum* Dividend.

Power for
Justices to
order Repair
of Reser-
voirs, and in
certain Cases
to direct the

XXV. And in order to provide against Accidents to Life or Property by the bursting of any Reservoir made under the Provisions of the recited Act, be it enacted, That whenever it shall be represented to Two Justices of the Peace met and acting together for the County or Borough in which any such Reservoir is situate, by the Owners or Occupiers of any Dwelling House, Mill, Factory, or other Works situate

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situate below such Reservoir as aforesaid, and so as to be in danger of being destroyed or injured by the Water of such Reservoir, in case it should escape therefrom, that such Reservoir is in a dangerous State, such Justices shall forthwith make Inquiry into the Truth of such Representation, and if they shall be satisfied that such Reservoir is in a dangerous State, they shall, by Writing under their Hands, order and require the said Company, within a Time to be specified in such Writing, to put such Reservoir into a proper State of Repair, or construct such Works as may be necessary to remove the Danger; and in case the said Company shall not within the Time so limited, and to the Satisfaction of the Justices who shall have made such Order, or of any Two Justices of the Peace for such County or Borough met and acting together, have repaired the said Reservoir or constructed the said Works, or in case, upon receiving such Representation as aforesaid, the Justices shall consider the Danger to be so imminent as not to admit of Delay, they may, if they shall think fit, by Writing under their Hands order and direct the Officer in charge of such Reservoir, or any other Person or Persons whom they may think proper, to enter upon the Premises of the said Company, and to open the Sluices of such Reservoir, or otherwise to let off so much of the Water from such Reservoir and to such a Level as may be necessary to remove the Danger, and to keep the Water in such Reservoir at the reduced Level until the said Reservoir shall have been repaired, or such Works as aforesaid shall have been constructed, to the Satisfaction of the Justices who shall have made such Order, or any other Two Justices of the Peace for the said County or Borough met and acting together, and who shall signify their Satisfaction by Writing superseding such Order, or until such Order shall be superseded upon Appeal, as herein-after mentioned; and such Order may be in the Form or to the Purport and Effect following; (that is to say,)

Water there-
in to be
lowered.

‘ To A. B.

‘ WE, the undersigned, Two of Her Majesty’s Justices of the
‘ Peace acting in and for the County or Borough of
‘ do hereby order and direct you, and such Person or Persons as you
‘ may require to aid and assist you herein, forthwith to do all such
‘ Acts as may be necessary to lower the Water in a certain Reservoir
‘ known as the Reservoir, by the Space of
‘ Feet or thereabouts, and to keep the same at that Level until you
‘ shall be further instructed by us or by Two other Justices of the
‘ Peace acting in and for the said County or Borough; and you shall
‘ do as little Injury as possible to the Property of the Company of Pro-
‘ prietors of the Birmingham Waterworks; and in acting in obedience
‘ to the Premises this shall be your sufficient Warrant.

‘ Given under our Hands, this Day of One
‘ thousand eight hundred and .

(Signed)

‘ C. D.
‘ E. F.’

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And no Person acting under and in pursuance of such Order shall be deemed a Trespasser ; and any Person who shall obstruct or prevent such Person in the Discharge of such Order, or shall wilfully do any Act in contravention of such Order, shall for every such Offence be liable to a Penalty not exceeding Fifty Pounds : Provided always, that, except when the Urgency of the Case will not admit of the Delay, the Justices, before making an Order to repair any such Reservoir, or to construct any Works as aforesaid, or to lower the Water in any such Reservoir, shall cause Notice to be given to the Clerk of the said Company, and shall hear and consider any Evidence that may be tendered on behalf of the said Company against the making of such Order : Provided also, that if the said Company shall consider themselves aggrieved by any such Order they may appeal against the same to the General or Quarter Sessions of the Peace for the County of *Warwick*, or to the General or Quarter Sessions of the Peace for the Borough of *Birmingham*, upon giving to the Justices who shall have made such Order Three Weeks Notice in Writing of the Grounds of such Appeal ; and the Court of Quarter Sessions shall hear and determine such Appeal, and may either confirm or supersede the Order of the said Justices, as they may think proper ; but until such Order shall be superseded it shall continue in full Force ; and all the Costs, Charges, and Expenses of applying for, obtaining, and enforcing such Order shall be borne by the said Company, unless the Justices making the Order shall direct such Costs, Charges, and Expenses, or a proportionate Part of them, to be borne by the Parties applying for such Order, which they are hereby authorized to do ; and the Costs of any such Appeal as aforesaid shall be in the Discretion of the said Court of Quarter Sessions.

Company
not to be
responsible
for Conse-
quences of
such Order.

XXVI. Provided always, That the said Company shall not be liable to pay any Persons any Damages, Penalties, Costs, Charges, or Expenses for or in respect of or be answerable or accountable to any Persons for any Diminution or Cessation of the Supply of Water, or any other Breach or Nonperformance of their or any of their Duties, Liabilities, or Obligations under this Act or the recited Act, or either of those Acts, which may be occasioned in or by or result from the Execution of any such Order as aforesaid, anything in this Act or the said recited Act, or either of them, to the contrary notwithstanding.

Expenses of
Act.

XXVII. That all the Costs, Charges, and Expenses of and incident to the Application for and passing of this Act shall be paid by the Company.

LONDON :

Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1854.