



CHAP. cxxxiii.

An Act for better supplying with Water the towns of Musselburgh and Dalkeith, and districts and places adjacent, in the county of Edinburgh. A.D. 1871.
[13th July 1871.]

WHEREAS the town of Musselburgh and port or harbour of Fisherrow and town of Dalkeith, and suburbs and places adjacent, are at present inadequately supplied with water :

And whereas it is necessary and expedient, for the health and convenience of the inhabitants of and the sanitary improvement of the aforesaid towns and districts, and for the encouragement of trade and manufactures therein, that an ample supply of pure and wholesome water should be introduced to such towns and districts, under the provisions of this Act :

And whereas it is expedient that the trustees appointed by this Act should be authorised to introduce an additional supply of water from the river South Esk by means of the works to be constructed under the authority of this Act, and to distribute such supply of water among the inhabitants of the said towns, harbour, and districts, and places adjacent, and to provide compensation water to parties interested in the water to be so abstracted from the said river South Esk, and to make and maintain the necessary works for effecting these purposes :

And whereas plans and sections showing the situation, lines, and levels of the proposed new waterworks, and lands and property proposed to be taken for the purposes of the undertaking and of this Act, and a book of reference to such plans containing the names of the owners or reputed owners, lessees or reputed lessees, and of the occupiers of such lands and property respectively, have been deposited in the office of the sheriff clerk of the county of Edinburgh (which plans, sections, and book of reference are hereinafter referred to as the deposited plans, sections, and book of reference) :

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And whereas the objects and purposes aforesaid 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,

I.—*Preliminary.*

Short title.

1. This Act may be cited for all purposes as "The Musselburgh and Dalkeith Water Act, 1871."

Provisions of general Acts herein named incorporated.

2. "The Lands Clauses Consolidation (Scotland) Act, 1845," "The Lands Clauses Consolidation Acts Amendment Act, 1860," "The Waterworks Clauses Acts, 1847 and 1863," (with the exception of the provisions of "The Waterworks Clauses Act, 1847," with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit,) and "The Commissioners Clauses Act, 1847," (with the exception of the clauses and provisions with respect to the following matters, that is to say, with respect to the qualification of commissioners, with respect to the election and rotation of the commissioners where the commissioners are to be elected by the ratepayers or other like class of electors, with respect to the accounts to be kept by the commissioners, and also with the exception of clauses 84, 86, and 87,) are, except where expressly varied by this Act, incorporated with and form part of this Act.

Interpretation of terms.

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partially incorporated herewith have the same respective meanings, unless there be something in the subject or context repugnant to such construction; the expression "the trustees" means the trustees appointed and incorporated by this Act; the words "clerk" and "treasurer" mean the clerk and treasurer for the time appointed by the trustees under this Act; the expression "the corporation of Musselburgh" means the provost, bailies, and members of the town council of Musselburgh for the time being; the expression "the local authority of Dalkeith" means the existing statutory trustees of the town of Dalkeith acting under the Local Acts of Parliament now in force relating to the said town, or other the local authority of the said town for the time, as the same may be constituted under the authority of any Act of Parliament; the words "lands and heritages" have the meaning attached to them in the Act of

the 17th and 18th year of the reign of Her present Majesty, intituled "An Act for the Valuation of Lands and Heritages in Scotland;" the expression "the Valuation Act" means the Act last mentioned, and includes any Acts amending the same; and the expression "valuation roll" or "valuation rolls" means the roll or rolls in force for the time within the limits of this Act made up in pursuance of the said Acts; the word "owner" includes joint owner, fiar, liferenter, feuar, or other person in the actual possession or receipt of the rents of lands and tenements of every description, and the factor, agent, or commissioner of such persons intronitting with or drawing the rents; the word "occupier" includes tenant and sub-tenant, and any person in the actual occupation of any lands or premises, but does not include a lodger or person occupying as tenant of a furnished house let for a less period than one year; the expressions "the works," "the waterworks," and "the undertaking" mean respectively the waterworks and undertaking by this Act authorised; the word "street," in the Waterworks Clauses Act, 1847, extends and applies to any turnpike road or other public roads or bridges, and includes railways and other works of a like nature within the limits of this Act; and the word "sheriff" means the sheriff of the county of Edinburgh or any of his substitutes.

II.—*Incorporation of Trustees: Lands and Works.*

4. From and after the expiration of one month after the passing of this Act, the members of the corporation of Musselburgh shall, subject to the provisions herein-after contained, be and are hereby appointed trustees for carrying into effect this Act, and shall be a body corporate, with perpetual succession and a common seal, under the name and style of "The Musselburgh and Dalkeith Water Trustees," with power to sue and be sued, and to purchase, take, hold, and dispose of lands and other property, and all the powers of a corporate body, and the provost for the time being of the town of Musselburgh shall be chairman of the said trustees.

Incorporation of trustees.

5. The trustees shall hold their first general meeting at Musselburgh upon the first Monday after the expiration of one month from the passing of this Act, and shall thereafter hold general meetings at such time and place as the trustees shall from time to time fix; and the chairman shall have power to authorise meetings of the trustees to be called by the clerk for carrying into effect the purposes of this Act; and all such meetings shall be called by intimation either sent by post or delivered to each of the trustees forty-eight hours before such meetings are held: Provided that it

Meetings of trustees.

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Committees to be appointed. 6. The trustees shall in the month of November in each year appoint out of their number one or more committees, consisting of such number of persons as they may think fit, for all or any of the purposes of this Act, and shall fix a quorum of such committees, and name a convener and sub-convener thereof, with power to such committees to appoint sub-committees for special purposes.

Proceedings of committees. 7. Every committee may meet from time to time, and may adjourn from place to place, as they may think proper, for carrying into effect the objects of their appointment; and at all meetings of any committee the convener or sub-convener, or in their absence any member appointed by the members present, shall be chairman; and all questions shall be determined by a majority of the votes of the members present, and in case of an equal division of votes the chairman shall have both a deliberative and casting vote.

Power to make works according to deposited plans. 8. Subject to the provisions of this Act, the trustees may make and maintain, in the lines and according to the levels shown on the deposited plans and sections, the works herein-after described, and may enter upon, take, and use such of the lands, waters, and streams delineated on the said plans and described in the deposited book of reference as may be required for that purpose.

The works herein-before referred to and authorised by this Act are:—

Description of works. First, a reservoir (herein called reservoir No. 1) situated on the river South Esk, and on portions of the farms or lands of Yorkston and Rosebery Mains, on either side of said river, the north-eastern, down-stream, or lower end of which intended reservoir will be formed by an embankment across the said river at a point in said river 50 yards or thereabouts north from the ford whereby the road from Yorkston which joins the turnpike road from Carrington to Peebles crosses the said river, and passes through Gillygub Dean, which said embankment will extend to a distance of 99 yards west and 105 yards east or thereabouts from the above-described crossing of the said

river, together with a waste weir and channel therefrom, commencing at the western end of the said embankment, and terminating in the bed of the river South Esk at a point 160 yards or thereabouts northwards from the centre line of the said embankment; and by means of the said intended reservoir and embankment, and works connected therewith, the valleys to the south and west from the point where the said embankment crosses the river South Esk to the extent respectively of 860 yards south and 760 yards west or thereabouts, and lands adjoining the said river on the aforesaid farms of Yorkston and Rosebery Mains, will be submerged to the extent shown on the deposited plans and to the depth or height shown on the deposited sections, which reservoir, when finished, will cover an area of 183,920 superficial yards or thereabouts; together also with a diversion and alteration of the levels of the said road from Yorkston which joins the said turnpike road from Carrington to Peebles, which intended diversion will commence at a point on said road 600 yards or thereabouts from Yorkston farmstead, and will terminate at a point on said road 400 yards or thereabouts from the point where the said road joins such turnpike road leading from Carrington to Peebles; which reservoir and other works will be situate in the parish of Temple and county of Edinburgh:

Second, a conduit or line of pipe (herein called conduit No. 1), commencing in the river South Esk above the reservoir No. 1, within the limits of deviation shown on the deposited plans at a point 1,080 yards or thereabouts southward from the centre of the ford whereby the said road herein-before described crosses the said river South Esk, and terminating in the reservoir No. 3 herein-after described at a point 126 yards or thereabouts, measured in a south-easterly direction, along the western side of the turnpike road leading from Carberry Trows to Crossgate Hall, and 18 yards or thereabouts from the west side of the said road from such last-mentioned point; and which conduit or pipe will pass from, in, through, or into the parishes of Temple, Borthwick, Cockpen, Newbattle, Dalkeith, and Inveresk, or some of them, all in the county of Edinburgh:

Third, a conduit or line of pipe (herein called conduit No. 2), commencing by a junction with conduit No. 1 at or near a point situate 110 yards or thereabouts, measured in a southerly direction, along the western side of the private railway from the weigh-house of the mineral depôt near Capielaw, called Shaw's depôt, and terminating in the service reservoir No. 2 next herein-after described at a point situate 175 yards or there-

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abouts, measured in a westerly direction, from the aforesaid weigh-house, along the turnpike road leading from Dalkeith to Lauder, and 22 yards or thereabouts from the north side of said road at that point; which conduit No. 2 will be wholly situate in the parish of Newbattle:

Fourth, a service reservoir (herein called reservoir No. 2), to be situated in the south-west corner of a field on the farm or lands of Kippilaw, in the occupation of Archibald Torrance, on the north side of the turnpike road leading from Dalkeith to Lauder, the eastern side of which reservoir will be 160 yards and the western side 190 yards or thereabouts from the weigh-house at the mineral depôt herein-before described; which reservoir No. 2 will, when finished, cover an area of 676 superficial yards or thereabouts, and will be situate in the parish of Newbattle:

Fifth, a conduit or line of pipe (herein called conduit No. 3), commencing in reservoir No. 2 herein-before described at a point 190 yards or thereabouts, measured in a westerly direction, along the turnpike road leading from Dalkeith to Lauder, from the weigh-house of the mineral depôt herein-before described, and 22 yards or thereabouts north from the north side of the said road at that point, and terminating in the centre of the High Street of the town of Dalkeith at a point 50 yards or thereabouts in a south-westerly direction from the junction of the new road with the said High Street; which conduit No. 3 will pass from, in, through, or into the parishes of Newbattle and Dalkeith:

Sixth, a service reservoir (herein called reservoir No. 3), to be situated on the farm or lands of Carberry Mains, and on the west side of the turnpike road leading from Inveresk to Crossgatehall, and immediately opposite Carberry Mains, the southern side of which reservoir will be 130 yards or thereabouts and the northern side 100 yards or thereabouts, in a south-easterly direction from the buildings called Carberry Trows; which reservoir No. 3 will, when finished, cover an area of 900 superficial yards or thereabouts, and will be situate in the parish of Inveresk:

Seventh, a conduit or line of pipe (herein called conduit No. 4), commencing in reservoir No. 3 at a point 107 yards or thereabouts, measured in a south-easterly direction, along the western side of the turnpike road leading from Carberry Trows to Crossgatehall, and 18 yards or thereabouts west from that point, and terminating in the town of Musselburgh in the centre of the High Street of the said town, 35 yards or thereabouts, measured in an easterly direction, from the town hall of

the said town; which conduit No. 4 will be situate in the parish of Inveresk: A.D. 1871.

Together with such embankments, cuttings, dams, weirs, culverts, sluices, filtering beds, or apparatus, gauges, pipes, tanks, and other works and conveniences as may be necessary.

9. In constructing the works authorised by this Act, the trustees may deviate laterally to any extent within the limits of lateral deviation shown upon the deposited plans, and may deviate vertically from the levels shown on the deposited sections to any extent not exceeding five feet, and in the case of the said reservoirs to any extent not exceeding three feet. Limits of deviation.

10. The powers of the trustees for the compulsory purchase of lands for the purposes of this Act shall not be exercised after the expiration of four years from the passing of this Act. Period for compulsory purchase of lands.

11. The quantity of land to be taken by agreement for the purposes of depôts, pipe yards, buildings, and conveniences in connexion with the works hereby authorised shall not exceed three acres; and it shall be lawful for any person to sell and convey lands to the trustees for such purposes, and to contract in reference thereto. Lands to be taken by agreement.

12. The clauses in "The Railways Clauses Consolidation (Scotland) Act, 1845," with respect to the temporary occupation of lands near the railway during the construction thereof, for the purposes of obtaining materials therefrom for the construction or repair of the works, or for forming temporary roads to or from the same, are incorporated with this Act, and such clauses shall apply to the trustees and the works by this Act authorised, and only to lands not being more than one hundred yards distant from such works, and shall be construed as if the word "waterworks" had been inserted therein instead of the word "railway;" provided that the powers conferred by the aforesaid clauses shall only apply to the reservoirs authorised to be constructed by this Act. Certain provisions of Railways Clauses Consolidation (Scotland) Act, 1845, incorporated.

13. The works shall be completed within five years from the passing of this Act, and on the expiration of that period the powers by this Act granted to the trustees for making the works, or otherwise in relation thereto, shall cease to be exercised, except as to so much thereof as shall then be completed. Period for completion of works.

14. Whereas the conduits or lines of pipes, No. 1, No. 3, and No. 4, by this Act authorised to be constructed, will be carried over or under or will pass through or otherwise interfere with the railways and works of the North British Railway Company: Be it enacted, that before the trustees commence any works, the execution Protecting works of North British Railway Company.

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Trustees not to acquire absolute property in land of the North British Railway Company.

15. The trustees shall not be entitled to take or acquire as absolute property any land belonging to the North British Railway Company which shall be required for any of the conduits or lines of pipes or other works by this Act authorised, but all such lands shall remain the property of the North British Railway Company, subject to a right of servitude in favour of the trustees for maintaining and repairing the said works, and using the same for the purposes authorised by this Act.

Saving rights of North British Railway Company.

16. Nothing in this Act contained or in the Acts therewith incorporated shall alter, prejudice, or affect or take away any of the rights, powers, privileges, or authorities vested in the North British Railway Company, or, excepting as by this Act and the said incorporated Acts provided, shall authorise the trustees to enter upon or interfere with or acquire any part of the lands, railways, and works of that company, or any right therein, or to enter upon and use for temporary purposes any land or property of that company, without their consent in writing first had and obtained; provided nevertheless, that nothing herein contained shall prevent the trustees from carry-

ing into execution the powers of this Act for constructing, and from time to time maintaining and repairing, the works by this Act authorised, in the manner herein-before specially provided. A.D. 1871.

17. The trustees may, subject to the provisions of this Act, take, collect, and divert the waters of the river South Esk, and affluents and tributaries of the same, and springs, streams, and waters arising in or flowing through the aforesaid lands of Rosebery Mains and Yorkston into the said reservoir No. 1. Power to impound water for compensation.

18. The trustees shall be entitled to take from the said river South Esk above the reservoir No. 1, but within the limits of deviation shown upon the deposited plans, for the purposes of this Act, a quantity of water not more than eighty-three and one third cubic feet per minute, and that to the satisfaction of an engineer to be appointed by the sheriff, and for the due regulation of which quantity there shall be provided by the trustees such water meters or other appliances as shall be required by the aforesaid engineer. Power to take water for supply of towns, &c.

19. As compensation to the owners and occupiers of property and mills upon the river South Esk below the point from which the water is to be taken as aforesaid, the trustees shall construct, at the sight and to the satisfaction of the engineer appointed by the sheriff as aforesaid, and shall permanently maintain at their own expense and risk, the said reservoir No. 1, shown on the parliamentary plan, for compensation purposes only, capable of containing thirty millions of cubic feet of water above the level of six feet above the bottom of the offset sluice, and the discharge of water from such reservoir shall be placed under the control of a committee, consisting of the proprietors for the time being of the estates of Arniston, Rosebery, Newbattle, Dalhousie, and Dalkeith, or under the control of persons duly authorised by such committee, who shall from time to time determine the quantity of water to be given off into the stream below, and the quantity so determined shall be given off day and night during every day of the week, Sundays included. Provisions for compensation water to land and mill owners.

20. It shall not be lawful for the trustees to draw any water from the river South Esk until the said reservoir No. 1 has been certified by the engineer appointed by the sheriff to have been constructed as aforesaid and filled with water, and during the filling of the reservoir there shall always be allowed to flow out of it into the bed of the river such constant quantity as shall be determined by the engineer to be appointed as aforesaid. Trustees not to take water from river till compensation reservoir has been constructed and filled.

21. The trustees shall from time to time appoint a proper person as sluice-keeper of the said reservoir No. 1, with competent wages Trustees to appoint and

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maintain
sluice-
keeper.

to be paid by them, for the regulation of the discharge of the said reservoir, and such sluice-keeper shall at all times reside in a dwelling-house to be built or provided and maintained by the trustees at their own expense near to the said reservoir, and shall mete out the water according to written instructions, to be drawn up for the purpose by the committee herein-before mentioned, for the regulation of the discharge from the said reservoir No. 1; but in case the said sluice-keeper shall fail or refuse to attend to or comply with said written instructions, he shall, on complaint being made to the trustees, and proof given by any of the committee of such neglect or refusal, be forthwith dismissed by the trustees, who shall without delay appoint some other person in his stead, and such other person shall be liable to be dismissed in like manner on a like complaint being made and proved in like manner against him.

Provision for
compensa-
tion water to
Newbattle
paper mills.

22. For the purpose of affording to the owners, lessees, and occupiers of Newbattle paper mills in the parish of Newbattle compensation for the water by this Act authorised to be diverted and taken for the supply of the towns of Musselburgh and Dalkeith, and places adjacent, within the limits of this Act, the trustees shall, and they are hereby required, on the diversion of the said water or any part thereof, to supply from their conduit No. 1 to the said Newbattle paper mills, in perpetuity and without charge, fifteen cubic feet of water per minute, to be delivered in a constant flow at the said mills during every day of the year, except when the trustees shall be prevented from so doing by accident, necessary repairs, or other unavoidable cause; and the pipe and other apparatus for supplying the said water shall be laid and maintained at the expense of the trustees; and the point at which the said water shall be delivered at the said mills shall, in case of difference between the trustees and the owners, lessees, or occupiers of the said mills for the time, be fixed by Alexander James Adie, civil engineer, whom failing, by an engineer to be named by the sheriff, on the application of any of the said parties; and it shall be lawful for the trustees and they are hereby empowered to lay and maintain the said pipe and other apparatus for supplying the said water in and through the said estate of Newbattle from the said conduit No. 1 to the said mills.

Trustees to
be liable for
damage from
bursting of
reservoirs,
&c.

23. Notwithstanding that the said reservoir No. 1 shall have been constructed for compensation purposes only, and the distribution of the water placed under the regulation of the said proprietors, it is hereby declared that if any of the reservoirs or works constructed by the trustees shall at any time burst or give way in consequence of floods or other causes, the said proprietors or

occupiers or lessees shall in no respect be held liable, and that the trustees shall be alone liable for any loss or damage occasioned thereby; and the damage thereby done to the owners or occupiers of lands, mills, or other works, establishments, and buildings shall be ascertained by the sheriff, on the application of any party interested, whose judgment or verdict for the payment of damages by or absolving the trustees, or in such terms as he shall think fit to pronounce, on advising such applications, shall be final, and not subject to review in any form or in any court whatsoever.

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24. Whereas the trustees and their officers are responsible for the maintenance and safety of the whole works: It shall be in the power of the sluice-keeper, should he have reasonable cause to apprehend any damage to the banks or sluices from floods or otherwise, to disregard for the time being the aforesaid written orders of the said committee, and to discharge such other greater or lesser quantity of water as he may consider necessary.

Discretionary power conferred on sluice-keeper in certain events.

25. In the event of the discharge of the river South Esk falling at any time below one hundred cubic feet per minute, the trustees shall limit the supply for the said towns and districts to fifty cubic feet per minute, instead of eighty-three and one third cubic feet per minute when the discharge of the river exceeds one hundred cubic feet per minute.

Limitation of supply of water to towns in a certain event.

26. The whole expense of the said engineer in the several matters aforesaid on which he is directed to be employed shall be paid by the trustees.

Expenses of engineer to be paid by trustees.

27. The respective proprietors for the time being of the estates of Rosebery and Arniston, and the families and visitors of such proprietors or other persons having the written authority of such proprietors, shall have and enjoy the exclusive right of fishing, shooting, and sporting in and over the said reservoir No. 1, and of keeping and using pleasure boats on the said reservoir, and of skating and curling thereon, but so that the exercise of such rights shall not injure the embankment of the said reservoir or any of the other works of the trustees, or pollute the water in the said reservoir; and the said proprietors shall also have right (without prejudice to a similar right on the part of the trustees) of protecting the said reservoir from trespassers, by using all lawful means therefor; and the rights before mentioned (excepting the right of protecting the said reservoir from trespassers) shall not belong to or be enjoyed by the trustees or any of them, or any of their officers or servants, or any person deriving or pretending to derive authority from them: Provided that it shall be lawful for

Reserving rights of fishing, &c. to proprietors of Rosebery and Arniston.

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Repair of
reservoir.

28. Any owner or occupier of lands, mills, or manufactories on the river South Esk, and interested in the waters thereof or streams and waters authorised to be taken or acquired by the trustees under the authority of this Act, may apply to the Court of Session or the sheriff, alleging that the said reservoir, or the embankments, sluices, gauges, or other works connected therewith, are or have become insufficient or want repair, or that it has diminished in capacity to such an extent as not to contain thirty millions of cubic feet of water, whereupon the said court or sheriff shall cause inquiry to be made into the truth of such allegations by skilful persons, and thereupon make such orders for the repair or alteration of such reservoir or otherwise as the case may require, so that the said reservoir, embankment, sluices, and other works may be always kept in a sufficient state of repair, and the supply of water always maintained.

Water may
be drawn
from reser-
voir for
repairs.

29. The trustees may, on giving seven days previous notice in at least two newspapers published in Edinburgh, apply to the sheriff for leave to draw off the water from the said reservoir, when and so often as it shall appear to them to be necessary for the purpose of repairing the same or any of their works; and the sheriff shall, if he see fit, authorise the trustees to draw off such water accordingly, the trustees in drawing off such water doing as little damage as may be, and making full compensation for any loss or damage that may be thereby sustained.

III.—*Limits of Act, and Water Supply.*

Limits of
Act.

30. The limits of this Act shall comprise and include the following areas respectively:—(1.) As regards Musselburgh and places adjacent thereto, such limits shall comprise and include that portion of the parish of Inveresk bounded on the north by the Firth of Forth, on the west by the boundary of that parish from the Firth of Forth to where that boundary is crossed by the

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line of the North British Railway from Edinburgh to Berwick, thence along the northern boundary of that line of railway to a point where the said line crosses the county boundary dividing Mid-Lothian from Haddington, and thence in a northerly direction along the said county boundary to the Firth of Forth: (2.) As regards Dalkeith and places adjacent thereto, such limits shall comprise and include all that portion of the town and parish of Dalkeith situated to the northward and westward of the river South Esk: (3.) As regards the districts and places adjacent to the undertaking and works by this Act authorised, such limits shall comprise and include all lands and heritages, or lands, houses, and premises, situated within six furlongs on every side of the undertaking and works by this Act authorised to be made and maintained; and which last-mentioned limits shall be in addition and without prejudice to the aforesaid limits first and second above described; and the said several limits herein-before described shall be termed "the limits of this Act."

31. The limits of this Act for the compulsory supply of water shall comprise and include the parliamentary burgh of Musselburgh within the boundaries thereof, as the same are defined in an Act passed in the second and third year of the reign of His late Majesty King William the Fourth, intituled "An Act to amend the representation of the people in Scotland;" and the limits described in this clause shall be termed "the limits for compulsory supply."

Limits for compulsory supply.

2 & 3 W. 4. c. 65.

32. The trustees shall cause pipes to be laid and water to be brought throughout all the streets within the limits for compulsory supply, and shall, at the request of the owner or occupier of any house or part of a house occupied as a separate dwelling, situated within such limits, furnish to such person within such dwelling-house, by means of communication pipes and other necessary and proper apparatus, to be provided, laid down, and maintained at the cost of such person, a sufficient supply of water for domestic purposes, including a supply for any private watercloset or closets, and fixed bath or baths, in such dwelling-house.

Water supply within limits for compulsory supply.

33. For the purpose of providing for the better distribution of the water supply among the inhabitants within the limits for compulsory supply, it shall be lawful for the trustees to require the owner of any dwelling-house or tenement of dwelling-houses not properly supplied with water in any street within such limits in which the pipes belonging to the trustees are laid to take a supply of water for such house or tenement, by connecting a service pipe with the main or communication pipe belonging to the trustees in

Trustees may require owners to provide and maintain service pipes, and take supply of water.

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A.D. 1871. any street or road, and to provide and maintain in good and sufficient repair such service pipes, stand-pipes, taps, cisterns, and other apparatus, and in such positions as may be necessary for that purpose; and in the event of refusal or delay on the part of such owner to comply with such requisition, it shall be lawful for the trustees to enter such house or tenement and premises connected therewith, and to provide, lay, and maintain such service pipes, stand-pipes, or taps, cisterns, and apparatus, and in such positions as shall appear to them to be necessary for the purpose aforesaid, and to recover the expense thereof from such owners in the same manner as rates or penalties are recoverable under this Act: Provided that in the case of houses not exceeding five pounds of yearly rent or value such owner shall not be required to introduce water into such house, but only such means of supply for each tenement of houses as the trustees may deem necessary; provided further, that in case any question or difference arise between the trustees and such owner with regard to the necessity for such apparatus for supply being provided for any such house or tenement, or with regard to the number or position of service pipes, stand-pipes, or taps, cisterns, or other apparatus necessary therefor, the same shall be determined by the sheriff, on summary application by either of the parties, and the decision of the sheriff shall be final.

Water supply
for domestic
purposes
beyond limits
for compul-
sory supply.

34. The trustees shall cause pipes to be laid down, and water for domestic purposes to be brought to all places within the limits of this Act, beyond the limits for compulsory supply, to which they shall be required by so many owners or occupiers of dwelling-houses in such part of the district beyond the limits for compulsory supply as that the aggregate amount of water rates payable by them annually at the rate by this Act provided shall not be less than one tenth part of the expense of providing and laying down such pipes, but no such requisition shall be binding on the trustees unless such owners or occupiers shall severally execute an agreement binding themselves to take such supply of water for five successive years at least: Provided that where the trustees shall have laid mains or other pipes in streets or places beyond the limits for compulsory supply without such requisition as aforesaid, they shall, at the request of the owner or occupier of any house or part of a house occupied as a separate dwelling in such street or place situated within ten yards of any such mains or pipes, furnish to such person within such dwelling-house, by means of communication pipes and other necessary and proper apparatus, to be provided and maintained at the expense of such person, a sufficient

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Water Act, 1871.

supply of water for domestic purposes at the rates by this Act provided. A.D. 1871.

35. Notwithstanding anything in "The Waterworks Clauses Act, 1847," contained or implied to the contrary, it shall not be incumbent on the trustees to furnish to the owners or occupiers referred to in the foregoing clause a constant supply of water under pressure.

Watersupply beyond limits for compulsory supply not necessarily to be under pressure.

36. The trustees may furnish to any person, corporation, or company, or to the owner or occupier of any shop, within the limits of this Act, a supply of water for manufacturing, trading, or any other purposes whatsoever not domestic, for which no specific rates are by this Act authorised, for such remuneration and upon such terms and conditions as may be agreed upon between the trustees and the person, corporation, or company, owner or occupier, desirous of having such supply.

Supply of water for other than domestic purposes.

37. The trustees may, if they think fit, enter into agreements for the supply of water by measure to any consumer.

Trustees may supply water by measure.

38. Every pipe, valve, or cock, and every cistern or other receptacle for water, and every closet, soil-pan, and private bath, which shall be supplied with water by the trustees, shall be constructed and used to their satisfaction so as effectually to prevent the waste, misuse, undue consumption, or pollution of water, and the flow or return of foul air or other impure matter into the trustees mains or pipes, or into any pipes connected or communicating therewith; and the trustees shall not be bound to supply water into any pipe, cistern, or other apparatus for water as aforesaid which shall not be so constructed and used.

Pipes and cisterns to be constructed so as to prevent waste and impurity.

39. The trustees may supply water to the shipping frequenting or calling at the port or harbour of Fisherrow, in such quantity, at such rates, and upon such terms and conditions as shall be agreed upon between the trustees and the persons desiring the same.

Supply of water to shipping.

40. The trustees shall, when required by the corporation or Police Commissioners of Musselburgh, furnish a supply of water for the public wells or fountains situated in such public streets or thoroughfares within the said town as may be agreed on between the trustees and such corporation or commissioners; and should any difference of opinion arise between the trustees and the said corporation or commissioners, with regard to the number, situation, and water supply to be furnished to such wells and fountains, the same shall be determined, on application to the sheriff by any member of such corporation or commissioners or any one of the trustees respectively; and the decision of the sheriff shall be final.

Supply of water to public wells.

[Ch. cxxxiii.] *The Musselburgh and Dalkeith* [34 & 35 VICT.]
Water Act, 1871.

A.D. 1871.

Supply of
water for
sanitary
purposes.

41. The trustees shall supply and maintain such a constant flow of water along any natural stream or watercourse within the limits for compulsory supply, and such a constant or occasional flow in or on the public sewers or streets, as shall be requisite for the health of the inhabitants within said limits, and for carrying away the sewage and drainage, and keeping such streams or watercourses, sewers, and streets clean; and the trustees shall also furnish a supply of water for the use of such public baths and wash-houses as may be erected for charitable and sanitary purposes; and such supplies for the several purposes herein-before specified shall be furnished by the trustees at such nominal rate, not exceeding fourpence per thousand imperial gallons, as may be agreed on, or, if the trustees shall deem it expedient, free of charge.

Power to
trustees to
sell a part
of under-
taking to
local autho-
rity of Dal-
keith in a
certain
event.

42. If at any time after the passing of this Act the local authority of Dalkeith shall obtain powers to purchase so much of the works and undertaking by this Act authorised as may be necessary for the supply of Dalkeith and places adjacent thereto with water, the trustees shall be bound and they are hereby required and empowered, on receiving notice from the local authority of Dalkeith that they have obtained such powers, and desire to treat for the acquisition of so much of the said undertaking and works, or of such joint interest, part, or share therein as may be applicable to the supply of Dalkeith and districts and places adjacent thereto, to sell and transfer such works and undertaking, or such joint interest, part, or share therein as aforesaid, to the local authority of Dalkeith accordingly; and the trustees on the one hand, and such local authority on the other, may contract and enter into all necessary agreements or arrangements with reference to such acquisition and transfer, and the fixing and settlement of the price or compensation to be paid, and whole matters arising out of such acquisition, sale, or transfer, or may refer and have the same settled by arbitration in manner herein-after provided.

Compensa-
tion to be
paid, and
interests of
local autho-
rity of Dal-
keith, and of
trustees in
undertaking,
to be settled
by arbitra-
tion.

43. The compensation to be payable by the local authority of Dalkeith for such part or joint share or interest in the undertaking of the trustees, and the whole rights, powers, duties, and authorities and responsibilities in relation thereto, as between such local authority of Dalkeith and the trustees, shall, in the event of no arrangement or agreement being come to in regard thereto between the trustees and such local authority, be fixed and determined by two arbiters, to be mutually chosen by such local authority and the trustees, with power to the said arbiters to name an oversman in case of their differing in opinion, and failing the arbiters agreeing on an oversman, such oversman shall be appointed by the sheriff,

on the application of the trustees or of such local authority of Dalkeith. A.D. 1871.

44. The trustees and local authority of Dalkeith shall be bound to enter into such arbitration (should they not previously have come to an arrangement) within three months after service of a notice on the trustees by the local authority of Dalkeith, after they shall have obtained such powers to purchase as aforesaid, of their intention so to acquire such share in the undertaking; and in the event of either of the parties failing to enter into such arbitration within the said period, then the sheriff, on the application of the other party, shall appoint a fit and proper person as sole arbiter, to fix and determine such compensation and other matters aforesaid. Arbitration,
when to be
entered into.

45. Such arbitration shall be proceeded with, subject to the provisions of "The Lands Clauses Consolidation (Scotland) Act, 1845," with respect to the settlement of disputed questions of compensation by arbitration, and the trustees and the local authority of Dalkeith may appear and sist themselves as parties in the said arbitration, and be heard in regard to the amount of compensation to be paid and secured to the trustees in respect of the acquisition of such share or joint interest by the said local authority in the undertaking hereby authorised, and the arbiters or oversman shall by their award fix and determine the amount of such compensation, and how the same shall be paid and secured, and whole matters as between the trustees and such local authority. Proceedings
in arbitra-
tion.

46. The award to be pronounced by such arbiters or oversman shall be final, and shall not be subject to review by reduction or otherwise in any court or on any ground whatsoever, and the nomination of arbiters and award shall be recorded by the arbiters in the books of council and session immediately after being pronounced and signed. Award of
arbiters to
be final,
and to be
recorded.

47. On such compensation being paid or security being provided therefor as the arbiters or oversman by such award may have determined, such arbiters or oversman shall, by writing under their or his hand, certify that such compensation has been paid or security provided to their or his satisfaction, and such certificate shall be recorded by them or him in the books of council and session, and upon the same being so recorded the local authority of Dalkeith shall, from the date of recording such certificate, be vested in and have the whole rights and privileges, revenues, and pertinents of every description belonging to such original trustees, as regards water supply to Dalkeith and districts, and shall have the whole control and management of the water supply within the limits of On payment
of compensa-
tion, share or
interest in
undertaking
to be vested
in local
authority of
Dalkeith.

A.D. 1871. — this Act relating to Dalkeith and districts, and the trustees shall be bound and obliged immediately thereafter to execute all such deeds and conveyances as may be requisite for conveying to and vesting in the local authority of Dalkeith so much of the undertaking of the trustees, or such share and joint interest therein intended to be so transferred and conveyed.

Application of price or compensation payable by local authority of Dalkeith.

48. Such price or compensation to be paid by the local authority of Dalkeith may be applied by the trustees for the purposes of their undertaking, in such manner as they may think fit, or may be carried in whole or in part to the credit of the sinking fund hereinbefore provided, and applied for the purposes thereof.

IV.—*Rates and Assessments.*

Trustees to estimate annual sums required.

49. The trustees shall and they are hereby required, once in every year, to estimate the amount of money necessary to be levied for the purposes of defraying the costs, charges, and expenses of supplying with water the places within the limits of this Act during the year then commencing or current, the interest of any money to be borrowed or that may be due under the provisions of this Act, the expenses of maintenance, repair, and management of the undertaking, the feu duties or other annual payments exigible therefrom, the annuity of the funded debt, the moneys which the trustees shall set apart and apply each year as a sinking fund, as herein-after provided, the salaries, wages, and other expenses of any engineers, surveyors, clerks, collectors, or other officers or servants employed by them, and such portion of the expenses of extending the mains and pipes from time to time as the trustees shall think equitable and fair to charge to such account of annual expenditure, and all other charges and expenses chargeable against revenue.

Public water rate to be levied.

50. The trustees are hereby required and empowered, once in every year, to assess and levy upon and from the occupiers of all lands and heritages within the limits for compulsory supply, except as herein-after mentioned, at an equal and uniform rate, to be determined by the trustees, a rate to be called "the public water rate," of not less than one penny nor exceeding threepence per pound of the full annual value thereof; provided that no public water rate shall be assessed or levied on or from any railway company, canal company, or gas company, but such rates shall be assessed and levied on and from such companies in respect of all stations, depôts, and buildings occupied by them respectively; provided further, that such public water rate shall not be assessed or levied upon or from the occupiers of any garden not attached to or occupied with a

dwelling-house, or of any arable, meadow, or pasture land within such limits, in respect of such garden or land; and also that no public water rate shall be assessed or levied in respect of any church, chapel, or other building exclusively used for public worship, or in respect of any building exclusively used for the education of the poor. A.D. 1871.

51. The public water rate authorised by this Act to be levied shall not be imposed in respect of any station, depôt, building, or other property belonging to or occupied by the North British Railway Company within the limits for compulsory supply. Certain property not to be liable to public rate.

52. The trustees are hereby required and empowered, once in every year, to assess and levy a rate, to be called "the domestic water rate," upon and from the occupiers of all dwelling-houses, and of such parts of all shops and buildings as may be used as dwelling-houses, within the limits for compulsory supply, according to the full annual value of such dwelling-houses and parts of shops and buildings, and of any gardens, yards, or greens attached or belonging thereto or occupied therewith respectively. Domestic water rate.

53. The rate leviabie by the trustees for the supply of water for domestic purposes to any person beyond the limits for compulsory supply, but within the limits of this Act, shall be of such amount as the trustees in their discretion may from time to time fix, but such rate shall not at any time exceed the combined amount of "the public water rate" and "the domestic water rate" before mentioned levied at the time by the trustees, and shall be levied from the person receiving the supply according to the full annual value of the house, or of such parts of any house or building occupied by him as a dwelling-house, and of any offices, gardens, yards, or greens belonging thereto or occupied therewith respectively. Rates beyond limits for compulsory supply.

54. The trustees shall from time to time so regulate the water rates and charges under the provisions of this Act that the amount of such rates and charges shall be, as nearly as may be, sufficient to meet the interest on borrowed money, together with the annual charges and expenses before specified, and such further sum as the trustees shall set apart for the purpose of the sinking fund hereinafter provided; and if in any year the rates imposed and levied shall yield a sum more than sufficient for the purposes aforesaid, the trustees shall make a corresponding reduction in the rates to be in the next year assessed and levied; provided that it shall not be lawful for the trustees to reduce the domestic water rate below the Rates to be regulated by annual expenditure.

A.D. 1871. — rate of one shilling per pound of the full annual value of the subjects assessed in respect of such domestic water rate while and so long as the public water rate shall be assessed at a rate higher than one penny per pound of the full annual value of the subjects assessed in respect of such public water rate, nor to raise the domestic water rate above one shilling per pound of the full annual value of the subjects assessed in respect of such domestic water rate, until the public water rate shall have been raised to threepence per pound of the full annual value of the subjects assessed in respect of such public water rate; provided further, that the trustees shall not be bound under this Act to impose any rate which shall include a fractional part of a penny.

Assessment
of rates.

55. The trustees may assess the public water rate and the domestic water rate prospectively in order to raise money to pay charges and expenses to be incurred thereafter, or retrospectively in order to raise money to pay charges and expenses already incurred; and all such rates shall be assessed for the period from the fifteenth day of May in each year to the fifteenth day of May in the year following; and all such rates shall be payable in advance at the office of the trustees on the fifteenth day of May in each year, or as soon thereafter as the same shall be demanded.

Surveyors
to be ap-
pointed.

56. The trustees may, if they think fit, annually appoint one or more surveyors, who shall be sworn by the provost or acting chief magistrate of Musselburgh to administer their office faithfully according to their judgment and knowledge; and such surveyors shall, as soon as may be after the fifteenth day of May in each year, survey the houses, buildings, and other premises and property in respect of which the said rates are authorised to be levied; and a certificate, signed by the surveyor making such survey, shall be deemed sufficient *primâ facie* evidence of the full annual value of the said houses, buildings, and other premises and property so surveyed by him; or the trustees may estimate and fix the annual value of the said houses, buildings, and other premises and property, as far as may be, by the valuation made under the provisions of the Valuation Act, and the valuation so made and adjusted shall be final and binding on all parties, and shall not be subject to review or alteration in any court.

Trustees
empowered
to inspect
public rates.

57. The trustees, or any person authorised by them, may from time to time inspect all or any of the public or parochial rates and assessments in any parish or other district within the limits of this Act, and the books in which are contained all the assessments by which the same are made, and may take copies thereof or extracts

therefrom respectively ; and any person having the custody of such rates or assessments who shall not permit the trustees or any person authorised by them to inspect the same at reasonable times, or to take copies thereof or extracts therefrom, shall be liable to a penalty not exceeding five pounds for such offence.

A.D. 1871.

58. The trustees may from time to time make arrangements or agreements with any officers having the charge and collection of any other rates or assessments within the limits of this Act, for the assessment and collection of the several rates by this Act authorised to be imposed and levied, in such manner and form as the trustees and such officers shall mutually determine, with the view to the assessment and collection thereof in the most satisfactory and economical manner.

Trustees may agree with collectors of other rates.

59. When any premises in respect of which any person may be liable to be assessed to the public or domestic water rate under the provisions of this Act shall at the time of assessing any such rate be unoccupied, then and in every such case it shall be lawful for the trustees to include such premises, describing them, in the column in the rate book appropriated to the name of the occupier, as being "unoccupied;" and if any person shall afterwards occupy such premises during any part of the period for which such rate may have been assessed, it shall be lawful for the trustees to insert the name of such occupier, and to levy from him, or from the owner, if such owner shall be liable to pay the same, as in this Act provided, such part of the said rate as shall be proportioned to the time during which such person shall occupy such premises, and every such person shall thereupon be deemed to all intents and purposes to be properly rated, and all such rates may be levied and recovered from the person who shall be liable to pay the same under the provisions of this Act in the same manner as other rates are assessed under the provisions of this Act; provided that any such person whose name shall be so inserted in such rate book, and such owner as last aforesaid, may appeal against the same to the sheriff, whose decision shall be final; provided further, that, except as aforesaid, no public or domestic water rate shall be payable by any person whatsoever in respect of unoccupied premises.

Unoccupied premises may be included in rates.

60. The owner, instead of the occupier, shall be liable to the payment both of the domestic and public water rates for and in respect of every dwelling-house or part of a dwelling-house, shop, or other premises the annual value of which shall not exceed the sum of four pounds, and also for and in respect of every dwelling-house or part of a dwelling-house occupied as a separate tenement, shop,

Power to rate owners of houses in certain cases.

[Ch. cxxxiii.] *The Musselburgh and Dalkeith* [34 & 35 VICT.]
Water Act, 1871.

A.D. 1871. — or other premises which shall be let for a term of occupancy of less than one year, or for rents payable quarterly or at more frequent periods; and the powers and provisions in this Act contained for the recovery of public and domestic water rates from occupiers shall apply and be construed to apply to the owners of such dwelling-houses or parts of dwelling-houses occupied as parts of separate tenements, shops, and other premises; provided that the trustees shall allow to the owners of all such dwelling-houses, shops, and premises not exceeding four pounds of yearly rent or value, who shall pay such public or domestic water rate, an abatement of seven and one half per cent. on the amount of such rate paid by such owner; provided further, that such owners shall be entitled to receive and recover from the occupiers of such houses the amount of the rates payable for their respective possessions along with and in the same manner as the rents thereof, and that such abatement before mentioned shall only be claimable by and allowed to such owners who shall pay such public and domestic water rates when due and demanded.

Owner may be rated without stating his name.

61. Whenever the name of any owner liable to be rated under the provisions of this Act shall not, after due inquiry, be known to the trustees, or to the person assessing any rate, it shall be sufficient to rate such owner in the rate book of the trustees as the owner of the property to be rated by the designation of "the owner," without stating his name, or by such designation or description as may appear in the valuation roll.

Form of rate and notice to ratepayers.

62. Every rate shall be fairly transcribed in a book to be kept for that purpose, and may be in the form of Schedule (A.) to this Act annexed, or to the like effect, and every such rate shall contain an account of every particular set forth at the head of the respective columns, so far as the same can be ascertained; and in the event of the trustees at any time resolving to assess and levy the public water rate from the owner instead of the occupier, the name of the owner, or the person or persons appearing as owners in the valuation roll, shall be inserted in such rate book as the person rated; and in such case it shall be sufficient, where the property or any portion thereof is rated for the domestic water rate, to describe such property or portion thereof by inserting in the column set apart for the description and situation of property the numbers in the rate book referring to the domestic water rate on such property; and the rate book and rates, and all alterations thereon and additions thereto, and all writings purporting to be extracts from such rate book, shall be held to be sufficiently authenticated by the signature of the treasurer to the trustees at the foot of each page

thereof; and notice shall be given to every person rated of the rate charged upon him, the place of payment, and the date at which such payment is required to be made, and that he may appeal to the trustees against the same within fourteen days after such notice.

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63. The proposed rate, immediately after the same is assessed, shall be open to the inspection of any person interested or liable to pay such rate, at all reasonable times, and any such person may take copies or extracts from the rate book of the rate in which he is interested or for which he is liable, without paying anything for the same; and any person having the custody of such rate book who refuses or does not permit any person so interested or rated as aforesaid to take copies or extracts in regard to such rate shall for every such offence be liable to a penalty not exceeding five pounds.

Rate to be open to inspection of ratepayers.

64. If any person shall be in arrear of the public water rate or domestic water rate, or either of them, or any portion thereof, on the expiry of two months after the date on which the rate shall be declared payable by the trustees, one penny upon each pound of the rental upon which such rate is applied shall be leviable from such person by way of penalty for neglect or failure in payment, and the trustees and collector are hereby authorised and required to levy and collect the same, and such penalty shall be leviable along with and in the same manner as the rates.

Penalty for nonpayment of rates.

65. The trustees may from time to time amend any such rate assessed by virtue of this Act by inserting therein the name of any person claiming and entitled to have his name therein as owner or occupier, or by inserting therein the name of any person who ought to have been rated, or by striking out the name of any person who ought not to have been rated, or by raising or reducing the sum at which any person has been rated, if it appear to the trustees that such person has been erroneously rated, or by making such other amendments therein as shall make such rate conformable to this Act, and no such amendment shall be held to make void the rate: Provided that every person aggrieved by any such alteration shall have the same right of appeal therefrom as he would have had if his name had been originally inserted in the rate book, and no such alteration had been made, and, as respects such person, the rates shall be considered to have been assessed at the time when he received notice of such alteration; and every person whose rate is altered shall be entitled to seven days notice of such alteration before the rate shall be payable by him.

Rates may be amended.

A.D. 1871.

Appeal to
trustees.

66. If any person shall consider himself to be improperly or unduly rated, he may appeal to the trustees, within fourteen days from the date of the notice being given, by lodging with the collector written objections signed by him, and the trustees, or a committee named by them, are hereby authorised and empowered to consider such objections, and to give such relief in the premises, or otherwise, as they may deem reasonable, and the decision of the trustees shall be final.

Rate books
to be evi-
dence.

67. In any proceeding to levy and recover or consequent on the levying or recovering of any rate under the provisions of this Act, the books of the trustees, and all entries made therein in manner by this Act directed, by the production thereof alone, and without any evidence that the requirements of this Act have been complied with, shall be received as evidence of such rate, and of the amount thereof.

Second
notice of
rate to be
given to
defaulters.

68. If any person to whom notice shall be given by the collector shall fail to pay the rates due by him at the time and place stated therein, or in case of appeal any rates to which he may be found liable under the same, the collector, before taking any legal proceedings for recovery thereof, shall give a new notice to such person, requiring him to make payment thereof within fourteen days thereafter, and such notice shall state that his goods are liable to be distrained upon in manner provided by this Act.

Recovery
of rates.

69. The trustees may recover any arrears of rates or charges due under the provisions of this Act, either according to the ordinary procedure before any competent court, or by obtaining from the sheriff a summary warrant to recover such arrears, with the addition of ten per cent. on the amount thereof as costs, from the persons liable to pay the same, which warrant the sheriff shall grant, on production of an extract from the rate book, made up in pursuance of the provisions herein-before contained, of the entries therein relating to such persons, showing the amounts respectively due by them, and of a certificate by the collector that he had given to such persons the second notice by this Act directed, requiring him to make payment of the amount due within fourteen days thereafter, that such period had expired, and that the said amount had not been paid, and was still truly due; and such warrant shall authorise the collector to cause any messenger-at-arms or sheriff officer to enter into the premises of the persons so in arrear, and poind, seize, remove to a place of safety, or otherwise secure, any goods and effects therein belonging to such persons, or so much thereof as shall fully satisfy the arrears due by them respectively, with the addition of

ten per cent. thereon as costs, and shall also authorise the collector, after the lapse of four days, in the event of nonpayment of the arrears and costs, to cause any messenger-at-arms, or sheriff officer, or licensed auctioneer, to sell and dispose of the said goods and effects, and shall further authorise the collector, on receiving payment of the price of such goods and effects, to apply the same in payment of said arrears and addition of ten per cent. thereon respectively due by such persons, and also in payment of the expenses attending the sale.

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70. No misnomer, mistake, or informality committed in any proceedings for recovery of rates under the provisions of this Act shall prejudice the recovery thereof, nor shall such proceedings lapse, cease, or abate by the death, resignation, or removal of the collector instituting the same, or by any change in the persons holding office as trustees, but it shall be lawful for the collector for the time to prosecute and follow forth procedure commenced and carried on in the name of any previous collector, in all respects as if such procedure had been taken by himself.

Misnomers, &c. not to affect proceedings for recovery of rates.

71. Every sale which shall take place in terms of the provisions herein-before contained shall be conducted by public auction, and on such notice and at such place as the sheriff who shall grant the warrant may direct, or failing such directions as the collector may appoint.

Regulating sales of effects for payment of rates.

72. The collector shall account to the owner of any goods and effects which may be sold in pursuance of the provisions of this Act for any surplus which may remain after applying the proceeds of sale in payment of the said arrears and addition of ten per cent. thereon, and expenses of sale, and shall for a period of three months after every such sale preserve evidence of the amount of such proceeds.

Collector to account for surplus proceeds of sales.

73. The owner of any goods and effects which shall have been pointed or sold in terms of the provisions herein-before contained, and who may consider himself aggrieved by any unjust or oppressive proceeding on the part of the collector, or to whom the collector has failed to account for any surplus remaining after applying the proceeds of sale in payment of the arrears of assessment and addition of ten per cent. thereon due by such owner, and expenses of sale, may apply by petition to the sheriff, and the sheriff shall summarily call before him the collector and such petitioner, and, without written pleadings, shall inquire into and decide any dispute, question, or claim of damage raised by such petition, and, in addition to any award of damages, may award expenses to either

Providing appeal against any oppressive proceedings of collector.

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A.D. 1871. — party; but, except to the extent and in manner herein-before provided, it shall not be competent for any person to make nor for any court of law to entertain a complaint with respect to any warrant granted by the sheriff in pursuance of the provisions herein-before contained on account of any mistake, informality, or misnomer, or on any ground or account whatsoever with respect to any proceedings of the collector, or of any messenger-at-arms, sheriff officer, or licensed auctioneer; and the decision of the sheriff on any such dispute, question, or claim shall be final.

Mode of service of notices.

74. Any notice required to be given to any owner or occupier with respect to the rates or charges assessable by the trustees may be delivered to him personally, or left for him on the premises in respect of which such rates or charges are levied, or at his dwelling-place or place of business; and if the name of such owner or occupier is unknown to the trustees, after due inquiry, it shall be sufficient to address such notice to such owner or occupier by his description as owner or occupier, as the case may be, of the premises (naming them) in respect of which such notice is given, without any further name or description.

Recovery of rates beyond limits of Act.

75. In case any person liable in payment of the rates by this Act authorised to be levied shall remove to any place beyond the limits of this Act, it shall be lawful for the trustees, and for the collector or other officers aforesaid, to put the decrees and warrants which may have been granted for the recovery of such rates into execution within or beyond the said limits, in the same manner as if such person had continued to reside within such limits, such decrees or warrants being first indorsed by a magistrate or sheriff or justice of the peace for the county or burgh within which the same are to be put into execution.

Application of rates.

76. The water rates and charges levied under the authority of this Act shall be applied in manner following; (that is to say,)
First, in defraying the expenses of management and maintenance of the undertaking, and in payment of any feu duties exigible in respect of any lands, streams, or other property acquired for the purposes of the undertaking:
Second, in payment of the interest of money borrowed under the authority of this Act, and of the annuity on the funded debt, if any:
Third, in payment of such portion of the cost of extending and renewing mains and pipes from time to time as the trustees shall think reasonable, and of any other necessary annual expenditure:

Lastly, in providing for the sum required to be annually set apart and appropriated for the purpose of the sinking fund, as herein-after provided.

A.D. 1871.

V.—*Borrowing Powers.*

77. The trustees may from time to time borrow on mortgage any sum not exceeding forty thousand pounds, and may make and grant mortgages of the several water rates and charges leviabie under the provisions of this Act, in security of the payment of the money so borrowed, and interest thereon.

Power to borrow on mortgage.

78. Every mortgage to be granted by the trustees shall be by deed duly stamped, in which the consideration shall be duly stated, and may be in the form of Schedule (B.) to this Act annexed, or to the like effect.

Form of mortgage.

79. The trustees may issue along with any such mortgage, and during the period of any postponement of the term of payment thereof, interest warrants in the form of Schedule (C.) to this Act annexed, or to the like effect, signed by the treasurer, for the periodical payment of the interest to become due on the principal sums thereby secured during the period for which such mortgage is intended to subsist; and the delivery to the trustees or their treasurer, or to any person on their behalf, of any such interest warrant, duly stamped as a receipt, shall be a valid and sufficient discharge to the trustees for the interest in respect of which the same was issued.

Mortgages may be accompanied with interest warrants.

80. The trustees may accept and take from any bank or banking company credit on a cash account to be opened and kept with such bank or banking company in the name of the trustees, according to the usage of bankers in Scotland, to the extent of the sum which the trustees are by this Act authorised to borrow, or any part thereof, and may make and grant mortgages of the several rates and charges leviabie by them under this Act in security of the payment of the amount of such credit, or of the sums from time to time advanced on such cash account, with interest thereon; provided that the whole principal sums due and owing by the trustees on such cash account, and for money borrowed by them on mortgage as aforesaid, shall not, when taken together, exceed the sum by this Act authorised to be borrowed.

Trustees may borrow on cash credit.

81. The Public Works Loan Commissioners, as defined by "The Public Works Loan Act, 1853," may advance to the trustees, and the trustees may take from them for the purposes of this Act, and upon the security herein-before mentioned, such sums of money as

Trustees may obtain advances from Public Works Loan Commissioners.

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Water Act, 1871.

A.D. 1871. — may be recommended by one of Her Majesty's Principal Secretaries of State.

Manner in which mortgages, &c. may be signed and executed.

82. Every mortgage to be granted by the trustees may be partly in writing and partly printed, and shall, besides being under the common seal of the trustees, be signed by at least two of the trustees and the treasurer; and all drafts or orders on the cash account before mentioned shall be signed by any two of the trustees authorised so to do, and shall be countersigned by the treasurer; provided that no trustee or treasurer shall by his subscription of any such mortgage, draft, or order be or be held to have rendered himself individually or personally liable for the payment of any money so borrowed, drawn, or received, or any interest thereon, or of any sums whatsoever in respect thereof.

Trustees may fund debt, and issue certificates of funded debt.

83. The trustees may from time to time, in lieu of borrowing or continuing on mortgage the sums which they are authorised to borrow under the authority of this Act, resolve to fund the whole of such sums, or such part thereof as they shall from time to time think fit, and on any such resolution being passed the amount stated therein shall be denominated "the Musselburgh and Dalkeith Waterworks Funded Debt;" and the trustees may issue to any person, company, trustees, or corporation paying to them any portion of the said sums a certificate of such person, company, trustees, or corporation being the holder of funded debt to the amount so paid; and every such certificate may be according to the form of the Schedule (E.) to this Act annexed, or to the like effect, and shall be subscribed by two of the trustees and the treasurer; provided that after the creation and issue of any portion of such funded debt it shall not be lawful for the trustees to issue mortgages for or again to borrow the amount so created and issued; and the powers of borrowing by the trustees shall to the extent of the funded debt so from time to time created and issued be extinguished, and the sums due and owing at any one time on the security of the water rates and charges by this Act authorised to be levied, including the funded debt, shall not exceed the sums by this Act authorised to be borrowed.

Register of holders of funded debt.

84. The trustees shall from time to time cause the names of the several parties who may be interested in such funded debt as aforesaid, with the amount of the interest therein possessed by them respectively, to be entered in a book to be kept for that purpose, and to be called the "Register of Holders of Funded Debt;" and such book shall be accessible at all reasonable times to the several holders of such debt, or of mortgages granted by the trustees.

85. The interests of the several holders of such funded debt, or any part of such interests, may be transferred or transmitted in the same manner and subject to the same regulations and provisions, mutatis mutandis, as or according to which any mortgage to be granted by the trustees may be transferred or transmitted, under the provisions of this Act and "The Commissioners Clauses Act, 1847;" and the trustees shall cause an entry to be made in a book to be kept by the treasurer for that purpose of every such transfer or transmission, and for every such entry the treasurer may demand any sum not exceeding two shillings and sixpence.

A.D. 1871.
Transfer of
funded debt.

86. The several holders of such funded debt shall receive an annuity thereon at any rate not exceeding five pounds per centum per annum which shall be fixed by the trustees in any resolution to be passed by them as aforesaid, and specified in the certificates issued to such holders, which annuity shall be payable half-yearly on the fifteenth day of May and the eleventh day of November in every year; and the holders of such funded debt shall not be entitled to repayment of the capital thereof, but the same shall be redeemable by the trustees, in whole or in part, by means of the sinking fund herein-after provided, and not otherwise, on payment to the holders of such funded debt of the principal sum due to them, and of any arrears of annuity which at the time may be due thereon, six months notice of their intention so to redeem being given by the trustees to the holders of such part of the said funded debt as may be intended to be so redeemed; and such holders respectively shall be bound to accept of such redemption money, when tendered by the trustees.

Annuity to
be paid.

87. The several holders of such funded debt shall be creditors of the trustees for the payment of the said annuity, and shall be deemed to hold by virtue of this Act a mortgage of the several water rates and charges leviable under the provisions of this Act, in security of such payment, and the holders of such funded debt shall rank *pari passu* with the holders of the sums of money which the trustees may have in loan or be entitled to borrow, and the interest thereon.

Security of
holders of
funded debt.

88. The mortgagees holding mortgages in arrear, or funded debt holders, to the amount of four thousand pounds in the aggregate, may, in order to render their security effectual, apply for the appointment of a judicial factor. The application for such appointment shall be made by summary petition to the Court of Session, or in time of vacation to the Lord Ordinary on the Bills, who are hereby respectively authorised and required, on such application being

For appoint-
ment of judi-
cial factor.

A.D. 1871. made by such mortgagees or holders of funded debt, holding such sums respectively as before specified, to appoint some person as judicial factor, to the effect and with the powers herein-after mentioned, unless previously to such application being advised the amount of such mortgages or annuities, as the case may be, with interest and expenses, shall have been paid to the petitioner or petitioners, or unless the said court or Lord Ordinary, as the case may be, shall be satisfied that consignation thereof should under the circumstances be accepted in lieu of payment, and such consignation be made accordingly; and the interlocutor or order making such appointment shall not be subject to review or appeal.

Powers and duties of judicial factor.

89. The judicial factor so appointed, on finding security in common form, shall exercise all the powers conferred by this Act upon the trustees for and in relation to assessing, levying, and recovering the several rates and charges by this Act authorised to be levied, and managing and maintaining the undertaking, works, and property; and the trustees shall deliver to him all rate books and other books and documents necessary for that purpose; and, after defraying the expense of such application, and of management and maintenance, the said judicial factor shall from time to time apply and pay over the balance of the sums received by him to the several parties entitled to payment out of the rates and revenues; and, unless previously recalled on the application or with the concurrence of at least three fourths in value of the applicants for the appointment of a judicial factor, such judicial factory shall continue, not only until all arrears of mortgages and annuities of the funded debt due at the date of the appointment of such judicial factor, and all interest due on any of the said sums, and any annuity or interest which shall have become due during his continuance in office, with interest and expenses, including the expenses of the application for such appointment, and of carrying the purposes thereof into execution, shall have been paid, but also until any half year's annuity or interest, which although not due may become current during his continuance in office, and a sufficient sum to meet expenses, shall have been paid or consigned in one of the chartered banks in Scotland; and upon payment and consignation as aforesaid of such annuities, interest, and expenses it shall be lawful for the trustees to apply to the Court of Session or Lord Ordinary as aforesaid for the recall of the appointment of the judicial factor, who may recall such appointment accordingly.

Mortgages and funded debt to be personal estate.

90. All mortgages and certificates of funded debt to be granted by the trustees under the authority of this Act, and all money to be advanced and lent on the security of the rates and charges

leviable by them, shall be moveable or personal estate, and trans- A.D. 1871.
missible as such, and shall not be of the nature of heritable or real
estate.

91. Any person entitled to any mortgage granted by the trustees Discharge of
under the authority of this Act may discharge the same, and his mortgages.
right and interest therein, in favour of the trustees; and every such
discharge may be written, or partly written and partly printed, on
the mortgage, and may be according to the form contained in the
Schedule (D.) to this Act annexed, or to the like effect; and such
discharge, when signed by the person entitled to such mortgage, and
duly stamped, shall be valid and effectual to all intents and purposes.

92. The moneys raised and borrowed by the trustees under the Application
authority of this Act shall be applied to the purposes of this Act of moneys.
only; provided that with the exception of the cost of enlarging and
increasing the number of mains and pipes, and of extending the
works, mains, and pipes, the several sums so raised and borrowed
shall not be applied to any of the purposes to which the rates and
charges by this Act authorised to be levied are herein-before specially
made applicable.

93. The trustees shall cause books to be provided and kept, and Accounts to
true and regular accounts to be entered therein of all sums of money be kept and
received and paid by them for the purposes of this Act, which accounts published.
and the affairs of the trust shall be balanced in each year as at the
fifteenth day of May, and they shall once every three years apply to
the sheriff, who shall appoint a person properly qualified who shall
be the auditor of the trustees accounts for three years, and an
abstract of the accounts, certified as correct by the treasurer and two
of the trustees and the said auditor, shall annually be published
within two months after the said fifteenth day of May in a news-
paper circulating in Edinburgh.

94. The trustees may and they are hereby required, after the Sinking
fifteenth day of May eighteen hundred and seventy-six, to set apart fund.
annually as a sinking fund the following sums; that is to say,
during each of ten years from the said last-mentioned date a sum of
one pound ten shillings for every hundred pounds of the money
borrowed, and after the expiration of such ten years a sum of not
less than two pounds yearly for every one hundred pounds of the
money borrowed; and such sinking fund shall be from time to time
applicable to the redemption of mortgages and of the annuity pay-
able to the holders of the said funded debt, and to no other purposes
whatever: Provided that no part of such sinking fund shall be
applied in the redemption of the said annuity until the whole

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A.D. 1871. mortgages of the trustees shall have been redeemed; provided also, that such principal sum shall be repaid within a period not exceeding sixty years.

VI.—*General Provisions.*

Byelaws.

95. The trustees may make byelaws for the prevention of waste, misuse, or undue consumption of water, within the limits of this Act, and may impose such penalties for breaches of such byelaws, not exceeding five pounds for each offence, as may be considered expedient, and from time to time, as they shall think fit, may repeal, alter, or re-enact any such byelaws; provided that such byelaws shall not be repugnant to the law of Scotland, and before being acted on shall be signed by at least two of the trustees, and approved of and confirmed by the sheriff, and inserted weekly, for at least two weeks, in any two newspapers published in Edinburgh; and all byelaws so made, signed, confirmed, and published shall be observed by and binding on all persons concerned therein; provided further, that such byelaws shall be so framed as to allow the sheriff before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid, if he shall think fit.

Application of penalties.

96. All penalties and forfeitures exigible under this Act and the Acts wholly and partially incorporated herewith shall be payable to the trustees, and shall, when recovered, be applied by them to the purposes of this Act.

Expenses of Act.

97. All costs, charges, and expenses incurred preparatory to and in applying for, obtaining, and passing this Act, or in any way incidental thereto, shall be paid by the trustees out of the moneys to be borrowed under the authority of this Act.

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Rate Book.

An assessment to the public water rate and domestic water rate for the Parliamentary Burgh of Musselburgh for the year from the 15th day of May one thousand eight hundred and thousand eight hundred and , made this day of to the 15th day of May one and in the pound for the public water rate, and one thousand eight hundred in the pound for the domestic water rate; also charges for meter rents and supply of water for other than domestic purposes for said year.

No. in the rate.	Name of person rated.	Name of the owner of property rated.	Description and situation of property.	Full annual value.	Public water rate at in the £.	Domestic water rate at in the £.	Charges for meter rents and supply of water for other than domestic purposes.

A.D. 1871.

SCHEDULE (B.)

Form of Mortgage.

MUSSELBURGH AND DALKEITH WATER.

Mortgage, No. .

By virtue of "The Musselburgh and Dalkeith Water Act, 1871," we, the trustees for executing and carrying into effect the said Act, in consideration of the principal sum of [*specify amount*] paid by [*name and designation of mortgagee*] to the treasurer to the said trustees, for the purposes of the said Act, do hereby grant and assign to the said [*name of mortgagee*], and his executors, administrators, and assignees [*or as the case may be*], such proportion of the several rates to be levied by the said trustees under the authority of the said Act as the said sum of [*specify amount*] doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates; to hold to the said mortgagee and his foresaids until the said principal sum and the whole interest due thereon shall be fully paid and satisfied; and it is hereby stipulated that the said principal sum shall be repayable on the [*date*], or shall thereafter in virtue hereof remain as a loan to the said trustees until the expiration of such further term of years and at such rate of interest as shall be specified in a minute or minutes to be indorsed hereon, and signed by the said mortgagee or his foresaids, and by the treasurer to the said trustees, and which minutes are hereby declared and shall be held to be valid and binding, though they may be neither holograph of the said mortgagee or his foresaids or of the said treasurer, nor tested; and for and in respect of interest on the said principal sum to the said date of repayment first above mentioned (being at the rate of [*specify rate*] per centum per annum) the said trustees shall pay the several sums contained in the [*state number*] interest warrants bearing the number and date hereof and delivered herewith, and that at the several times mentioned in such warrants, upon delivery of the same respectively, and such delivery shall be a sufficient receipt and discharge to the said trustees for the contents of such warrants; declaring that the said mortgagee and his foresaids shall not be entitled to make, and that the said trustees shall not be bound to recognise or register, any partial assignation of these presents, or of the sums of money, principal or interest, herein contained, and that the said trustees shall not be liable for any expenses that may be incurred by the said mortgagee or his foresaids for or in relation to the preparation, revision, adjustment, or execution of this mortgage, or of any discharge, renunciation, assignation, or minute of postponement or renewal thereof.

In witness whereof [*testing clause according to the law of Scotland*].

SCHEDULE (C.)

Form of Interest Warrant.

MUSSELBURGH AND DALKEITH WATER.

Mortgage, No. Dated 18

INTEREST WARRANT

For pounds shillings and
 pence.

Less income tax - - - - - £
 £ : :

Payable on 18 ,
 at the

Treasurer.

SCHEDULE (D.)

Form of Discharge.

Received from the treasurer to the Musselburgh and Dalkeith Water Trustees, acting on their behalf, the sum of pounds, being the principal sum contained in the within mortgage (all interest due thereon having been previously paid), and the said mortgage is now delivered up as paid.

Dated this day of eighteen hundred
 and

SCHEDULE (E.)

Form of Certificate of Funded Debt.

MUSSELBURGH AND DALKEITH WATER.

No.
 This is to certify, that *A.B.* [*name and designation*] is the holder of pounds of "The Musselburgh and Dalkeith Water Funded Debt," created by and under the provisions of "The Musselburgh and Dalkeith Water Act, 1871," and is entitled to receive an annuity on the said sum at the rate of per centum per annum.

Signed at a meeting of trustees, this day of
 one thousand eight hundred and

