



ANNO TRICESIMO

# VICTORIÆ REGINÆ.

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## Cap. xli.

An Act to make further Provision for making, repairing, maintaining, and extending the Highways, Roads, and Bridges within the County of *Orkney*; and for other Purposes.

[31st *May* 1867.]

**W**HEREAS an Act was passed in the Twentieth and Twenty-first Years of the Reign of Her present Majesty, intituled "*The Orkney Roads Act, 1857,*" which Act is herein-after called the firstly-recited Act: And whereas an Act was passed in the First and Second Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for amending and making more effectual the Laws concerning Turnpike Roads in Scotland,* which Act is herein-after called the secondly-recited Act: And whereas an Act was passed in the Eighth and Ninth Years of the Reign of Her present Majesty, intituled *An Act for amending the Laws concerning Highways, Bridges, and Ferries in Scotland, and the making and maintaining thereof by Statute Service, and by the Conversion of Statute Service into Money,* which Act is herein-after called the thirdly-recited Act: And whereas the Trustees appointed by the firstly-recited Act have partially made the new Roads on the Mainland of *Orkney* thereby authorized, and have for the Purposes of that Act

20 & 21 Vict. c. lxxv.

1 & 2 W. 4. c. 43. (Public.)

8 & 9 Vict. c. 41. (Public.)

[Local.]

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borrowed

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borrowed and applied the Sum of Twenty-five thousand Pounds, which is now due and owing to the Extent of Twenty-three thousand one hundred and fifty-three Pounds One Shilling and Elevenpence Sterling: And whereas the Powers of raising Money conferred by the firstly-recited Act are insufficient for the Completion of the whole Works thereby authorized, and it is expedient that they should be enlarged, and that further Provision should be made for making, repairing, and maintaining the Highways, Roads, and Bridges on the Mainland, and for making the new Roads herein-after described, and that for these Purposes the firstly-recited Act should be amended: And whereas it is likewise expedient that such of the Highways, Roads, and Bridges as are situate within the Parliamentary Boundaries of the Burgh of *Kirkwall*, together with certain Portions of the Roads herein-after described adjoining that Burgh, should be placed under separate Management and Control, subject to the Conditions and Provisions herein-after expressed: But these Objects cannot be accomplished 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;

(Preliminary.) (that is to say,)

When Act  
to take  
effect, and  
Short Title.

1. This Act shall take effect as at and from the passing thereof, and may be cited for all Purposes as "The *Orkney Roads Act, 1867.*"

Interpreta-  
tion of  
Terms.

2. The several Words and Expressions to which by the Acts incorporated herewith Meanings are assigned have in this Act the same Meanings, and the following Words and Expressions in this Act have for the Purposes of this Act the following Meanings, unless there be something in the Subject or Context repugnant to such Construction; (that is to say,)

"County" shall mean the County of *Orkney* as defined by the firstly-recited Act:

"Burgh" shall mean the Burgh of *Kirkwall* according to the Parliamentary Boundaries thereof, as defined by an Act passed in the Second and Third Years of the Reign of His late Majesty King *William* the Fourth, Chapter Sixty-five:

"Mainland" shall mean the Island called the Mainland of *Orkney*, and shall include the Burgh:

"Landward Mainland" shall mean the Mainland exclusive of the Burgh:

"Trustees" shall mean the Trustees for the Time being acting under the firstly-recited Act:

"Commissioners" shall mean the Magistrates and Town Council of the Burgh acting as Commissioners of Police thereof by virtue of

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of "The General Police and Improvement (*Scotland*) Act, 1862," or any General or Local Act in force within the same: "Roads" shall include all Highways, Streets, Bridges, Jetties, and Landing Places made or maintained under the Provisions of the firstly-recited Act or this Act.

3. From and after the passing of this Act, the following Sections of the firstly-recited Act shall be and the same are hereby repealed; (*videlicet*,) Sections Five, Sixteen, Sections Eighteen and Nineteen in so far only as applicable to the Mainland, Section Forty-two, so much of Section Forty-nine as provides that the Assessors of the County shall annually make up Lists of Persons liable in Payment of Commutations or Assessments in lieu of Statute Labour, and so much of Sections Forty-four and Sixty-two as provide for the Determination of the Assessments thereby authorized on the Payment and Discharge of the Sums authorized to be borrowed under the firstly-recited Act.

Repeal of certain Sections of 20 & 21 Vict. c. lxxv.

4. The Trustees may at their Annual General Meeting in any Year, or at any Adjournment thereof, resolve that the Provisions of the firstly-recited Act shall not be put in force in any Island or Group of Islands in the County wherein an Assessment on the Owners of Lands and Heritages under that Act has not been imposed, and wherein no Money has been borrowed under the Authority thereof; and at any subsequent Annual General Meeting the Trustees may rescind or alter such Resolution in whole or in part, and they may thereafter renew the same, and so from Time to Time as they may see expedient.

The Trustees may resolve that 20 & 21 Vict. c. lxxv. shall not be put in force in certain Cases.

5. From and after the passing of this Act, the thirdly-recited Act shall not apply to the County, nor to any of the Roads, nor to the Trustees, Commissioners, or Road Committees acting in pursuance of the firstly-recited Act or of this Act.

8 & 9 Vict. c. 41. not to apply to County.

6. From and after the passing of this Act, the following Sections of "The Commissioners Clauses Act, 1847," shall not extend or apply to the Trustees, Commissioners, or Road Committees acting in pursuance of the firstly-recited Act or of this Act, *videlicet*, Thirty-six to Forty-three inclusive, Forty-five, Fifty-three, and Fifty-four.

Certain Clauses of 10 & 11 Vict. c. 16. not to apply.

7. The Provisions and Enactments of the secondly-recited Act, excepting the Sections thereof following, (*videlicet*,) Seven, Eight, Nine, Thirteen to Fifty-nine, both inclusive, Eighty-two, Ninety-four, Ninety-five, and One hundred and seventeen, and excepting also so much of Section Sixty-one as declares Twenty Feet to be the least legal Breadth of a Turnpike Road, and provides that all such

Portion of General Turnpike Act 1 & 2 W. 4. c. 43. incorporated.

Roads

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Roads shall be in all Places Twenty Feet of clear passable Road exclusive of the Bank, Ditch, or Fence on either Side thereof, shall be and, in so far as the same are not inconsistent herewith, are incorporated with and form Part of this Act, and shall extend and apply to all the Roads; and in the Construction of the secondly-recited Act with reference to this Act the Expression "Trustees under any Turnpike Act," or Words having the like Import, and the Expression "Turnpike Roads," shall mean and apply to the Trustees, Commissioners, and Road Committees acting under the firstly-recited Act and this Act, and the Roads vested in or managed by them respectively, as the Case may require, in so far as such Application shall not be excluded by the Context, or by any of the Provisions of this Act.

(Division of Mainland into Districts.)

The Mainland to form Two Districts.

(New Provisions as to General Meetings of Trustees.)

Two Meetings to be held annually.

Chairman of the Trustees.

Chairman to be elected in Absence of the Convener of the County.

Provisions as to Meetings and Proceedings of Trustees.

8. For the Purposes of the firstly-recited Act and of this Act, the Mainland shall be divided into the following Districts; (that is to say,)

1. The Landward Mainland District:
2. The Burgh District.

9. The Trustees shall hold Two stated General Meetings in each Year at *Kirkwall*, one on the First *Wednesday* of *April*, to be called "the Annual General Meeting," and the other on the First *Wednesday* of *October*, to be called "the *Michaelmas* General Meeting," or on such other Days or at such other Place as may be resolved on at any Annual General Meeting of the Trustees: Provided always, that at least One Month's previous Notice of the Intention to propose any Alteration of the Day or Place of Meeting shall have been given by the Clerk by Advertisement in a local Newspaper.

10. The Convener of the County for the Time being shall be Chairman of the Trustees, and shall, when present, preside at all Meetings of the Trustees.

11. In the Absence of the Convener of the County from any Meeting of the Trustees, any Person elected by the Majority of the Trustees present at such Meeting shall preside thereat; and in case of an Equality of Votes, the Trustee present and proposed as Chairman, having or representing the largest Valuation as shown by the Valuation Rolls of the County, shall preside at such Meeting; and in all other Cases of Equality of Votes at any Meeting of the Trustees, the Convener or other Person presiding thereat shall, in addition to his own Vote as a Trustee, have a Second or Casting Vote.

12. The following Provisions shall be applicable to the Meetings and Proceedings of the Trustees:

The Quorum of a Meeting of the Trustees shall be Five:

Special

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Special Meetings of the Trustees may be called by the Convener of the County at any Time he may think fit by Advertisement in a local Newspaper stating the Object of such Meeting, the First Advertisement to be published not less than Ten Days previous to the Day of Meeting; and on a Requisition to the Convener, or to the Clerk to the Trustees, for a Special Meeting of the Trustees, stating the Object and Business to be brought before the Meeting, and signed by at least Three of the Trustees, the Convener or Clerk, as the Case may be, shall call a Meeting of the Trustees by Advertisement as last above provided:

No Business shall be discussed or transacted at any Special Meeting except the Business specified in the Advertisement calling the same:

Any General or Special Meeting of the Trustees may be adjourned to a Time and Place to be specified in the Minutes of such Meeting, and in the event of a Quorum not being present at any such General or Special Meeting, the Convener may by Advertisement call an adjourned Meeting, to be held at the same Place on any Day within Three Weeks after the Day fixed for the original Meeting:

Any Business appointed by the firstly-recited Act or this Act to be transacted, and any Assessment by the firstly-recited Act or this Act authorized to be imposed, at any General or Special Meeting of the Trustees, may be transacted or imposed at any adjourned Meeting: Provided always, that no Business shall be brought before or transacted at such adjourned Meeting which was not brought before or appointed to be brought before the original Meeting which was so adjourned.

(Management.)

**13.** The Trustees may at any General Meeting appoint a Committee or Committees of their Number for the more immediate Direction, Management, and Regulation of the Roads within the Landward Mainland District, and for carrying into effect the several Powers and Provisions of the firstly-recited Act and of this Act within that District, and the Trustees may fix the Quorum of any such Committee, they may appoint One of the Members to be Chairman and Convener thereof, they may continue, alter, or discontinue such Committee, and every such Committee shall in transacting the Business committed to them have and exercise all the Powers which belong to the Trustees: Provided always, that no Trustee, not being elected as such by the Town Council of *Stromness*, or by a Parochial Board, shall be entitled to act as a Member of any such Committee unless the Lands and Heritages in respect of which his Qualification as a Trustee is derived are situated, in so far as may be requisite for such Qualification, within the Landward Mainland.

Committee may be appointed to manage Roads in Landward Mainland.

[Local.]

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**14.** Every

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Meetings of Committees.

14. Every Committee so appointed may meet from Time to Time, and may adjourn from Place to Place, as they may think proper, for carrying into effect the Purposes of their Appointment; but no Business shall be transacted at any Meeting of the Committee unless the Quorum of Members fixed by the Trustees, or if no Quorum be fixed, Three Members, be present; in the Absence of the Chairman or Convener appointed by the Trustees from any Meeting, One of the Members present shall be appointed Chairman; all Questions shall be determined by a Majority of the Votes of the Members present, and in case of an Equality of Votes the Chairman shall have a Casting Vote, in addition to his Vote as a Member of the Committee.

Quorum.

Management, &amp;c. of Roads in Burgh transferred to Commissioners.

15. From and after the passing of this Act, the immediate Direction, Management, and Regulation of the Roads within the Burgh shall be transferred to and vested in the Commissioners, and the whole Assessments thereafter imposed and levied within the Burgh, by virtue of the firstly-recited Act or this Act, shall be paid to and applied by the Commissioners for the Purposes and subject to the Provisions of the said Acts, and the Commissioners may appoint a Collector, Surveyor, and all other necessary Officers to aid them in the Execution thereof, and the Commissioners shall within the Burgh have and exercise all the Powers, Rights, and Privileges competent to the Trustees under the said Acts.

Certain Roads annexed to Burgh.

16. The Portions of Roads specified in the Schedule to this Act annexed, though wholly or partially situated beyond the Bounds of the Burgh, shall for the Purposes of this Act be held as situated within the Burgh.

Proceedings in case Commissioners neglect to keep Roads in repair.

17. If after the passing of this Act any of the Roads within the Burgh shall be allowed to fall into disrepair, the Trustees may present a Petition and Complaint against the Commissioners to the Sheriff of the County, or his Substitute, who is hereby authorized to hear and decide the same in a summary Manner, and to make and enforce such Orders for repairing and maintaining such Roads, or otherwise, as the Justice of the Case shall require, and also to determine as to the Expense of such Complaint and the Proceedings thereon.

(Provisions with reference to new Roads.)

Description of new Roads.

18. The Trustees may make and maintain the new Roads on the Landward Mainland following; (that is to say,)

First, a Road, Two Miles Nine Chains in Length, commencing by a Junction with the existing Road from *Orphir* to *Stromness* at or near the March between the Lands of *Norton* and *Ness of Ireland* in the Parish of *Stenness*, and terminating by a Junction with the Main or Trunk Road from *Kirkwall* to *Stromness* at a Point

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Point on the last-mentioned Road about Two hundred Yards to the East of the *Bridge of Waith*, also within the Parish of *Stenness* :

Second, a Road, Three Miles Eight Chains and One Half in Length, commencing by a Junction with the existing *Evie and Rendall Road* at or near the Point where that Road diverges in an Eastwardly Direction in a Piece of Moorland belonging to the Trustees of *John Brough* in the Parish of *Rendall*, and terminating by a Junction with the said existing *Evie and Rendall Road* opposite the House called "*Fursan*" occupied by *James Marwick* in the Parish of *Evie*.

19. And whereas Plans and Sections of the said intended new Roads and Works connected therewith, and also a Book of Reference to such Plans containing the Names of the Owners or reputed Owners, Lessees or reputed Lessees, and Occupiers of the Property upon or through which the said new Roads and Works are intended to be made, were deposited with the Principal Sheriff Clerk of the County of *Orkney*, and with the Schoolmasters of the several Parishes in which such new Roads and Works are situate, on or before the Thirtieth Day of *November* One thousand eight hundred and sixty-six : The Trustees may, subject to the Provisions of this Act and of the Acts incorporated herewith, make and maintain the said new Roads, as shown upon the Plans and Sections deposited as aforesaid, on the Lines and through the Lands delineated on the said Plans and described in the said Book of Reference, and according to the Levels shown upon the said Sections, together with all such Footpaths, Bridges, Embankments, Ditches, Drains, Fences, and other necessary Works upon or near thereto as they may think fit, and for the Purposes aforesaid the Trustees may enter upon, take, and use such of the Lands and Premises described in the said Plans and Book of Reference as they shall deem necessary.

Power to make new Roads, &c. according to deposited Plans, &c.

20. For the Purpose of constructing the said new Roads, "The Lands Clauses Consolidation (*Scotland*) Act, 1845," and "The Lands Clauses Consolidation Acts Amendment Act, 1860," in so far as applicable, are incorporated with and form Part of this Act.

8 & 9 Vict. c. 19. and 23 & 24 Vict. c. 106. incorporated.

21. The Trustees in making the said new Roads and other Works may deviate from the Lines delineated on the said Plans to the Extent or Distance of the Limits of Deviation marked thereon, provided that the Works shall not by means of such Deviation be made to extend into the Lands of any Person whose Name is not mentioned in the said Book of Reference without his previous Consent in Writing, unless the Name of such Person shall have been omitted by Mistake, and

Power to deviate in Construction of Works.

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and the Fact that such Omission proceeded from Mistake shall have been certified in manner herein-after provided.

Deviation  
from Levels.

**22.** The Trustees may deviate from the Levels of the Works as marked on the said deposited Sections to any Extent not exceeding Five Feet.

Errors, &c.  
in Plan may  
be corrected  
by Sheriff.

**23.** If any Omission, Mis-statement, or erroneous Description shall have been made of any Lands described on the said Plans or in the said Book of Reference, the Trustees may apply to the Sheriff of the County, or his Substitute, for the Correction thereof, after giving Ten Days Notice to the Owners, Lessees, and Occupiers of the Lands affected by such proposed Correction; and if it shall appear to the Sheriff that such Omission, Mis-statement, or erroneous Description arose from Mistake, he shall certify the same accordingly, and shall in such Certificate state the Particulars of any such Omission, Mis-statement, or wrong Description, and such Certificate shall, along with the other Documents to which it relates, be deposited with the Sheriff Clerk of the County and the Schoolmaster of the several Parishes in which such Lands are situate, or with the Session Clerk of any such Parish, in case there may happen to be no Schoolmaster therein, and thereupon such Plan and Book of Reference shall be deemed to be corrected according to such Certificate; and the Trustees may proceed with the Execution of the said Works in accordance with such Certificate in the same Manner as if such Omission, Mis-statement, or wrong Description had not been made.

Deposited  
Plans to be  
open for  
Inspection.

**24.** The said Plans, Sections, Book of Reference, and Certificate (if any) deposited with the Sheriff Clerk, Schoolmaster, or Session Clerk, as the Case may be, shall remain in the Custody of the said Sheriff Clerk, Schoolmaster, or Session Clerk respectively for the Time being, who shall respectively permit all Persons interested to inspect the same, and to have Copies thereof or Extracts therefrom, on Payment of the Sum of One Shilling for every such Inspection, and at the Rate of Sixpence for every One hundred Words of such Copies or Extracts; and the said Plans, Sections, and Book of Reference, or any Alteration or Correction thereof, or any Copy thereof respectively, or of any Part thereof, certified by the Sheriff Clerk of the County, or his Depute for the Time being, to be a true Copy (which Certificate the said Sheriff Clerk, or his Depute, shall give to all Parties interested when required), shall be received in all Courts of Justice or elsewhere as Evidence of the Contents thereof.

New Roads  
vested in  
Trustees.

**25.** The said new Roads and other Works, and all Materials used in the Construction thereof, shall be vested in the Trustees as well



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well during the Construction thereof as after the same shall be completed.

26. The Powers given by this Act and "The Lands Clauses Consolidation (*Scotland*) Act, 1845," incorporated therewith, for the compulsory Purchase of Lands for the Purposes of this Act, shall not be exercised after the Expiration of Five Years from the passing of this Act.

Powers for compulsory Purchase limited.

(As to other Roads.)

27. The Trustees and the Commissioners respectively may construct and maintain such other new Roads as they may think necessary within the Landward Mainland and the Burgh respectively: Provided always, that the previous Consent in Writing of the Owners of the Lands through which such new Roads are proposed to pass or be situate is first obtained; and provided also, that no such Roads shall be made by the Trustees, or by the Commissioners, unless the Resolution to make the same shall have been sanctioned at a Special Meeting of the Trustees, or the Commissioners, as the Case may require, called for the Purpose by Advertisement specifying the Object of such Meeting published in a local Newspaper weekly for at least One Month previous to the Date of such Meeting.

Trustees and Commissioners may construct other new Roads by Consent.

28. The Trustees and the Commissioners respectively may, by a Majority of Two Thirds of their Number present at a Special Meeting held for the Purpose, resolve and declare that any Road within their respective Districts which may have become useless to the Public shall cease to be a Road within the Meaning and for the Purposes of the firstly-recited Act and this Act; and the Trustees and the Commissioners respectively may at any such Meeting resolve to adopt and adopt, for the Purposes of the firstly-recited Act and this Act, any Parish or other Road within their respective Districts which prior to such Meeting had not been a Road within the Meaning of the said Acts: Provided always, that Notice shall be given by the Clerk to the Trustees, or to the Commissioners, as the Case may be, of the Intention to propose any such Resolution by Advertisement in a local Newspaper, and by printed Notices placed in some conspicuous place at each End of any such Road, and also affixed on the Church Door of every Parish in which any Part of any such Road is situated, for at least One Month prior to the Date of the Meeting at which such Resolution is proposed to be made; and if any Ratepayer within the County, at any Time before the Expiration of the said Month, shall lodge with the Clerk to the Trustees, or Commissioners, as the Case may be, written Objections to the Discontinuance of any Road or Highway, the Clerk shall forthwith call a Meeting of the Trustees, or the Commissioners, by Advertisement containing Notice of the Object of the Meeting, for

Useless Roads may be abandoned and other Roads adopted.

[Local.]

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the Purpose of considering and disposing of such Objections ; and if any Ratepayer shall be dissatisfied with the Decision of such Meeting thereon, he may, at any Time within Fourteen Days after the Date of such Meeting, appeal to the Sheriff of the County, who shall hear and determine the Appeal in a summary Way, and the Decision of the Sheriff shall be final and not subject to Review, and the Cost of and incident to such Appeal shall be in the Discretion of the Sheriff.

Roads  
ceasing to  
be such  
may be  
shut up.

29. After a Road has ceased to be such within the Meaning of the firstly-recited Act and this Act, the Trustees or the Commissioners, as the Case may be, may at the Meeting at which a Resolution to that Effect was adopted, or at any Adjournment thereof, or at any other Special Meeting held for the Purpose, direct such Road to be closed or shut up ; the Ground occupied by such Road, or any Part thereof, if the same is vested in the Trustees or Commissioners, shall thereupon be offered to the Proprietor of the adjoining Land, who shall have the Option of taking over the same at the Valuation of Arbiters to be mutually chosen by such Proprietor and the Trustees or Commissioners ; and in case of such Arbiters differing in Opinion, by an Oversman to be appointed by them, or otherwise the Trustees or Commissioners may exchange the same with the Owner of any adjoining Land for any other Land which they may have obtained or may require for the Purposes of the Roads ; if the same is not vested in the Trustees or Commissioners, then it shall revert to the Owner of the adjoining Land.

(New Pro-  
visions with  
respect to  
Assessments.)

Separate  
Assessments  
to be levied  
on the Two  
Districts,  
and separate  
Books to be  
made up.

30. The Trustees and the Commissioners shall respectively once in each Year fix and settle the Rates of the respective Assessments authorized to be levied by the firstly-recited Act for the Landward Mainland District and the Burgh District respectively, and they shall impose and levy the same on and from the Persons liable in Terms of the said Act in Payment thereof ; for that Purpose they shall respectively annually cause to be made up by their Clerk, or by any other Person or Persons whom they may appoint, separate Rolls or Books of the said Assessments from the Valuation Rolls in force at the Time within the County and the Burgh respectively, showing the yearly Rent or Value of the Premises owned or occupied by the Persons liable in Payment of the said Assessments, and according to which such Assessments are intended to be imposed and levied ; there shall in no Case be entered in any such Roll or Book any fractional Part of a Pound of the assessable yearly Rent or Value aforesaid ; when such fractional Part shall not amount to Ten Shillings, the Sum shall not be entered at all ; when such fractional Part shall amount to or exceed Ten Shillings the Sum shall be entered as One Pound of such yearly Rent or Value, in addition to the actual Number  
of

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of Pounds of such Rent or Value, and shall be assessed accordingly, anything contained in the firstly-recited Act notwithstanding, and the Trustees and the Commissioners respectively shall have Power to rectify any Error which may be found in any such Roll or Book; the Trustees shall also cause similar Rolls or Books to be annually made up for the Purpose of the Assessments in the several Districts of the County other than the Mainland.

**31.** Where any Premises shall be separately set at a Rent not amounting to Four Pounds *per Annum*, and the Names of the Occupiers thereof shall not have been inserted in the Valuation Roll, the Trustees and the Commissioners respectively may in making up any such Roll or Book charge and assess the Owners in place of the Occupiers of such Premises, and they may respectively levy such Assessments from such Owners; but every Owner so charged with and paying such Assessment shall have Relief against the Occupiers of the Premises for Reimbursement thereof, if and in so far as such Assessments may by Law be chargeable upon such Occupiers.

As to  
Premises  
rented  
under 4l.

**32.** All Assessments within the Burgh shall be imposed as from the Fifteenth Day of *May* in any one Year to the Fifteenth Day of *May* in the following Year, and the Commissioners shall fix a Day on which the same shall be payable, which shall be intimated by Handbills posted in the Burgh, and by Advertisement in a Newspaper circulating therein; and if previous to the passing of this Act any Assessment under the firstly-recited Act shall have been imposed and be leviabie within the Burgh for a Period ending on a Day prior to the Fifteenth Day of *May* One thousand eight hundred and sixty-eight, the Commissioners may impose and levy within the Burgh a Proportion of the Assessment authorized by the firstly-recited Act corresponding to the Time intervening between the Expiration of such Period and the Fifteenth Day of *May* One thousand eight hundred and sixty-eight.

Assessments  
in Burgh  
when  
payable.

**33.** The Town Council of *Kirkwall* may annually contribute out of the Free Revenue or Common Good of the Burgh such Sum in aid of the Assessments payable under the firstly-recited Act and of this Act within the Burgh as they shall in the Exercise of their Discretion think proper, and any Sum so contributed shall be paid to the Commissioners, to be applied by them for the Purposes and subject to the Provisions of the said Acts within the Burgh, and shall *pro tanto* be credited to the said Town Council and Common Good as Part of any Contribution which the Burgh is liable to make towards the Cost of Police Purposes within the Burgh; and the Town Council of *Kirkwall* may also, if they see fit, at a Special Meeting duly convened with Notice of the Object, resolve to guarantee Payment out of the said Free Revenue or Common Good of the Interest or

Town  
Council of  
*Kirkwall*  
may con-  
tribute out  
of surplus  
Revenue in  
aid of  
Assessments  
within  
Burgh.

Annuities

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Annuities payable by the Commissioners for any of the Monies to be borrowed or raised by them in virtue of this Act, and they may grant such Dispositions in Security or other Deeds as may be necessary for conveying and disposing the whole or any Part of the Lands, Tenements, Superiorities, and other Property heritable and moveable belonging to the Burgh and vested in the Town Council, or in the Magistrates and Council as representing the Community thereof, in Security of the said Guarantees to the Creditors in the Bonds, Mortgages, Assignations, Debentures, or other Securities granted or to be granted by the Commissioners, and such Dispositions in Security or other Deeds when duly completed according to the Law of *Scotland*, and recorded in the General or Particular Register of Sasines, or in the Register of Sasines for the Burgh, as the Case may require, shall to all Intents and Purposes be valid and effectual to the Creditors therein.

No Exemption from Assessments by Privilege.

(Clauses with respect to Apportionment of Debt.)

General Debt of Mainland Roads to be ascertained and Burgh to pay Proportion thereof.

**34.** No Person shall be exempt from any Assessment imposed by virtue of this Act or of the firstly-recited Act by reason of Privilege.

**35.** As soon as conveniently may be after the passing of this Act, the whole of the general Debt on the Mainland Roads owing by the Trustees shall be ascertained and shall be apportioned by the Trustees between the Landward Mainland and the Burgh Districts respectively, according to the Proportions which the Assessments levied under the firstly-recited Act within the said Districts for the Year from *Martinmas* Eighteen hundred and sixty-six to *Martinmas* Eighteen hundred and sixty-seven respectively bear to each other, and the Commissioners shall thereupon pay to the Trustees the Proportion of such Debt applicable to the Burgh District, under the Deduction hereinafter provided; and in case the Trustees and the Commissioners shall be unable to agree as to the Amount of the said Debt, or the Apportionment thereof as aforesaid, the Matter shall, upon the Application of both or either of the Parties, be determined in a summary Way by the Sheriff of the County, whose Decision shall be final.

In ascertaining Burgh's Proportion of Debt Commissioners to be credited with Sum of 300*l.* as Cost of Kirkwall Harbour Access Road.

**36.** Whereas by "The *Kirkwall* Harbour Act, 1859," it is provided that it shall be lawful for the Trustees acting in execution of that Act, *inter alia*, to make and maintain, fourthly, the Road of Access to the Harbour of *Kirkwall* therein described, and the Trustees acting in execution of the firstly-recited Act are thereby empowered out of the Funds authorized by that Act to be levied to contribute a Sum not exceeding Three hundred Pounds towards the Expense of making and maintaining the said Road, and to adopt the said Road as One of the Roads to be made and maintained by them under the Provisions

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Provisions of the firstly-recited Act: And whereas the said Road has now been constructed by the Trustees of the Harbour of *Kirkwall*, but the Trustees acting under the firstly-recited Act have not yet contributed the said Sum of Three hundred Pounds, or any Part thereof, towards the Expense of making and maintaining the said Road, nor have they yet adopted the same: And whereas the said Road is wholly situated within the Bounds of the Burgh, and it is expedient that it should be vested in the Commissioners and upheld by them: Therefore, from and after the passing of this Act, the said Road shall be transferred to and vested in the Commissioners for the Purposes of the firstly-recited Act and of this Act, and shall be upheld by them out of the Funds and Assessments to be levied and received by them in virtue thereof; and in respect that the Commissioners are in future to adopt and maintain the said Road, it is hereby provided that the said Sum of Three hundred Pounds shall be allowed to them in ascertaining the Proportion of the general Debt of the Mainland Roads applicable to the Burgh District to be paid by the Commissioners, and the Balance only of such Proportion of the said general Debt, after Deduction of the said Sum of Three hundred Pounds, shall be paid by the Commissioners to the Trustees in manner herein provided.

37. Upon the Commissioners making Payment of their Proportion of the said Debt to the Trustees, the Treasurer of the Trustees for the Time being shall grant a Receipt for the same to the Commissioners; on such Receipt being recorded in the Register of Mortgages kept by the Trustees, it shall operate as a Discharge and Renunciation in favour of the Commissioners of all Mortgages or Assignations in Security of the Assessments to be imposed and levied under the firstly-recited Act within the Burgh heretofore granted by the Trustees, and the said Assessments within the Burgh shall thereupon be released and disburdened of all such Mortgages or Assignations in Security accordingly.

On Payment of Proportion of Debt Burgh to be discharged.

38. The Trustees shall apply the Money so paid to them by the Commissioners in reducing and paying off *pro tanto*, subject to the Provisions of this Act, the said general Debt on the Mainland Roads, and to no other Purpose whatever.

Application of Money paid by Burgh for Proportion of Debt.

39. Subject to the Provisions of the firstly-recited Act and of this Act, the Trustees may from Time to Time borrow and take up at Interest such Sums of Money, in addition to the Sums authorized to be borrowed by the firstly-recited Act, as they may find necessary for carrying into effect the Purposes of the said Acts within the Landward Mainland District, and they may make and grant Mortgages and Assignations in Security for the Sums so borrowed, and Interest thereon,

(*Borrowing Powers.*)

Trustees may borrow on Credit of Assessments in Landward Mainland.

[*Local.*]

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thereon,

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thereon, of the Assessments authorized to be levied and raised within the Landward Mainland District under the Authority of the firstly-recited Act and this Act, or either of them; Provided always, that the whole Amount so borrowed and resting owing at one Time, together with the Sums borrowed and resting owing on the Security of the said Assessments, under the Powers contained in the firstly-recited Act, shall not at any Time exceed the Amount of Ten Years gross Proceeds of the said Assessments, calculated as if the same were levied at the maximum Rates authorized by the firstly-recited Act.

Commis-  
sioners may  
borrow on  
Credit of  
Assessments  
in Burgh.

40. In like Manner the Commissioners may, subject to the Provisions of the firstly-recited Act and this Act, from Time to Time borrow and take up at Interest such Sums of Money as they may find necessary for carrying into effect the Purposes of the said Acts within the Burgh, and they may make and grant Mortgages and Assignations in Security for the Sums so borrowed, and Interest thereon, of the Assessments authorized to be levied and raised within the Burgh District under the Authority of the firstly-recited Act and this Act, or either of them: Provided always, that the whole Amount so borrowed and resting owing shall not at any Time exceed the Amount of Twelve Years gross Proceeds of the said Assessments, calculated as if the same were levied at the maximum Rates authorized by the firstly-recited Act; and the several Clauses of "The Commissioners Clauses Act, 1847," incorporated with the firstly-recited Act with respect to Mortgages, shall extend and apply to the Mortgages to be granted by the Commissioners under this Act.

Mode of  
borrowing.

41. The Trustees and the Commissioners may respectively raise the Monies authorized to be borrowed by them respectively under the Authority of this Act in such Amounts, and either by way of Mortgage, Bond, Assignation in Security, Debenture, or Terminable Annuity, as they may think fit.

Power to  
borrow on  
Cash Credit  
Account.

42. The Trustees and the Commissioners respectively may, instead of borrowing on Mortgage or Assignation in Security or otherwise, as herein-before provided, but without Prejudice to their Right so to do, borrow or accept and take from any Bank or Banking Company on a Cash Credit Account to be opened and kept according to the Usage of Bankers in *Scotland* with such Bank or Banking Company, in Name of the Trustees or Commissioners, as the Case may be, or of their Treasurers respectively for the Time being, any Sum or Sums of Money not exceeding in the whole, together with any Sum or Sums which the Trustees or the Commissioners respectively may have raised upon Mortgage or Assignation in Security or otherwise, the Sums

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Sums which they respectively are authorized to borrow as aforesaid, and they may respectively make and grant Mortgages and Assignations of the said Assessments in Security, and for Repayment of the Sums advanced from Time to Time upon such Cash Credit Account and the Interest thereof.

43. If the Trustees or the Commissioners respectively, after having raised any Sum or Sums upon Mortgage or Assignation in Security, or by way of Cash Credit Account, or otherwise, under the Powers to that Effect hereby granted, shall pay off the same or any Part thereof, they may again borrow the Sum or Sums so paid off, and so from Time to Time as Occasion shall require.

Power to  
reborrow.

44. All Bonds, Mortgages, Assignations, Debentures, or other Securities for Money borrowed under the Authority of this Act, and all Dispositions and Conveyances of Property by the Trustees or by the Commissioners, shall be granted in the Name of the Trustees or the Commissioners, and shall be signed by Two Trustees and the Clerk to the Trustees, or by Two of the Commissioners and the Clerk to the Commissioners respectively, as the Case may be; all Deeds and Writings so subscribed shall be good, valid, and effectual to the Person or Persons to whom the same shall be granted; every Mortgage or Assignation in Security or any Transfer thereof authorized to be made under the Provisions of this Act may be partly printed and partly written, and may be according to the Forms in the Schedules (A.) and (B.) annexed to the firstly-recited Act, or according to the Forms prescribed by "The Commissioners Clauses Act, 1847," incorporated therewith; or to the like Effect, or in such other Form as may be most convenient and in accordance with Law and Usage in respect of Securities of a like Nature in *Scotland*; and the respective Clerks to the Trustees and the Commissioners shall keep Registers of all Bonds, Mortgages, Debentures, or other Securities granted under this Act, and of the Transfers thereof.

As to  
Execution  
and Form  
of Deeds.

45. All Assignations, Mortgages, Bonds, Debentures, or other Securities for Money borrowed, granted by the Trustees before the passing of this Act, to secure the Payment of Monies borrowed by them on the Security of the Assessments to be levied under the firstly-recited Act within the Mainland, shall have Priority over all Assignations, Mortgages, Bonds, Debentures, or other Securities which shall be granted by the Trustees to secure the Payment of Monies borrowed by them under the Provisions of this Act.

Existing  
Mortgages  
to have  
Priority.

46. The Mortgagees or Assignees in Security of the Trustees, or the Commissioners, or the Road Committees acting in pursuance of

Arrears may  
be enforced  
by Appoint-

the

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the firstly-recited Act or of this Act may enforce Payment of Arrears of Interest or Principal or Principal and Interest due on their Mortgages or Assignations, or other Deeds of Security granted under the Powers of the firstly-recited Act or of this Act, by the Appointment of a Receiver; and in order to authorize the Appointment of a Receiver in respect of Principal or Principal and Interest, the Amount owing to the Mortgagees by whom the Application for a Receiver is made shall not be less than One thousand Pounds in the whole.

As to Sinking Fund.

47. In order to discharge the Principal Monies to be borrowed as aforesaid on Security of the said respective Assessments, or by Cash Credit Account, in so far as such Monies have not been raised by Terminable Annuity, the Trustees or the Commissioners respectively by whom the same may have been borrowed shall every Year appropriate and set apart out of such Assessments, as a Sinking Fund for Redemption of the Principal of the said Debts, not less than Two Pounds Ten Shillings *per Centum* of such Principal Monies, and, until the whole of the Monies so borrowed shall be fully paid off and discharged, the Trustees and the Commissioners respectively shall annually lay on and assess the District Assessment authorized to be levied on the Owners of Lands and Heritages within the Mainland District and the Burgh District, as the Case may require, under the firstly-recited Act and this Act.

Application of Monies borrowed by Trustees.

48. The Monies to be borrowed under this Act by the Trustees shall be applied in the first place in paying the Expense of obtaining this Act and incidental thereto, as herein-after provided, and thereafter in constructing new Roads and Jetties, or Landing Places connected therewith, and placing existing Roads in a State of thorough Repair within the Mainland.

Application of Monies borrowed by Commissioners.

49. The Monies to be borrowed by the Commissioners under the Authority of this Act shall be applied,

- (1.) In Payment of the Expense of applying for and obtaining this Act and incidental thereto, as herein-after provided;
- (2.) In Payment to the Trustees of the Proportion applicable to the Burgh of the general Debt of the Mainland Roads owing by the Trustees at the passing of this Act, to be ascertained in manner herein-before provided; and
- (3.) In constructing new Roads, and placing existing Roads within the Burgh in a State of thorough Repair.

Application of Assessments.

50. The Assessments to be levied by virtue of this Act by the Trustees and the Commissioners respectively shall be applied in carrying



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carrying out the Purposes of this Act and the firstly-recited Act, and to no other Purpose whatever.

51. The Expense of applying for and obtaining this Act and incidental thereto shall be paid by the Trustees and the Commissioners out of the First Monies received by them respectively under the Powers of this Act, and shall be defrayed by them respectively in the same Proportions as is herein-before provided with respect to the Apportionment of the general Debt of the Mainland Roads; and on the Proportion thereof payable by the Commissioners being ascertained, they shall pay the same out of the first and readiest of their Funds to the Trustees, to be applied by them in satisfying such Expense. Expenses  
of Act.

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## SCHEDULE referred to in this Act.

## ROADS ANNEXED TO THE BURGH.

Name of Road,	Description.
1. Part of Main or Trunk Road - -	} From the Burgh to a Point on each of the said Four Roads in the Parish of St. Ola, distant One Mile Two Furlongs from the Point where the Parliamentary Boundary of the Burgh intersects the same.
2. Part of Kirkwall and Orphir Road - -	
3. Part of Kirkwall and Holm Road - -	
4. Part of Kirkwall and Deerness Road - -	
5. Market Road - - - - -	From the Burgh to the Market Ground opposite to the House of Sunnybank in the said Parish of Saint Ola.

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