

**CHAPTER cxlviii.**

An Act to amend the Acts relating to the Barnsley Canal of the Undertakers of the Navigation of the Rivers of Aire and Calder in the West Riding of the County of York in respect to minerals under or near that Canal and other matters to authorise the Undertakers to close the upper portion of such Canal to extend the time for the purchase of lands and to make further provisions in respect of their undertaking and for other purposes.

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[27th July 1893.]

WHEREAS by Acts (local and personal) passed respectively in the tenth and eleventh years of the reign of King William the Third (chapter nineteen) the fourteenth year of the reign of King George the Third (chapter ninety-six) the first year of the reign of King George the Fourth (chapter thirty-nine) and the ninth year of the reign of King George the Fourth (chapter ninety-eight) powers for making and keeping navigable the rivers of Aire and Calder in the county of York and constructing certain cuts canals docks and works were conferred on the Undertakers of the Navigation of the Rivers of Aire and Calder in the West Riding of the county of York (herein-after called "the Undertakers") and by subsequent Acts including the Aire and Calder Navigation Act 1889 (herein-after called "the Act of 1889") those powers have been in various respects amended and further powers conferred on the Undertakers:

10 & 11
Wm. III.
c. xix.
14 Geo. III.
c. xvi.
1 Geo. IV.
c. xxxix.
9 Geo. IV.
c. xxviii.

52 & 53 Vict.
c. xxxii.

And whereas by an Act (local and personal) passed in the thirty-third year of the reign of King George the Third (chapter one hundred and ten) (herein-after called "the Act of 1793") the Company of Proprietors of the Barnsley Canal Navigation (herein-after called "the Barnsley Canal Company") were incorporated and empowered to make a canal from the River Calder in the township of Warmfield-

33 Geo. III.
c. cx.

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48 Geo. III.
c. xiii.

cum-Heath to or near the town of Barnsley and thence to Barnby Bridge together with the railways or roads reservoirs and works connected therewith therein described or referred to And by an Act (local and personal) passed in the forty-eighth year of the same reign (chapter thirteen) further powers were conferred on the Barnsley Canal Company in relation to their undertaking :

And whereas by section forty of the Act of 1793 the mines and minerals lying and being within and under the lands or grounds to be set out or made use of for the canal and works thereby authorised were reserved to the lords or ladies of the manor or the owners of such lands or grounds with right to work the same not thereby injuring prejudicing or obstructing the canal And by section forty-one of the same Act provisions were made with respect to the rights and liabilities of the Barnsley Canal Company and the owners or workers of any coal or other mine or mines near the said canal and the working whereof might endanger or damage the canal or the further working of such mine or mines And by section forty-two power was given to the Barnsley Canal Company by themselves or their agents and servants to enter upon lands and mines to view and discover the distance of the canal from the working part of such mines and powers were conferred on the said company for preserving the safety of the canal and works as therein mentioned in case of the mines being worked contrary to the directions of the Act :

34 & 35 Vict.
c. cxcv.]

And whereas under and by virtue of the Barnsley Canal Transfer Act 1871 (herein-after called "the Act of 1871") the undertaking of the Barnsley Canal Company was acquired by the Undertakers and is now vested in their trustees in trust for them and it was provided that the Acts herein-before recited or referred to relating to the Barnsley Canal and any Acts of Parliament containing provisions relating to the Barnsley Canal Company should unless such construction would be inconsistent with the provisions of the Act of 1871 and of the Acts incorporated with that Act be read and construed from and after such acquisition as if the name of the Undertakers had been used therein instead of the name of the Barnsley Canal Company and provision was made for the winding up and dissolution of the Barnsley Canal Company and powers were conferred on the Undertakers to (amongst other things) enlarge as they have since done the Upper Reservoir at Cold Hiendly and to construct other works for the better supply of water for the Barnsley Canal and other provisions were made in relation to that canal :

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And whereas the provisions of the Act of 1793 herein-before referred to with respect to the working of mines and minerals under or near the Barnsley Canal are unduly burdensome on the owners of the canal and interfere with the working of the minerals and it is expedient that the same should be repealed to the extent herein-after provided and other provisions made in lieu thereof :

And whereas the provisions of this Act will supersede the provisions of sections forty-three and forty-four of the Act of 1793 so far as they relate to the mines and minerals to which this Act applies and it is expedient that those sections should to that extent be also repealed :

And whereas the Undertakers have purchased or acquired or made payment or compensation for the mines and minerals under portions of the Barnsley Canal or the reservoirs works and property thereof and the mines and minerals under the enlargement of the Cold Hiendly Reservoir and other works constructed under the Act of 1871 are regulated by the provisions of the Railways Clauses Consolidation Act 1845 with respect to mines lying under or near the railway which are incorporated with the Act of 1871 and the provisions of the Act of 1793 do not apply to such last-mentioned mines and minerals :

And whereas it is expedient that the Acts relating to the Barnsley Canal should in other respects be amended as by this Act provided :

And whereas the upper part of the Barnsley Canal from Barnby Basin to Barugh Lower Lock has long ceased to be used for traffic and has become unnecessary for the purposes of public navigation but is used as a watercourse or feeder for the lower portion of the canal and it is expedient that the Undertakers should be released from the obligation to maintain the same as a navigation and that such provisions should be made in regard thereto as are herein-after contained :

And whereas by the Aire and Calder and River Dun Navigations Junction Canal Act 1891 (herein-after called "the Act of 1891") the Undertakers were empowered to make a new canal from the River Dun Navigation to join their Knottingley and Goole Canal and it is expedient that the period limited by that Act for the compulsory purchase of lands for the purposes of such new canal should be extended :

54 & 55 Vict.
c. clxx.

And whereas by the Act of 1889 the Undertakers were empowered (amongst other works) to alter the bridge and the approaches thereof in the parish of Kellington in the West Riding of the county of York known as Whitley Bridge which carries the

A.D. 1893. Doncaster and Selby Road over their Knottingley and Goole Canal and the Undertakers are in carrying out such work altering and straightening the line of such bridge and approaches and it is expedient that all rights of way over or along such portions of the site of the former approaches of the bridge as may become unnecessary as part of the highway should be extinguished :

And whereas it is expedient that such further powers and provisions as are in this Act contained should be conferred upon the Undertakers or be made with respect to their undertaking :

And whereas the purposes 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 :—

Short title. 1. This Act may be cited as the Aire and Calder Navigation Act 1893.

Incorporation of Acts. 2. The Lands Clauses Acts and Part II. of the Railways Clauses Act 1863 (relating to extension of time) are incorporated with and form part of this Act.

Interpretation. 3. Unless there be something in the subject or context repugnant to such construction—

The expressions “ the Company ” “ the promoters of the undertaking ” and other like expressions in the Acts wholly or partially incorporated with this Act mean for the purposes of this Act the Undertakers and the expression “ railway ” in the part of the Railways Clauses Act 1863 so incorporated means for the like purposes the new canal authorised by the Act of 1891 ;

The expression “ the Barnsley Canal ” in this Act means and includes the Barnsley Canal and the railways or roads reservoirs and works connected therewith.

Application of Act. 4. Subject as herein-after provided sections forty-one forty-two forty-three and forty-four of the Act of 1793 are by this Act repealed and in lieu thereof and notwithstanding anything implied in any conveyance grant or agreement executed or made under the Act of 1793 the provisions in this Act contained shall extend and apply to and in relation to all mines and minerals lying under or near the Barnsley Canal and to the owners of such mines and minerals their sequels in estate heirs executors administrators and

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assigns and their lessees and licensees and other the workers of such mines and minerals (all of whom are in this Act included in the expression "mine-owner") and to the Undertakers in relation thereto. Provided that nothing in this Act contained shall alter prejudice or affect the respective rights or liabilities of the Undertakers or of any owner lessee licensee or worker of mines or minerals under or near the Barnsley Canal in relation to any mines or minerals which have been purchased or acquired by the Undertakers or which may hereafter be purchased or acquired by them otherwise than under the provisions of this Act or to any mines or minerals for which the Undertakers may have already made compensation under the Act of 1793 or to any mines or minerals the rights and liabilities in respect of which are now regulated by the provisions of any Act other than the Act of 1793.

5. When the workings of any mine-owner in any bed vein or seam of minerals shall in the ordinary course of working have approached within a distance of one hundred yards measured in a horizontal direction from the nearest point of the Barnsley Canal and such mine-owner shall be desirous of working and would in the ordinary course of working and but for the existence of the Barnsley Canal have proceeded to work within such distance he shall give to the Undertakers at least two months' notice in writing of his intention to work such bed vein or seam and within such period of two months the mine-owner shall not work such bed vein or seam within fifty yards measured as aforesaid from the Barnsley Canal but he shall notwithstanding anything contained in section forty of the Act of 1793 be at liberty to proceed with the working of the said bed vein or seam under the lands lying between the one hundred yards limit and the fifty yards limit or such other limit up to which the Undertakers shall as hereinafter mentioned have given a notice of their desire to purchase the minerals without being responsible for any loss damage or injury which may arise to the Barnsley Canal by reason of such working. Provided such working be carried on in the manner mentioned in the section of this Act the marginal note whereof is "Provisions if Undertakers do not within said two months elect to purchase &c."

Notice to be given by the mine-owner when workings approach prescribed distance.

6. Every such notice shall specify the particular bed vein or seam so intended to be worked the thickness or probable thickness thereof the depth from the surface at the nearest point to that part of the Barnsley Canal under or near which it shall be intended to work at which the same bed vein or seam shall have been won

Contents of notice.

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or opened and the dip of the strata at that point and the direction of the dip and the portion of the Barnsley Canal which may be affected by such proposed working and the names and addresses of the owners or lessors and the lessees tenants or occupiers of the said minerals.

After such notice Undertakers may inspect mine and may purchase and compensate for minerals to be left.

7. Upon or at any time after the receipt of such notice the Undertakers may cause the mine or workings from which it shall be intended to work the said bed vein or seam to be inspected by any person appointed by them for the purpose and the mine-owner giving such notice shall produce to and allow such person to inspect the working plans of the part of the mine or workings adjacent to the minerals proposed to be worked and to make use of any apparatus or machinery belonging to the mine-owner and supply him with all information in his possession in relation thereto which the Undertakers may require. And if upon any such inspection or any subsequent inspection it appears to the Undertakers that the working of such bed vein or seam of minerals within the limit of one hundred yards above referred to or any part thereof is likely to damage the Barnsley Canal or the colliery or collieries of such mine-owner and if the Undertakers be willing to purchase and make compensation for such bed vein or seam within such limit or any part thereof to the mine-owner and shall give notice in writing to that effect to such mine-owner then the said bed vein or seam within the limits aforesaid or such part thereof as the Undertakers may by any such notice desire to be left shall not be wrought or gotten but shall be purchased and paid for by the Undertakers and if the Undertakers and the mine-owner do not agree as to the amount of such purchase-money and compensation the same shall be settled by arbitration in the manner provided for by the Arbitration Act 1889 or any subsisting statutory modification thereof. Such purchase-money and compensation shall include in addition to the value of the bed vein or seam so purchased all such additional expenses and losses as shall be incurred by the mine-owner by reason of the leaving of minerals for the support security or preservation of the Barnsley Canal or for the protection of the colliery or collieries of such mine-owner or by reason of the continuous working of the said mines being interrupted as aforesaid or by reason of the severance of such mines or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the Barnsley Canal or the minerals not required to be left as aforesaid and compensation for any minerals not purchased by the Undertakers which cannot be obtained by reason of the exercise by the Undertakers of the option to purchase.

8. If before the expiration of such two months the Undertakers do not give notice as aforesaid of their willingness to treat with the mine-owner to purchase and pay such compensation in respect of the whole of the said bed vein or seam or give notice only for such part thereof as the Undertakers may specify in such notice within the limits aforesaid it shall be lawful for the mine-owner notwithstanding anything contained in section forty of the Act of 1793 to work the said bed vein or seam or any part thereof for which the Undertakers shall not for the time being have given notice as aforesaid of their willingness to purchase and pay compensation as the case may be and until the Undertakers shall give notice as aforesaid without being responsible for or being under any obligation to make good or pay compensation for any loss damage or injury which may be occasioned to the Barnsley Canal but so that the same be done in a manner proper and necessary for the beneficial working thereof and according to the usual manner of working such mines in the district where the same shall be situate and if any damage or obstruction be occasioned to the Barnsley Canal by improper working of such mines the same shall be forthwith repaired or removed as the case may require and such damage made good by the mine-owner at his own expense and if such repair or removal be not forthwith done or if the Undertakers shall so think fit without waiting for the same to be done by such mine-owner it shall be lawful for the Undertakers to execute the necessary works and recover from the mine-owner the expense occasioned thereby by action in the Supreme Court and the mine-owner shall in every case be liable for any damage occasioned by any such improper working. Provided that if the Undertakers shall not give notice until after the expiration of such two months the compensation which they shall by giving such notice become liable to pay shall include any expenditure incurred by the mine-owner since the expiration of the said two months which shall be unproductive by reason of the giving such notice and the rights thereby acquired by the Undertakers.

9. If the mine-owner shall in pursuance of the last preceding section proceed to work the bed vein or seam or any part thereof in respect of which the Undertakers shall not for the time being have given notice as aforesaid the Undertakers shall nevertheless be at liberty at any time or times on giving twenty-four hours' notice in writing to cause the said working and the working plans thereof to be inspected by any person to be appointed by them for the purpose in order to ascertain if such working is likely to damage the Barnsley Canal or the colliery or collieries of such mine-owner

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Provisions if
Undertakers
do not
within said
two months
elect to purchase &c.

Provision as
to entry if
Undertakers
do not give
notice within
two months.

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and the mine-owner shall produce to such person the said working plans and allow him the use of any apparatus or machinery belonging to the mine owner and afford him all reasonable information in relation thereto.

Power to cut headways &c. if working prevented.

10. If the working of any minerals under the Barnsley Canal or within the limits aforesaid be prevented as aforesaid any mine-owner whose mines or minerals shall extend so as to lie on both sides of the Barnsley Canal may cut and make such and so many airways headways gateways or water levels through the mines measures or strata the working whereof shall be so prevented as may be requisite to enable him to ventilate drain and work his said mines but no such airway headway gateway or water level shall be of greater dimensions or section than twelve feet wide and eight feet high or nearer to any other such airway headway gateway or level than ten yards nor shall the same be cut or made so as to injure the Barnsley Canal.

As to mine-owner's right to sink shafts.

11. Nothing in this Act contained shall prevent the mine-owner from sinking such and so many pits and shafts wheresoever and whenever he may think fit to or through any beds veins or seams the working whereof may be prevented as herein-before mentioned and to all or any one or more of the beds veins or seams the working whereof shall not for the time being be so prevented and to cut and make such and so many headways therefrom as may be reasonably necessary for the purpose of properly utilising such pits and shafts though the same may exceed the dimensions and section mentioned in the last preceding section but no such pit or shaft or headways therefrom shall be sunk or made or used so as to injure prejudice or obstruct the Barnsley Canal The Undertakers shall be at liberty at their own expense to fill up any such pit or shaft which shall no longer be required to be kept open by reason of the permanent abandonment of the workings by the mine-owner.

Undertakers liable for damage to mines by canal if they do not purchase minerals.

12. The Undertakers shall from time to time pay to the mine-owner compensation for all loss damage or injury done or occasioned to any mine or colliery belonging to him by reason or in consequence of the flowing escape or percolation of water from the Barnsley Canal into any mine or colliery in case the Undertakers do not purchase sufficient minerals for the support of the same and for preventing such flow escape or percolation and the mine-owner has thereupon worked such minerals not so purchased under and in accordance with the provisions of the foregoing section the marginal note whereof is "Provisions if Undertakers do not within said two months elect to purchase &c."

13. For better ascertaining whether any mines or minerals are being or have been worked contrary to the provisions of this Act and also in any case in which compensation is claimed under the last preceding section of this Act for the flowing escape or percolation of water the Undertakers may after giving twenty-four hours' notice in writing enter upon any lands through or near which the Barnsley Canal passes wherein any such mines or minerals are being or have been worked or are supposed so to be or wherein any mines are situate in respect of which any such compensation is claimed and may enter into any such mines or the works connected therewith and for that purpose may make use of any apparatus or machinery belonging to the mine-owner and may use all necessary means for inspecting and examining such mines and minerals.

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Power to
Undertakers
to inspect
workings.

14. If it appear that any such mines or minerals are being or have been worked contrary to the provisions herein contained the Undertakers may if they think fit give notice to the mine-owner to construct such works and adopt such means as may be necessary or proper for making safe the Barnsley Canal and preventing injury thereto and if after such notice such mine-owner do not forthwith proceed to construct such works the Undertakers may construct the same and recover the expense thereof from the mine-owner and the mine-owner shall also in every case be liable for any damage occasioned by any such improper working. If any dispute or difference shall arise between the Undertakers and any mine-owner under this section the same shall be settled by arbitration in manner aforesaid.

If mines
improperly
worked
Undertakers
may make
canal safe at
cost of mine-
owner.

15. Subject to the provisions aforesaid the mines and minerals which the Undertakers shall purchase and make compensation for under this Act as aforesaid shall be vested in and held in trust by the same trustees their heirs and assigns and with the like indemnification as the other property of the Undertakers is by virtue of the Acts heretofore passed relating to the Undertakers vested but the same shall remain for ever unworked for the support of the Barnsley Canal.

Minerals
compensated
for to vest in
Undertakers
for support
of canal.

16. All claims for damages losses or expenses which the Undertakers may have against any mine-owner or his predecessors in title by reason or in consequence of the past working of any minerals under or near to the Barnsley Canal are hereby waived released and discharged.

Undertakers
to waive
claims
against
mine-owners.

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Costs of
arbitration.

17. Upon any arbitration under the provisions of this Act relating to mines under or near the Barnsley Canal the costs of the reference and the award shall be borne in such manner as the arbitrators or umpire may think fit.

Provision in
case of
existing
workings
within the
prescribed
distance.

18. If any mine-owner at the time of the passing of this Act is working by the consent of the Undertakers mines or minerals under or near the Barnsley Canal and shall have already approached within the distance of one hundred yards above-mentioned such mine-owner shall have the same right of working all such mines or minerals as if he had given notice to the Undertakers under this Act of his intention to work within such distance and the Undertakers had not for the time being given notice of their willingness to purchase and make compensation for such mines or minerals And in respect of any such workings the notice required to be given by such mine-owner as aforesaid shall be deemed to be waived.

Power to
make agree-
ments as to
mines and
minerals.

19. The Undertakers may from time to time enter into and carry into effect agreements or arrangements with any mine-owner for the purchase leaving or working of any mines or minerals under or near the Barnsley Canal upon terms and conditions other than those by this Act provided or otherwise relating to any such mines or minerals.

Undertakers
may in
certain cases
take lands
with sanction
of Board of
Trade
making com-
pensation.

20. If by reason of the working of any mines or minerals under or near the Barnsley Canal the canal or the banks and towing-paths thereof respectively or any works connected therewith or any bridge over the canal shall subside or be in immediate or urgent danger of subsidence the Undertakers with the sanction in writing of the Board of Trade under the hand of the secretary or an assistant-secretary of that Board may enter upon take and use any lands on either side of such canal or of the said banks towing-paths bridge or works as the case may be which may be necessary in order to enable the Undertakers to execute such works or do such things as may be necessary to enable them to remedy or prevent such subsidence and to keep up the level of the waterway of the canal and the height of the towing-path thereof or any bridge over the canal Provided that the Undertakers shall make full compensation to all persons interested in such lands the amount of such compensation (if not agreed) to be determined in accordance with the provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement except those contained in the sixteenth seventeenth and eighteenth sections of the Lands Clauses Consolidation Act 1845 and provided that as

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soon as may reasonably be after taking or entering upon any such lands the Undertakers shall give notice in writing to all parties interested in or entitled to sell such lands specifying the lands which the Undertakers have so taken or entered upon and the purpose for which the same have been so taken or entered upon and shall by such notice demand from the parties upon whom the notice is served the particulars of their estate and interest in the said lands specified in the notice and of the claims made by them in respect thereof and every such notice shall state that the Undertakers are willing to treat for the purchase of the lands specified in the notice and as to the compensation to be made to all parties in respect of the taking of and entering upon such lands and the notices so given shall be deemed to be the notices referred to in the nineteenth and subsequent sections of the said Act of 1845.

21. Nothing in this Act shall be held to relieve the Undertakers from any obligation to keep open the Barnsley Canal and to maintain the same in good repair and condition and fit for the purpose of navigation except as regards the upper part of the said canal as herein-after provided.

Undertakers not to be relieved from maintaining canal except certain portion.

22. Section fourteen of the Act of 1793 and so much of section nineteen of that Act as provides that contracts agreements sales exchanges conveyances and assurances shall be enrolled with the clerk of the peace for the West Riding of the county of York are hereby repealed.

Repeal of certain provisions of the Act of 1793.

23. From and after the passing of this Act the Undertakers shall be released from all obligation and liability to maintain and keep open the upper part of the Barnsley Canal from Barnby Basin (including that basin) to Barugh Lower Lock as a waterway for the purposes of public navigation and may close the same for such purposes and hold use and apply the site thereof as a watercourse or feeder for the lower portion of the canal or for any purpose connected with their undertaking and all public rights of way (if any) over or upon the said part of the Barnsley Canal and its bed banks towing paths locks and appurtenances are hereby extinguished but without prejudice to any rights or easements to which any person is or may be entitled over the towing-path along such part of the canal in respect of or as appurtenant to any hereditaments adjoining or near to the same part of the canal Provided that nothing herein contained shall relieve the Undertakers from the obligation to maintain and keep in repair any bridge or bridges

Closing of upper portion of Barnsley Canal as a navigation.

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Extension of time for compulsory purchase of lands for the new canal authorised by Act of 1891.

24. The powers granted to the Undertakers by the Act of 1891 for the compulsory purchase of lands for the purposes of the new canal authorised by that Act are hereby extended and shall continue in force until the expiration of two years from the twenty-eighth day of July one thousand eight hundred and ninety-four and on the expiration of that period those powers shall cease.

Restriction on taking houses of labouring class.

25. The Undertakers shall not under the powers of this Act or under the powers of any former Act extended by this Act purchase or acquire in any city borough or urban sanitary district or in any parish or part of a parish not being within an urban sanitary district ten or more houses which after the passing of this Act have been or on the fifteenth day of December next before the passing of this Act or of the former Act by which such purchase or acquisition was originally authorised as the case may be were occupied either wholly or partially by persons belonging to the labouring class as tenants or lodgers.

For the purpose of this section the expression "labouring class" includes mechanics artisans labourers and others working for wages hawkers costermongers persons not working for wages but working at some trade or handicraft without employing others except members of their own family and persons other than domestic servants whose income does not exceed an average of thirty shillings a week and the families of any such persons who may be residing with them.

Extinguishment of rights of way on disused portions of road at Whitley Bridge.

26. Upon the completion of the alteration of the bridge and the approaches thereof at Whitley Bridge by the Undertakers under the powers of the Act of 1889 and the opening of the same for traffic all rights of way over or along such portions of the former approaches of that bridge as may become unnecessary as part of the highway shall be and are hereby extinguished.

Application of Undertakers' funds to purposes of Act.

27. The Undertakers may apply to the purposes of this Act (but as respects any borrowed money or the proceeds of the sale of surplus lands or other money in the nature of capital only to purposes to which capital is properly applicable) any funds or moneys belonging to them or which under any of the recited Acts they have borrowed or have power to borrow and which are not required for the purposes of those Acts respectively and the recited

Acts and this Act shall be read and construed as if such funds or A.D. 1893.
moneys were thereby authorised to be borrowed and applied for the
purposes of this Act. —

28. All costs charges and expenses of and incident to the Costs of Act.
preparing for obtaining and passing of this Act or otherwise in
relation thereto shall be paid by the Undertakers.

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