ACTS OF ASSEMBLY

AND

ORDINANCES OF COUNCILS

RELATING TO

FAIRMOUNT PARK

HUNTING PARK

BURHOLME PARK

COBB'S CREEK PARK

MORRIS PARK

PENNYPACK PARK

WISTER'S WOODS

AND

FISHER PARK

UNDER THE CONTROL OF THE

COMMISSIONERS OF FAIRMOUNT PARK

PHILADELPHIA
PRINTED FOR THE COMMISSIONERS
1912

the Junction railroad as now used; thence by the said easterly side of the Junction railroad and the Pennsylvania railroad to the north side of Haverford street; thence by the northerly side of said Haverford street to the westerly side of Bridgewater street; thence by said Bridgewater street to the north line of Bridge street; thence by said Bridge street to the west abutment of the Suspension bridge; thence by the northwesterly side of the Suspension bridge and Callowhill street to the angle in said street, on the southwesterly side of Fairmount basin; thence by the northerly side of Callowhill and Biddle streets to the westerly side of Twenty-fifth street; thence by the said Twenty-fifth street to the southwesterly side of Pennsylvania avenue; thence by the southwesterly side of Pennsylvania avenue to the west side of Thirty-third street; thence along the westerly side of Thirty-third street to the southwesterly line of Ridge avenue; thence along said Ridge avenue to the southwesterly line of South Laurel Hill Cemetery (north of Huntingdon street); thence by and along said property line to such a distance from the shore line of the river Schuylkill as will permit the location of a carriage road one hundred feet wide upon its margin; thence along said river shore and its several courses as may be most practicable, at the same distance as above specified (provided said distance shall not exceed one hundred and fifty feet), to a point opposite the intersection of the Ridge turnpike and School lane; thence northwardly to a point on the southwesterly side of said turnpike road opposite to the southeasterly side of said School lane; thence by the southwesterly side of the Ridge turnpike road and its several courses to the southeasterly side of the Wissahickon creek; thence by the several courses of the said southeasterly side of Wissahickon creek to the Schuylkill river; thence across the water course of said river to the northeasterly line of the Reading Railroad Company's

property as now occupied and in use, at the City boundary line; thence along said northeasterly line, as now occupied and used by said railroad company, to the place of beginning;[2] excepting, nevertheless, thereout the several water works and their appurtenances, which are included within these boundaries, and such uses of the premises immediately adjacent to the same, and such other portions of the ground as are described in the plan, as the City of Philadelphia may from time to time require for the purposes of its water department.[3]

Water works excepted.

Roberts' Hollow drive authorized.

SECT. 2. That there shall be laid out and constructed a road of easy and practicable grades extending from the intersection of the northerly line of the Park by Belmont avenue on the westerly side of the river Schuylkill to the head of Roberts' Hollow, and thence along said hollow and the river Schuylkill to the foot of City avenue, laid out with the ground contiguous thereto for ornamentation, of such width and so constructed as the Commissioners of Fairmount Park, appointed under authority of the Act of the General Assembly of the Commonwealth,[4] may determine. And such road and its contiguous ground are hereby declared to be a part of the aforesaid Park; and said Park Commissioners are hereby authorized and required to ascertain, by a proper survey, the limits thereof, which survey they shall file in the Survey Department of the City of Philadelphia. And it shall also be the duty of said Park Commissioners to appropriate the shores of the Wissahickon creek on both sides of the same from its mouth to the Paul's Mill road, and of such width as may

And declared part of the Park.

Commissioners to make and file survey thereof.

Wissahickon creek and its shores appropriated.

[2]See Act of April 21, 1869, Sec. 2, post, page 23, and Sec. 5, post, page 25.

[3]See, for further exceptions, Act of April 14, 1868, Sec. 3, post, page 11. See also Act of March 15, 1871, Sec. 1, post, page 32, and Act of March 26, 1867, Sec. 1, ante, page 3.

[4]See Act of March 26, 1867, Sec. 2, ante, page 4.

embrace the road now passing along the same; and may also protect the purity of the water of said creek, and by passing along the crest of the heights which are on either side of said creek, may preserve the beauty of its scenery. The said Park Commissioners are hereby authorized and required to cause a proper survey to be made of said grounds upon the Wissahickon, and to file said survey in the Survey Department of the City of Philadelphia, and the grounds and creek hereby appropriated are declared to be a part of Fairmount Park.

Commissioners to make and file survey thereof.

Declared part of the Park.

SECT. 3. That the title to and ownership of the ground within said boundaries shall be vested[5] in the City of Philadelphia, excepting therefrom so much as shall be required by the Schuylkill Navigation Company, the Philadelphia and Reading, the Junction and Connecting Railroad Companies for the execution of their franchises as now provided by law.[6]

Title to Park vested in the city. Excepting franchises of Schuylkill Navigation, Philadelphia and Reading, Junction and Connecting Railroad Companies.

SECT. 4. So much of the ground as was embraced in the act to which this is a supplement, approved the twenty-sixth day of March, one thousand eight hundred and sixty-seven, and is not included in the above boundaries,[7] is

Claim of city to portion of ground embraced in Act of 1867 released.

[5]Land taken for public use is divested of all liens and incumbrances: 24 Leg. Int. 61; 27 Leg. Int. 61. But the court will not award the damages assessed, without inquiring whether there are any incumbrances, and if there are, an equitable distribution of the fund will be made: 1 Ashmead, 276; 5 Wr. 470. The power of the court must be exercised before the report of the jury is confirmed: 4 P. L. J. 468. Where damages have been assessed or agreed on for land taken for Fairmount Park, the land is vested in the City of Philadelphia, and if the land owner continues in possession, it is at sufferance, and he can be turned out at any time: 18 P. F. Smith, 49. See also Act of April 21, 1869, Sec. 4, post, page 24, and Act of April 14, 1868, Sec. 9, post, page 13.

[6]See Act of April 14, 1868, Sec. 1, ante, page 10, for further exception.

[7]See ante, Sec. 1, page 8, and Sec. 2, page 10.

hereby released from all claim of title by the said city, with the same effect as if it had never been included.[8]

All Park grounds to be subject to all powers conferred by the Act of 1867.

SECT. 5. That all the grounds taken within the boundaries of the Fairmount Park by the first section of this act, shall be subject to all the powers and control given by the act to which this is a supplement to the City of Philadelphia and the Park Commissioners designated by or appointed under said act;[9] and the owners of all ground taken for the Park, and others interested therein, shall be compensated as in said act is directed and provided.[10]

And owners of ground shall be compensated as therein provided.

Commissioners may vacate streets, except Girard avenue, and open other roads, etc.

SECT. 6. The said Commissioners shall have power and authority, from time to time, to vacate any street or road within the boundaries of the Park (excepting Girard avenue), and to open for public use such other roads, avenues and streets therein as they may deem necessary.

Councils shall cause alterations of the plan of survey in the 24th, 20th and 28th Wards.

SECT. 7. The Councils of the City of Philadelphia shall cause, under the supervision of the Department of Surveys, such alterations of the plan of survey of the Twenty-fourth Ward as lies between Fairmount Park as by this act established, the Pennsylvania railroad and the City avenue, and of the contiguous parts of the Twentieth[11] and Twenty-eighth Wards, as may become necessary or expedient by reason of the extension as aforesaid of the limits of the Fairmount Park, and cause the same to be estab-

[8]See Act of March 26, 1867, Sec. 1, ante, page 3. This release applies only to the triangular piece of ground bounded by Girard avenue, Forty-first street and Parkside avenue.

[9]Act of March 26, 1867, ante, page 3. See also Act of April 21, 1869, Sec. 8, post, page 26.

[10]See Act of April 14, 1868, Sec. 26, post, page 21. See also Act of March 26, 1867, Sec. 3, ante, page 4.

[11]A new ward has been created out of that part of the Twentieth Ward contiguous to the Park, since this act was passed, called the Twenty-ninth Ward.

lished in manner as now provided by law for revising or laying out plans of survey in and for the City of Philadelphia; and shall lay out an avenue as one of the streets of the city, of the width of not less than one hundred feet, as a boundary of the Park on the southwest, west and northwest sides thereof, extending from Girard avenue to the river Schuylkill, at or near the Falls Bridge; and also upon the eastern side of the river from the intersection of Pennsylvania avenue and Thirty-third street, northward along the boundary of said Park to the river Schuylkill.

And lay out a boundary avenue around the Park.

SECT. 8. The jurisdiction of the Commissioners of the Park shall extend to the breadth of the footway next the Park, in all avenues or streets which shall bound upon the Park, and they shall direct the manner in which such footways shall be laid out, curbed, paved, planted and ornamented; which footways shall not be less than twenty feet in width on any avenue or street of the width of one hundred feet, and of like proportion upon any street or avenue of a greater or less width, unless otherwise directed by the Commissioners.

Jurisdiction of Commissioners shall extend over footway of boundary avenues next the Park. Width of footways.

SECT. 9. The said Park Commissioners or jury who shall assess the compensation to the owners for the ground taken, shall ascertain and make compensation for buildings,[12] as well as the ground taken; but all buildings and machinery and fixtures not required by the Park Commissioners shall be removed by the owners thereof whenever payment of the compensation awarded them shall be made or tendered to them; and upon such payment or tender, the Park Commissioners shall forthwith take possession of the premises.[13] If any owner or lessee of ground taken cannot be found, notice of the taking and valuation

Compensation to be made for buildings, as well as ground taken. Buildings, machinery and fixtures not required by Commissioners to be removed by owners, whenever payment of damages is tendered them. Proceedings where owner or lessee of ground taken cannot be found.

[12]See Act of March 15, 1871, Sec. 1, post, page 32.

[13]See ante, page 11, note 5. See also Act of April 21, 1869, Sec. 4, post, page 24.

of his land shall be given by advertisement in two daily papers, published in Philadelphia, six times, and in the Legal Intelligencer twice; and the amount awarded in such case to the owner or lessee shall remain in the city treasury, until such owner shall produce the decree of the court having jurisdiction in the premises, ordering the said moneys to be paid to him or his legal representatives.

Commissioners and jury may make partial reports.

Powers of the jury to continue until they have reported on all their cases, unless otherwise ordered by the court.

Six jurors may be appointed on one or more cases.

Valuation forthwith payable upon confirmation of the report.

SECT. 10. The said Commissioners and jury may make partial or special reports, from time to time, to the court, as they may be ready to do so, and the court may act upon such reports separately;[14] and the powers of the jury shall continue, unless limited by the court, or they be required by the court to make report, until they shall have reported on all the cases on which they have been appointed, although a term or terms of the court shall have intervened; and jurors, not to exceed six in number, may be appointed upon one or more cases, according to the order of the court made; and whenever any report of the said Commissioners or of the jury shall have been confirmed by the court, the valuation made shall be forthwith payable by the City of Philadelphia.[15]

City to raise money by loans for all grounds; the laying out and construction, permanent

SECT. 11. The City of Philadelphia shall be authorized and required to raise by loans, from time to time, such sums of money[16] as shall be necessary to make compensation for all grounds heretofore taken or to be taken for

[14]See Act of January 27, 1870, Sec. 1, post, page 28. See also ante, page 6, note 12.

[15]The Legislature may direct the *time* for paying damages assessed for taking property for public use: 18 P. F. Smith, 45. The price of land taken for Fairmount Park as agreed upon with the Commissioners bears interest from the day of the confirmation of their report by the court, not from the date of the agreement: Ibid. 48. As to interest on awards made after April 21, 1869, see Act of April 21, 1869, Sec. 9, post, page 27.

[16]See Act of April 21, 1869, Sec. 3, post, page 24.

said Fairmount Park, and for the laying out and construction thereof for public use; for the permanent care and improvement thereof, and for all culverts and other means for preserving the Schuylkill water pure for the use of the citizens of said city, and shall annually assess taxes for keeping in repair and good order the said Park; and shall also provide for the payment of the interest on all said loans, and the usual sinking fund for the redemption thereof.

care and improvement thereof, and for all culverts.

Shall assess taxes for keeping the Park in repair. And provide for payment of interest, and loans.

SECT. 12. The said Park Commissioners shall, from time to time, appoint such officers, agents and subordinates as they may deem necessary, for the purposes of this act and the act to which this is a supplement;[17] and they shall prescribe the duties and the compensation to be paid them; and so much of the second section[18] of the act to which this is a supplement, as requires that the Secretary shall be chosen from the Commissioners, be and the same is hereby repealed.

Commissioners to appoint officers, agents, etc., and prescribe their duties and compensation.

Repeal of provision of Act of 1867, relating to election of Secretary.

SECT. 13. It shall be lawful for said Park Commissioners to acquire title to the whole of any tract of land, part of which shall fall within the boundaries mentioned in the first section of this act, and to take conveyance thereof in the name of the City of Philadelphia; and such part thereof as shall lie beyond or [within][19] the said Park limits, again to sell and convey in absolute fee simple to any purchaser or purchasers thereof, by deeds to be signed by the Mayor, under the seal of the City, to be affixed by direction of Councils; either for cash, or part cash and part to be secured by bond and mortgage to the city, paying

Commissioners may acquire the whole of a tract of land where part of it lies within the Park.

And sell parts thereof lying outside the Park.

Terms of sale.

[17]See Act of April 14, 1868, Sec. 27, post, page 21, and also Act of January 27, 1870, Sec. 5, post, page 29.

[18]Ante, page 4.

[19]Altered to "without" by Sec. 2, of the Act of January 27, 1870, post. page 28.

Proceeds of sales to be paid into the sinking fund.

all cash into the city treasury: *Provided,* That the proceeds of such sales shall be paid into the sinking fund for the redemption of the loan created under the provisions of this act: *Provided also,* That no Commissioner, nor any officer under the Park Commission, shall in any wise be directly or indirectly interested in any such sale of lands by the Commissioners as aforesaid; and if any Commissioner or officer aforesaid shall act in violation of this proviso, he shall, if a Commissioner, be subject to expulsion; if an officer, to be discharged by a majority of votes of the Board of Park Commissioners, after an opportunity afforded of explanation and defence.

No Commissioner or officer shall be interested in such sales under penalty of discharge.

Commissioners to report annually to the Mayor.

SECT. 14. The said Board of Commissioners shall, annually hereafter, [in the month of December, make, to the Mayor of the City of Philadelphia,][20] a report of their proceedings, and a statement of their expenditures for the preceding year.

May lease houses, etc., within Park limits

To collect rents and pay them into City Treasury.

SECT. 15. The said Park Commissioners shall have exclusive power to lease from year to year, all houses and buildings within the Park limits, which may be let without prejudice to the interests and purposes of the Park, by leases to be signed by their President and Secretary, and to collect the rents and pay them into the city treasury.

Buildings erected on Park grounds by boat clubs, etc., relative to.

SECT. 16. All houses and buildings now built or to be built on any part of the Park grounds, by or for boat or skating clubs, or zoological or other purposes shall be taken to have rights subordinate to the public purposes intended to be subserved by acquiring and laying out the Park, and shall be subject to the regulations of said Park Commissioners, under licenses which shall be approved by the Commission, and signed by the President

[20]Amended by Sec. 4, of the Act of January 27, 1870, to read "to the Councils of the City of Philadelphia during the month of January." See post, page 29.

and Secretary, and will subject them to their supervision and to removal, or surrender to the city, whensoever the said Commissioners may require.

Commissioners may accept devises, etc., of property in trust for the purposes of the Park.

SECT. 17. The said Park Commissioners shall have power to accept, in the name and behalf of the City of Philadelphia, devises, bequests and donations of lands, moneys, objects of art and natural history, maps and books, or other things, upon such trusts as may be prescribed by the testator or donor: *Provided,* Such trusts be satisfactory to the Commission, and compatible with the purposes of said Park.

Debts to be created only by Commissioners at a regular meeting.

SECT. 18. None of the Park Commissioners, nor any person employed by them, shall have power to create any debt or obligation to bind said Board of Commissioners, except by the express authority of the said Commissioners at a meeting duly convened.

Commissioners to have power to manage and lay out the Park.

SECT. 19. The said Park Commissioners shall have the power to govern, manage, lay out, plant and ornament the said Fairmount Park, and to maintain the same in good order and repair;[21] and to construct all proper bridges, buildings, railways,[22] and other improvements therein, and to repress all disorders therein under the provisions hereinafter contained.[23]

Commissioners may license passenger railways in the Park.

SECT. 20. That the said Park Commissioners shall have authority to license the laying down, and the use for a term of years, from time to time, of such passenger railways as they may think will comport with the use and enjoyment of the said Park by the public, upon such terms as said Commissioners may agree; all emoluments from which shall be paid into the city treasury.[24]

[21]See also Act of March 26, 1867, Sec. 4, ante, page 6, and Sec. 5, ante, page 6.

[22]See Act of March 16, 1870, Sec. 1, post, page 30.

[23]See post, Sec. 21.

[24]See Sec. 23, post, page 20.

Rules and regulations.

SECT. 21. The said Park shall be under the following rules and regulations, and such others as the Park Commissioners may from time to time ordain:

Cattle, goats, swine, horses, etc.

I. No persons shall turn cattle, goats, swine, horses or other animals loose into the Park.

Fire-arms, throwing stones, etc.

II. No persons shall carry fire-arms, or shoot birds in the Park, or within fifty yards thereof, or throw stones or other missiles therein.

Defacing trees, buildings, etc., and fouling springs, etc.

III. No one shall cut, break, or in anywise injure or deface the trees, shrubs, plants, turf, or any of the buildings, fences, structures or statuary, or foul any fountains or springs within the Park.

Rate of speed.

IV. No person shall drive or ride therein at a rate exceeding seven miles an hour.

Driving off roads.

V. No one shall ride or drive therein, upon any other than upon the avenues and roads.

Vehicles used for hire.

VI. No coach or vehicle used for hire, shall stand upon any part of the Park for the purpose of hire, nor except in waiting for persons taken by it into the Park, unless in either case at points designated by the Commission.

Vehicles of burden.

VII. No wagon or vehicle of burden or traffic shall pass through the Park, except upon such road or avenue as shall be designated by the Park Commissioners for burden transportation.

Street railroad cars.

VIII. No street railroad car[25] shall come within the lines of the Park without the license of the Park Commission.

Articles exposed for sale.

IX. No person shall expose any article for sale within the Park without the previous license of the Park Commission.

[25]See Act of March 16, 1870, post, page 30.

X. No person shall take ice from the Schuylkill within the Park without the license of the said Commission first had, upon such terms as they may think proper. Ice.

XI. No threatening, abusive, insulting, or indecent language shall be allowed in the Park. Indecent language, etc.

XII. No gaming shall be allowed therein, nor any obscene or indecent act therein. Gaming, obscenity, etc.

[XIII. No person shall go in to bathe within the Park.][26] Bathing.

XIV. No person shall fish or disturb the water-fowl in the pool, or any pond, or birds in any part of the Park, nor discharge any fire-works therein, nor affix any bills or notices therein. Fish, water-fowl, birds, fire-works and notices.

XV. No person shall have any musical, theatrical, or other entertainment therein, without the license of the Park Commissioners. Entertainments.

XVI. No person shall enter or leave the Park except by such gates or avenues as may be for such purpose arranged. Entrance and exit.

XVII. No gathering or meeting of any kind, assembled through advertisement, shall be permitted in the Park without the previous permission of the Commission; nor shall any gathering or meeting for political purposes in the Park be permitted under any circumstances. Political and other meetings.

XVIII. That no intoxicating liquors shall be allowed to be sold within said Park. Intoxicating liquors.

Sect. 22. Any person who shall violate any of said rules and regulations, and any others which shall be ordained by the said Park Commissioners, for the government of said Park, not inconsistent with this act, or the laws and constitutions of this State and United States—the power to ordain which rules and regulations is hereby expressly given to said Commissioners—shall be guilty of Commissioners shall have power to ordain other rules.

[26]Repealed by Act of June 3, 1911, post, page 56.