



CHAPTER xxxvii.

An Act for conferring further powers upon the Malvern Hills Conservators and for other purposes.

A.D. 1909.

[16th August 1909.]

WHEREAS under a decree of the Court of Exchequer in the 7th year of the reign of King Charles I. (as reviewed and explained by a decree of the same Court in the 8th year of the same reign) confirmed by an Act passed in the 16th 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 mean 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 woods or trees growing or to be growing thereon whereby the commoners might be hindered of their estovers :

And whereas by the Malvern Hills Act 1884 (in this Act referred to as " the Act of 1884 ") the Malvern Hills Conservators (herein-after referred to as " the Conservators ") were incorporated for the purposes and with the constitution in that Act described

A.D. 1909. 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 to the extent in the said Act appearing :

And whereas by the Act of 1884 the 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 :

And whereas since the passing of the Act of 1884 the then parish of Great Malvern has been divided into two parishes named respectively Great Malvern and Guarlford and the then parish of Mathon has been divided into two parishes named respectively Mathon and West Malvern :

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

And whereas it is expedient that the Conservators should be empowered to borrow money as in this Act provided :

And whereas it is expedient that the county councils of Worcestershire and Herefordshire should be empowered to contribute to the said funds :

And whereas it is expedient that the constitution of the Conservators should be altered as in this Act provided :

And whereas it is expedient that the Act of 1884 should be in part amended and repealed as in this Act provided :

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

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 :—

1. This Act may be cited as the Malvern Hills Act 1909 and A.D. 1909. this Act and the Malvern Hills Act 1884 may be cited together Short titles. as the Malvern Hills Acts 1884 and 1909.

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

The expression "the Act of 1884" means the Malvern Hills Act 1884;

The expression "the Conservators" means the Malvern Hills Conservators incorporated by the Act of 1884;

The expression "the Board" means the Board of Agriculture and Fisheries;

The expression "the lands subject to the Act of 1884" has the same meaning as that given by the Act of 1884 to the expression in that Act "the lands subject to this Act."

3.—(1) As from the 1st day of November 1909 section 5 (Appointment of Conservators) of the Act of 1884 shall be amended by striking out the words "Five by the vestry of the parish of Great Malvern" "Two by the vestry of that part of the parish of Mathon which is not within the ecclesiastical district or ecclesiastical parish of West Malvern" "One by the vestry of that part of the parish of Mathon which forms the ecclesiastical parish or district of West Malvern" and "Two by the vestry of the parish of Colwall" and by inserting immediately after the words "The Conservators shall be appointed as herein-after expressed" the following words (that is to say):—

"Five by the parochial electors of the parish of Great Malvern:

"One by the parochial electors of the parish of Guarlford:

"Two by the parochial electors of the parish of Mathon:

"One by the parochial electors of the parish of West Malvern:

"Two by the parochial electors of the parish of Colwall:

"One by the parochial electors of the parish of Malvern Link:

"One by the parochial electors of the parish of Malvern Wells."

(2) As from the 1st day of November 1909 the said section 5 of the Act of 1884 shall be further amended by inserting the words "parochial electors" in place of the word "vestry."

A D. 1909. — (3) As from the 1st day of November 1909 all the words in section 7 (Election of Conservators) of the Act of 1884 shall be repealed and the following provisions shall apply (that is to say):—

The Conservators to be appointed by the parochial electors of the parishes of Great Malvern West Malvern Malvern Link and Malvern Wells respectively shall be elected in the same manner as urban district councillors are for the time being elected and the Conservators to be appointed by the parochial electors of the parishes of Guarlford Mathon and Colwall respectively shall be elected in the same manner as rural district councillors are for the time being elected and subject to the provisions of the Act of 1884 and 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 1st day of November and the times for the several proceedings in connexion 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 connexion with first elections of urban district councillors or rural district councillors as the case may be;
- (B) The clerk of the Conservators shall be the returning officer for every such election;
- (c) Any sum which may be payable to the returning officer in respect of his services in the conduct of the election or in respect of expenses incurred in relation to the election shall be defrayed by the Conservators out of their funds.

(4) The first election of Conservators by the parochial electors of the said several parishes in pursuance of this section shall be held on the 1st day of November 1909 and on that day all the Conservators appointed by vestries under the Act of 1884 and then in office shall go out of office.

Amending
section 19 of
Act of 1884.

4. Section 19 (Contributions from parishes) of the Act of 1884 is hereby amended by the substitution of the words "Great

“ Malvern Malvern Link Malvern Wells West Malvern and Guar-
 “ ford in the county of Worcester and Colwall and Mathon in the
 “ county of Hereford ” in the place of the words “ Colwall Mathon
 and Great Malvern ” and by the substitution of the words “ one
 penny ” in place of the words “ one halfpenny ” in that section.

A.D. 1909.

5. The Conservators shall maintain and repair the road known as the Jubilee Drive so far as the same passes along or by the lands subject to the Act of 1884 and also the hill paths over such lands and may pay all expenses incurred in connexion therewith out of their funds.

Maintenance
of Jubilee
Drive.

6. The Conservators may purchase or acquire and plant trees and shrubs upon any part of the lands subject to the Act of 1884 and may fence or protect the same and from time to time remove or transplant any of such trees or shrubs. Such trees and shrubs if planted elsewhere than upon any part of the lands described in the Third Schedule to the Act of 1884 shall be deemed to be subject to estovers as regulated by the Conservators but shall not be liable to be cut down until they reach eighteen feet in girth according to the ancient rules of the Forest or Chase of Malvern.

Power to
plant trees
and shrubs.

7.—(1) The Conservators may provide construct fix and maintain seats and shelters upon any part of the lands subject to the Act of 1884 and may apply any of their funds for that purpose.

Power to
provide seats
and shelters
and regulate
use thereof.

(2) The Conservators may make byelaws for regulating the use of any seats and shelters for the time being provided by them or under their control or management and for preventing injury thereto.

8. Except as provided by the section of this Act of which the marginal note is “ Amending section 19 of Act of 1884 ” nothing in this Act and no byelaw or power of the Conservators under this Act shall apply to or affect any lands tenements or hereditaments of Sir Henry Foley Grey Baronet or of his successors in title in the manor or parish of Great Malvern or any estate interest or property within the said manor or parish of the said Sir Henry Foley Grey or of his successors in title or of his or their lessees tenants or grantees or of any person or persons claiming through or under him or them respectively.

For protec-
tion of Sir
Henry Foley
Grey Bart.

9. The county council of Worcestershire and the county council of Herefordshire or either of them may contribute to the funds of the Conservators such sums as they may respectively fix by resolution and the said county councils respectively shall pay

Contribu-
tions by
county
councils of
Worcester

A.D. 1909.
and Here-
ford to funds
of Conser-
vators.

the amounts of such contributions out of their respective county funds and each of such county councils may in its discretion either treat the whole amount of any such contribution as general county expenses or treat the whole or any part thereof as special county expenses to be levied upon such parish or parishes in the county as the county council may think fit:

Provided always that no rate shall be raised for the purposes of this section within the urban district of Malvern save with the consent of a resolution of the urban district council of Malvern or within the parishes of Guarlford Mathon or Colwall save with the consent of a resolution of the respective parish councils of those parishes.

Power to
agree with
Worcester
County
Council or
Hereford
County
Council for
appointment
of a Conser-
vator.

10. The Conservators on the one hand and the county council of Worcestershire or the county council of Herefordshire on the other hand may at any time enter into and carry into effect an agreement providing for the appointment of an additional Conservator by the county council party to such agreement upon and subject to such terms and conditions as may by any such agreement be prescribed.

Power to
borrow
amount of
compensa-
tion and
costs under
this Act.

11.—(1) The Conservators may from time to time with the consent of the Board and upon and subject to such terms and conditions and for such period as the Board may sanction or direct and upon the security of the contributions authorised to be raised by precept from certain parishes and upon the security of any property belonging to the Conservators borrow any sum or sums of money that may be required by the Conservators for the purposes of this Act and the Act of 1884.

(2) The Conservators may mortgage or assign over to the persons by or on behalf of whom such sums are advanced the said contributions and property or any part thereof and the sections of the Commissioners Clauses Act 1847 with respect to mortgages to be created by the Commissioners shall form part of and be incorporated with this Act and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

Investment
of surplus
funds.

12. Any moneys from time to time in the hands of the Conservators and not immediately required for the purposes for which the same are applicable may be invested by the Conservators in any securities in which trustees are for the time being empowered by Act of Parliament to invest trust moneys and the

Conservators shall be at liberty from time to time to transpose any such investments. A.D. 1909.

13.—(1) From and after the passing of this Act section 18 (Byelaws and proceedings) of the Act of 1884 shall be read and construed as if the Secretary of State for the Home Department were therein referred to instead of “the First Commissioner of Her Majesty’s Works and Public Buildings.” General provisions as to byelaws.

(2) Provided that nothing in this subsection shall invalidate any byelaws already made and in force at the passing of this Act

(3) Section 14 of the Act of 1884 is hereby repealed.

14. 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 12th day of May in the 7th year of the reign of His late Majesty King Charles the First belonging to or exerciseable on behalf of His Majesty His heirs or successors. Saving rights of Crown.

15. All expenses (including interest and repayments of principal in respect of borrowed moneys) incurred by the Conservators in carrying into execution the purposes and provisions of this Act (other than expenses for the payment of which money is borrowed by the Conservators under the powers of this Act) may be paid by the Conservators out of any moneys for the time being in their hands and not exclusively applicable to any other purposes in pursuance of the provisions of this Act or the Act of 1884. Expenses of execution of Act.

16. The costs charges and expenses 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 and not exclusively applicable to any other purposes in pursuance of the provisions of this Act or the Act of 1884. Costs of Act.

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