

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO

VICTORIÆ REGINÆ

No. 34

An Act to extend the powers of 'The Fremantle Gas and Coke Company, Limited,' and to make provision for the better carrying on of the business and works of the said Company.

[Assented to 16th September, 1886.]

Preamble

WHEREAS under and by virtue of 'The Joint Stock Companies Ordinance, 1858,' of Western Australia, certain persons became and were associated under the name or style of 'The Fremantle Gas and Coke Company, Limited,' and the objects of such association were the purchase of the plant of the Fremantle Gas Company, and the manufacture and sale of Gas, Tar, Coke, and other products usually incidental to the manufacture of Gas at Fremantle and such other place as the Company might from time to time appoint, and also the purchase and sale of such fixtures, fittings, pipes, and other things necessary or required for the distribution and consumption of Gas, and the doing of all such other things as are incidental or conducive to the attainment of the above objects, and the nominal capital of the Company was stated and fixed at Fifteen thousand pounds divided into Fifteen thousand shares of One pound each, and by virtue of 'The Joint Stock Companies Ordinance, 1858,' the Company became and is now duly incorporated and certain Articles of Association have been duly registered under the provisions

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of 'The Joint Stock Companies Ordinance, 1858,' and are now in full force; And whereas under the powers contained in 'The Joint Stock Companies Ordinance, 1858,' the Company has issued Fifteen thousand shares upon all of which the sum of Sixteen shillings per share has been paid up, and the said shares are held by One hundred and sixteen persons; And whereas the Company is now possessed of a lease for ten years of certain lands in the Town of Fremantle known as 'Fremantle Building Lot 245,' with a right of purchase at any time during that term, and the Company has erected Gas Works and other buildings upon the said lands and now occupies and uses the same for the purposes of its undertaking, and the principal office of the Company is upon part of the said lands and is fronting to and situate in Cantonment Street in the said Town of Fremantle; And whereas it would be of public and local advantage and utility and also to the advantage of the Company, if the powers of the Company under 'The Joint Stock Companies Ordinance, 1858,' and the articles of association registered thereunder, were extended and more fully defined, and it is expedient to confer upon the Company the further powers and privileges hereinafter set forth: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. This Act may be cited as 'The Fremantle Gas and Coke Company's Act, 1886,' and shall come into operation on the first day of October, 1886. Short title of Act

2. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words and expressions hereinafter mentioned shall have or include the meanings following, that is to say,— Interpretation clause

- (a) The expression 'general Act' shall mean 'The Joint Stock Companies Ordinance, 1858.'
- (b) The expression 'the Company' shall mean 'The Fremantle Gas and Coke Company, Limited.'
- (c) The expression 'the undertaking' shall mean the making and supply of gas within the limits herein mentioned, and the making and constructing gas works for that purpose, with proper works and conveniences and apparatus connected therewith, and all other works in pursuance of the objects of the Company or by this Act authorised to be executed, and the doing of all things necessary or convenient for such purposes, subject to the provisions of this Act and the general Act.
- (d) The words 'directors,' 'manager,' 'secretary,' 'clerk,' 'engineer,' or 'other officer of the Company,' shall respectively mean the directors, manager, secretary, clerk, engineer, or other officer of the Company for the time being.
- (e) The words 'owner' or 'occupier' shall respectively mean and include any person or corporation who shall, for the time being, be the owner or occupier, or have the charge

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of any road, street, place, or land affected or to be affected by the undertaking of the Company.

- (f) The word 'street' shall include, not only streets commonly so called, but also any street, market place, court, highway, lane, public road, wharf, thoroughfare, or public passage, or place within the limits of this Act.
- (g) The expression 'gas works' shall mean the gas works, and all other works connected therewith, by this Act or in any other way authorised to be constructed.
- (h) The expression 'gas rate' shall include any rent to be received or remuneration of any kind to be paid to the Company for the supply of gas or the letting of gas apparatus.
- (i) The word 'building' shall include places of public worship, places of public amusement, public institutions, public and private offices, dwelling houses, mills, manufactories, stores, shops, stables, sheds, and other similar erections, with any premises appurtenant thereto, and also public and private gardens, and enclosed courts and yards.
- (j) The expression 'local authority' shall mean the mayor, councillors, and burgesses of the Town of Fremantle, or the Roads Board or other bodies or body having the care and charge of any of the streets or roads within the limits of this Act, and for their respective jurisdictions.
- (k) The word 'district,' in relation to a local authority, shall mean the area within the jurisdiction of such local authority.
- (l) The expression 'special resolution' shall mean a special resolution passed in accordance with section 37 of the general Act.

Limits of the Act

3. The limits of this Act shall extend to and include the town of Fremantle, and every place being within a circle of five miles from the Town Hall in the said town of Fremantle.

'Joint Stock Companies Act, 1858,' incorporated

4. All the provisions of the general Act shall apply to and form part of this Act, and both the general Act and this Act shall be read and construed together as one Act.

Articles of Association of the Fremantle Gas and Coke Company, Ltd., incorporated

5. The articles of association adopted by the Company and duly registered under the general Act shall continue to be the regulations for the management of the Company, but the Company may from time to time alter and make new provisions in lieu of or in addition to the said regulations under the powers given by the general Act.

Power to borrow money

6. For the purposes of the undertaking, the directors of the Company may, with the sanction of a special resolution of the Company previously given in general meeting, raise or borrow such sum or sums of money as they may from time to time think expedient, not exceeding in the whole the sum of Sixty thousand pounds either by way of mortgage of the whole or any part of the property or assets of the Company, or by bonds or debentures, or in such manner as they may deem fit; and so that any mortgage or other security made

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or given under this or any other power may contain a power of sale of the property comprised therein, and such other powers and provisions as may be thought fit and as are usual in mortgages of a like nature. All mortgages and other securities heretofore made or given by the Company to any person or body corporate in the execution of any actual or assumed power or authority shall be good and effectual to all intents and purposes whatsoever, and the moneys secured by the mortgages or other securities shall be a valid charge upon the property and assets of the Company, anything in the general Act or the said articles of association to the contrary thereof notwithstanding. All moneys borrowed or to be borrowed by the Company shall be applied only in the carrying into execution the objects and purposes of the Company's undertaking.

7. All debentures issued under the authority of this Act shall be on an equal footing without priority one over the other, and no dividend shall be declared, or profits divided amongst the shareholders of the Company, until all interest previously accrued on such debentures so issued shall have been paid, or a sufficient sum set apart and made available for the payment thereof

Debentures to be on equal footing, and interest to be paid before dividends

8. Any debentures issued under the authority of this Act shall be in the form or to the effect set forth in the Schedule to this Act, and shall be sealed with the common seal of the Company, and be numbered in arithmetical progression beginning with the number 1; and all such debentures, with the interest coupons annexed thereto, and every interest coupon after being detached from any such debenture, shall pass by delivery only without any assignment or endorsement, and the bearer of every such debenture or detached interest coupon shall have the same rights and remedies as if he were expressly named therein, but no interest shall be payable in respect of any such debenture except to the holder and upon delivery up of the coupon representing the interest claimed.

Form of debentures

9. A register of debentures shall be kept by the Company, and within fourteen days after the date of any such debentures an entry, specifying the number and date of such debentures, shall be made in such register.

Register of debentures

10. It shall be lawful for any executor, administrator, or trustee, having the duty of investing any trust moneys, to purchase with or out of such trust moneys, unless he is or they are forbidden so to do by the instrument creating the trust, or unless some particular mode of investment is thereby prescribed, any debentures issued by the Company, under the authority of this Act, and every such purchase shall be deemed a due investment of such trust moneys.

Trustees may invest on debentures

11. In addition to the powers of borrowing before contained, and notwithstanding anything contained in the general Act or in the articles of association registered thereunder, the Company, with the sanction of a special resolution passed at a general meeting to be convened for the purpose, may from time to time increase the capital of the Company by the creation of new shares, of such amount as may be deemed expedient, so, nevertheless, that the whole capital of the Company shall not exceed the sum of Sixty thousand pounds.

Power to increase capital to £60,000

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Conditions of
issue of new
shares

12. The new shares shall be issued on such terms and conditions and with such rights and privileges annexed thereto as the general meeting resolving on the creation thereof may direct, and, if no direction be given, as the directors of the Company may determine; and in particular such shares may be issued with a preferential or guaranteed right to dividends, and with a special or without any right of voting.

New shares to be
offered to exist-
ing members

13. All such new shares, unless the general meeting resolving on the creation of the same otherwise direct, shall be offered to the members of the Company, in proportion as nearly as may be to the shares or stock for the time being held by them respectively; and if an offer of new shares is not accepted by the member to whom the offer is made, within one month after the date thereof, the directors may dispose of such shares in such manner as they shall deem most beneficial for the interests of the Company.

Status of new
shares

14. Except so far as otherwise provided by the conditions of issue or by this or the general Act, any capital raised by the creation of new shares shall be considered part of the original capital, and shall be subject to all the provisions of the said articles of association relative to the payment of calls, transfer, register, transmission, forfeiture, lien, and otherwise.

Power to con-
struct works

15. Subject to the provisions of this Act, it shall be lawful for the Company from time to time to construct and maintain such gas works and apparatus and such buildings with approaches thereto, upon the lands now occupied by or which shall hereafter be occupied by or belong to the Company, and to do all such other acts and things as the Company shall think necessary for carrying out the objects of its association, and supplying the inhabitants within the limits of this Act with gas, and to supply such gas upon such terms as shall be agreed upon between the Company and the persons supplied therewith; and to sell and dispose of the coke and residuum arising from the materials used in the manufacture of gas, in such a manner as the Company may think proper; and all gas tar or ammoniacal liquor created in the process of making gas shall be kept in covered tanks.

Power to break
up street, &c.,
under superin-
tendence, and
to open drains

16. The Company, under such superintendence as is hereinafter specified, may open and break up the soil of any road, path, or pavement of the several streets and roads within the limits of this Act, and may open and break up any sewers, drains, or tunnels within or under such streets and roads; and lay down and place, within the same limits, mains, conduits, service-pipes and other works, and from time to time repair, alter, or remove the same; and also from time to time make, repair, alter, or remove any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the Company's gas; and for the purposes aforesaid may remove and use all earth and materials in and under such streets; and the Company may in any such street erect any pillars, lamps, or other works, and do all other acts which the Company from time to time shall deem necessary for supplying gas to the inhabitants within the limits of this Act; and it shall be lawful for the Company to lay any pipe, branch, or other apparatus from any main or branch pipes into, through, or against any building for the purpose of lighting the same; and to provide and set up any apparatus necessary for securing to any

And to lay pipes
for lighting build-
ings

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building a proper and complete supply of gas, and for measuring and ascertaining the extent of such supply. Provided always, that nothing in this Act contained shall authorise or empower the Company to lay down or place any pipe or other works into, through, or against any building or in any land not dedicated to public use, without the consent of the owner and occupier thereof, except that the Company may at any time enter upon any land for the purpose of laying or placing, and may lay or place any new pipe in the place of an existing pipe in any land wherein any pipe shall have been lawfully laid down or placed, and may repair or alter any pipe so laid down. Provided further, that no footpath shall be broken up for the purpose of laying any main or service-pipe without the consent of the local authority of the place or district within which it is proposed to lay such main or service-pipe.

Not to enter on
private land
without consent

Not to break up
footpath without
consent

17. Before the Company proceeds to open or break up any street, road, sewer, drain, or tunnel, it shall give to the local authority under whose control or management the same may be, or to the clerk, surveyor, or other officer of such local authority, notice in writing of the Company's intention to open or break up the same not less than three clear days before beginning such work, except in cases of emergency arising from accidents to or defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work or the necessity for the same has arisen; and also excepting for the purpose of connecting service-pipes to mains which have been previously laid, and in such cases one clear day's notice shall be sufficient.

Notice to be
served before
breaking up
streets, &c., or
opening drains

18. No such street, road, sewer, drain or tunnel shall, except in case of emergency as aforesaid, and except as hereinafter provided, be opened or broken up, except under the superintendence of the local authority having the control or management thereof, or of its officer, and according to such plan as shall be approved of by the local authority or its officer, or in case of any difference respecting the plan, then according to such plan as shall be determined by two Justices, and such Justices may, upon the application of the local authority or its officer, require the Company to make such temporary or other works as the said Justices may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain. Provided always, that if no officer appointed by the local authority for the purpose shall attend at the time fixed for the opening of any such street, road, sewer, drain, or tunnel, after having had notice of the Company's intention as aforesaid, or if the local authority or its officer shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the Company may perform the work specified in the notice without the superintendence of the local authority or its officer.

Streets, &c., and
drains not to be
broken up except
under superin-
tendence

19. When the Company opens or breaks up any road, or the road, path, or pavement of any street, or any sewer, drain, or tunnel, the Company shall, with all convenient speed, complete the work for which the same shall be so opened or broken up, and fill in the ground and reinstate and make good, to the satisfaction of the local authority or its officer, the road, path, or pavement, or the sewer

Streets, &c.,
broken up to be
reinstated with-
out delay

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drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned by the work; and the Company shall at all times, whilst any such road, path, or pavement shall be so opened or broken up, cause the same to be properly guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road, path, or pavement, where the same shall be opened or broken up, every night during which the same shall be continued open or broken up, and shall keep the road, path, or pavement which has been so broken up in good repair for two months after replacing and making good the same, and for the further time (if any), not being more than three months in the whole, during which the soil so broken up shall continue to subside.

Penalty for
breaki ng up
without notice
or delay in
reinstating

20. If the Company opens or breaks up any street, road, sewer, drain or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required (except in the cases in which the Company is by this Act authorised to perform such works without any superintendence or notice), or if the Company makes any unnecessary delay in completing any such work or in filling in the ground or reinstating and making good the road, path or pavement, or the sewer, drain or tunnel so opened or broken up, or in carrying away the rubbish occasioned by the work, or if the Company neglect to cause the place where such road, path, or pavement has been broken up to be properly guarded and lighted, or neglects to keep the road, path, or pavement in repair for the space of two months next after the same is made good, or such further time as aforesaid, the Company shall incur a penalty not exceeding Five pounds for every such offence, and the Company shall incur an additional penalty of Forty shillings for each day during which any such delay as aforesaid shall continue after the Company shall have received notice thereof.

In cases of delay
other parties may
reinstate and
recover expenses

21. If any such delay or omission as aforesaid take place, the local authority having the control or management of the street, road, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed and performed, and the expense of executing and performing the same shall be repaid to such local authority by the Company, and such expenses shall be recoverable in the same manner as damages are recoverable under this Act.

Company to
make compensa-
tion for any
damage

22. The Company shall do as little damage as may be in the execution of the powers by this Act granted, and shall make compensation for any damage which may be done in the execution of such powers.

Power to local
authority to alter
situation of
pipes, &c.

23. If at any time any local authority shall deem it necessary or expedient to require the Company to raise or sink or otherwise alter the situation of any of the pipes which shall be laid down for the purposes of the Company, or to alter the situation of any pipes which shall have been laid down contrary to any of the provisions of this Act, the Company shall, within ten days next after being required so to do by notice in writing, raise or sink or otherwise alter the situation of such pipes according to the notice. And in default of the Company so

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doing, it shall be lawful for the local authority to cause such pipes to be so raised or sunk or the situation thereof otherwise altered, and the expense of doing the work shall, with respect to any pipes which shall have been laid down contrary to any of the provisions of this Act, either be paid by the Company or repaid by the Company to the local authority; and the expense of doing the work with respect to any other pipes shall either be paid by the local authority or repaid by the local authority to the Company, as the case may require. And such expenses respectively shall be recoverable in the same manner as damages are recoverable under this Act. Provided that if in raising or sinking or otherwise altering any of the pipes of the Company, any injury shall be wilfully or negligently done to the same by any person employed by the local authority, compensation shall be made by the local authority to the Company for such injury, and the amount of such compensation may be ascertained and recovered in the same manner as damages are recoverable under this Act.

24. Subject to the provisions of this Act, as hereinafter contained, the Company may from time to time enter into any contract with any person for lighting, heating, or supplying with gas any public or private building, or for providing any person with pipes, burners, meters, or lamps and other gas fittings and things, and for the repairs thereof. And may also from time to time enter into any contract with the local authority, and with other persons having the control of the streets or roads within the limits of this Act, for lighting the same or any of them with gas, and for providing any such local authority or persons with lamps, lamp posts, burners, and pipes, and other gas fittings and things for such purpose, and for the repairs thereof, in such manner and upon such terms as shall be agreed upon between the Company and the said local authority or other persons.

Power of Company to enter into contracts for lighting

25. The price of gas to be supplied by the Company to private consumers shall be uniform throughout the limits of this Act, and the Company shall supply with gas, at the current price charged by it for the time being, any person demanding such supply who occupies or owns premises abutting on any street or road at a distance of not more than eighty feet from any one of the Company's mains and who is not at the time of requiring to be so supplied, indebted to the Company, and who shall in all respects conform to the conditions of the Company for the time being in such like cases.

Price of gas to private consumers to be uniform, and for supply to owners and occupiers

26. In the absence of any special contract with the local authority, the price to be charged by the Company to such local authority for all gas supplied to it shall be less, by ten per centum, than the price charged by the Company for the time being to private consumers.

Price of gas to local authority

27. The Company may let for hire any meter for ascertaining the quantity of gas consumed or supplied, and any fittings for the gas, at such rent or for such remuneration in money as shall be agreed upon between the Company and any person to whom the same may be let, and such rent or remuneration shall be recoverable in the same manner as the rent or sums due to the Company for gas, and such meters or fittings shall not be subject to distress for rent or to be taken in execution under any process of any court of law or equity against the person in whose possession the same may be, nor be affected by any adjudica-

Power to Company to let meters and gas fittings

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tion or other proceedings in bankruptcy or sequestration of the estate of any such person.

Charge for supply
of gas by meter

28. The maximum price at which gas shall be sold by the Company to private consumers who shall burn the same by meter shall not exceed One pound per thousand cubic feet, and the Company shall not be entitled to charge a higher rate for gas supplied by contract to any person, and the maximum rent on meters supplied or let for hire by the Company shall not exceed fifteen per centum per annum on the cost price in Fremantle of the meter used. If the Company shall charge any price or rate in excess of the above rate for any gas supplied, or any rent on meters let for hire beyond the rent above fixed, the Company shall not be entitled to receive payment for any gas supplied or rent for any meter so let for hire at such excessive price or rate or at such increased rent, and the Company shall also be liable to a penalty of not exceeding Five pounds for each day during which such excessive price or rate for gas or rent for meters shall be charged.

Quality of gas

29. All the gas to be supplied by the Company shall be of such minimum quality as to produce from an argand burner, having fifteen holes and a seven-inch chimney and consuming five cubic feet of gas per hour, a light equal in intensity to the light produced by twelve sperm candles of six in the pound, burning one hundred and twenty grains per hour; and the Company shall provide the necessary apparatus for testing the illuminating power of the gas, which apparatus shall at all reasonable times be available for use by the local authority, or any of its officers, for the purposes of testing such illuminating power.

Incoming
tenant not liable
to pay arrears of
gas rates, &c.

30. In case any consumer of gas supplied by the Company shall leave the premises where such gas has been supplied to him, without paying the gas rate or meter rent due from him to the Company, the Company shall not be entitled to require from the next incoming tenant or occupier of such premises the payment of the arrears left unpaid by the former tenant, unless such incoming tenant or occupier has undertaken with the former tenant to pay or exonerate him from the payment of such arrears.

Power for local
authority to ap-
point inspector
of meters

31. It shall be lawful for the local authority to appoint, and from time to time to remove and again appoint, an inspector of meters to be paid by such local authority, and such inspector shall have at all times, on the application and at the expense of any consumer of gas supplied by the Company, a right to inspect and test the meters erected by the Company on the premises of the person making such request, after giving forty-eight hours' notice of such intended inspection to the Company or to its manager or other officer, and before such inspection the person requiring such inspection shall deposit in the hands of the inspector all money due or appearing to be due by such person to the Company on an account delivered; and in case such deposit shall on inquiry be found to be in excess of the sum found to be due to the Company, such excess shall be returned to the consumer with all charges of inspection paid by him.

Company's
officers may enter
buildings for as-

32. The manager, clerk, engineer, or other officer or servant of the Company duly appointed for the purpose by the Company may, at all reasonable times between the hours of nine a.m. and nine p.m., enter

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any building or place lighted with gas supplied by the Company in order to inspect the meters, pipes, burners, or other apparatus for regulating the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person shall hinder such manager, clerk, engineer, officer, or servant as aforesaid from entering and making such inspection as aforesaid at any reasonable time within the hours before-mentioned, such person shall for every such offence forfeit and pay to the Company a sum not exceeding Five pounds.

certaining quantity of gas consumed

33. If any person supplied with gas by meter or otherwise, or with a meter by the Company under the provisions of this Act, or with pipes, burners, or lamps, or other gas fittings, shall fail or neglect to pay any gas rate or meter rent, or the price of such meter, pipes, burners or lamps, or other gas fittings due for the same respectively to the Company for the space of forty-eight hours next after a demand of the amount due, signed by the secretary for the time being of the Company, shall have been left at or upon the building or premises so supplied, the Company may stop the supply of gas from entering the premises of such person, by cutting off the service pipes, and by removing the meter when such meter is the property of the Company, or by such other means as the Company shall think fit, and may recover the gas rate, and the rent due for the meter, and the price of such meter, pipes, burners, or lamps, or other gas fittings from such person, if not exceeding Twenty pounds, together with the expenses of cutting off the gas and removing the meter, and the costs of recovering the rates or rents or price, in the same manner as damages are made recoverable under this Act, or if the rates or rents or price so due exceed Twenty pounds, the Company may recover the same, together with the expenses of cutting off the gas and removing the meter, and costs as aforesaid, by action in any court of competent jurisdiction.

Recovery of gas rate and meter rent

34. In all cases in which the Company is authorised to cut off and take away the supply of gas from any building or premises under the provisions of this Act, the Company, its manager, agent, or workmen, after giving twenty-four hours' previous notice to the occupier, may enter such building or premises between the hours of nine in the forenoon and four in the afternoon, and remove and carry away any pipe, meter, burner, fittings, or other apparatus the property of the Company. Provided, however, that all damages to property of whatever description occasioned by such removal as aforesaid shall be made good by and at the expense of the Company.

Power to take away pipes, &c., when supply of gas discontinued

35. Every person who shall lay or cause to be laid any pipe to communicate with any pipe belonging to the Company without its consent, or shall wilfully and fraudulently or by culpable negligence injure any pipe, meter, burner, or other apparatus belonging to the Company as aforesaid, or shall alter the index to any meter or prevent any meter from duly registering the quantity of gas supplied, or who, in case the gas supplied by the Company is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the Company or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or shall otherwise improperly use or burn such gas, or shall supply any other person with any part of the gas supplied

Undue use of gas

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Penalty for fraudulently using the gas of the Company

to him by the Company shall, without prejudice to any other right or remedy for the protection of the Company or the punishment of the offender, forfeit and pay to the Company the sum of Five pounds for every such offence, and also the sum of Forty shillings for every day such pipe shall so remain, or such pipe, meter, burner, or other apparatus, shall be so used, or such excess shall be so committed or continued, or such supply furnished, and the Company may take off the gas from the building and premises of the person so offending, notwithstanding any contract which may have been previously entered into and which may be then in existence. And in addition, the Company may recover the amount of any damage sustained by the Company by or through any such wrongful act or injury, in the same manner in which damages are made recoverable by this Act.

Penalty for wilfully damaging pipes, &c.

36. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, lamp post, plug, lamp, or other work or property of the Company for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the Company, shall for each such offence forfeit and pay to the Company any sum not exceeding Five pounds, in addition to the amount of the damage done.

Damages for accidentally damaging pipes, &c.

37. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, lamp, lamp post, lamp iron, or other apparatus belonging to the Company or under its control, shall pay such sum of money and such costs, by way of satisfaction to the Company for the damage done, as any two Justices shall think reasonable, and the Company may recover the same in the same manner as damages are made recoverable by this Act.

Fittings not to be connected with mains without previous consent

38. No person shall fit up any apparatus or fitting, whereby gas shall be obtained from any main or pipe belonging to the Company, without the consent in writing of the Company or its secretary, manager, or other officer first obtained for that purpose. And any person committing a breach of this clause shall forfeit and pay to the Company the sum of Five pounds for every such offence, and a further sum of Forty shillings for every day during which such offence shall continue.

Costs on distress

39. Any Justice who shall issue a warrant of distress for the recovery of any money due to or by the Company, either by way of penalty or damages, or otherwise, may order that the costs of the proceedings for the recovery of the same shall be paid by the person or persons or the Company liable to pay the same money, and such costs shall be ascertained and included in the warrant of distress for the recovery of such money.

Penalty on Company for causing water to be fouled

40. If the Company shall at any time wilfully or negligently cause or suffer to be brought or to flow into any river, stream, brook, creek, canal, reservoir, aqueduct, water-way, feeder pond, springhead, or well, or into any drain communicating therewith, any washings or other substance produced in the making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any river, stream, brook, creek, canal, reservoir, aqueduct, water-way, feeder pond, springhead, well, water-pipe, or water-course shall be fouled, the Company shall forfeit for every such offence the sum of Twenty pounds.

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41. The said penalty of Twenty pounds shall be recovered, with full costs of suit, before any two or more Justices in a summary way, or in any Court of competent jurisdiction, by Her Majesty, or by the local authority, or by any person into whose water such washings or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Penalty to be
sued for within
6 months

42. In addition to the said penalty of Twenty pounds (and whether such penalty shall have been recovered or not), the Company shall forfeit any sum not exceeding the sum of Five pounds (to be recovered in the like manner) for each day during which such washings or other substance shall be brought or flow as aforesaid or the act by which such water shall be fouled shall continue after the expiration of twenty-four hours from the time when notice shall have been served on the Company on behalf of Her Majesty, or by the local authority, or by any person into whose water such washings or other substance shall be brought or shall flow or whose water shall be fouled thereby.

Daily penalty
for continuance
of the offence

43. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the Company, the Company shall, immediately after receiving notice thereof in writing, take all necessary steps to prevent such gas from escaping; and in case the Company shall not, within two clear days next after service of such notice, effectually prevent the gas from escaping and wholly remove the cause of complaint, the Company shall for every such offence forfeit and pay the sum of Five pounds for each day during which the gas shall be suffered to escape after the expiration of two clear days from the service of such notice.

Daily penalty
during escape of
gas after notice
to the Company

44. Whenever any water within the limits hereinbefore mentioned shall be fouled by the gas of the Company, the Company shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding Ten pounds, and a further sum not exceeding Five pounds for each day during which the offence shall continue after the expiration of two clear days from the service of notice of such offence.

Penalty if water
fouled with gas

45. For the purpose of ascertaining whether such water be fouled by the gas of the Company, the person to whom the water supposed to be fouled shall belong, or the local authority, may dig up the ground and examine the pipes, conduits, and works of the Company, provided that such person or local authority before proceeding to so dig and examine shall give to the Company twenty-four hours' notice of the time at which such digging or examination is intended to take place: and also that such person shall give to the local authority a like notice where such digging or examination is to take place; and the Company shall, subject to the next clause of this Act, have the like obligation of reinstating the road, path, or pavement, and the same penalties for unnecessary delay, or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads, or the paths, or pavements of streets broken up by the Company for the purpose of laying its pipes.

Power to
examine gas
pipes to ascer-
tain the cause of
fouling, and
notice to be
given

46. If upon any such examination it shall appear that such water has been fouled by any gas belonging to the Company, the expense of

Expense of
examination to
abide result

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the digging and examination and of the repair of the street or place disturbed in any such examination shall be paid by the Company ; but if upon such examination it shall appear that the water has not been fouled by the gas of the Company, the person or local authority causing such examination to be made shall pay all such expenses to the Company, and shall also make good to the Company any injury which may be occasioned to the Company's works by such examination.

How expenses to
be recovered

47. The amount of the expense of every such examination and repairs, and of any injury done to the Company or to its works, may, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be recovered in the same manner as damages are made recoverable by this Act.

No creditor of
the Company
allowed to re-
move pipes, &c.,
laid in streets,
&c., or buildings

48. No judgment or other special or simple contract creditor of the Company shall, by or under any law, title, or pretence whatever, levy or seize in execution or in any way attempt to recover payment of any sum of money due to him from the Company by taking and removing any of the pipes or lamps of the Company laid, placed, or fixed in, under, upon, or through any street or road within the limits of this Act, or in any building not being in the occupation of the Company.

Company may
be indicted for
nuisance
Not exempt from
provisions of any
Public Health
Act

49. Nothing in this Act contained shall prevent the Company from being liable to an indictment for nuisance or to any other legal proceeding to which they may be liable in consequence of their making or supplying gas, or shall be deemed to exempt the Company from the provisions of any Act relating to the Public Health.

Power of com-
pulsory pur-
chase by Town
Council

50. It shall be lawful for the mayor, councillors, and burgesses of the town of Fremantle, if they shall think fit, at any time after the thirty-first day of December, One thousand nine hundred and six, to purchase all the land, buildings, works, hereditaments, lamps, pipes, stock, and appurtenances of and belonging to the Company, in the name and on behalf of the corporation, upon giving to the directors six calendar months' notice in writing of such intention so to do, and upon such terms and conditions as shall or may be mutually agreed upon between the directors and the corporation; but in case of any dispute or disagreement arising between the directors and the corporation respecting such purchase as aforesaid, then it shall be lawful for the directors or the corporation, if they or either of them shall think fit, to require that it shall be left to arbitration to determine what amount of purchase money shall be paid to the directors; and in the event of such arbitration being required, the corporation shall name one person and the directors another; and if such two persons cannot agree upon the amount to be paid to the Company, then the same shall be referred to the umpirage of some third person to be appointed by such two first-named persons previously to their entering upon the arbitration; and the determination of such arbitrators or umpire, as the case may be, shall be binding and conclusive on the said parties and their respective successors and assigns.

Saving clause of
Her Majesty's
rights

51. Nothing in this Act contained shall be deemed or construed to affect any right, title, or interest of Her Majesty, her heirs or successors.

Application of
damages and

52. Where any damage is done to the Company's property, and any damages are awarded to the Company for such injury; and where

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any penalty for an offence against the Company's property is directed by this Act to be paid to the Company; such damages or penalty respectively shall be paid to the Company for its own use.

penalties directed
to be paid to the
Company

53. Subject to the provisions of this Act, one moiety of all penalties imposed or recovered under this Act, where the application is not otherwise provided for, shall be paid to the informer, and the other moiety to the local authority.

Application of
other penalties

54. Subject also to the express provisions of this Act, all gas-rates, rent, damages, expenses, and other sums of money by this Act made payable to or by or recoverable by or against the Company shall, where the amount sought to be recovered does not exceed Twenty pounds, be recoverable in a summary way before two or more Justices in the manner directed by an Ordinance passed in the session holden in the 14th year of the reign of Her Majesty Queen Victoria, No. 5, intituled 'An Ordinance to facilitate the performance of the duties of Justices of the Peace out of sessions, within the Colony of Western Australia, with respect to summary convictions and orders,' or any Ordinance passed for the amendment thereof; and where the amount sought to be recovered exceeds Twenty pounds, then the same shall be recovered by action in any court of competent jurisdiction.

Recovery of gas
rates, damages,
&c.

55. Subject also to the express provisions of this Act, all offences against this Act, and all penalties imposed thereby, shall be prosecuted and recoverable in the same way and manner as is prescribed by section 56 of the general Act.

Mode of proceed-
ing for offences
and recovery of
penalties

56. Nothing in this Act shall prejudice or affect the rights or remedies of the Company against any individual shareholder, or against any other person or persons whomsoever, or the rights or remedies of any individual shareholder, or other person or persons whomsoever against the Company, or prejudice the shareholders or other persons as between themselves as private individuals in respect of any act, business, matter, or thing that may, before this Act shall come into operation, have been done or entered into or have arisen in pursuance of or under, or by reason of the general Act or the articles of association of the Company, or any clause or clauses thereof respectively.

Saving clause

57. This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all Judges, Justices, and others within the said Colony of Western Australia, without being specially pleaded.

Act to be deemed
a public Act

58. Except where otherwise provided by this Act, all informations and proceedings in respect of offences against this Act shall be commenced within three months after the offences thereby respectively charged shall have been committed.

Offences to be
prosecuted with-
in three months

59. No order, judgment, warrant, or other proceeding made or purporting to be made under or concerning the conviction of any offender against this Act shall be quashed or vacated for want of form only, or be removed or removable by *certiorari* or by any writ or process whatsoever into any superior court of this Colony.

No judgment,
&c., to be
quashed for want
of form or to be
removed by
certiorari

F. NAPIER BROOME,
GOVERNOR.

The Fremantle Gas and Coke Company's Act, 1886

SCHEDULE

WESTERN AUSTRALIA

‘THE FREMANTLE GAS AND COKE COMPANY, LIMITED’

Transferable by delivery

(Under the authority of ‘The Fremantle Gas and Coke Company's Act, 1886’)

This Debenture entitles the bearer to the sum of one hundred pounds on the day of with interest thereon in the meantime at the rate of per centum per annum payable half-yearly on the day of and the day of in every year, as per dividend coupons annexed; which principal sum and interest are hereby charged and secured upon the undertaking, rates, and other revenues of ‘The Fremantle Gas and Coke Company, Limited.’ And such principal sum and interest are payable at the Office of the Company in Fremantle.

Given under the common seal of the Company, at Fremantle, aforesaid, this
 day of 18 .
