



CHAPTER lxxxvii.

An Act to amend the Acts relating to the Company of Proprietors of the Navigation of the River Medway and to provide for the management and constitution of the Company and to change the name of the Company and for other purposes. A.D. 1892.

[20th June 1892.]

WHEREAS by virtue of an Act passed in the sixteenth and seventeenth years of the reign of His Majesty King Charles II. intituled “An Act for making the River of Medway navigable in the counties of Kent and Sussex” (hereinafter referred to as the Medway (Upper) Navigation Act 1664) and of an Act passed in the thirteenth year of the reign of His Majesty King George II. intituled “An Act to revive explain and amend an Act made in the “sixteenth and seventeenth years of the reign of His late Majesty “King Charles the Second intituled ‘An Act for making the River “of Medway navigable in the counties of Kent and Sussex’” (hereinafter referred to as the Medway (Upper) Navigation Act 1739) the Company of Proprietors of the Navigation of the River Medway (hereinafter referred to as the Company) were incorporated and were empowered to improve the navigation of the River Medway to the extent and in the manner therein mentioned :

And whereas the provisions of the said Acts with respect to the constitution and management of the Company are inconvenient and it is expedient that those provisions should be amended and that the provisions of the Companies Clauses Acts should be made applicable to the Company as provided by this Act :

And whereas it is expedient that the name of the Company should be changed :

And whereas the authorised capital of the Company is thirty thousand pounds divided into three hundred shares of one hundred pounds each of which one hundred and fifty-eight shares have been issued and eighty-nine pounds has been paid up on each share :

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And whereas it is expedient that the Company should have power to increase the capital of the Company and that provision should be made for the conversion of the existing shares in the capital of the Company into shares of a smaller denomination and for the removal of any limit on the number of shares which may be held in the capital of the Company :

And whereas in pursuance of the Medway (Upper) Navigation Act 1664 and the Medway (Upper) Navigation Act 1739 (which Acts are together hereinafter referred to as the Medway (Upper) Navigation Acts 1664 and 1739) the amount of any compensation for damage done by the Company in carrying out their powers under those Acts is determined by certain bodies of commissioners appointed for the counties of Kent and Sussex respectively and certain other duties are to be performed by those commissioners in pursuance of those Acts :

And whereas it is expedient that the powers and duties of the commissioners under those Acts should cease and that the amount of any compensation for damage as aforesaid should be determined in manner provided by the Lands Clauses Acts and that the other duties now performed by the commissioners should be performed as in this Act provided :

And whereas the Company have borrowed on mortgage of their lands tolls rates and duties the sum of six thousand pounds which is still due and owing and it is expedient that the Company should be empowered to pay off the moneys due thereon notwithstanding any question as to the legality of such mortgage :

And whereas it is expedient that the provisions of the Medway (Upper) Navigation Acts 1664 and 1739 should be amended as in this Act mentioned and that such other provisions should be made as this Act contains :

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

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

Preliminary.

1.—(1.) This Act may be cited as the Medway (Upper) Navigation Act 1892 and shall come into operation on the third Monday after its passing.

(2.) This Act and the Medway (Upper) Navigation Acts 1664 and 1739 may together be cited as the Medway (Upper) Navigation Acts 1664 to 1892. A.D. 1892;

2.—(1.) Terms to which meanings are assigned in the Acts incorporated with this Act or which have therein special meanings shall have the same respective meanings in this Act unless the context otherwise requires. Interpretation.

(2.) In this Act unless the context otherwise requires—

The expression “Companies Clauses Acts” means the Companies Clauses Consolidation Act 1845 and the Companies Clauses Act 1863 as amended by the Companies Clauses Act 1869 :

The expression “existing” means existing immediately before the passing of this Act :

The expression “new shares” means the shares by this Act substituted for the existing shares :

The expression “old shares” means the existing shares in the capital of the Company.

3. The Companies Clauses Acts (with the exception of the provisions of the Companies Clauses Consolidation Act 1845 with respect to the settlement of disputes by arbitration) are incorporated with and form part of this Act and the provisions of the Companies Clauses Acts so incorporated shall apply to the Company in respect of the matters to which they relate to the exclusion of the provisions of the Medway (Upper) Navigation Acts 1664 and 1739 relating to the same matters. Incorporation of Companies Clauses Acts.

Name and Constitution of Company.

4. The name of the Company shall be changed and shall after the commencement of this Act be the “Medway (Upper) Navigation Company.” Change of name of Company.

5. Any power which may be exercised and any duty which is to be performed under the Medway (Upper) Navigation Acts 1664 and 1739 by a general assembly of proprietors may be exercised and performed by the Company and where anything under those Acts may be done or is to be done at a general assembly of proprietors that thing may be done at a general meeting of the Company. General meetings substituted for general assemblies.

6. Any power which may be exercised and any duty which is to be performed under the Medway (Upper) Navigation Acts 1664 and 1739 by the committee chosen in pursuance of those Acts may be exercised and performed by the directors of the Company. Substitution of directors for committee.

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Amount
and division
of capital.

7.—(1.) The capital of the Company shall consist of fifteen thousand eight hundred pounds divided into one thousand five hundred and eighty shares each of the nominal amount of ten pounds and also of such additional capital as may be raised under the provisions of this Act Provided that the Company shall not create or issue any further capital under the Medway (Upper) Navigation Acts 1664 and 1739.

(2.) Ten new shares on each of which the sum of eight pounds eighteen shillings is by virtue of this Act deemed to have been paid are hereby substituted for every existing one hundred pound share in the capital of the Company.

(3.) A person may notwithstanding anything contained in the Medway (Upper) Navigation Acts 1664 and 1739 hold any number of shares in the capital of the Company.

New shares
to be issued
to existing
proprietors.

8.—(1.) Every existing proprietor of a share in the capital of the Company shall receive in substitution for every existing one hundred pound share held by him in the capital of the Company ten of the new shares created by this Act.

(2.) Ten new shares shall for all purposes be substituted for one existing share and the new shares shall be subject and liable to the same trusts powers provisions declarations agreements charges liens and incumbrances as immediately before the passing of this Act affected the corresponding old shares respectively and every deed agreement or instrument or any testamentary or other disposition shall take effect with reference to the whole or a proportionate part of the substituted shares as the case may be.

Certificates
of new
shares.

9. The directors shall issue certificates of the new shares to the existing proprietors of shares in the capital of the Company on such conditions as to evidence of title to the old shares or otherwise as they may reasonably determine.

Ordinary
meetings.

10.—(1.) The first ordinary meeting of the Company shall be held in the month of January eighteen hundred and ninety-three.

(2.) Ordinary meetings after the first ordinary meeting shall be held in the months of July and January or at such other times as the Company may determine at a general meeting.

Place
quorum and
scale of
voting for
general
meetings.

11.—(1.) General meetings of the Company shall be held at some convenient place in the town of Tonbridge or at such other place as the Company may determine at a general meeting.

(2.) To constitute a general meeting of the Company there shall be not less than ten shareholders personally present holding between them at least one hundred shares in the capital of the Company.

(3.) A shareholder shall have one vote for every share held by him up to fifty shares but a shareholder shall not have more than fifty votes.

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12.—(1.) The number of the directors of the Company shall be nine but the Company may from time to time reduce or increase the number of directors but so that the number is not less than eight or more than twelve.

Directors.

(2.) A person shall not be eligible as a director of the Company unless he holds not less than twenty shares in the capital of the Company.

(3.) The quorum of a meeting of directors shall be four.

(4.) The members of the existing committee namely John Sills Charlton Ambrose Warde Arthur Thomas Beeching George Friend Charles Arkcoll James Smith Eastes John Abrey Edmund Law Lushington shall be the first directors of the Company.

Power to increase Capital and to borrow.

13. Notwithstanding any question as to the legality of the power of the Company to borrow the moneys secured by the indenture dated the eighth day of March one thousand eight hundred and seventy-eight and made between Ambrose Warde and others of the first part the Company of the second part and William Crundwell and others of the third part and which moneys have been expended upon the undertaking the Company shall be at liberty to repay the amounts so secured And for the purpose of paying off such mortgage the Company may borrow on mortgage of their undertaking any sum not exceeding six thousand pounds Provided that the amount to be borrowed under the general borrowing powers conferred by this Act shall be reduced by the amount borrowed under this section.

Power to
repay
mortgage.

14.—(1.) The Company may beyond their said capital of fifteen thousand eight hundred pounds raise (subject to the provisions of Part II. of the Companies Clauses Act 1863) any additional capital not exceeding in the whole thirty thousand pounds by the issue at their option of new ordinary shares or stock or new preference shares or stock or wholly or partially by any one or more of those modes respectively.

Power to
raise
additional
capital.

(2.) A share issued in respect of the additional capital shall not be of less nominal value than ten pounds and the Company shall not issue any such share nor shall any such share vest in any person unless and until a sum not less than one fifth of the amount of the share has been paid in respect thereof.

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(3.) Except as otherwise expressly provided by the resolution creating the same a person shall not be entitled to vote in respect of any shares or stock to which a preferential dividend shall be assigned.

Power to borrow.

15. The Company may in respect of the additional capital of thirty thousand pounds which they are by this Act authorised to raise from time to time borrow on mortgage of the undertaking any sum not exceeding in the whole ten thousand pounds but no part thereof shall be borrowed until shares for so much of the said additional capital as is to be raised by means of shares are issued and accepted and one half of such capital is paid up and the Company have proved to the justice who is to certify under the fortieth section of the Companies Clauses Consolidation Act 1845 before he so certifies that shares for the whole of such capital have been issued and accepted and that one half of such capital has been paid up and that not less than one fifth part of the amount of each separate share in such capital has been paid on account thereof before or at the time of the issue or acceptance thereof and until stock for one half of so much of the said additional capital as is to be raised by means of stock is fully paid up and the Company have proved to such justice as aforesaid before he so certifies that such shares or stock as the case may be were issued and accepted and to the extent aforesaid paid up bonâ fide and are held by the persons or corporations to whom the same were issued or their executors administrators successors or assigns and also so far as the said additional capital is raised by shares that such persons or corporations or their executors administrators successors or assigns are legally liable for the same and upon production to such justice of the books of the Company and of such other evidence as he shall think sufficient he shall grant a certificate that the proof aforesaid has been given which certificate shall be sufficient evidence thereof.

Debenture stock.

16. The Company may create and issue debenture stock subject to the provisions of Part III. of the Companies Clauses Act 1863 but notwithstanding anything therein contained the interest of all debenture stock and of all mortgages at any time after the passing of this Act created and issued or granted by the Company under this Act or any subsequent Act shall subject to the provisions of any subsequent Act rank *pari passu* (without respect to the dates of the securities or of the Acts of Parliament or resolutions by which the stock and mortgages were authorised) and shall have priority over all principal moneys secured by such mortgages

Notice of the effect of this enactment shall be endorsed on all mortgages and certificates of debenture stock. A.D. 1892.

Provisions with respect to Undertaking.

17.—(1.) The duties to be performed and the powers which may be exercised in pursuance of the Medway (Upper) Navigation Acts 1664 and 1739 by the commissioners appointed for the counties of Kent and Sussex respectively under those Acts shall cease to be performed and exercised by those commissioners. Powers and duties of commissioners to cease.

(2.) Where any question or difference arises which would but for this Act have been decided by those commissioners or by the commissioners and a jury summoned in pursuance of the said Acts that question or difference shall after the commencement of this Act be decided under the provisions of the Lands Clauses Acts in the same manner as if it was a question of disputed compensation for land and the provisions of the Lands Clauses Acts shall apply accordingly.

(3.) Any money payable on the decision of any such question or difference may be paid in the like manner and to the like persons as in the case of money payable for compensation for land under the Lands Clauses Acts and any damages costs or expenses and penalties which are recoverable or leviable on the decision of any such question or difference may be recovered and levied as damages costs expenses and penalties incurred under the Lands Clauses Acts may be recovered and levied.

(4.) Any power consent approbation or any duty other than that of settling any question or difference under the Medway (Upper) Navigation Acts 1664 and 1739 which is by those Acts directed to be exercised given or performed by the said commissioners shall after the commencement of this Act be exercised given or performed by any two or more justices acting together. Provided that if any person or the Company feel aggrieved by any determination of the justices or by the withholding of any consent or approbation that person or the Company may appeal to quarter sessions in manner provided by the Lands Clauses Acts in the case of an appeal from the determination or adjudication of a justice with respect to any penalty or forfeiture.

18.—(1.) The Company may retain and hold any lands for the time being vested in them which in the opinion of the Company are or will eventually be required for the purposes of the undertaking and the Company may either let those lands at such rent and on such terms and conditions as they think fit or the Company may themselves cultivate the lands or use them for any purpose they think fit. Letting and sale of lands.

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(2.) The Company may sell any lands for the time being vested in them which in their opinion will not be required for the purposes of the undertaking at such price and on such terms and conditions as they think fit.

(3.) Any money received by the Company in respect of the sale letting cultivation or use of any lands under this section shall be applied by the Company if attributable to income as income and if attributable to capital shall be applied in repayment of any money borrowed under or legalized by this Act or for any other purpose for which capital is properly applicable and if not so applied or until so applied may be invested in any manner in which trustees are for the time being authorised by law to invest trust funds or in any other manner authorised by the Company at a general meeting.

Power to carry merchandise on Thames and Medway.

19. The power of the Company under section 23 of the Medway (Upper) Navigation Act 1739 to carry merchandise and other things and to take and receive the profits thereof shall apply to the carriage of merchandise and other things to from or on any part of the River Thames as well as to the carriage on the River Medway.

Power of Company to own and build barges &c.

20. The Company may themselves own and themselves build purchase or hire such tugs barges boats or other vessels worked by steam or any other power as they may think convenient for the purpose of the carriage of merchandise or for any other purpose authorised by this Act or by the Medway (Upper) Navigation Acts 1664 and 1739.

Saving pending indictment.

21. Nothing in this Act shall in any way prejudice or affect the proceedings now pending in the matter of the indictment of Regina v. The Company of Proprietors of the Navigation of the River Medway and such proceedings shall be continued and determined as if this Act had not passed.

For protection of the Brand-bridge Mills.

22. The Company during all such time as the proprietors of the Brandbridge Mills shall consider requisite shall so far as the traffic and the state of the river will permit regulate the water in and passing along the cut of the canal upon which the mills are situated so that there shall be an even flow of water along the same to the intent that the proprietors may be enabled to use the water wheel (other than the turbine wheel) of the mill without hindrance from any deficiency or excess of water by reason of the acts of the Company But except as otherwise expressly provided in any other section of this Act nothing in this section contained shall be deemed or construed to limit or affect any liability of the Company under the recited Acts.

23. Nothing contained in this Act shall extend or be construed to extend to prejudice or derogate from the estates rights interests privileges liberties or franchises of the Conservators of the River Medway or to prohibit the exercise of or defeat or alter or diminish any powers authority or jurisdiction which at the time of the passing of this Act the said Conservators did or might lawfully claim use or exercise.

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Saving for
the Medway
Conser-
vators.

Supplemental.

24. The Medway (Upper) Navigation Acts 1664 and 1739 are respectively repealed to the extent specified in the schedule to this Act.

Repeal.

25. The costs charges and expenses preliminary to and of and incidental to the preparing obtaining and passing of this Act shall be paid by the Company.

Costs of Act.

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SCHEDULE.**REPEAL.**

Session and Chapter.	Title of Act.	Extent of Repeal.
16 Charles II. c. 11. -	An Act for making the River of Medway navigable in the Counties of Kent and Sussex.	Section three from "and the determinations" to the end of the section. Section four. Section five from "provided always" to the end of the section. Section six. Section eight. Section nine to "to sit and act." Section ten. Section eleven.
13 Geo. II. c. 26. -	An Act to revive explain and amend an Act made in the sixteenth and seventeenth years of the reign of His late Majesty King Charles the Second intituled "An Act for making the River of Medway navigable in the counties of Kent and Sussex."	Section three from "and if it shall happen" to the end of the section. Section four from the beginning of the section to "greater or less number of words" and from "to the party or parties concerned" to "without fee or reward." Sections five to nine. Section ten from "and in default of the payment" to the end of the section. Section eleven from "provided that the said sum" to "ten shares." Sections twelve to fifteen. Section sixteen from the beginning of the section to "profits of the said undertaking" and from "so that no such purchase" to the end of the section. Sections seventeen to twenty-one.

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