



CHAPTER xxxvi.

An Act for conferring further powers upon the Malvern Hills Conservators and for other purposes. A.D. 1924
[14th July 1924.]

WHEREAS under a decree of the Court of Exchequer in the seventh year of the reign of King Charles I. (as reviewed and explained by a decree of the same Court in the eighth year of the same reign) confirmed by an Act passed in the sixteenth year of the reign of King Charles II. intituled "An Act for Confirmation of the Inclosure and Improvement of "Malvern Chase" the waste or commonable lands constituting the forest or chase of Malvern were divided and one-third part thereof was appropriated to be enclosed and held by the King in severalty and the other two-third parts were ordered to remain and continue unto and amongst the commoners and to be held by them in common according to their several rights and interests free from the King's rights of forest and such two-third parts were to be for ever left free for the freeholders and tenants and commoners to take their common of pasture and common of estovers therein as theretofore they had been accustomed and no mesne lords of fees or manors or other freeholders or owners whatsoever or the King's Majesty His heirs successors or assigns or any person or persons claiming from by or under them or any of them were to enclose any part of such two-third parts or to fell any of the

A.D. 1924. — woods or trees growing or to be growing thereon whereby the commoners might be hindered of their estovers :

And whereas prior to the year one thousand eight hundred and eighty-four numerous enclosures and encroachments had at various times been made upon portions of the said waste or commonable land formerly within the said forest and not forming part of the King's third and by the Malvern Hills Act 1884 provision was made for the prevention of encroachments and enclosures upon and of injury to the said tracts of land and also for the management of the same :

And whereas by the Act of 1884 the Malvern Hills Conservators (herein referred to as " the existing Conservators ") were incorporated and were invested with certain powers of protection control and management with regard to the lands in that Act specified and provision was made for restricting the user and enjoyment of the said lands :

And whereas by the Act of 1884 the existing Conservators were authorised to raise any moneys required for meeting their expenses by precept to be served on the overseer of each of the parishes of Colwall Mathon and Great Malvern and the said overseers were directed to pay the amounts specified in the said precepts out of the poor rate of the said respective parishes Provided always that the sum required by any such precept in any one year should not exceed the amount which would be produced by a rate of one halfpenny in the pound which amount was by the Act of 1909 increased to one penny in the pound :

And whereas the urban district of Malvern consists of the parishes of Great Malvern Malvern Link Malvern Wells and West Malvern and is divided into six wards :

And whereas by the Act of 1909 the constitution of the existing Conservators was altered and the county councils of Worcestershire and Herefordshire were authorised to contribute to the funds of the Conservators :

And whereas the lands under the jurisdiction of the existing Conservators and commonly known as the Malvern Hills have become widely known and admired for their natural beauties and have formed a centre of attraction to the inhabitants of the counties of Worcester and Hereford and to visitors coming from all parts of

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the country for purposes of health recreation and enjoyment and the prosperity and development of the district depend upon the preservation of the amenities of the Malvern Hills :

And whereas in recent years the amenities of the Malvern Hills have been seriously interfered with by quarrying operations and by the erection of buildings sheds machinery and plant and those operations are being extended in such manner as to threaten to destroy the value of the Malvern Hills as objects of public interest as well as to impede the user and enjoyment thereof for purposes of public recreation and wholly to alter the state of the hills as they existed in the year one thousand eight hundred and eighty-four :

And whereas the powers of the existing Conservators are insufficient to preserve the Malvern Hills from such quarrying operations and to prevent the erection of such buildings sheds machinery and plant as aforesaid and it is desirable that further provision should be made for the acquisition by the existing Conservators of the manorial and other rights over the Malvern Hills and of other property or interests in the Malvern Hills or any part thereof and that further powers of protecting controlling and dealing with the Malvern Hills should be conferred upon the existing Conservators as in this Act provided :

And whereas it is expedient that the area of jurisdiction of the existing Conservators should be enlarged and their constitution altered as in this Act provided :

And whereas the financial resources of the existing Conservators are insufficient to provide for the carrying into effect of the purposes of this Act and it is expedient that the existing Conservators should be empowered to raise further moneys for meeting their expenditure :

And whereas it is expedient that the other provisions contained in this Act should be enacted :

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

And whereas plans and books of reference to the plans containing the names of the owners or reputed owners and lessees or reputed lessees and of the occupiers of the lands required or which may be taken for the purposes or under the powers of this Act were duly deposited with the clerks of the peace for the counties of

A.D. 1924. — Worcester and Hereford respectively which plans and books of reference are in this Act referred to as the deposited plans and book of reference :

May it therefore please Your Majesty that it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows :—

Short and
collective
titles.

1. This Act may be cited as the Malvern Hills Act 1924 and this Act and the Malvern Hills Act 1884 and the Malvern Hills Act 1909 may be cited together as the Malvern Hills Acts 1884 to 1924.

Interpreta-
tion.

2. In this Act unless the subject or context otherwise requires :—

“ The Act of 1884 ” means the Malvern Hills Act 1884 and “ the Act of 1909 ” means the Malvern Hills Act 1909 ;

“ The Board of Conservators ” and “ the Conservators ” mean the Malvern Hills Conservators re-incorporated by this Act ;

“ The existing Conservators ” means the existing Malvern Hills Conservators ;

“ The Minister ” and “ the Ministry ” mean respectively the Minister and the Ministry of Agriculture and Fisheries ;

“ Constituent authority ” means the respective authority entitled under this Act to nominate or appoint a conservator or conservators ;

“ Contributory authority ” means any authority body or person authorised or required by this Act to contribute to the funds of the Conservators ;

“ The county councils ” means the councils of the administrative counties of Hereford and Worcester respectively ;

“ The Malvern Council ” means the urban district council of Malvern ;

“ Revenues of the Conservators ” includes the revenues of the Conservators from time to time arising from the Malvern Hills or from any land or other property for the time being belonging to the Conservators and the money

receivable or received by them from the constituent authorities and the contributory authorities. A.D. 1924. —

3. The following Acts and parts of Acts (so far as the same are applicable for the purposes and are not inconsistent with the provisions of this Act) are hereby incorporated with this Act namely:— Incorporation of Acts.

(1) The Lands Clauses Acts with the following exception and modification:—

(a) Section 127 of the Lands Clauses Consolidation Act 1845 (relating to the sale of superfluous lands) is not incorporated with this Act;

(b) The bond required by section 85 of the Lands Clauses Consolidation Act 1845 shall be under the seal of the Conservators and shall be sufficient without the addition of the sureties mentioned in that section:

(2) The provisions of the Commissioners Clauses Act 1847—

With respect to the contracts to be entered into and the deeds to be executed by the Commissioners (except section 57);

With respect to the liabilities of the Commissioners and legal proceedings by or against the Commissioners;

With respect to mortgages to be executed by the Commissioners (except section 84):

And for the purposes of those Acts this Act shall be the special Act and the acquisition by the Conservators of lands properties and rights in the Malvern Hills shall be the undertaking and the Conservators shall be the promoters of the undertaking or the Commissioners respectively.

4. Subject to the provisions of this Act the provisions of the Acquisition of Land (Assessment of Compensation) Act 1919 shall extend and apply with reference to the acquisition of lands and any interests in lands by the Conservators under the powers of this Act as if the Conservators were a local or public authority within the meaning of that Act and reference in this Act to the Lands Clauses Acts shall be construed as references to those Acts as amended by the said Act of 1919. Application of Acquisition of Land (Assessment of Compensation) Act 1919.

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Malvern
Hills
defined.

5. The area within the jurisdiction of the Conservators for the purposes of this Act and the Acts of 1884 and 1909 shall comprise the lands rights and interests described in the first second and third schedules to this Act together with all lands common or waste over which the Conservators now have or may hereafter acquire rights and interests all of which are in this Act referred to as "the Malvern Hills."

Repeal.

6. Section 5 (Appointment of Conservators) section 6 (Duration of office) section 7 (Election of Conservators) and section 8 (Conservators to be appointed within three months) of the Act of 1884 and section 3 (Amending provisions of Act of 1884 as to appointment of Conservators) of the Act of 1909 are hereby repealed as from the first day of October one thousand nine hundred and twenty-four.

Constitu-
tion of
Board of
Conser-
vators.

7.—(1) Notwithstanding the repeal of sections 5 6 7 and 8 of the Act of 1884 and section 3 of the Act of 1909 the existing Conservators as re-constituted by this Act and their successors shall continue to be a body corporate by the name of "the Malvern Hills Conservators" with a common seal having power to hold and manage lands.

(2) On and after the first day of October one thousand nine hundred and twenty-four the Malvern Hills Conservators who were incorporated by section 5 of the Act of 1884 for the purpose of carrying that Act into effect and upon whom the powers of that Act and the Act of 1909 have been conferred shall consist of the following persons namely:—

Two persons to be nominated by the county council of Hereford;

Two persons to be nominated by the county council of Worcester;

Seven persons to be nominated from and by the urban district council of Malvern;

One person to be nominated by the rural district council of Upton-on-Severn;

One person to be nominated by the parish council of Colwall;

One person to be nominated by the parish council of Mathon Rural;

Six persons to be elected by the local government electors for the urban district of Malvern (one

person by each of the six wards of the said district); A.D. 1924.

Two persons to be elected by the local government electors for the parish of Colwall;

One person to be elected by the local government electors for the parish of Mathon;

One person to be elected by the local government electors for the parish of Guarlford; and

One person to be nominated by the Ecclesiastical Commissioners for England for the time being or their successors in title.

(3) The Conservators shall hold office for a period of three years* and at the end of each period of three years shall retire but shall be eligible for re-nomination or re-election provided that the Conservators nominated in the month of September one thousand nine hundred and twenty-four and elected on the first day of October one thousand nine hundred and twenty-four shall respectively remain in office until the first day of November one thousand nine hundred and twenty-seven.

(4) The existing Conservators in office at the passing of this Act shall cease to hold office on the first day of October one thousand nine hundred and twenty-four but shall be eligible for re-nomination or re-election as Conservators.

8. Each constituent authority nominating one or more members of the Board of Conservators shall at a meeting of their body to be held in the month of September one thousand nine hundred and twenty-four nominate the number of Conservators whom they are by this Act authorised to nominate to hold office from the first day of October one thousand nine hundred and twenty-four to the first day of November one thousand nine hundred and twenty-seven and shall in the month of October one thousand nine hundred and twenty-seven similarly nominate such number of Conservators as aforesaid to hold office for three years and so on from time to time at the expiration of every successive period of three years. Nomination
of Conser-
vators.

9. The Conservators to be elected by the local government electors of the urban district of Malvern shall be elected in the same manner as urban district Election
of Conser-
vators.

* OR SUCH OTHER TERM, NOT EXCEEDING FOUR YEARS, AS THE BOARD OF CONSERVATORS MAY BY RESOLUTION DETERMINE.
† OR SUCH OTHER PERIOD DETERMINED BY THE BOARD OF CONSERVATOR

A.D. 1924. — councillors are for the time being elected and the Conservators to be elected by the local government electors of the parishes of Colwall Mathon and Guarlford shall be elected in the same manner as rural district councillors are for the time being elected and subject to the provisions of this Act the statutory provisions and rules for the time being in force and governing the elections of urban district councillors and rural district councillors respectively shall so far as applicable apply mutatis mutandis to the election of such Conservators as aforesaid:

Provided that—

- (a) The day of election shall be the first day of October for the first election and the first day of November for subsequent elections and the times for the several proceedings in connection with any such election of Conservators shall bear the same relation to the day of election as in the case of the corresponding proceedings in connection with first elections of urban district councillors or rural district councillors as the case may be;
- (b) The clerk to the existing Conservators shall be the returning officer for the first election and the clerk to the Conservators shall be the returning officer for every subsequent election;
- (c) Any sum which may be payable to the returning officer, in respect of his services or in respect of expenses incurred in relation to the election shall be defrayed by the Conservators out of their funds.

Provision
on failure
to appoint
Conser-
vators.

10. If any constituent authority fails to nominate the first Conservators as by this Act provided it shall be competent nevertheless for the other Conservators to carry this Act and the Acts of 1884 and 1909 into execution and if any constituent authority fails to nominate Conservators at any subsequent period of three years the then existing Conservators representing such authority shall continue in office till their successors are nominated or elected.

Occasional
vacancies;

11. If any Conservator nominated by a constituent authority dies resigns becomes bankrupt or ceases to be a Conservator the constituent authority whom he repre-

sented may at any time after the happening of such vacancy nominate a Conservator in his place and every Conservator so nominated shall continue in office only so long as the person in whose place he is appointed would have been entitled to continue in office. A.D. 1924. —

12. Whenever a nomination or election of a Conservator has been made the clerk to the constituent authority or body by whom the appointment was made or the returning officer in the case of an election shall by writing under his hand certify the appointment to the clerk to the Conservators. Appointment of Conservators to be certified.

13. The first meeting of the Board of Conservators shall be convened by the clerk to the Conservators during the month of October one thousand nine hundred and twenty-four and other meetings of the Board of Conservators shall be held on such days at such times and at such places as the Conservators may from time to time appoint. First meeting.

14. In addition to the meetings to be held by appointment of the Conservators the chairman of the Board of Conservators for the time being or any four or more Conservators may at any time by writing addressed and sent to the clerk to the Conservators require a special meeting to be convened and the said clerk shall convene a meeting accordingly. Power to call special meetings.

15. Any act of the Board of Conservators or of any of the members thereof shall not be invalidated or be illegal by reason of any irregularity in the appointment of any Conservator or by reason of any person not qualified or ceasing to be qualified acting as a Conservator or by reason of any failure or omission on the part of the constituent authority or body to nominate or elect a Conservator or by reason of any other irregularity error failure or omission in or about any appointment or in or about any matter preliminary or incidental thereto. Acts of Conservators not to be invalidated.

16. The number of Conservators present to constitute a meeting of the Board of Conservators shall be six unless altered by special resolution of the Conservators. Quorum.

17. The clerk to the existing Conservators shall continue in office as clerk to the Board of Conservators on the same terms and conditions as theretofore. The Officers of Conservators.

A.D. 1924. — Conservators may appoint such officers clerks and servants as they think requisite and on such terms and conditions as they may think fit.

Arbitra-
tion.

18. If at any time any difference arises between the Conservators and any of the constituent authorities respecting any matter arising out of the provisions of this Act the same shall be referred to and be settled by arbitration under the Arbitration Act 1889.

Extension
of sections
of Public
Health
Act 1875
to Conser-
vators.

19. Section 176 (Regulations as to purchase of land) section 297 (As to Provisional Orders made by Local Government Board) and section 303 (Power to repeal and alter local Acts) of the Public Health Act 1875 shall extend and apply to and may be exercised by the Conservators as if they were a local authority within the meaning of those sections and the Malvern Hills were their district and the Minister of Health may make such Orders as he is by those sections empowered to make on the petition or application of a local authority.

Malvern
Hills to be
managed
by Conser-
vators.

20. The Malvern Hills shall be regulated and managed by the Conservators under and in accordance with this Act and the Acts of 1884 and 1909.

Natural
conditions
of Malvern
Hills to be
preserved.

21. The Conservators shall at all times as far as possible preserve the natural aspect of the Malvern Hills and shall protect the timber and other trees pollards shrubs underwood heather gorse turf and herbage growing on the Malvern Hills and subject to the provisions of this Act shall prevent all persons from unlawfully felling cutting lopping or injuring the same and from unlawfully digging or removing any stone gravel clay loam soil or turf forming part of the Malvern Hills.

Purchase of
lands and
manorial
rights by
Conser-
vators.

22.—(1) Notwithstanding anything contained in the Acts of 1884 and 1909 the Conservators are hereby authorised to purchase the whole or any portions of the lands properties quarries manorial rights and interests described in the Second and Third Schedules to this Act and the owners thereof and other persons interested therein shall sell the same subject and according to the provisions of this Act and the Acts incorporated herewith.

(2) In assessing the amount of compensation to be paid under this Act to the owner of any quarry any obligations such owner may be under in regard to his employees shall be taken into account.

23. The powers of the Conservators for the compulsory purchase of lands and other interests for the purposes of this Act shall cease after the expiration of five years from the thirty-first day of December one thousand nine hundred and twenty-four.

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Compulsory
purchase of
lands.

24.—(1) On the Conservators giving notice of their intention to exercise their option to purchase the undertaking of the Pyx Granite Company Limited (in this section referred to as "the company") pursuant to the heads of agreement set forth in the Fourth Schedule to this Act the Conservators shall deposit in a bank in the joint names of themselves and the managing director of the company a sum equal to twenty-five times the assessable value to poor rate of the property of the company in the urban district of Malvern.

For protec-
tion of
quarry
owners.

(2) Within six months from the date of the passing of this Act the Conservators shall deposit in a bank in the joint names of themselves and William Berington or other the owner or owners for the time being of the mineral rights referred to in the section of this Act of which the marginal note is "For protection of William Berington," a sum equal to twenty-five times the assessable value to poor rate of the properties numbered 1 and 2 in the parish of Little Malvern on the deposited plans.

(3) The amounts deposited as aforesaid shall be applied towards payment of any purchase money or compensation that may be agreed or awarded in respect of the undertaking or rights to be acquired and any balance remaining after such payments shall be refunded to the Conservators.

25.—(1) The Conservators may make and enforce bye-laws to regulate quarrying in upon or under the Malvern Hills and to regulate the erection of buildings sheds cranes works and machinery on the Malvern Hills ~~Section 18 (Bye-laws and proceedings) of the Act of 1884 as amended by section 13 of the Act of 1909 shall apply to any such bye-laws as if such section had been re-enacted in this Act.~~

Bye-laws
to restrict
and
regulate
quarrying
&c.

(2) In the event of the owner lessee or occupier of any quarry being injuriously affected by the operation of any bye-law made under this section the Conservators shall pay compensation to such owner lessee or occupier

* AND SUBSECTIONS (4) & (8) OF SECTION 10 (BYELAWS) OF THE MALVERN HILLS ACT 1930 SHALL APPLY IN RELATION TO ANY SUCH BYELAWS AS IF THEY WERE BYELAWS MADE UNDER THAT SECTION.

SEE SCHEDULE
2, PART II OF
1945 ACT

A.D. 1924. — and any such compensation shall be ascertained in accordance with the provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement.

Power for
Minister
to make
orders
prohibiting
quarrying.

26.—(1) The Minister may at any time on the application of the Conservators and after holding a local inquiry at which all landowners and other persons affected by the application shall have the right to appear and be heard make an order or orders to prohibit quarrying upon any part of the Malvern Hills specified in such order or orders or to require that in the quarrying operations the surface of the ground shall not be removed.

(2) Any such order shall make provision for the payment of compensation by the Conservators to any landowners or other persons whose interest may be affected by such order and any such compensation shall be ascertained in accordance with the provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement.

Provision
for tempor-
ary pro-
hibition of
quarrying.

27. After an application shall have been made by the Conservators to the Minister for an order under the last preceding section of this Act and before such application shall have been withdrawn or an order shall have been made thereon the Minister may at any time on the application of the Conservators and without holding any local inquiry or hearing any of the parties interested make a temporary order or temporary orders to prohibit quarrying on the lands to which such application relates for such period as the Minister thinks fit provided that the period of any such temporary order shall not exceed twelve months and any such temporary order may be made upon such terms and conditions (if any) as to compensation costs or otherwise as the Minister thinks fit.

Procedure
as to local
inquiries
and orders
of Minister.

28. The Minister shall give directions in writing as to the procedure to be followed with reference to the making of any application by the Conservators to the Minister and the holding of any local inquiry under this Act and as to the publication of any order made by the Minister under this Act and such directions shall have effect as if they were incorporated in this Act.

Costs of
local
inquiries.

29. The Minister may by any order made by him in pursuance of the section of this Act whereof the

marginal note is " Power for Minister to make orders prohibiting quarrying " or by a separate order or separate orders direct that the whole or any part of the costs of any local inquiry under this Act (including the expenses of any witnesses summoned by the inspector or other person holding the inquiry and a sum to be fixed by the Minister for the services of such inspector or person) shall be paid by the Conservators. A.D. 1924. —

30.—(1) Any person who shall offend against any provision contained in an order made by the Minister under this Act (other than an order for the payment of money) shall be liable to a penalty not exceeding five pounds in respect of every day on which the offence occurs or continues and all such penalties shall be recoverable summarily before a petty sessional court. Enforcement of orders of Minister and penalties for breach thereof.

(2) In addition and without prejudice to the provisions of subsection (1) of this section all the provisions of an order made by the Minister under this Act may be enforced by action in any court of competent jurisdiction.

31. The Conservators may grant licences to any local authority part of whose district is included in the Malvern Hills to obtain stone for the repair of roads which are situate within a radius of seven miles from the Priory Church at Malvern such stone to be obtained from such parts of the Malvern Hills as will not interfere with their natural aspect and subject to such terms and conditions (including the payment of rent or royalties) as the Conservators may think fit and the Conservators may enter into and carry into effect agreements with reference thereto. Quarrying for local public purposes.

32.—(1) The Conservators may from time to time with the consent of the Minister of Health and upon and subject to such terms and conditions and for such period as the Minister of Health may sanction or direct and upon the security of the revenues and property of the Conservators borrow such sum or sums of money as may be required by the Conservators for the purposes of this Act or the Act of 1884 and the Act of 1909. Power to borrow.

(2) The Conservators may mortgage or assign over to the persons by or on behalf of whom such sums are advanced the said revenues and property or any part thereof.

A.D. 1924.

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Expenses to
be paid by
contribu-
tory autho-
rities.

33. The expenses incurred by the Conservators shall be paid by them out of any moneys in their hands or received from the contributory authorities and they may raise any moneys required for meeting such expenses whether before or after the same shall have actually become liable in manner following:—

- (a) They shall apportion the amount so required between the parishes of Great Malvern Malvern Link Malvern Wells West Malvern and Guarlford in the county of Worcester and Colwall and Mathon in the county of Hereford according to the respective assessable values of the said parishes at the time the apportionment is made such assessable value having the same meaning as in section 3 of the Agricultural Rates Act 1896 as amended by the Agricultural Rates Act 1923 :
- (b) The amounts due from the above-mentioned parishes may be raised by precept of the Board of Conservators on the overseers of each such parish requiring them to pay the amount specified in such precept to the treasurer clerk or other officer of the Conservators and the respective overseers shall pay the same accordingly out of the poor rate of their respective parishes :
- (c) The receipt of the officer or officers of the Conservators named in such precept shall be a good discharge for the amount so paid :
- (d) The amounts raised under this section shall be in addition to the amounts to be raised under the Acts of 1884 and 1909 :
- (e) No amount so apportioned shall include any sum of money payable on a date which is more than twelve months in advance of the date upon which the apportionment is made.

Limitation
of rate.

34. Notwithstanding anything contained in this Act:—

- (1) The sum required by any precept issued under the provisions of the last preceding section in any one year for the special purposes of this Act shall not exceed an annual sum calculated at the rate of threepence for every pound of assessable value such assessable value having

the same meaning as in section 3 of the Agricultural Rates Act 1896 as amended by the Agricultural Rates Act 1923 but this limitation shall not affect the rates authorised by the Acts of 1884 and 1909 :

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- (2) The Minister of Health may on the application of the Conservators and after holding a public inquiry of which due notice shall be given by order sanction an increased rate for the special purposes of this Act for such period as may be specified in the order and in that case the limit fixed by this section shall be increased accordingly.

35. The Conservators shall create and form a general fund and they shall carry to the credit of that fund all sums payable by any contributory authority all moneys raised by precept under the provisions of the section of this Act of which the marginal note is " Expenses to be paid by contributory authorities " and all fines fees on licences and revenue of the Conservators other than interest on the compensation fund.

36. The Conservators shall pay out of the general fund all expenses of administration and also the interest and instalments of principal or payments to a sinking fund in respect of any moneys borrowed under the provisions of this Act.

37. The Conservators shall create and form a fund to be called the compensation fund and they shall carry to the credit of the compensation fund :—

- (a) All moneys borrowed by the Conservators under this Act other than money borrowed for the payment of the costs of this Act :
- (b) The balance at the end of each financial year of any moneys standing to the credit of the general fund after making allowance for any outstanding current liabilities :
- (c) Interest on the moneys forming the compensation fund :
- (d) Voluntary donations or subscriptions.

38. The Conservators shall pay out of the compensation fund all amounts that may be awarded by the arbitrator under the provisions of this Act to lords of the

A.D. 1924. — manor owners or other persons and any costs and charges in connection therewith payable by the Conservators.

Mode of
raising
money.

39.—(1) The Conservators may raise all or any moneys which they are authorised to borrow or re-borrow under this Act by mortgage or by the issue of debentures or annuity certificates under and subject to the provisions of the Local Loans Act 1875 or partly in one way and partly in another or others and for the purposes of such issue under the last-mentioned Act the Conservators shall be deemed a local authority under that Act and the revenues of the Conservators shall be deemed to be the local rate as defined by the said Act :

Provided that the provisions of this Act in regard to the formation of sinking funds shall apply in substitution for the like provisions of the Local Loans Act 1875.

(2) Any constituent or contributory authority (other than a parish council or overseers of the poor) may with the consent of the Minister of Health lend to the Conservators any sum or sums of money on such terms and conditions and in such form as may be agreed between the Board of Conservators and such authority.

Provisions
of Public
Health Act
1875 as to
mortgages
to apply.

40. The following sections of the Public Health Act 1875 shall extend and apply to mortgages granted under this Act (that is to say) :—

Section 236. Form of mortgage;

Section 237. Register of mortgages;

Section 238. Transfer of mortgages.

Mode of
payment off
of money
borrowed.

41. The Conservators shall pay off all moneys borrowed by them on mortgage under the powers of this Act either by equal yearly or half-yearly instalments of principal or of principal and interest combined or by means of a sinking fund or partly by one of these methods and partly by another or others of them and the payment of the first instalment or the first payment to the sinking fund shall be made within one year or when the money is repaid by half-yearly instalments or by half-yearly payments to the sinking fund within six months from the date of borrowing.

Sinking
fund.

42.—(1) If the Conservators determine to repay by means of a sinking fund any moneys borrowed by virtue

of this Act such fund shall be formed and maintained either— A.D. 1924.

- (a) by payment to the fund throughout the prescribed period of such equal annual sums as will together amount to the moneys for the repayment of which the sinking fund is formed A sinking fund so formed is hereinafter called a "non-accumulating sinking fund"; or
- (b) by payment to the fund throughout the prescribed period of such equal yearly or half-yearly sums as with accumulations at a rate not exceeding three pounds ten shillings per centum per annum or such other rate as the Minister of Health may from time to time approve will be sufficient to pay off within the prescribed period the moneys for the repayment of which the sinking fund is formed A sinking fund so formed is hereinafter called an "accumulating sinking fund."

(2) Every sum paid to a sinking fund and in the case of an accumulating sinking fund the interest on the investments of the sinking fund shall unless applied in repayment of the loan in respect of which the sinking fund is formed be immediately invested in statutory securities the Conservators being at liberty from time to time to vary and transpose such investments.

(3) In the case of a non-accumulating sinking fund the interest on the investments of the fund may be applied by the Conservators towards the equal annual payments to the fund.

(4) The Conservators may at any time apply the whole or any part of any sinking fund in or towards the discharge of the moneys for the repayment of which the fund is formed Provided that in the case of an accumulating sinking fund the Conservators shall pay into the fund each year and accumulate during the residue of the prescribed period a sum equal to the interest which would have been produced by such sinking fund or part thereof so applied if invested at the rate per centum per annum on which the annual payments to the sinking fund are based.

(5) (a) If and so often as the income of an accumulating sinking fund is not equal to the income which would be derived from the amount invested if the same

A.D. 1924. — were invested at the rate per centum per annum on which the annual payments to the fund are based any deficiency shall be made good by the Conservators.

(b) If and so often as the income of an accumulating sinking fund is in excess of the income which would be derived from the amount invested if the same were invested at the rate per centum per annum on which the annual payments to the fund are based any such excess may be applied towards such annual payments.

(6) Any expenses connected with the formation maintenance investment application management or otherwise of any sinking fund under this Act shall be paid by the Conservators in addition to the payments provided for by this Act.

(7) If it appears to the Conservators at any time that the amount in the sinking fund with the future payments thereto in accordance with the provisions of this Act together with the probable accumulations thereon (in the case of an accumulating sinking fund) will not be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed it shall be the duty of the Conservators to make such increased payments to the sinking fund as will cause the sinking fund to be sufficient for that purpose. Provided that if it appears to the Minister of Health that any such increase is necessary the Conservators shall increase the payments to such extent as the Minister may direct.

(8) If the Conservators desire to accelerate the repayment of any loan they may increase the amounts payable to any sinking fund.

(9) If the amount in any sinking fund with the future payments thereto in accordance with the provisions of this Act together with the probable accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Minister of Health be more than sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed the Conservators may reduce the payments to the sinking fund either temporarily or permanently to such amounts as will in the opinion of the Minister of Health be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed.

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(10) If the amount in any sinking fund at any time together with the probable accumulations thereon (in the case of an accumulating sinking fund) will in the opinion of the Minister of Health be sufficient to repay within the prescribed period the moneys for the repayment of which the sinking fund is formed the Conservators may with the consent of that Minister discontinue the annual payments to such sinking fund until the Minister shall otherwise direct.

(11) Any surplus of any sinking fund remaining after the discharge of the whole of the moneys for the repayment of which it was formed shall be applied to such purpose or purposes as the Conservators with the consent of the Minister of Health may determine.

43.—(1) Any mortgagee of the Conservators by virtue of this Act may enforce the payment of arrears of interest or principal or of principal and interest by the appointment of a receiver. The amount of arrears of principal due to such mortgagee or in the case of a joint application by two or more mortgagees to such mortgagees collectively to authorise the appointment of a receiver shall not be less than one thousand pounds in the whole.

(2) The application for the appointment of a receiver shall be made to the High Court.

44.—(1) The Conservators shall have power—

Power to
re-borrow.

(a) to borrow for the purpose of paying off any moneys previously borrowed under this Act which are intended to be forthwith repaid; or

(b) to borrow in order to replace moneys which during the previous twelve months have been temporarily applied from other funds of the Conservators in repaying moneys previously borrowed under this Act and which at the time of such repayment it was intended to replace by borrowed moneys.

(2) Any moneys borrowed under this section shall for the purposes of repayment be deemed to form part of the original loan and shall be repaid within that portion of the period prescribed for the repayment of

A.D. 1924. — that loan which remains unexpired and the provisions which are for the time being applicable to the original loan shall apply to moneys borrowed under this section.

(3) The Conservators shall not have power to borrow for the purpose of making any payment to a sinking fund or of paying any instalment or making any annual payment which has or may become due in respect of borrowed moneys.

(4) The Conservators shall not have power to borrow in order to replace any moneys previously borrowed which have been repaid—

- (a) by instalments or annual payments; or
- (b) by means of a sinking fund; or
- (c) out of moneys derived from the sale of land; or
- (d) out of any capital moneys properly applicable to the purpose of the repayment other than moneys borrowed for that purpose.

Application
of money
borrowed.

45. All moneys borrowed by the Conservators under the powers of this Act shall be applied only to the purposes for which they are authorised to be borrowed and to which capital is properly applicable.

Power to
invest funds
in statutory
securities.

46.—(1) When under the provisions of any Act of Parliament or of any Order confirmed by or having the effect of an Act of Parliament whether passed confirmed or made before or after the passing of this Act the Conservators are empowered or required to form a sinking fund for the payment off of moneys borrowed or payable by them they may (in addition to any other powers for the time being vested in them) invest such sinking fund and the interest of the investments of such sinking fund in statutory securities and they may also invest moneys standing to the credit of the compensation fund required for other purposes in the like securities.

(2) In this Act the expression “statutory securities” means any security in which trustees are for the time being by or under any Act of Parliament passed or to be passed authorised to invest trust money and any mortgage bond debenture debenture stock stock or other security authorised by or under any Act of Parliament passed or to be passed of any county council or municipal corporation or other local authority as defined by section 34 of the Local Loans Act 1875 but does not include annuities rentcharges or securities transferable by delivery or any securities of the Conservators.

47.—(1) The clerk to the Conservators shall if and when he is requested by the Minister of Health so to do transmit to the Minister a return showing the provision made for the repayment of any loans raised by the Conservators under the authority of this Act.

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Return to
Minister of
Health with
respect to
repayment
of debt.

(2) The return shall show such particulars and shall be made up to such date and in such form as the Minister may require and shall if so required by him be verified by statutory declaration of the clerk to the Conservators or other the chief accounting officer of the Conservators and shall be transmitted within one month after the making of the request and in the event of his failing to make such return the clerk to the Conservators shall for each offence be liable to a penalty not exceeding twenty pounds to be recovered by the Minister in a court of summary jurisdiction and notwithstanding the recovery of such penalty the making of the return shall be enforceable by writ of mandamus to be obtained by the Minister out of the High Court.

(3) If it appears to the Minister by such a return as aforesaid or otherwise that the Conservators have failed to pay any instalment or annual payment required to be paid or to appropriate any sum required to be appropriated or to set apart any sum required for any sinking fund (whether such instalment or annual payment or sum is required by this Act or by the Minister in virtue thereof to be paid appropriated or set apart) or have applied any portion of any sinking fund to any purpose other than those authorised the Minister may by order direct that the sum in such order mentioned not exceeding the amount in respect of which default has been made shall be paid or applied in the manner and by the date in such order mentioned and the Conservators shall notify the Minister as soon as the order is complied with and any such order shall be enforceable by writ of mandamus to be obtained by the Minister out of the High Court.

48.—(1) The Minister of Health may direct any inquiries to be held by his inspectors which he may deem necessary in regard to the exercise of any powers conferred upon him or the giving of any consents under this Act and the inspectors of the Ministry of Health shall for the purposes of any such inquiry have all such powers

Inquiries by
Minister of
Health.

A.D. 1924. as they may have for the purposes of inquiries directed by that Minister under the Public Health Act 1875.

(2) The Conservators shall pay to the Minister of Health any expenses incurred by that Minister in relation to any inquiries referred to in this section including the expenses of any witnesses summoned by the inspector holding the inquiry and a sum to be fixed by that Minister not exceeding five guineas a day for the services of such inspector.

Conservators not to regard trusts.

49. The Conservators shall not be bound to see to the execution of any trust whether express implied or constructive to which any loan or security for a loan may be subject but the receipt of the person in whose name any loan or security for loan stands in the register of mortgages of the Conservators shall be a sufficient discharge to the Conservators in respect thereof notwithstanding any trust to which such loan or security may be subject and whether or not the Conservators have had express or implied notice of any such trust or of any charge or incumbrance upon or transfer of such loan or security or any part thereof or interest thereon not entered in their register.

Protection of lender from inquiry.

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

Judges not disqualified.

51. A judge of any court or a justice shall not be disqualified from acting in the execution of this Act by reason of his being liable to any rate.

Incorporation of sections 259 and 265 of Public Health Act 1875.

52. Section 259 (Appearance of local authorities in legal proceedings) and section 265 (Protection of local authority and their officers from personal liability) of the Public Health Act 1875 shall apply to the Conservators and to the clerk and to any officer or member of the Board of Conservators or other person acting under the direction of the Conservators as if the Conservators were included in those sections in addition to the local and other authorities mentioned therein and any expense referred to in the said section 265 shall be borne and repaid out of the funds of the Conservators.

53. Nothing in this Act contained shall prejudice or affect the property rights or interest of the Great Western Railway Company.

For protec-
tion of Great
Western
Railway
Company.

54. For the protection of the Pyx Granite Company Limited (in this section referred to as "the company.") the following provisions shall unless otherwise agreed in writing between the company and the Conservators and the Malvern Council have effect (that is to say) :—

For protec-
tion of Pyx
Granite
Company
Limited.

The heads of agreement as set forth in the Fourth Schedule to this Act are hereby confirmed and made binding on the company and the Conservators and the Malvern Council and the provisions of this Act shall only apply to or affect the undertaking property or rights of the company subject to the provisions of the said heads of agreement.

55. The Conservators shall pay to the Malvern Council compensation in respect of the value of the interest of that council as lessees licensees or tenants in the two quarries at North Malvern referred to in the Fourth Schedule to this Act other than the plant and machinery on or held in connection with those quarries and such value shall be ascertained as on the date upon which the interest of the Malvern Council in those quarries is transferred to the Pyx Granite Company Limited and unless the amount be agreed the same shall be settled by arbitration.

For protec-
tion of
Malvern
Council.

56. For the protection of William Berington of Little Malvern Court in the county of Worcester or other the owner or owners for the time being of the estate in the parish of Little Malvern in the said county known as the Little Malvern Court Estate (all of whom are in this section referred to as and included in the expression "the owner") the following provisions shall unless otherwise agreed in writing between the owner and the Conservators have effect (that is to say) :—

For protec-
tion of
William
Berington.

- (1) The Conservators shall within twelve months from the date of the passing of this Act purchase and the owner shall sell to them subject to the existing lease granted by the owner to the Pyx Granite Company Limited the mineral rights of the owner (including stone) in the lands of the owner numbered on the deposited

A.D. 1924.

plans 1 and 2 in the parish of Little Malvern but notwithstanding anything contained in this Act or shown on the deposited plans the Conservators shall not acquire any surface rights in or over any lands of the owner or any greater or other estate or interest therein than such mineral rights as aforesaid :

- (2) The purchase money and compensation to be paid to the owner for the acquisition of the said mineral rights shall be such a sum as failing agreement between the owner and the Conservators shall be determined by a single arbitrator to be agreed upon between them or failing such agreement to be appointed on the application of either party after notice in writing to the other of them by the President of the Institute of Mining Engineers in accordance with the provisions of the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act 1919 shall not apply to such determination :
- (3) Upon the expiration of the said existing lease to the Pyx Granite Company Limited the owner shall not renew that lease :
- (4) The owner shall be entitled for building or road purposes on the Little Malvern Court Estate at any time to take stone sand and gravel from any quarry existing at the date of the passing of this Act on that estate :
- (5) In consideration of the elimination from the Bill for this Act of the provisions contained therein pursuant to which the parish of Little Malvern would have been subject to the provisions contained in the section of this Act of which the marginal note is " Expenses to be paid by contributory authorities " there shall be deducted from the purchase money and compensation payable to the owner under the provisions of this section and retained by the Conservators the sum of two hundred and fifty pounds :
- (6) The provisions of this Act other than this section shall not apply to or in any way affect the property or rights of the owner.

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57. Notwithstanding anything contained in this Act the Conservators shall not acquire any part of the lands of which Charles Frederick Price is the owner or reputed owner otherwise than by agreement nor shall any of the provisions of this Act apply to such lands.

For protec-
tion of
Charles
Frederick
Price.

58. Nothing contained in this Act or to be done under the authority thereof shall in any manner affect the title to any of the subjects or any rights powers or authorities reserved by certain letters patent of the twelfth day of May in the seventh year of the reign of His late Majesty King Charles the First and belonging to or exerciseable on behalf of His present Majesty His heirs or successors or affect prejudicially any estate right power privilege or exemption of the Crown.

Saving
rights of
Crown.

59. The costs charges and expenses of the Conservators and of the Malvern Council preliminary to and of and incidental to the preparing applying for obtaining and passing of this Act shall be paid by the Conservators out of any moneys for the time being in their hands or out of moneys to be borrowed by them under the provisions of this Act.

Costs of
Act.

A.D. 1924. The SCHEDULES referred to in the foregoing Act.

THE FIRST SCHEDULE.

PROPERTY VESTED IN THE CONSERVATORS.

The lands shown upon the deposited plans and distinguished by the following numbers :—

In the urban district of Malvern—

Nos. 17 28 30.

In the parish of Colwall—

Nos. 4 5 6.

The waste lands of the manor or parish of Great Malvern.

The rights and interests of the Conservators over and in the lands described in the First and Third Schedules to the Act of 1884 as specified in that Act.

THE SECOND SCHEDULE.

LANDS AND QUARRIES AUTHORISED BY THIS ACT TO BE ACQUIRED BY THE CONSERVATORS.

The properties shown upon the deposited plan and distinguished by the following numbers :—

In the urban district of Malvern—

Nos. 1 5 6 7 8 10 12 13 15 16 19 21 22 23 24 25 26 27 29.

In the parish of Colwall—

Nos. 1 2 3 7.

In the parish of Ledbury Rural.

Nos. 1 2.

THE THIRD SCHEDULE.

A.D. 1924.

MANORIAL RIGHTS AUTHORISED BY THIS ACT TO BE ACQUIRED BY THE CONSERVATORS.

The rights of the following persons as lords of the manor in any of the lands quarries or properties described in the First and Second Schedules :—

The Ecclesiastical Commissioners for England.

The Malvern Urban District Council.

Lady Catherine Sarah Grey.

Mr. Thomas Read Quarrell.

Major C. F. Raper as Executor of R. W. Raper.

The Right Honourable Arthur Herbert Tennyson Baron Somers.

THE FOURTH SCHEDULE.

HEADS OF AGREEMENT BETWEEN THE PYX GRANITE COMPANY LIMITED AND THE CONSERVATORS AND THE MALVERN URBAN DISTRICT COUNCIL.

1. The Company's rights of quarrying to be limited (outside their freehold property) to the quarryable area at North Malvern defined on a plan to be signed by the Right Honourable the Lord Islington the Chairman of the Committee of the House of Lords to whom the Bill is referred a copy of which is to be supplied by the Conservators to the Company.

2. The Company to surrender the remaining area held by them under the Gandolfi Licences but to be at liberty to work under the Berington Lease until it expires That Lease is not to be renewed.

3. The Malvern Urban District Council (hereinafter referred to as "the Council") to transfer to the Company their interest as lessees or tenants of the two quarries at North Malvern which they hold and the Company to purchase by agreement or by valuation the plant and machinery of the Council now there.

4. The Company to supply the Council with all stone they require for repair of roads in their area at 7s. 9d. per ton at the quarry subject to variation of price according to variations in wages.

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14. A clause to be inserted in the Bill excluding the undertaking property and rights of the Company from its operation except that bye-laws may be made with the approval of the Home Secretary (after notice to the Company) in regard only to blasting operations in the Company's quarries for the protection of the public.

15. The Company to be at liberty to continue working under the existing licences without restriction until the new licences above mentioned are granted.

16. The Company undertake during the period within which the Conservators have power to give to the Company notice of their intention to purchase not to work the Council's quarries mentioned in clause 3 hereof in any other way than from the bases of the said quarries as they now exist such quarrying not to reach above a line marked A—B on plan drawn one hundred and forty feet south of the outer wall of the North Malvern Reservoir in a south-easterly direction to the present chestnut fence above the Scar Rock Quarry The Company may be allowed if found necessary to remove any dangerous rock now overhanging the face at their Scar Rock Quarry or liable to become dislodged by reason of the lower workings Any dispute on this point to be referred to His Majesty's Inspector of Mines.

17. The Company shall be at liberty to make and use a tunnel fifteen feet wide and ten feet high under the area of land dividing their freehold property from the Council's quarries at a point above the reservoir of the Council to be agreed between the Conservators and the Council in accordance with plans to be approved by their respective surveyors and regulations to be made by the Council for the protection of the public.

18. These provisions to be inserted in an agreement which shall contain an arbitration clause and to be executed in triplicate such agreement in case of difference to be settled by a conveyancing counsel to be agreed upon between the Company and the Conservators or failing such agreement to be nominated by the President of the Incorporated Law Society.

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