CHAPTER clxi.

An Act for Appropriating Preserving and Improving certain Lands within the parishes of Christchurch and Holdenhurst in the County of Southampton for the purposes of Parks or Open Spaces. [12th August 1889.]

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WHEREAS by an Act passed in the forty-second year of the reign of His late Majesty George III (cap. 43) intituled "An Act for dividing allotting and inclosing certain commonable lands and waste grounds within the parish of Christchurch and parish or chapelry of Holdenhurst in the county of Southampton" (hereinafter called "the Inclosure Act of 1802") and under and by virtue of the award and allotment made in the year 1805 by the Commissioners in the said Act named (hereinafter called "the award of 1805") in pursuance of the powers in them vested by the said Act certain lands situate in the tithings of Muscliff Muckleshell Throop Holdenhurst Pokesdown Iford Tuckton and Week (otherwise Wick) commonly called the liberty of West Stour (otherwise Westover) within the said parish of Christchurch and the parish or chapelry of Holdenhurst were set out and allotted unto and for Sir George Ivison Tapps baronet the then lord of the several manors in the said tithings or liberties commonly called the liberty of West Stour (otherwise Westover) (within which liberty the said lands are situate) in trust for the occupiers for the time being of all such cottages and tenements containing less than one acre each as were erected on ancient sites or had been at the time of passing of the Inclosure Act of 1802 erected more than fourteen years as scheduled in the said award in lieu of their rights or pretended rights or custom of cutting turves in the said liberty of West Stour (otherwise Westover) for a turf common and which allotments were for ever afterwards to be managed and the turf arising therefrom cut taken and used by the occupiers of such cottages or tenements in such quantities and at such time or times in every year and in such manner as the lords of the said manors respectively and the church-

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wardens and overseers of the poor acting for or within such manors or the major part of them should from time to time order and appoint but such turf common should not be fed or depastured by any cattle or sheep whatsoever:

And whereas the allotments so set out as aforesaid comprised inter alia two small pieces of land which were in or about the year 1884 taken by the London and South Western Railway Company and used for the purposes of their undertaking and a sum of money in respect thereof having been paid into Court by the said Railway Company under the provisions of the Trustee Relief Act it was on the 28th March 1887 by the Honourable Mr. Justice Stirling upon the hearing of a petition for the distribution of the fund so in Court in effect declared that the lands taken by the said Railway Company formed part of the turf common set out and allotted pursuant to the Inclosure Act of 1802 for supplying turves for fuel for the use of the occupiers for the time being of the cottages or tenements mentioned in the award of 1805 and that the soil of the said lands was vested in the lord of the manor without any right on his part to depasture any cattle or sheep whatsoever upon the said lands. And the Court did order certain enquiries to be made in Chambers viz. (1) An enquiry what compensation was payable in respect of the right to the soil of the said lands taken by the said Railway Company and (2) An enquiry what compensation was payable in respect of the commonable rights of the occupiers of the cottages or tenements in the award of 1805 mentioned over the said lands and an apportionment was directed of the residue of the fund in Court (after payment of costs) between the lord of the manor and the persons claiming through him in or towards satisfaction of the compensation that should be ascertained to be payable in answer to the first enquiry and in or towards satisfaction of the compensation that should be ascertained to be payable in answer to the second enquiry according to the amounts to be ascertained as aforesaid:

And whereas upon an appeal to Her Majesty's Court of Appeal against the said order of Mr. Justice Stirling by Her Majesty's Attorney-General who asked that it might be adjudged that the fund in court was the subject of a charitable trust and that a scheme for the application thereof might be ordered to be settled the Court of Appeal ordered that the order of Mr. Justice Stirling of the 28th March 1887 be varied by the insertion before the ordering part of a declaration of the opinion of the Court of Appeal that the trusts declared by the Inclosure Act of 1802 in favour of the said occupiers was a charitable trust and the Attorney-General was to be at liberty to apply to the Judge in Chambers as to the application of so much of the residue of the fund in court

as should be apportioned in respect of the compensation mentioned to be payable in answer to the said second enquiry :

And whereas Her Majesty's Attorney-General has duly preferred a petition of appeal to the House of Lords against the aforesaid order of the Court of Appeal in order to have it determined as was contended by him in the court below that the whole fund in court was subject to the aforesaid charitable trust :

And whereas such appeal is now pending :

And whereas the lands so allotted comprised amongst other lands the lands intended to be made subject to the provisions of this Act (hereinafter called "the park lands") and part of such park lands comprising one hundred and one acres or thereabouts are lands situate in the parish of Christchurch and are numbered 59 on the map annexed to the award of 1805 and are included in an area bounded on or towards the north partly by land of Enoch White and partly by land of James Cooper Dean on the east partly by land of James Cooper Dean and partly by land of the devisees of William Windham Farr deceased and partly by the grounds of Pokesdown Vicarage on the south partly by the Bournemouth and Christchurch high road partly by lands of the devisees of William Windham Farr deceased partly by lands of Sir George Eliott Meyrick Tapps Gervis Meyrick baronet partly by the London and South-Western railway partly by land of the Bournemouth Commissioners (hereinafter called "the Commissioners") and partly by North Road and on the west by Ashley Road and the other part of such park lands comprising one hundred and twenty-four acres or thereabouts are lands situate in the parish of Holdenhurst and are numbered 62 on the map annexed to the award of 1805 and are included in an area bounded on the north-west by the Talbot Woods on the south and south-west by lands forming part of the Branksome estate on the east by lands of the Honourable Ronald Leslie Melville and Sir George Eliott Meyrick Tapps Gervis Meyrick baronet and on the north-east by the Wimborne Road :

And whereas the park lands are situate partly within or partly adjacent to the district of the Commissioners :

And whereas the occupiers of the cottages or tenements who are entitled under the award of 1805 to a right to cut and take turves for fuel have for many years' almost ceased to exercise such right and the active exercise of such right has owing to the introduction of more suitable fuel and from other circumstances become improbable in the future :

And whereas many of the cottages or tenements for the benefit of the occupiers of which the said allotments were made have

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become uninhabitable or have been taken down and in consequence thereof the number of persons entitled to the benefit of such right has greatly diminished:

And whereas the area of the lands allotted as aforesaid excluding the park lands is greater than is necessary to satisfy the probable requirements of the occupiers of the cottages or tenements now in existence:

And whereas the total number of cottages or tenements now in existence the occupiers of which are entitled to the right of cutting and taking turf as aforesaid does not exceed fifty-eight and no one of such cottages or tenements is situate within one mile of the portion of the park lands numbered 62 in the award of 1805 and only eleven of such cottages or tenements are situate within two miles of the park lands so numbered 62:

And whereas the lands so allotted as aforesaid are now and have for many years past been lying waste disused and unproductive and such lands in their present condition are incapable of improvement:

And whereas the park lands except as regards the said allotment numbered 59 are now vested in the commissioners by virtue of an indenture dated the eleventh of December one thousand eight hundred and eighty-three and made between Sir George Eliott Meyrick Tapps Gervis Meyrick baronet lord of the manors within the liberty of Westover and George Augustus Eliott Tapps Gervis Meyrick of the one part and the Commissioners of the other part And the said allotment numbered 59 is now vested in the said Sir George Eliott Meyrick Tapps Gervis Meyrick baronet lord of the said manors subject to the provisions of the Inclosure Act of 1802 and of the award of 1805:

And whereas the Commissioners are the Urban Sanitary Authority for the Urban District of Bournemouth:

And whereas the Commissioners in the year one thousand eight hundred and sixty-seven duly adopted the Local Government Act 1858 and notice of such adoption was published in the London Gazette on the fifteenth day of January one thousand eight hundred and sixty-eight by the Right Honourable Gathorne Hardy then one of Her Majesty's Principal Secretaries of State:

And whereas it would be of local and public advantage that the park lands or some part thereof should be maintained for ever open unenclosed and unbuilt upon and that the turf gorse timber and underwood thereon should be preserved subject to any common rights for the time being in or over the same and that the same should be dedicated to the public for recreation and enjoyment and for the purposes aforesaid that the entire management and regulation

thereof should be vested in the Commissioners with all usual and necessary powers:

And whereas a map signed by the Right Honourable Albert Edmund Earl of Morley Chairman of Committees of the House of Lords has been prepared in triplicate for the purposes of this Act showing by the colours pink green and yellow all the lands so allotted as aforesaid including the area of the park lands:

And whereas doubts exist as to the power of the Land Commissioners for England to make a provisional order for the purposes of this Act under the powers conferred upon them by the Commons Acts 1876 and 1879:

And whereas thirteen of the whole number of the Commissioners at a meeting held on the third day of January one thousand eight hundred and eighty-eight after ten clear days notice by public advertisement of such meeting and of the purpose thereof in the Bournemouth Observer and Chronicle a local newspaper published and circulating in the town of Bournemouth such notice being in addition to the ordinary notices required for summoning such meeting resolved that the expense in relation to promoting the Bill for this Act should be charged on the general district fund and general district rate:

And whereas such resolution was published twice in the same newspaper and has received the approval of the Local Government Board:

And whereas the propriety of the promotion of the Bill for this Act was confirmed by nine of the whole number of the Commissioners at a further special meeting held in pursuance of a similar notice on the fifteenth day of January 1889 being not less than fourteen days after the deposit of the Bill in Parliament:

And whereas the owners and ratepayers of the urban district of Bournemouth by resolution in the manner provided in the third schedule of the Public Health Act 1875 consented to the promotion of the Bill for this Act:

And whereas the objects aforesaid 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 Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Preliminary.

1. This Act may be cited as the Bournemouth Park Lands Act 1889. **Short title.**

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Interpretation.

2. The following expressions in this Act have the meanings hereby assigned to them (that is to say):—

"The Commissioners" means the Bournemouth Commissioners for the time acting under the Bournemouth Improvement Act 1856 and the Acts amending the same;

"Person" includes corporation aggregate or sole;

"The park lands" means the lands shown on the deposited map by the colours green and yellow;

"The parks" means the parts of the park lands for the time being dedicated as an open space for the recreation and enjoyment of the public under the provisions of this Act the parts now dedicated being shown on the deposited map by the colour green;

"The deposited map" means the map prepared and signed as aforesaid and deposited in pursuance of the provisions of this Act.

I.—Dedication of the Park Lands.

Dedication of the park lands.

3. The park lands (except the said allotment numbered 59 being the lands coloured yellow on the said map) subject to all common rights for the time being existing in or over the same are hereby dedicated as open spaces for the recreation and enjoyment of the public under the exclusive regulation and management of the Commissioners subject to and in accordance with the provisions of this Act.

II.—Duties of Commissioners.

Deposit and custody of maps.

4. Within one month after the passing of this Act and before exercising any of the powers vested in them by this Act the Commissioners shall deposit with the clerk of the peace for the county of Southampton at his office in Winchester one of the triplicate maps prepared as aforesaid and such deposit shall be deemed within the provisions of the Act passed in the first year of Her Majesty's reign (chapter eighty-three) to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament in like manner as if the same had been deposited with the clerk of the peace in such a case as is provided for by that Act one in the Office of the Clerk of the Parliaments and one other shall be retained by the Commissioners and shall be admissible and be received in evidence for the purposes of this Act on production by the Commissioners or their officer.

Future deposit of maps.

5. If at any time any part of the park lands not hereby dedicated as aforesaid shall be acquired by the Commissioners and dedicated for the purposes of this Act the Commissioners shall cause maps of such newly dedicated land similar as far as may be to the deposited map to be prepared in duplicate and the same shall be sealed with their common seal and one of such maps shall be deposited with the said clerk of the peace and the other shall be retained by the Commissioners and the said maps shall thenceforth form part of and shall be admissible and be received in evidence in like manner as the deposited map.

Parks to be kept open.

6. The Commissioners shall (except as in this Act provided) at all times keep the parks uninclosed and unbuilt on and subject to the exercise of all existing common rights thereon as open spaces for the recreation and enjoyment of the public and they shall (except as aforesaid) by all lawful means prevent resist and abate all future inclosures encroachments and buildings thereon and all attempts to inclose encroach or build on any part thereof or to appropriate or use the same or the soil timber or roads thereon or any part thereof for any purpose inconsistent with the objects of this Act.

Prohibition of alienation &c.

7. The Commissioners shall not except as is hereinafter provided sell demise or otherwise alienate any part of the parks and shall not concur in any sale demise or other alienation thereof or any part thereof.

Preservation of turf &c.

8. The Commissioners shall at all times as far as possible but subject to any rights reserved by this Act preserve the natural aspect and state of the parks and shall subject to the provisions of this Act protect the trees shrubs gorse turf and herbage growing on the same and shall prevent all persons from felling cutting lopping or injuring the same and from digging or quarrying stone gravel clay loam and soil therefrom.

Power to appoint officers &c.

9. The Commissioners may from time to time—

(*a.*) Appoint and dismiss officers and servants for the purposes of this Act and pay them salaries or wages;

(*b.*) Improve portions of the parks so far as may be necessary or desirable for the purposes of health recreation and enjoyment and they may erect lodges for park keepers;

(*c.*) Make and maintain roads footpaths and ways;

(*d.*) Plant trees and shrubs for purposes of shelter or ornament and fell cut lop and manage the same and any other trees and shrubs in the parks in ordinary course and not to profit and sell and receive the proceeds of the timber cuttings and lopping and they may make and maintain so long as shall be

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necessary temporary enclosures for the protection of trees shrubs and turf Provided that in exercising the powers aforesaid the Commissioners shall not unduly interfere with hinder or prejudice any existing common rights;

(*e.*) Provide and maintain pounds for the impounding of cattle and other animals trespassing straying or damage feasant either by erecting new or making arrangements for the joint or separate use of existing pounds and every such pound shall be deemed a common pound as regards cattle and animals impounded therein by virtue of this Act;

(*f.*) Acquire by voluntary grant or agreement and hold any of the lands forming part of the park lands or any other lands in the neighbourhood with the minerals thereunder and the timber thereon or any rights privileges or easements over the same for the purpose only of preserving such land subject to any existing common rights as open spaces for the purposes of health recreation and enjoyment;

(*g.*) From time to time sell for the purpose of defraying the expenses preliminary to and of and incidental to the applying for the passing and obtaining of this Act and of carrying the same into execution such portion as it may be necessary to sell for such purpose of the park lands as are next hereinafter specified namely that portion of the allotment numbered 62 in the award of 1805 which lies on the north side of the London and South Western Railway and between that Railway and the Wimborne Road and subject to the consent of the lord of the manor and Her Majesty's Attorney-General that portion of the allotment numbered 59 in the award of 1805 which lies to the south of the said railway and is bounded by the said railway and by the Ashley and North Roads respectively;

(*h.*) From time to time exchange small portions of the aforesaid parts of the park lands for other lands to be added to and to form part of the parks.

Restriction on gravel digging by surveyors of highways.

10. No surveyor of highways shall search for dig or carry away gravel sand stone or other material in or from any part of the parks.

III.—Bye-laws.

Power to make bye-laws.

11. Subject to the provisions of this act the Commissioners may from time to time make revoke and alter bye-laws for any of the following purposes relating to the parks (that is to say):—

(*a.*) For preventing fires and nuisances and for preservation of order;

(*b.*) For excluding and removing gypsies hawkers beggars rogues vagabonds and idle and disorderly persons;

(*c.*) For preventing bird catching bird trapping and the taking of or searching for birds eggs or nests and for preventing or regulating the killing taking injuring shooting chasing or disturbing of animals and for preventing or regulating the setting of traps nets snares or other engines for any of those purposes;

(*d.*) For excluding and removing horses asses cattle sheep and other animals from and for preventing persons from turning out or permitting horses asses cattle sheep or other animals to graze or feed upon the parks;

(*e.*) For preventing or regulating the firing or discharging of fire arms or the throwing or discharging of missiles;

(*f.*) For preventing the digging or taking of turf loam stone sand gravel or other substances otherwise than in the exercise of the right reserved by this Act and for regulating the cutting and taking of turf in the exercise of such right;

(*g.*) For preventing the injuring cutting or felling of fern gorse timber or other trees shrubs brushwood or other plants otherwise than in the exercise of the right of cutting and taking turf reserved by this Act;

(*h.*) For preventing injury to or the defacement or removal of fences barriers or notice-boards or other things put up by the Commissioners and the disfigurement of fences buildings or trees by posting or painting bills placards or notices thereon or otherwise;

(*i.*) For preventing or regulating the placing of or suffering to remain on any part of the parks any rubbish manure or other substance;

(*j.*) For regulating the playing of games the letting and hiring of horses asses and other animals and of carriages and other vehicles and preventing the racing of horses or other animals;

(*k.*) For regulating the use of bicycles tricycles and velocipedes within the parks;

(*l.*) For regulating the use of roads in the parks by carriages and horses;

(*m.*) For generally carrying into effect the powers of the Commissioners and for preventing or restraining any improper or offensive use of any part of the parks or anything tending to the injury or disfigurement thereof.

Application of certain provisions of the Public Health Act 1875.

12. The provisions of sections 182 183 184 185 186 251 254 255 258 259 260 263 264 and 265 of the Public Health Act 1875 shall apply to bye-laws to be made under this Act and to proceedings

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by and against the Commissioners under this Act and for this purpose the expression "this Act" in the one hundred and eighty-fourth section of the Public Health Act 1875 shall be read as referring to this Act and not to the Public Health Act 1875 and section 255 of the Public Health Act 1875 shall apply to any offence under this Act as if the same were a nuisance within the meaning of that Act.

Copies or abstracts of the bye-laws for the time being in force shall be put up by the Commissioners on the parks at such places and in such conspicuous manner as they think best calculated to give information to the persons using the parks.

IV.—General.

Officers may be sworn as constables.

13. The Commissioners may from time to time procure any officers appointed by them for securing the execution of this Act and bye-laws made thereunder to be sworn in as constables.

Penalty for assaulting constable.

14. If any person assaults or resists or aids or incites any person to assault or resist any constable or officer of the Commissioners or any other person in the execution of his duty or in the lawful exercise of any authority under this Act or any bye-law made in pursuance thereof he shall for every such offence be liable on summary conviction to a penalty not exceeding five pounds without prejudice to any other proceeding or remedy against him.

Police authority over park.

15. For the purposes of the Towns Police Clauses Act 1847 and of all other enactments for the time being empowering the police of the county of Southampton or other the police force for the time being having authority and acting within the Urban District of Bournemouth the parks shall be deemed a street public place and place of public resort and the powers and duties of the police in relation to public safety and preservation of order and protection of property shall extend to the parks But nothing in this Act shall extend the power of levying police rates to any person or property to which the same would not have extended if this Act had not passed.

Powers and duties of constables.

16. Where a person is seen or found committing or is reasonably suspected of being engaged in committing an offence against this Act or any bye-law made in pursuance thereof any constable may without warrant stop and detain him and if his name and address are not known to the constable and he fails to satisfy the constable respecting them the constable may without warrant apprehend him and the constable may whether so stopping or detaining or apprehending a person or not stop detain and examine any

animal vehicle or thing to which the offence or suspected offence relates.

A person apprehended under this section if not bailed at a police station shall be taken as soon as practicable before a justice of the peace and shall not be detained without a warrant longer than is necessary for that purpose.

The foregoing provisions of this section respecting a constable extend and apply to any person called by a constable to his assistance.

A constable shall forthwith make a report in writing to his superior officer of every case in which he stops any person animal vehicle or thing under this section and of his proceedings consequent thereon.

Nothing in this section shall take away or abridge any power or authority that a constable or any other person would have had if this section had not been enacted.

Mode of publication of notices.

17. When the Commissioners are by this Act required to publish any notice they shall do so by inserting the same as an advertisement in two newspapers published or circulating in Bournemouth and by keeping the same at their office open for inspection by persons interested and also by affixing the same upon a notice board in the parks and at or upon one of the doors to which notices are usually affixed at the parish church or churches of the parish or parishes in which the lands are situate which are for the time being subject to the provisions of this Act.

Providing for extinguishing turbary rights.

18. If at any time hereafter it shall in the opinion of the Commissioners be expedient having regard to the use and enjoyment by the public of the parks to extinguish over all or any part thereof the right of cutting turf so created as aforesaid under and by virtue of the Inclosure Act of 1802 and the award of 1805 the Commissioners may acquire and extinguish those rights upon payment of reasonable compensation to the persons entitled thereto and for the purpose of determining the amount of such compensation and the person or persons to whom the same is to be paid and the time and manner of such payment the provisions of the Lands Clauses Consolidation Act 1845 as amended by any subsequent Acts are so far as applicable incorporated with and for the purposes of this section form part of this Act.

Extension of Act.

19. If at any time the lord of the manor or other owner in whom for the time being are vested any other lands allotted as aforesaid and shown on the said map and thereon coloured pink and yellow and the Commissioners shall with the consent of the Attorney-General so agree then such other lands may be acquired

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and shall be dedicated regulated and managed by the Commissioners as open spaces in accordance with the provisions of this Act and all the powers conferred upon the Commissioners by this Act with reference to the parks shall extend and apply to the land to which any such agreement relates and such land and any other lands acquired by the Commissioners under the power of exchange conferred by this Act shall thenceforth to all intents and purposes form part of the parks and the Commissioners shall forthwith publish notice of the extension of their powers to the land in question.

Saving of rights.

20. Nothing in this Act contained shall in any way prejudice or affect the rights or interests of any person in or to the said pieces of land taken by the said Railway Company or the fund paid into Court in respect thereof or any proceeding (including the aforesaid appeal to the House of Lords) or question with reference thereto or save as herein expressly provided with respect to the park lands the rights interests or liabilities of any person whomsoever under the aforesaid charitable trust or otherwise to in or with respect to any of the lands set out and allotted under the Act of 1802 by the award of 1805 in manner aforesaid in trust for a turf common or any question whatever in reference thereto.

Costs of obtaining and carrying Act into execution.

21. The costs charges and expenses preliminary to and of and incidental to the preparing applying for and obtaining and passing of this Act (as the same shall be taxed and certified by the taxing officer of the House of Lords or the House of Commons) and of carrying the same into execution shall be paid by the Commissioners out of the district fund and general district rate of the urban district of Bournemouth in like manner and the same shall be audited and with the same incidents and consequences as if they were expenses incurred under and by virtue of the Public Health Act 1875 or they may be defrayed (subject as aforesaid) from the proceeds of any sale or exchange under the provisions of this Act.

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