

THE ORIENTAL GAS COMPANY

ARRANGEMENT OF SECTIONS

PREAMBLE

SECTIONS

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THE ORIENTAL GAS COMPANY

ACT NO. 5 OF 1857

[13th February, 1857.]

An Act to confer certain powers on the Oriental Gas Company, Limited.

Preamble.—WHEREAS a Joint Stock Company has been lately formed for the purpose of introducing Gas-works into India, which Company having been completely registered in England under the Act of Parliament of the eighth year of the reign of Her present Majesty, Cap. 110, has since been registered in England under “The Joint Stock Companies’ Act, 1856”, with limited liability, and has duly obtained a certificate of Incorporation under the name of the Oriental Gas Company, Limited; and whereas the said Company has erected Gas-works on land granted for that purpose by Government in the vicinity of the Town of Calcutta, and is engaged in the preparation of apparatus and materials for the manufacture and supply of Gas for lighting the said Town; and whereas it is expedient that powers and facilities should be given to the said Company to enable them to carry out their undertaking of lighting with Gas the said Town of Calcutta, which powers and facilities may hereafter be extended to the operations of the said Company in other towns and places. It is enacted as follows:—

1. Power to break up streets, etc., under superintendence, and to open drains.—In the Town of Calcutta and its environs, and in any other town or place to which the provisions of this Act may hereafter be extended, by a law to be passed for that purpose, the Oriental Gas Company, Limited, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service-pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the Gas; and, for the purposes aforesaid, may remove and use all earth and materials in and under such streets and bridges; and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the said Company shall from time to time deem necessary for supplying Gas to the inhabitants of the said Town of Calcutta and its environs, or other town or place as aforesaid, doing as little damage as may be in the execution of the powers hereby granted, and making compensation for any damage which may be done in the execution of such powers.

2. Not to enter on private land without consent.—Provided always, that nothing herein shall authorise or empower the said 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 owners and occupiers thereof; except that the said Company may at any time enter upon and lay or place any new pipe in the place of an existing pipe, in any land wherein any pipe has been already lawfully laid down or placed in pursuance of this Act, and may repair or alter any pipe so laid down.

3. Notice to be served on persons having control, etc., before breaking up streets or opening drains.—Before the said Company proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the Municipal Commissioners for the Town of Calcutta, or other persons under whose control or management the same may be, or to their Clerk, Surveyor, or other officer, notice in writing of their 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 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 shall have arisen.

4. Streets or drains not to be broken up except under superintendence of persons having control of the same. If persons having the control, etc., fail to superintend, Company may proceed with the work.—No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by a Magistrate; and such Magistrate may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the said Company to make such temporary or other works as they 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 the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel; after having had such notice of the said Company's intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the said Company may perform the work specified in such notice without the superintendence of such persons or their officer.

5. Streets broken up to be reinstated without delay.—When the said Company open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall, with all convenient speed, complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, and carry away the rubbish occasioned thereby; and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light, sufficient for the warning of passengers, to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up; and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

6. Penalty for delay in reinstating streets.—If the said Company open or break up any street or bridge, or any 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 said Company are hereby authorised to perform such works without any superintendence or notice; or if the said Company make any delay in completing any such work, or in filling in the ground or reinstating and making good the road or pavement, or the sewer, drain, or tunnel so opened or broken up, or in carrying away the rubbish occasioned thereby; or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same shall have been made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel, in respect of which such default is made, a sum not exceeding fifty rupees for every such offence, and they shall forfeit an additional sum not exceeding fifty rupees for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

7. In case of delay, other parties may reinstate, and recover the expenses. Expense how to be ascertained and recovered.—If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, 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 the expense of executing the same shall be repaid to such persons by the said Company; and the amount of such expense shall, in case of any dispute about the same, be ascertained and recovered in Calcutta and in any other town or place subject to the jurisdiction of any of Her Majesty's Courts of Judicature, in the manner in which expenses are ascertained and recovered under Act 14 of 1856¹, and in any town or place not within the jurisdiction of any of Her Majesty's Courts, in the same manner as damages are recoverable under this Act.

8. Power to enter buildings for ascertaining quantity of gas consumed.—The Clerk, Engineer or other officer duly appointed for the purpose by the said Company, may, at all reasonable times, enter any buildings or place lighted with Gas supplied by the said Company, in order to inspect the meters; fittings, and works for regulating the supply of Gas, and for the purpose of ascertaining the quantity of Gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall, for every such offence, forfeit to the said Company a sum not exceeding fifty rupees.

1. Rep. by Act 16 of 1874.

9. Recovery of rent due for gas.—If any person supplied with Gas, or any person to whom any meter or fitting shall have been let for hire by the said Company, neglect to pay the rent due for the same to the said Company, the said Company may stop the Gas from entering the premises of such person, by cutting off the service-pipes, or by such means as the said Company shall think fit, and recover the rent due from such person, together with the expenses of cutting off the Gas by action in any Court of competent jurisdiction.

10. Power to take away pipes when supply of gas discontinued.—In all cases in which the said Company are authorised to cut off and take away the supply of Gas from any house or building or premises under the provisions of this Act, the said Company, their agents or workmen, after giving twenty-four hours' previous notice to the occupier, may enter into any such house, building, or premises, between the hours of nine in the forenoon and four in the afternoon, and remove and carry away any pipe, meter, fittings, or other works, the property of the said Company.

11. Meters not liable to distress for rent, etc.—Any meter or fitting let for hire by the said Company shall not be subject to distress for rent or revenue or any rate due upon the premises where the same may be used, nor be taken in execution under any process of a Court of law or equity, or any proceeding in insolvency against the person in whose possession the same may be.

12. Penalty for fraudulently using gas.—Every person who shall lay, or cause to be laid, any pipe to communicate with any pipe belonging to the said Company, without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the Gas supplied by the said Company is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the said 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 the Gas, or shall supply any other person with any part of the Gas supplied to him by the said Company, shall forfeit to the said Company the sum of fifty rupees for every such offence, and also the sum of twenty rupees for every day such pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the said Company may take off the Gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into.

13. Penalty for wilfully damaging pipes.—Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the said 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 said Company, shall, for each such offence, forfeit to the said Company any sum not exceeding fifty rupees, in addition to the amount of the damage done.

14. Satisfaction for accidentally damaging pipes.—Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the said Company, or under their control, shall pay such sum of money by way of satisfaction to the said Company for the damage done, not exceeding fifty rupees, as any Magistrate shall think reasonable.

15. Penalty for causing water to be corrupted. Daily penalty during the continuance of the offence.—If the said Company shall at any time cause or suffer to be brought, or to flow into any stream, reservoir, aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying Gas, or shall wilfully do any act connected with the making or supplying of Gas, whereby the water in any such stream, reservoir, aqueduct, pond, or place for water, shall be fouled, the said Company shall forfeit for every such offence a sum not exceeding one thousand rupees; and they shall forfeit an additional sum not exceeding five hundred rupees for each day during which such washing or other substance shall be brought or shall flow, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the said Company, by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby; and such penalties shall be paid to such last-mentioned person.

16. Daily penalty daring escape of Gas after notice.—Whenever any Gas shall escape from any pipe, laid down or set up by or belonging to the said Company, they shall, immediately after receiving notice thereof in writing, prevent such Gas from escaping; and in case the said Company shall not, within twenty-four hours next after service of such notice, effectually prevent the Gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of fifty rupees for each day during which the Gas shall be suffered to escape, after the expiration of twenty-four hours from the service of such notice.

17. Penalty if water be fouled by Gas.—Whenever any water shall be fouled by the Gas of the said Company, they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding two hundred rupees, and a further sum, not exceeding one hundred rupees, for each day during which the offence shall continue, after the expiration of twenty-four hours from the service of notice of such offence.

18. Power to examine Gas-pipes to ascertain cause of water being fouled.—For the purpose of ascertaining whether such water be fouled by the Gas of the said Company, the person to whom the water supposed to be fouled shall belong, may dig up the ground, and examine the pipes, conduits and works of the said Company; provided that such person, before proceeding so to dig and examine shall give twenty-four hours' notice in writing to the said Company of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place, and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay, or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the said Company, for the purpose of laying their pipes.

19. Expenses to abide result of examination.—If upon any such examination it appears that such water has been fouled by any Gas belonging to the said Company, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the said Company; but if upon such examination, it appear that the water has not been fouled by the Gas of the said Company, the person causing such examination to be made, shall pay all such expenses, and shall also make good to the said Company any injury which may be occasioned to their works by such examination.

20. How expenses to be ascertained.—The amount of the expenses of every such examination and repair, and of any injury done to the said Company, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the manner prescribed for the ascertainment and recovery of expenses in section 7 of this Act.

21. Liability to indictments for nuisance.—Nothing in this Act contained shall prevent the said Company from being liable to an indictment for nuisance, or to any other legal proceedings to which they may be liable in consequence of making or supplying Gas.

22. Copies of the original Deed of Association and of all rules, etc., to be kept for inspection at the office of the Company in Calcutta and in the office of the Registrar of Joint Stock Companies, or the Keeper of the Records of the Supreme Court at Fort William.—A copy of the original Deed of Association of the said Company, and of every other instrument registered under the said “Joint Stock Companies’ Act, 1856”, as constituting the Regulations of the said Company, and a copy of every special resolution of a General Meeting whereby any change shall have been, or at any time shall be made in the Regulations of the said Company, shall be kept at the office of the said Company in Calcutta, and shall there be open to the inspection of all persons during the usual hours of business of the said office; and a copy of such original Deed of Association, and of every other such instrument, and of every special resolution as aforesaid, shall also be deposited by the said Company as soon as it can be done after the passing of this Act, or after the making of any such special resolution hereafter to be made, in the office of the Registrar of Joint Stock Companies, or, if there be no such officer, in the office of the Keeper of the

Records of the Supreme Court of Judicature at Fort William¹, and shall there be filed; and an examined copy of any such filed copy as aforesaid, certified by and under the hand of the Registrar of Joint Stock Companies, or of the Keeper of the Records of the said Supreme Court, shall be good and sufficient evidence of each such original Deed, instrument, or special resolution, in all actions, suits, and proceedings whatsoever, whether civil or criminal, to be had in any Court of Justice or before any Magistrate, or Revenue or other officer, and whether acting judicially or in any proceedings preliminary to a judicial inquiry, throughout the territories of the East India Company.

23. Service of process.—All services of mesne or other process, and all notices whatsoever, which, by law or by the practice of any Court wherein the said Company shall sue or be sued, are required to be made, served, or given for any purpose whatsoever to the said Company, shall and may be made, served, and given, in addition to all ways and means by which the same may otherwise be legally made, served, and given, by leaving the same addressed to the Managing Agent of the said Company at the office in Calcutta of the said Company.

24. Recovery of penalties, etc.—All penalties and forfeitures imposed by this Act, and all damages and expenses the recovery of which is not specially provided for, may be recovered by summary proceeding before a Magistrate.

25. Levy by distress.—All penalties, forfeitures, damages, and expenses adjudged due under this Act, if the amount be not otherwise paid, may be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from such goods and chattels, after satisfying such amount and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained; or instead of proceeding by distress and sale, or in case of failure to realise by distress the whole or any part of any penalties, forfeitures, damages, or expenses imposed or incurred under the provisions of this Act, the person claiming such penalty, forfeiture, damage, or expenses, may sue the person liable to pay the same in any Court of competent jurisdiction.

26. No distress unlawful for want of form, etc.—No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall any such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by any irregularity may recover full satisfaction for the special damage in any Court of competent jurisdiction.

27. Interpretation.—The following words and expressions used in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say):—

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include also the singular number.

Words importing the masculine gender shall include females.

The word “person” shall include a corporation, whether aggregate or sole.

The word “street” shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place.

The word “Magistrate” shall include any Magistrate of Police, and any joint Magistrate or other person lawfully exercising the powers of Magistrate, acting at or for the place or district where the matter requiring the cognizance of any such Magistrate arises.

1. Now High Court at Calcutta.