

Exeter Canal Act  
1883

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## ACT

For sanctioning a settlement of the claims of the Mortgagees of the Exeter Canal against the Corporation of the City of Exeter ; for empowering the Corporation to borrow for the purpose of carrying into effect such settlement and of improving the said Canal and for other purposes.

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**W**HEREAS in or about the year 1563 the Mayor Bailiffs and Preamble.  
Commonalty of the City of Exeter the predecessors of the Mayor Aldermen and Citizens of the City and County of the City of Exeter (hereinafter styled the Corporation) commenced and  
5 subsequently completed the construction of a navigable Canal (since known as the Exeter Canal) from the River Exe at or near a place called the King's Arms Sluice in the parish of St. Thomas the Apostle in the County of Devon to the Estuary of the same River for the purpose of facilitating the passage of vessels between the  
10 City and the Sea :

And whereas the Corporation having previously expended large sums of money in extending and improving the said Canal were by an Act passed in the tenth year of the reign of King George the Fourth chapter forty seven intituled "An Act for altering  
15 "extending and improving the Exeter Canal" (hereinafter called the Act of 1829) empowered to raise by mortgage a competent sum of money for completing certain works then in progress and for making other works by the said Act authorised for the improvement of the said Canal and for other purposes of the said Act :

And whereas the Corporation under the powers of the Act of 1829 raised by mortgage a sum of eighty-five thousand nine hundred pounds :

And whereas differences having arisen between the mortgagees of the Canal undertaking under the Act of 1829 (hereinafter called the Canal mortgagees) and the Corporation a suit in Chancery was in the year one thousand eight hundred and forty-five instituted by or on behalf of the mortgagees or some of them which ultimately resulted in a compromise of the said suit by a deed dated the twentieth day of June one thousand eight hundred and fifty-seven and made between the Mayor Aldermen and Burgesses of the City and Borough of Exeter of the first part the Honourable Henry Bouverie William Brand and Adam Duncan Haldane commonly called Viscount Duncan two of the Lords Commissioners of Her Majesty's Treasury of the second part and Maurice Ceely Trevillian of the third part :

And whereas certain claims have recently been advanced by the Canal mortgagees under that deed which the Corporation dispute :

And whereas since the date of the said deed the Corporation have purchased and cancelled Canal mortgages of the nominal value of thirty-four thousand three hundred and fifty pounds whereby the said mortgage debt has been reduced to and is now fifty-one thousand five hundred and fifty pounds :

And whereas a liability of one thousand three hundred and twenty-eight pounds three shillings and seven pence has been incurred in providing new Gates for and otherwise repairing a certain Lock on the said Canal called Double Locks and disputes have arisen between the Corporation and the Canal Mortgagees as to the mode in which such liability shall be defrayed :

And whereas for the final settlement of all claims of the Canal mortgagees against the Corporation and discharging the Canal undertaking and other property of the Corporation from all charges and liens existing in respect thereof an arrangement on the terms embodied in this Act has been proposed and has been assented to by upwards of three-fourths in number and value of the Canal mortgagees :

And whereas it is expedient that such settlement be sanctioned and the requisite powers conferred on the Canal mortgagees and on the Corporation for carrying it into effect :

And whereas it is expedient that the Corporation be authorised to borrow for satisfaction of the claims of the Canal mortgagees and for the costs of this Act and the expenses incurred in providing new gates for and otherwise repairing the Double Locks and for dredging and improving the Canal and its approaches such sums as in this Act mentioned :

And whereas the objects aforesaid cannot be attained without the authority of Parliament :

And whereas an absolute majority of the whole number of the Council of the City at a meeting held on the nineteenth day of July one thousand eight hundred and eighty-two after ten clear days' notice by public advertisement of such meeting and of the purpose thereof in the Daily Western Times a local newspaper published or circulating in the city (such notice being in addition to the ordinary notices required for summoning such meeting) resolved that the expense in relation to promoting the Bill for this Act should be charged on the Borough Fund and Borough Rate :

And whereas such resolution was published twice in the said Daily Western Times and has received the approval of one of Her Majesty's Principal Secretaries of State :

And whereas the propriety of the promotion of the Bill for this Act was confirmed by an absolute majority of the whole number of the Council at a further special meeting held in pursuance of a similar notice on the tenth day of January one thousand eight hundred and eighty-three being not less than fourteen days after the deposit of the Bill for this Act in Parliament :

And whereas the owners and ratepayers of the city by resolution in accordance with the rules contained in Schedule III. to the Public Health Act 1875 as to the passing of resolutions of

owners and ratepayers consented to the promotion of the Bill for this Act :

MAY IT THEREFORE PLEASE YOUR MAJESTY

That it may be enacted and be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say :)—

Short title.

1. This Act may be cited as the Exeter Canal Act 1883.

Interpretation.

2. In this Act unless the context otherwise requires— 10  
 "The City" means the Municipal Borough and the City and County of the City of Exeter ;

"The Council" and "The Town Clerk" mean the Council and the Town Clerk of the City ;

"The Borough Fund" and "Borough Rate" mean the Borough 15  
 Fund and Borough Rate of the city ;

"The Exeter Canal" or "The Canal" means the existing canal of the Corporation from the place called Turf in the parish of Exminster in the County of Devon to its termination in the river at or near the place called The King's 20  
 Arms Sluice in the parish of Saint Thomas the Apostle in the same county ; and "Canal undertaking" means and includes the said canal and all basins bridges locks quays wharves works lands buildings and conveniences and all 25  
 tolls rates duties and sums belonging or payable to the Corporation under the Act of 1829 or otherwise for Canal purposes ;

"The composition deed of 1857" means the recited deed dated the twentieth day of June, 1857 ;

"Person" includes a Corporation.

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3. (1.) The Corporation shall as soon as may be and in any event within three months of the passing of this Act pay to every Canal mortgagee twenty-five pounds in respect of every one hundred pounds of the principal moneys owing to him as such mortgagee.

Composi-  
tion of debt  
of Canal  
mortgagees.

(2.) If such payment is not made till after the twenty-fourth day of June One thousand eight hundred and eighty-three interest at the rate of four pounds per centum per annum shall be paid by the Corporation on the amount payable as aforesaid from that date till payment thereof.

(3.) Such payment shall as respects each Canal mortgagee be a complete satisfaction and discharge of all claims by or under him as such mortgagee against the Corporation whether under his mortgage the composition deed of one thousand eight hundred and fifty seven or otherwise howsoever.

(4.) If within twelve months from the passing of this Act the Corporation are unable after diligent inquiry to ascertain any Canal mortgagee or cannot obtain a sufficient discharge for the amount payable to him the Corporation may pay the same into the Chancery Division of the High Court of Justice under any Act for the time being in force for the relief of trustees and every such payment into Court shall conclusively discharge the Corporation from all further liability with respect to the money so paid into Court and for the purpose of this Act shall be deemed payment thereof to a Canal mortgagee absolutely entitled thereto and any person afterwards showing to the satisfaction of the Court that he is entitled thereto may obtain payment thereof out of Court accordingly.

(5.) If the Corporation make default in payment to any Canal mortgagee of any amount payable to him as principal or interest under the foregoing enactments such mortgagee may recover that amount by action in any court of competent jurisdiction.

4. (1.) Where the holder of a Canal mortgage is one of the persons described in Section 7 of the Lands, Clauses Consolidation Act 1845 and by that Act enabled to sell land thereunder that person is hereby authorised and required to accept the composition by this Act sanctioned as a complete satisfaction and discharge of the moneys secured by such mortgage and of all claims in respect thereof as if he were the absolute owner of such mortgage and he

Power of  
trustees and  
others to  
accept com-  
position.

is hereby indemnified for so doing and his receipt shall be a good discharge to the Corporation.

(2.) Money received by any such holder of a Canal mortgage shall be subject to the same trusts powers testamentary and other dispositions provisions and incumbrances as the money secured or represented by the mortgage was subject to immediately before the payment of the composition sanctioned by this Act and every testamentary or other disposition shall take effect with reference to the whole or a proportionate part of the money received as the case may be.

Receiver  
to pay cer-  
tain moneys  
to com-  
mittee of  
Canal mort-  
gagees.

5. (1) As soon as may be and in any event within three months after the passing of this Act the Canal receiver shall out of the moneys in his hands pay to the special committee appointed some time since by the Canal mortgagees to negotiate a settlement of their claims the sum of five hundred pounds in respect of the costs charges and expenses incurred by them and if on making up the accounts of the special committee it appears that their expenditure has been less than five hundred pounds the balance shall be divided rateably among the Canal mortgagees. And the receipt of the chairman for the time being of such Committee shall be a good discharge to the receiver for any money paid by him under this section.

(2) Any moneys arising from the Canal undertaking and remaining in the hands of the receiver after payment of the said sum of five hundred pounds and of the remuneration due to him shall be forthwith paid by him to the Corporation.

Discharge of  
lien on  
Canal  
undertaking  
and other  
property of  
Corpora-  
tion.

6. On and after the expiration of three months from the passing of this Act the Canal undertaking and all other revenues and property whatsoever of the Corporation shall by virtue of this Act without reconveyance or other assurance be vested in the Corporation freed and discharged from any lien incumbrance or charge created or continued by any mortgage under the Act of 1829 or by the composition deed of one thousand eight hundred and fifty-seven or otherwise howsoever in favour of the Canal mortgagees or any of them or any person claiming under them or any of them and the said undertaking revenues and property may be held dealt with and disposed of by the Corporation as freely and effectually as if they had not been comprised in or

affected by any mortgage or other instrument in favour of any such mortgagee or person as aforesaid.

7. On the expiration of three months from the passing of this Act or if the payments directed by this Act have been made by the receiver and his final accounts submitted to the Corporation on an earlier day then on such earlier day the receiver shall be discharged from his office and all his powers and duties shall cease and all the provisions of the composition deed of one thousand eight hundred and fifty-seven shall become void and of no effect save as to things previously lawfully done or suffered thereunder.

Discharge of receiver and repeal of composition deed.

8. The expense of the repairs lately executed of the Double Locks shall be paid by the Corporation out of moneys to be borrowed for the purpose under this Act.

Expense of repair of double locks.

9. Notwithstanding anything contained in the Act of 1829 or in the Exeter Port Dues Act 1840 the Corporation as and when they shall see fit may from time to time make special arrangements with importers of goods and merchandize in respect of the Canal dues and Town dues respectively payable by them for or upon particular cargoes or consignments of goods and merchandize or for or upon the vessels wherein such goods and merchandize shall be carried but so that all importers under similar circumstances shall enjoy equal advantages.

Corporation may make special arrangements as to payment of Canal and Town dues.

10. All moneys from time to time received by the Corporation by way of revenue in respect of their Canal undertaking shall be applied for the following purposes:—

Application of Canal revenue.

First. In payment of the establishment charges (that is to say) of the expenses properly chargeable to revenue of conducting managing and maintaining their Canal undertaking:

Second. In payment of the interest on the money for the time being owing on account of the mortgages or other securities granted or issued under the authority of this Act:

Third. In providing for the discharge of any moneys borrowed or raised under the authority of this Act in accordance with the provisions in that behalf of this Act or of the Local Loans Act 1875 according as such moneys so borrowed or raised have been secured by mortgage under this Act

or in the manner prescribed by the Local Loans Act 1875 and the balance if any shall be carried to and applied as part of the borough fund.

Separate  
Canal  
Account.

11. The Corporation shall keep a separate account of all their receipts credits payments and liabilities in respect of their Canal undertaking to be called the "Canal Account" and such account shall be subject to the same provisions as to audit examination report inspection copies and extracts and production of vouchers as other accounts of the Corporation. 5

Power to  
borrow.

12. Subject to the provisions of this Act the Corporation are hereby authorized from time to time to borrow and re-borrow— 10

For payment of the sums payable to the Canal mortgagees under this Act and of the expenses of the repairs lately executed of the Double locks and of the costs of and incidental to preparing and obtaining this Act any sums not exceeding fifteen thousand pounds: 15

For dredging and improving the Canal and its approaches and for strengthening the banks thereof and for improving the method of towing any sums not exceeding five thousand pounds: 20

Security  
and mode  
of raising  
moneys.

13. All or any sums which the Corporation are authorised by this Act to borrow may be borrowed and re-borrowed by them on the security of the revenues of the Canal undertaking and of the Borough Fund and Borough Rate and the Corporation may mortgage the said revenues fund and rate to secure repayment of such sums accordingly. 25

Form of  
mortgages.

14. (1.) All the mortgages of the Corporation under this Act shall rank together without any priority on account of the date of the deed or on any other account and shall be marked as "Canal mortgages." 30

(2.) The provisions contained in sections two hundred and thirty-six to two hundred and thirty-nine (both included) of the Public Health Act 1875 with respect to the mortgages to be executed by a local authority shall apply in the case of all mortgages granted under this Act

except where any such provisions are expressly altered or varied by this Act and for the purposes of such application the term local authority in the said provisions shall be construed to mean the Corporation.

15. (1.) All sums borrowed or reborrowed on mortgage by the Corporation in pursuance of this Act shall be repaid by them within a period not exceeding sixty years after the same were respectively first borrowed either by equal yearly or half-yearly instalments of principal or of principal and interest combined or by means of a sinking fund.

Discharge of money borrowed.

(2.) If the Corporation establish a sinking fund they shall appropriate and carry to that fund such equal yearly or half-yearly sums as being invested in securities in which trustees are by law for the time being empowered to invest or in the mortgages bonds debentures or stock of any local authority within the meaning of the Local Loans Act 1875 (including any securities of the Corporation as an urban sanitary authority) and accumulated in the way of compound interest at the rate of three pounds ten shillings per centum per annum will be sufficient to discharge the loan or portion of a loan to the discharge of which it is applicable within the said period of sixty years.

(3.) Any such sinking fund or any part thereof may be from time to time applied by the Corporation in repayment of the principal moneys borrowed.

(4.) Provided that whenever any of such principal moneys have been so paid off the Corporation shall thenceforward until the whole of such principal moneys have been paid off pay into the sinking fund every year in addition to the other sums hereinbefore required to be set apart and appropriated a sum equal to the annual interest on the principal moneys so paid off.

(5.) Provided further that whenever and so long as the yearly income arising from the sinking fund shall be equal to the annual interest of the principal moneys then due and outstanding the Corporation may in lieu of investing the said yearly income apply the same in payment of such interest and may during such periods discontinue the payment to the sinking fund of the yearly sums hereinbefore required to be paid thereto.

Power to  
borrow  
under Local  
Loans Act.

16.—(1.) The Corporation may if they see fit in manner provided by the Local Loans Act 1875 borrow and reborrow on the security of the borough fund and borough rate any sums authorised to be borrowed under this Act.

(2.) Any loan borrowed in manner provided by that Act shall be discharged within such period not exceeding sixty years from the date of the original loan as the Corporation determine and the period so determined shall be the prescribed period within the meaning of the Local Loans Act 1875. 5

(3.) The Corporation may raise any loan or any part thereof by the issue of debenture stock. 10

(4.) Any loan raised under this section may be repaid by means of a sinking fund.

(5.) If any part of a loan is reborrowed then for the purposes of the time within which the sum reborrowed is to be repaid and of sections fourteen and fifteen of the Local Loans Act 1875 the said loan and the sums reborrowed shall be deemed to form the same loan. 15

(6.) Debentures may be issued to bearer for a sum not being less than ten pounds. 20

Application  
of borrowed  
moneys.

17. All moneys borrowed by the Corporation shall be applied by them to purposes to which borrowed moneys are applicable under this Act and not otherwise.

Order of  
charge as  
between  
revenues  
and rates.

18. (1.) All money borrowed under the authority of this Act shall as between the several revenues funds or rates comprised in the mortgage or other instrument securing the same be charged First on all the receipts and revenues of every description arising from the Canal undertaking of the Corporation and Second on the Borough Fund and Borough Rate. 25

(2.) But this enactment is without prejudice to the right of any mortgagee or other creditor of the Corporation to enforce if need be all the powers and remedies in respect of any revenue fund or rate comprised in his mortgage or other security. 30

19. (1.) The City Treasurer shall within twenty-one days after the expiration of each year during which any sum is required to be set apart by the Corporation for a sinking fund under this Act transmit to the Local Government Board a return in such form as may be prescribed by that Board and verified by statutory declaration if so required by them showing the amount which has been invested for the purposes of such sinking fund during the year preceding the making of such return and the description of the securities on which any investment has been made and also showing the purposes to which any portion of the moneys invested for the sinking fund and the interest thereof has been applied during the same period and the total amount remaining invested at the end of the year and in the event of any wilful default in making such return the said treasurer shall be liable to a penalty not exceeding twenty pounds recoverable by the Local Government Board in any court of summary jurisdiction.

Annual return to Local Government Board.

(2.) If it appears to the Local Government Board by such return or otherwise that the Corporation have failed to set apart the sum required by this Act for any sinking fund or have applied any portion of the moneys set apart for that fund or any interest thereof to any purposes other than those authorised by this Act the Local Government Board may if they think fit by order direct that a sum not exceeding double the amount in respect of which such default has been made shall be set apart and invested as part of the sinking fund and such order shall be enforceable by writ of mandamus to be obtained by the Local Government Board out of the High Court of Justice and the provisions of this section shall *mutatis mutandis* apply to instalments appropriations and annual repayments.

20. A person lending money to the Corporation under this Act shall not be bound to inquire as to the observance by them of any provisions of this Act or be bound to see to the application or be answerable for any loss mis-application or non-application of the money lent or of any part thereof.

Protection of lenders from inquiry.

21. All charges existing at the passing of this Act on the Canal undertaking and other property revenues and rates of the Corporation shall during their continuance have priority over any mortgages or other security granted by the Corporation under the powers of this Act.

Saving priority of existing charges.

Not to construct works without consent of Board of Trade.

22. The Corporation shall not construct on the shore of the sea or of any creek bay arm of the sea or navigable river communicating therewith where and so far up the same as the tide flows and reflows any work without the previous consent of the Board of Trade to be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade and then only according to such an and under such restrictions and regulations as the Board of Trade may approve of such approval being signified as last aforesaid and where any such work may have been constructed the Corporation shall not at any time alter or extend the same without obtaining previously to making any such alteration or extension the like consents or approvals. If any such work be commenced or completed contrary to the provisions of this Act the Board of Trade may abate and remove the same and restore the site thereof to its former condition at the cost and charge of the Corporation and the amount of such costs and charges shall be a debt due from the Corporation to the Crown and shall be recoverable accordingly with costs.

Saving rights of the Crown in the foreshore.

23. Nothing contained in this Act shall authorise the Corporation to take, use or in any manner interfere with any portion of the shore or bed of the sea or of any river channel creek bay or estuary or any right in respect thereof belonging to the Queen's Most Excellent Majesty in right of Her Crown and under the management of the Board of Trade without the previous consent in writing of the Board of Trade on behalf of Her Majesty (which consent the Board of Trade may give) neither shall anything in this Act containede xtend to take away prejudice diminish or alter any of the estates rights privileges powers or authorities vested in or enjoyed or exerciseable by the Queen's Majesty her heirs or successors.

General saving for Corporation.

24. Nothing in this Act shall (save as expressly provided) impair abridge or affect any right power or privilege of the Corporation.

Short titles for existing River and Canal Acts.

25. The following Acts relating to the Corporation may be cited by the following short titles respectively namely the Act passed in the 31st year of the reign of King Henry the Eighth cap. 4 intituled "An Acte for the mending of the Ryver of Exeter" may be cited as "The

River Exe Act 1539" the Act of 1829 may be cited as "The Exeter Canal Act 1829" the Act passed in the third year of the reign of Her present Majesty intituled "An Act for equalizing defining and regulating the Petty Customs and for facilitating the collection thereof and of the Quay Dues payable to the Mayor Aldermen and Burgesses of the City and Borough of Exeter and for preserving the navigation of the River Exe" may be cited as "The Exeter Port Dues Act 1840" and the two last mentioned Acts are in this Act so cited.

- 10      26. The costs charges and expenses preliminary to and of and incidental to preparing and obtaining this Act shall be paid by the Corporation out of money borrowed for the purpose under this Act. <sup>Costs of Act.</sup>

EXETER CANAL ACT 1883

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ACT

For sanctioning a settlement of the claims of the mortgagees of the Exeter Canal against the Corporation of the City of Exeter; for empowering the Corporation to borrow for the purpose of carrying into effect such settlement and of improving the said Canal and for other purposes.

[ROYAL ASSENT 18th JUNE 1883.]

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46 & 47 VICT.—SESSION 1883.

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BARTHOLOMEW C. GIDLEY,  
TOWN CLERK,  
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