CHAPTER 24.

An Act to amend the law with respect to the drainage of agricultural land.

[4th August 1926.]

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 :—

Transfer of drainage powers to councils of counties and county boroughs. 8 & 9 Geo. 5. c. 17.

1.—(1) The powers of the Minister of Agriculture and Fisheries (hereinafter referred to as "the Minister") under Part II. of the Land Drainage Act, 1918, shall be transferred to the councils of counties and county boroughs, and accordingly that Part of that Act in its application to any county or county borough shall have effect as if for references to the Board of Agriculture and Fisheries there were substituted references to the council of the county or county borough: Provided that—

(*a*) in the case of the powers conferred by subsection (2) of section fifteen of the Land Drainage Act, 1918, and transferred to the council of a county or a county borough by this section, the council shall, except in case of emergency, before exercising any such powers, give to the drainage authority in whose default they propose to exercise such powers not less than thirty days notice in writing of their intention so to do, and that if before the expiration of the period of notice the drainage authority intimate in writing to the council their objection to the exercise of the proposed powers, the council shall not exercise the same except with the consent of the Minister who may, if he thinks fit, cause a public local inquiry to be held with respect to the objection;

(*b*) in the case of the powers conferred by section sixteen of the Land Drainage Act, 1918, and transferred to the council of a county or county borough by this section, where a draft scheme has been prepared by the council of a county or county borough in pursuance thereof, and the owners of one-half or more of

the land comprised within the area to which the draft scheme relates have duly presented objections thereto and have not withdrawn the same, the council shall before settling the scheme cause a public local enquiry to be held with reference to the scheme.

(2) Section seventeen of the said Act is hereby repealed.

Maintenance of drains, &c.

2.—(1) Where any drain within the meaning of this section is in such a condition that the proper flow of water is impeded, then, unless the condition of the drain is attributable to the subsidence of surface due to mining operations, it shall be the duty of the person having control of the drain, or of the part thereof where the impediment occurs, to put the drain or such part thereof in proper order if by reason of such impediment agricultural land belonging to or in the occupation of some other person is injured by water, or in danger of being so injured.

(2) Where the council of a county or county borough are of opinion that by reason of the act or default of any person any such drain within the county or county borough is in such a condition that the proper flow of water is impeded and that by reason of the condition of the drain agricultural land belonging to or in the occupation of some other person is injured by water or is in danger of being so injured, the council may serve upon the person by whose act or default such flow is impeded notice requiring him to put the drain or any part thereof in proper order: Provided that no such notice shall be given in any case where the works required can conveniently be dealt with by a scheme under section sixteen of the Land Drainage Act, 1918, as amended by this Act.

(3) Subject to the right of appeal hereinafter contained, it shall be the duty of every person upon whom any such notice has been served within two months of the date of the service of the notice to comply with the requirements of the notice.

(4) Any person upon whom any such notice has been served may within twenty-one days from the date of the service of the notice either—

(*a*) complain to a court of summary jurisdiction on any of the grounds hereinafter mentioned; or

(*b*) by notice in writing addressed to the clerk of the council require that any question, being a matter on which he might complain to a court of summary jurisdiction, shall be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Surveyors' Institution.

(5) The grounds upon which any such person may so complain to a court of summary jurisdiction are all or any of the following :—

(*a*) that the service on him of the notice is not authorised by this section ;

(*b*) that the condition of the drain is not due to any act or default on his part ;

(*c*) that the notice cannot reasonably be enforced against him having regard to any or all of the following considerations, namely—

(i) the nature and extent of the land in respect of which his liability arises, and the extent to which such land abuts on the drain or the part thereof to which the notice relates ;

(ii) the extent and nature of his estate or interest in any such land ;

(iii) the expenses which would be involved in complying with the notice.

(6) Any person upon whom any such notice has been served and who alleges that the condition of the drain is attributable to the subsidence of surface due to mining operations may, within twenty-one days from the date of the service of the notice, by notice in writing addressed to the clerk of the council require such allegation to be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers.

(7) The court of summary jurisdiction or arbitrator may either confirm or annul the notice to which the complaint or reference relates, or vary any requirement thereof.

(8) If either party is aggrieved by the decision of a court of summary jurisdiction on a complaint under this section, he may appeal to a court of quarter sessions, and on any such appeal the court of quarter sessions

shall have power to make any order which the court of summary jurisdiction might have made.

(9) If within two months after the service of a notice under this section, or in the case of a complaint or appeal or a reference to arbitration under this section, within two months after the confirmation or variation of the notice, the requirements contained in the notice or in the notice as varied, as the case may be, are not complied with, the council may, if they think fit, execute the necessary works and recover the expenses thereof from the person in default summarily as a civil debt.

Where several persons are in default, the council may apportion amongst them the expenses incurred by the council in such manner as they think just, but the court before which proceedings for the recovery of any apportioned part of the expenses are instituted may, if they think fit, vary the apportionment.

(10) Nothing in this section shall affect the right of an owner or occupier to recover from the other under the terms of any lease or other contract for the time being in force the amount of any expenses incurred by him under the foregoing provisions of this section or recovered from him by the council.

(11) Where a local authority have powers vested in them for securing the proper flow of water in any drain under their jurisdiction, the county council, except by agreement with the local authority, shall not exercise their powers under this section in relation to the drain unless after reasonable notice from the council the local authority have made default in the proper exercise of such powers as aforesaid.

(12) For the purposes of this section, the expression "drain" includes any stream, ditch, drain, cut, culvert, dyke, or sluice: Provided that where any drain as so defined is under the jurisdiction of a drainage authority, a board of conservators or an inland navigation authority, which is exercising its powers, this section shall not apply to the drain except with the consent of the authority or board.

(13) This section shall have effect as if it formed part of Part II. of the Land Drainage Act, 1918.

Provisions as to councils.

3.—(1) The expenses of a council under this Act, so far as they are not defrayed out of moneys recovered

by the council in accordance with this Act, shall be defrayed—

(*a*) in the case of the council of a county, out of the county fund as expenses for general county purposes, or if and so far as the council think fit, as expenses for special county purposes, charged on such parts of the county as the council think fit; and

(*b*) in the case of the council of a county borough out of the borough fund or borough rate:

Provided always that the expenses referred to in this section and incurred in connection with this Act shall not exceed in amount the sum which would be produced by a rate of one penny in the pound levied over the county or county borough.

(2) The council of a county or county borough may borrow for the purposes of this Act—

(*a*) in the case of a county, in accordance with the Local Government Act, 1888;

51 & 52 Vict. c. 41.

(*b*) in the case of a county borough, in accordance with the Public Health Acts, 1875 to 1925.

(3) The council of a county or county borough may delegate, with or without restrictions, to the agricultural committee of the council any of their powers and duties under this Act, and the agricultural committee may delegate with or without restrictions to a sub-committee of the said agricultural committee any of their powers and duties under this Act.

(4) The councils of two or more counties or county boroughs may combine for the purposes of the joint exercise of any powers conferred on them by or under this Act, and may for that purpose appoint a joint committee, consisting of members of the agricultural committees of such respective councils, and may agree as to the proportions in which the several councils represented on the joint committee are to contribute towards the expenses thereof.

Powers of entry on land.

4. Any person authorised in that behalf by the council of a county or county borough for the purpose of carrying their powers under this Act into effect may, after notice in writing to the occupier and on production, if so required of his authority, enter on and inspect any land.

If any person prevents or obstructs the entry for the purpose aforesaid upon any land of any person

authorised under this section, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

Service of notices.

5. Notices required or authorised to be served under this Act by the council of a county or county borough may be served by registered post or by delivering the same to or at the residence of the person to whom they are addressed, or, where addressed to the owner or occupier of premises, by delivering the same or a copy thereof to some person on the premises, or if there is no person on the premises who can be served, by fixing the same on some conspicuous part of the premises.

Amendment of 8 & 9 Geo. 5. c. 17. s. 5.

6.—(1) The council of a county or county borough acting under this Act shall be deemed to be a drainage authority for the purposes of section five of the Land Drainage Act, 1918, which enables local authorities to contribute to the expenses of the execution or maintenance of drainage works by a drainage authority.

(2) The making of contributions under that section as so amended shall be a purpose for which a local authority may borrow under the Public Health Acts, 1875 to 1925.

Saving of existing powers.

7. The powers conferred on councils of counties and county boroughs by or in pursuance of this Act shall be in addition to and not in derogation of any other powers possessed by any such councils independently of this Act: Provided that, where by any local Act powers are conferred on the council of any county or county borough similar to the powers conferred by this Act and such local Act contains provisions for the protection of any authorities, companies or persons, those provisions shall apply in relation to the exercise by the council of the powers under this Act in like manner as they apply in relation to the exercise of the powers under the local Act.

Short title and commencement.

8.—(1) This Act may be cited as the Land Drainage Act, 1926, and shall be construed as one with the Land Drainage Act, 1918, and that Act and this Act may be cited together as the Land Drainage Acts, 1918 and 1926.

(2) This Act shall come into operation on the first day of October, nineteen hundred and twenty-six.