

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.



CHAPTER cxxviii.

An Act for making better provision for the Drainage of A.D. 1880.
the Low Grounds and Carrs (known as the Beverley and
Barmston Drainage District) in the East Riding of the
County of York, and for amending the Acts relating
thereto; and for other purposes. [2nd August 1880.]

WHEREAS in the session of Parliament held in the thirty-eighth year of the reign of His late Majesty King George the Third, an Act (chapter 63, Local and Personal) was passed for draining, preserving, and improving the low grounds and Carrs lying in the several parishes, lordships, townships, hamlets, precincts, and territories in the east riding of the county of York mentioned in the title and preamble of the said Act (all such low grounds and Carrs being better known as and herein-after referred to as the Beverley and Barmston Drainage District), and for the purpose of putting the said Act into execution three commissioners were thereby appointed for the term of three years from the passing of the said Act, and provision made for the election of three persons not interested in the said low grounds and Carrs as commissioners in every third year after the passing of the said Act:

And whereas certain drains or cuts were constructed by the commissioners acting under the said Act for the purpose of carrying off the waters from the said low grounds and Carrs within the Beverley and Barmston Drainage District, as also from certain high grounds having their outfall in the River Hull, and the southern end of the main drain constructed under the powers of the said Act discharges into the River Hull, but the commissioners have no power of dredging or cleansing the said river for giving free outlet to such waters as aforesaid:

And whereas the drainage of the said low grounds and Carrs being greatly prejudiced by the absence of any such powers, it is desirable that powers should be conferred in manner herein-after appearing:

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880. — And whereas it is expedient that the number, constitution, and functions of the commissioners for executing the said Act should be altered, and that certain changes should be made with reference to the powers of voting of the proprietors and of other persons interested in the said low grounds and Carrs :

And whereas it is expedient that increased powers and authority should be given to the new body of commissioners constituted by this Act for the purpose of preventing the flooding of the said low grounds and Carrs :

41 G. 3.
c. cxxxiv.

And whereas under the provisions of an Act of Parliament passed in the forty-first year of the reign of His late Majesty King George III., intituled "An Act to alter and amend an Act passed in the seventh year of the reign of His present Majesty, intituled An Act for improving the navigation of the River Hull and Frodingham Beck from Aike Beck mouth to the clough on the east corner of Fisholme, and for extending the said navigation from the said clough into or near the town of Great Driffield, in the east riding of the county of York, and to extend and improve the said navigation" (which Act is herein-after referred to as the Driffield Navigation Act, 1801, or the Act of 1801, and the Act of which it is an amendment, as the Driffield Navigation Act, 1767, or the Act of 1767), the commissioners for executing the said last-mentioned Acts (in this Act called the Driffield Navigation Commissioners) were empowered, amongst other things, to make a lock and weir upon the River Hull, at or near Seven Hills in the said Act mentioned, close to one side of the new cut by the same Act authorised; and it was enacted that between the outward wall of the said lock and the opposite side of the river there should be two openings, each of twenty feet width, in which should be placed falling gates capable of being lowered to any necessary extent, and to lie flat on the bottom of the river whenever the water at Frodingham Bridge, during the time that Foston large water-mill was not going, should cover the offset on the west abutment of the said Frodingham Bridge : and whereas by the 6th section of an Act passed in the 57th year of the reign of His late Majesty George III., intituled "An Act to amend and enlarge the powers of two Acts of His present Majesty for improving the navigation of the River Hull and Frodingham Beck, and extending the same to the town of Great Driffield, in the county of York," (which Act is herein-after referred to as the Driffield Navigation Act, 1817, or the Act of 1817), after reciting that a stone had been placed adjoining to and level with the offset of the west abutment of Frodingham Bridge, and that the level had been taken and a mark indented on a stone in Frodingham Church

57 G. 3.
c. lxiv.

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.

Steeple, with an inscription showing the height thereof above the surface of the water when level with such offset, it was enacted that from and after the passing of the Act of 1817 the height of the water should be regulated by the said mark on the steeple of Frodingham Church, and that the surface of the water should not be higher than fifteen feet and eleven inches below the same mark :

A.D. 1880.

And whereas a lock and weir were constructed at or near Seven Hills aforesaid under the powers of the Act of 1801, and such lock and weir are now commonly known and are herein-after respectively referred to as Hempholme Lock and Hempholme Weir, but the provisions of the said last-mentioned Act with regard to the width of the openings between the outward wall of the lock and the opposite side of the river and with regard to the falling gates were not complied with in such construction, and the provisions of the said Acts of 1801 and 1817 are not observed by the Driffield Navigation Commissioners, thereby greatly prejudicing the drainage of the said low grounds and Carrs :

And whereas it is expedient that the mark for regulating the height of the water in the said river be removed from Frodingham Church Steeple to Hempholme Weir, and that in other respects more effectual provision be made for carrying out the objects of the said Acts :

And whereas the objects aforesaid cannot be obtained 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,)

I. PRELIMINARY.

1. For all intents and purposes the said recited Act of the 38th George III., chapter 63 (herein-after referred to as the Act of 1798), may be cited as the *Beverley and Barmston Drainage Act, 1798*, and this Act as the *Beverley and Barmston Drainage Act, 1880*, and the said two Acts together as the *Beverley and Barmston Drainage Acts, 1798 and 1880*.

Short title.

2. This Act and the Act of 1798, as amended by this Act, shall be read and have effect together for all purposes as one Act.

Construction of Act.

3. Subject to the provisions of this Act, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (except the clauses with respect to the purchase of lands otherwise than by agreement, and with respect to the entry upon lands by the promoters of the

Incorporation of general Acts.
9 & 9 Vict. c. 18.
23 & 24 Vict. c. 106.
32 & 33 Vict. c. 18.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880. undertaking), and the following clauses of the Commissioners
Clauses Act, 1847, shall be incorporated with this Act; viz.,
10 & 11 Vict.
c. 16.

With respect to the qualification of Commissioners;

With respect to the meetings and other proceedings of the Commissioners, and their liabilities;

With respect to the contracts to be entered into and the deeds to be executed by the Commissioners;

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

With respect to the mortgages to be executed by the Commissioners:

Provided always, that in case of emergency the Commissioners shall, notwithstanding the provisions of section 57 of the said Act, be capable of entering into any contract for the purpose of meeting such emergency.

Amendment
of 38 Geo. 3.
c. lxiii. as to
qualification
and votes of
proprietors.

4. Section 92 of the Act of 1798 is hereby repealed, and in lieu thereof it is hereby enacted, that every body corporate and every other person who shall be possessed of the following estates in any part or parts of the said low grounds and Carrs not being less in the whole than fifteen acres in extent, that is to say, who shall severally or jointly be seized or possessed in his own right or in the right of his wife, either in law or equity, for his own use and benefit in possession of a freehold, copyhold, or customary estate of inheritance, or for life, or of an estate for a term of years determinable on one or more life or lives, or who shall hold any lease under the Crown, or under any archbishop, bishop, dean and chapter, church, hospital, college, or corporation, excepting in respect of such low grounds and Carrs as are held at rackrent, and no other shall be deemed a proprietor for the purpose of giving notice of and voting at any meeting of the proprietors to be held by virtue of this Act or of the Act of 1798, and shall have one vote in every public meeting to be held by the proprietors aforesaid, which vote may be given by the said respective bodies corporate and persons, either by themselves or by their proxy or proxies duly constituted under the seal of the respective bodies corporate and under the hands of all other proprietors, and such vote or votes by proxy shall be as good and sufficient to all intents and purposes as if such principals had voted in person, and any bodies corporate and other person who shall be so seized or possessed as aforesaid of more than fifteen acres of land in the said low grounds and Carrs shall for every one hundred acres more than fifteen acres of such land have liberty and power, personally or by his proxy regularly constituted as aforesaid

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.

to give one vote, not exceeding in the whole twelve votes, for each such body corporate or other person respectively. A.D. 1880.

5. Sections 96 and 97 of the Act of 1798 are hereby repealed.

Repeal of sections 96 and 97 of 38 Geo. 3. c. lxiii.
Repeal of sections 3 to 12 and 14 of 38 Geo. 3. c. lxiii.

6. Sections 3 to 12 inclusive and section 14 of the Act of 1798 are hereby repealed, and in lieu thereof the provisions contained in sections 2 to 14 inclusive of this Act shall have effect: Provided always, that until the last Thursday in the month of June one thousand eight hundred and eighty-one the Commissioners appointed under the provisions of section 4 of the Act of 1798 shall have the same powers and be entitled to the same remuneration and their Acts shall have all the same validity and effect, as if the said sections were not hereby repealed.

II.—COMMISSIONERS.

7. Upon the last Thursday in the month of June one thousand eight hundred and eighty-one the proprietors of the low grounds and Carrs shall meet at the Sessions Hall for the east riding of the county of York, situate at Beverley, at such hour between the hours of ten o'clock in the morning and four o'clock in the afternoon as may be named in the advertisement calling such meeting, for the purpose of electing a new body of Commissioners in the place of those now acting as Commissioners under the provisions of the Act of 1798; and upon the last Thursday in the month of June in every year subsequent to the year one thousand eight hundred and eighty-one meetings of the proprietors shall be held at the said Sessions Hall, at such hour between the hours aforesaid as may be named in the advertisement calling such meeting, for the purpose of electing Commissioners in the place of those going out of office as herein-after provided.

Meeting for election of Commissioners.

8. The body of Commissioners to be elected by the proprietors under the last preceding section shall be nine in number, of whom six shall be elected exclusively by the votes of proprietors qualified in respect of lands south of the barrier constructed under the powers of the Act of 1798, herein-after called the "Hull-end proprietors," and the remaining three shall be elected exclusively by the votes of proprietors qualified in respect of lands north of the barrier, herein-after called the "Sea-end proprietors": Provided that the meeting for the election of Commissioners by the Hull-end proprietors shall always precede the meeting for the election of Commissioners by the Sea-end proprietors, and that no person shall be qualified for election or act as Commissioner for both the Hull-end and the Sea-end of the drainage.

Mode of electing Commissioners.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880.

Com-
mis-
sioners to
retire by
rotation.

9. The first body of Commissioners elected under the provisions of this Act shall go out of office in the following manner; (that is to say,) on the last Thursday in the month of June one thousand eight hundred and eighty-two two of the Commissioners elected by the Hull-end proprietors and one Commissioner elected by the Sea-end proprietors shall go out of office, and on the last Thursday in the month of June one thousand eight hundred and eighty-three, two other of the Commissioners elected by the Hull-end proprietors and one other Commissioner elected by the Sea-end proprietors shall go out of office, and on the last Thursday in the month of June one thousand eight hundred and eighty-four the two remaining Commissioners elected by the Hull-end proprietors and the one remaining Commissioner elected by the Sea-end proprietors shall go out of office, and on the last Thursday in the month of June in every subsequent year one-third of the Commissioners elected by the Hull-end and Sea-end proprietors respectively, being those who have been longest in office, shall go out of office, and in each instance the places of the retiring Commissioners shall be supplied by the election of a like number of Commissioners in the manner by the Beverley and Barmston Drainage Acts, 1798 and 1880, prescribed; but in case the place of any Commissioner thus going out of office be not supplied in the manner so prescribed, then such Commissioner shall, notwithstanding anything in the said Acts contained, continue to act and retain the powers of a Commissioner until new Commissioners be appointed on the last Thursday in the month of June in the ensuing year, when he shall go out of office, together with the other Commissioners going out of office under the provisions of this section.

Qualifica-
tion of Com-
missioner.

10. The qualification of a Commissioner to be elected shall be as follows; (namely,) he shall be either—

(a.) The proprietor within the meaning of section 4 of this Act of at least thirty acres of land, or if such proprietor be a corporation then some person nominated for the purpose under their common seal;

(b.) The heir apparent of such a proprietor;

(c.) The agent duly nominated under the hand of such proprietor;

or

(d.) The lessee or occupier of at least one hundred acres of land being part of the said low grounds and Carrs :

Provided always, that any Commissioner upon ceasing to have the qualification requisite for such election as aforesaid shall cease to hold office as Commissioner under this Act.

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.

11. If any Commissioner dies or resigns, or becomes disqualified, or goes out of office otherwise than by effluxion of time, the remaining Commissioners elected by the proprietors by whom such Commissioner so dying, resigning, becoming disqualified, or going out of office as aforesaid was elected may, if they think fit, elect in his place some other qualified person to be a Commissioner, and the person so elected shall continue in office as long only as the person in whose place he is elected would have been entitled to continue in office.

A.D. 1880.
Supply of casual vacancies.

12. Every Commissioner going out of office by rotation or otherwise ceasing to be a Commissioner may, if duly qualified, be re-elected, and after such re-election he shall, with reference to going out by rotation, be considered a new Commissioner.

Commissioners eligible to be re-elected.

13. In order to determine the rotation by which the first body of Commissioners elected under the provisions of this Act shall go out of office, the Commissioners shall within one month after their election form a rotation list, and for this purpose such proceedings shall be taken as are required to be taken by the 20th section of the Commissioners Clauses Act, 1847, with regard to the making and keeping of rotation lists and the retirement of Commissioners, or as near thereto as circumstances will admit: Provided always, that such section shall be read as if the Commissioners elected by the Hull-end and Sea-end proprietors respectively had been elected for wards or electoral divisions.

Manner of making the rotation list.

14. No Commissioner elected by the Hull-end proprietors shall be entitled to vote upon any question relating solely and exclusively to matters connected with the drainage or taxation of lands north of the barrier, and no Commissioner elected by the Sea-end proprietors shall be entitled to vote upon any question relating solely and exclusively to matters connected with the drainage or taxation of lands south of the barrier.

Regulation as to votes of Commissioners.

15. At all meetings of the Commissioners, whenever the Commissioners elected by the Hull-end proprietors shall be exclusively entitled to vote upon any question the quorum of the meeting so far as relates to such question shall be four, and whenever the Commissioners elected by the Sea-end proprietors shall be exclusively entitled to vote upon any question the quorum of the meeting so far as relates to such question shall be two.

Quorum of Hull-end proprietors and Sea-end proprietors.

16. The Commissioners from time to time, by resolution, may delegate such of their functions under the Beverley and Barmston Drainage Acts, 1798 and 1880, as they may think fit, with the

Commissioners may delegate functions and

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880.
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remunerate
delegate.

exception of their powers of rating or borrowing money, to any one or more of the Commissioners, and may from time to time revoke such delegation or any part thereof, and shall be at liberty to remunerate in such manner and at such rates as they may think fit any such Commissioner or Commissioners or any member of any committee appointed under the provisions of the Commissioners Clauses Act, 1847; but, save as aforesaid, no Commissioner shall receive any remuneration or payment. And the acts and proceedings of every such Commissioner or committee within the limits of such powers as are delegated to them shall be deemed to be acts and proceedings of the Commissioners, and shall, if required by the Commissioners, but not otherwise, be submitted to the Commissioners for their approval.

Delegation
of Commis-
sioners for
each end
respectively.

17. Any committee appointed under the Commissioners Clauses Act, 1847, and any delegate appointed under the powers of this Act, with reference to matters affecting only the Hull-end or Sea-end of the drainage, shall be appointed by and from among the Commissioners acting for such ends of the drainage respectively.

III.—DREDGING IN RIVER HULL.

Power to
dredge,
scour, &c.
part of
River Hull.

18. Subject to the provisions of this Act, the Commissioners are hereby empowered from time to time to deepen, scour, cleanse, dredge, and otherwise improve and alter, and to remove obstructions, shoals, and impediments from, the bed and banks of that portion of the River Hull which lies northward of a point in the said river one hundred yards above the centre line of the bridge carrying the Victoria Dock Branch of the North-eastern Railway over the said river in the borough of Kingston-upon-Hull, and also from the bed and banks of all navigations, canals, becks, streams, drains, dykes, and cuts under the jurisdiction of the Driffeld Navigation Commissioners, and either directly or derivatively flowing into or communicating with the said portion of river, which said last-mentioned navigations, canals, becks, streams, drains, dykes, and cuts are herein-after referred to as the Driffeld Navigation: Provided always, that the Commissioners may apply the materials obtained in any such operations in strengthening and improving the banks of the above-mentioned portion of river and of the said navigation in such manner as they may think fit.

Minimum
width of
navigable
channel so
dredged, &c.

19. If by reason of all or any of the operations of the Commissioners the bed of any part of the navigable channel shall be lowered, the same shall be so lowered as that the channel of the river there shall at the depth to which such lowering shall extend have a minimum width of twenty feet, with suitable slopes.

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.

20. The Commissioners shall not by any of their operations so lower the water in the Leven Canal that the surface of such water immediately to the eastward of the lock at the entrance of the said canal shall have a less height than 6·20 feet above ordnance datum; provided nevertheless, that it shall be lawful for the Commissioners, and for any person who shall or may be employed by them, to execute and do all such works and things in and upon the said canal and the lock at the entrance thereof as may be necessary and reasonably proper for the prevention of the lowering of the surface of the water therein below the height aforesaid, and every work and thing so to be executed and done as aforesaid shall be executed and done by the Commissioners so as to interrupt as little as possible the free use of the navigation of the said canal, and to the satisfaction of two engineers, one to be appointed by the Commissioners and the other by the owner of the said canal for the time being, or in the event of any difference between them of an engineer to be appointed by the President of the Institution of Civil Engineers on the application of either party.

A.D. 1880.
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Water in
Leven Canal
not to be
lowered be-
low a certain
height.

21. If by reason of any of the operations carried out by the Commissioners the depth of water upon the lower sill of Hempholme Lower Lock shall be less than six feet at low water, then the Commissioners shall, at their own expense and to the reasonable satisfaction of the engineer of the Driffeld Navigation Commissioners, proportionately lower such sill and lock upon being required so to do by the said last-mentioned Commissioners, any question in case of difference to be settled in the manner provided by section 23 of this Act.

Hempholme
Lower Lock
to be lowered
in certain
event.

22. For the purpose of this Act it shall be lawful for the Commissioners, and for any person who shall or may be employed by them, at all reasonable times to enter into and to continue in and upon all lands within their jurisdiction, and also in and upon the said portion of the River Hull and the Driffeld Navigation, and to execute and do all such works and things authorised by this Act, or the Act of 1798, as may be necessary or reasonably proper without let, hindrance, or molestation from any person whomsoever, or without being deemed trespassers for so doing: Provided always, that the said Commissioners shall do as little damage as may be in the execution of the powers contained in this Act, and shall make full compensation for any damage so done.

Power to
enter lands
and execute
works.

23. The Commissioners shall, twenty-one days before commencing any operations under the powers of the eighteenth section of this Act, other than operations from time to time for the removal

Provision
for notice of
works and
arbitration.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880. — of sunken vessels or other obstructions, whether accidentally or wilfully caused, give such notices in writing as are herein-after mentioned; that is to say, as to any such operations within the borough of Hull, to the town clerk on behalf of the mayor, aldermen, and burgesses of the borough of Kingston-upon-Hull; as to any such operations within the jurisdiction of the Commissioners of Sewers for the east parts of the east riding of the county of York, to the clerk to such commissioners; as to any such operations in the Driffeld Navigation, to the clerk of the Driffeld Navigation Commissioners; as to any such operations within fifty yards of any of the works belonging to or maintained by the Holderness Drainage Trustees, to the clerk of such trustees; as to any such operations within fifty yards on either side of the entrance from the River Hull to the Leven Canal, to the owners of such canal for the time being; such notices shall indicate the general nature of the proposed operations, and the Commissioners shall keep open at their office for inspection by any commissioners, trustees, corporation, or persons to whom such notice may have been sent as aforesaid, or their or his officers or agents, during the twenty-one days next following the date of the notice, such plans, sections, drawings, and specifications as may be reasonably sufficient to show the details of the proposed operations, and if no written notice of objection is served upon the clerk to the Commissioners by or on behalf of any such corporation, commissioners, trustees, or persons to whom notice may have been sent as aforesaid within twenty-one days from the receipt of such notice the Commissioners may proceed with and complete such operations, but if within the said twenty-one days any such corporation, commissioners, trustees, or persons shall give notice in writing to the Commissioners that they object to any part of the proposed operations included in such notice, on the ground of their being likely injuriously to affect their property or any works maintained by them, it shall not be lawful for the Commissioners to execute such part thereof as may be objected to, unless and until the Commissioners on the one hand and any such corporation, commissioners, trustees, or persons objecting as aforesaid on the other hand shall have agreed in writing with reference to the operations thus objected to, or until in case of difference an engineer to be appointed by the President of the Institution of Civil Engineers upon the application of either party shall have determined the question in difference, and thereafter the Commissioners shall only execute the proposed operations in such manner and subject to such conditions as may have been so agreed upon or determined as aforesaid, and the expenses of any such reference as aforesaid shall be paid in such proportions by

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.

the Commissioners and the corporation, commissioners, trustees, or other persons objecting, or any or either of them, as the engineer appointed by the said President of the Institution of Civil Engineers may order: Provided always, that the receipt of such notice by the said town clerk, or anything to be done or suffered after the receipt of such notice, shall not create or impose on the said mayor, aldermen, and burgesses any legal duty or liability to the owners or occupiers of any property or works within the said borough likely to be injuriously affected or injuriously affected by or by reason of any such operations.

A.D. 1880.

24. Section 31 of the *Beverley and Barmston Drainage Act, 1798*, and so much of section 28 of the same Act as provides that the banks of the drain or cut therein referred to shall for the space of three hundred yards at the least adjoining to the banks of the *Beverley Beck* be made six inches lower than the lowest part of the banks of the drain therein mentioned, are hereby repealed.

Repeal of parts of 38 Geo. 3. c. lxiii.

25. Section 23 of the *Driffield Navigation Act, 1801*, is hereby repealed.

Repeal of section 23 of 41 Geo. 3. c. cxxxiv.

IV.—HEMPHOLME LOCK AND WEIR.

26. If at any time the water in the *Driffield Navigation* shall stand to a height greater than the statutory height in this Act mentioned, and the keeper or other person in charge of *Hempholme Lock and Weir* shall neglect to reduce the height of the water to the level of the statutory height for the space of one hour after personal application on behalf of the Commissioners for such reduction has been made to such keeper or other person, it shall be lawful for either one of two persons (of whose appointment for this purpose by the Commissioners notice shall have been given in writing to the clerk of the *Driffield Navigation Commissioners*) to enter into the premises of the last-named commissioners, and by lowering the falling gates, or using the other gear or machinery there of the *Driffield Navigation Commissioners*, to reduce the water to the level of the said statutory height, and for the purposes aforesaid the *Driffield Navigation Commissioners* shall maintain in proper working order the said falling gates, and such other machinery and gear as may be now existing at the said lock and weir, or may be hereafter provided in lieu thereof, under the provisions of this Act.

Powers for Commissioners to reduce height of water at *Hempholme Lock and Weir*.

27. For the purpose of more effectually carrying out the objects aforesaid it shall be lawful for the Commissioners at any time to give notice in writing to the *Driffield Navigation Commissioners*, under the hand of their clerk, of their desire to enter into an agree-

Provision for alteration of *Hempholme Weir*.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880. — ment with such last-mentioned commissioners with reference to the alteration of Hempholme Weir, so as to make it conform to the requirements of the Driffeld Navigation Act, 1801, and of their willingness to contribute to the cost of such alteration such a sum, being not less than one quarter and not more than one half of the actual cost of such alteration, as may be mentioned in the said notice. And the Driffeld Navigation Commissioners shall within one month after the receipt of such notice, by writing under the hand of their clerk, give notice to the Commissioners whether they are willing to enter into such an agreement with the Commissioners, and if so upon what terms and conditions. And it shall be lawful for the Driffeld Navigation Commissioners and the Commissioners to enter into and carry into effect such agreements, under their respective hands and seals, with reference to the matters aforesaid, and all matters connected therewith or incidental thereto, as they may think fit and as may be approved by the Inclosure Commissioners. In case, however, the Driffeld Navigation Commissioners shall decline to enter into any agreement, or shall fail to serve such notice upon the Commissioners as they are herein-before required to give, then the Commissioners may refer the matter to the Inclosure Commissioners in manner herein-after appearing, or in case for six months after the service of such notice by the Commissioners upon the Driffeld Navigation Commissioners no agreement shall have been entered into for the purposes aforesaid, then either the Commissioners or the Driffeld Navigation Commissioners may refer the matter to the Inclosure Commissioners, such reference to be made by a memorial requesting the Inclosure Commissioners to make such an order with reference to the alteration of Hempholme Weir, and the cost of any such alterations, and all matters connected therewith or incidental thereto, as they may think right, a copy of such memorial to be sent at the same time by either party applying to the other body of commissioners, and the Inclosure Commissioners may order an inquiry to be made as to the expediency of the proposed alteration and as to any suggested modification of the works consistent with the requirements of the Act of 1801, and as to the cost of any such alteration, and as to any matter connected therewith or incidental thereto. And the Inclosure Commissioners may take such matter into their consideration, and may make such order or orders under their common seal with reference to the foregoing matters, and generally upon the subject of the proposed alteration, as they may think right, and may vary any orders so made, and such order or orders when made, and unless and until varied, shall

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.

A.D. 1880.

be binding and conclusive upon all parties, and in case any such order shall provide for the alteration being effected, then the Driffeld Navigation Commissioners or the Commissioners, as the case may be, shall within the time named in such order duly execute such alteration or other works, or pay such sum or sums of money as may be required by the said order, and for that purpose they shall have all necessary powers for carrying the said order into effect: Provided always, that in case the Inclosure Commissioners shall be of opinion that the execution of such works as may be agreed upon between the Commissioners and the Driffeld Navigation Commissioners or may be ordered by the Inclosure Commissioners cannot be executed without further parliamentary powers, the Inclosure Commissioners may, if they think fit, upon the application of either party make a Provisional Order enabling such works to be executed, and authorising the taking of lands necessary for that purpose, and may include such Provisional Order in a Bill for confirming the same in the then present or next session of Parliament, and may make such order as to the costs as they may think right.

28. Within six months after the passing of this Act a mark (in this Act called the new standard) shall be affixed by the Commissioners upon or near Hempholme Weir, at a height of 10·87 feet above the Ordnance datum, and of such a description and in such place as shall be agreed on by the respective engineers for the time being of the Commissioners and of the Driffeld Navigation Commissioners.

New standard mark to be placed on Hempholme Weir.

29. The Commissioners shall alter the uppermost sill of Hempholme Lock and the lowermost sill of Snakeholme Lock so as to make the upper surfaces of the central portions of such sills respectively for a width of eight feet not less than six feet, and two inches lower than the said new standard. And for the purposes of such alterations as aforesaid the Commissioners shall be at liberty to cut and diminish the said sills, provided that sufficient parts thereof be left to allow the existing lock gates to overlap such sills respectively not less than three inches.

Commissioners to alter sills of Hempholme Lock and Snakeholme Lock.

30. Whenever the said sills of the said locks shall be altered by the Commissioners under the powers of the last preceding section the Commissioners shall dredge and deepen those parts of the River Hull which are situated between Hempholme Lock and Frodingham Bridge and Snakeholme Lock to such an extent as to give a navigable depth of water not less than six feet below the level of the new standard, and such dredging and deepening, as also the altera-

Parts of River Hull to be dredged by Commissioners.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880. tions of the sills of the locks, and all other works of the Commissioners shall be carried on and effected by the Commissioners so as to interrupt as little as possible the free use of the navigation of the River Hull.

Height of water to be regulated by new standard after the fixing thereof.

31. From and after the fixing of the new standard aforesaid and the completion of the works mentioned in the two preceding sections the surface of the water of the River Hull above Hempholme Weir shall not be kept at a greater height than the new standard, and all mention of or references to the said mark upon Frodingham Church Steeple in the Act of 1817 and this Act shall be read and construed as if the new standard had been inserted in lieu thereof: Provided always, that a certificate signed by the engineers of the Commissioners and the Driffeld Navigation Commissioners, or their umpire, shall be conclusive evidence that the works mentioned in the two last preceding sections have been duly completed.

Commissioners may fix a lower standard of water level.

32. The Commissioners are by this Act authorised at any time, after giving one calendar month's notice to the Driffeld Navigation Commissioners, to fix a lower standard than the new standard for the level of the water of the River Hull above Hempholme Weir; provided that it shall not be lawful for the Commissioners to fix such lower standard until (as they are hereby empowered to do) they shall, at their own expense, have so altered the sills and floors of the two locks described in section 29 of this Act as to make the upper surfaces of such sills and floors not less than six feet two inches below such lower standard, and shall also, at the like expense, have dredged and deepened those parts of the River Hull which are situated between Hempholme Lock and Frodingham Bridge and Snakeholme Lock to such an extent as to give a navigable channel having a bottom width of not less than twenty feet and a depth of not less than six feet below such lower standard, with sufficient slopes, and such lower standard shall be of such a description and in such place as shall be agreed on in manner provided in section 28 of this Act, and every enactment of the Act of 1801 or this Act with respect to the standard height of water is hereby, subject to this proviso, made applicable to such lower standard.

Commissioners may construct a new bye-wash at Hempholme Weir.

33. The Commissioners may at any time after the passing of this Act construct, and shall for ever thereafter maintain, at or near Hempholme Lock and Weir, and to be in addition thereto, a new bye-wash or relief weir, with footbridge and hauling track over the same in the place of any towing-path severed thereby; and the expense of constructing and maintaining all these works shall be

borne by the Commissioners. The Driffield Navigation Commissioners shall give all facilities and grant to the Commissioners such part of their land (if any) as may be required for the purposes of such bye-wash or weir: Provided always, that the top of such bye-wash or weir shall not be lower than the standard for the time being fixed for the height of water at Hempholme Weir.

A.D. 1880.

34. In case any question or difference shall at any time arise between the Commissioners and the Driffield Navigation Commissioners touching any matter or thing contained in sections 26, 28, 29, 30, 31, 32, and 33 of this Act, such question or difference shall be determined by two engineers, one to be appointed by the Commissioners and the other by the Driffield Navigation Commissioners, or in case of difference between them by the arbitration of an engineer to be appointed by the President of the Institution of Civil Engineers upon the application of either party, and the decision of such last-mentioned engineer shall be binding and conclusive upon both the parties in difference, and the costs of the arbitration shall be in his discretion.

Certain matters to be settled by arbitration.

V.—MISCELLANEOUS.

35. The Commissioners may enter into and carry into effect agreements with such persons, corporations, and commissioners, under their hands or common seals, as they think fit with reference to the construction, alteration, maintenance, management, and control of any works which the Commissioners and such persons, corporations, commissioners, and trustees, or any of them, may from time to time have power to execute and do, and which may be likely not only to benefit the drainage of the said low grounds and Carrs, or any of them, but also to benefit such persons, corporations, commissioners, and trustees, or any of them; and with reference to the payments of the costs and expenses of any such works, and with reference to any contribution made or to be made towards such costs and expenses, and the costs and expenses of any such works so far as the same are to be paid by the Commissioners, may be defrayed out of the moneys belonging to the Commissioners.

Commissioners and other persons, &c. may agree as to works.

36. Wherever any person is by prescription, by reason of tenure, or otherwise, liable by law to maintain or do any repairs to the banks or bed of any river, navigation, canal, beck, stream, or watercourse, or to any drain, sewer, ditch, dyke, or cut, which the Commissioners have power and think it necessary to deepen, scour, cleanse, dredge, strengthen, remove, alter, or improve, as well for the benefit of the lands adjoining such river or other watercourse

Power to divide expenses in certain cases.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880. as aforesaid, or on which any such works are situate, as for the benefit of other lands, it shall be lawful for the Commissioners, subject to the provisions of this Act and of the Act of 1798, to execute or do such work therein as they think proper, and to divide the expense thereof so as to throw upon the persons liable to such maintenance or repairs such part thereof as they may deem equitable under the circumstances of the case, and to charge upon their own funds as Commissioners the residue thereof, and to settle and adjust such proportions as they may think proper, taking into account the benefit which the lands belonging to such persons and all other lands benefited by such work or operations are likely to receive thereby: Provided always, that nothing in this Act contained shall exempt from liability to do any works or to pay the whole cost thereof any person who by prescription, by reason of tenure, or otherwise by law, is so liable.

Protection
of Commis-
sioners of
sewers for
east parts of
east riding
of county
York.

37. Nothing in this Act contained shall be construed to limit, abridge, or in any way affect the rights or powers of Her Majesty's Commissioners of Sewers for the east parts of the east riding of the county of York for or in respect of any lands or works situate within the level survey and area of the jurisdiction of, or in anywise under and subject to, the control of the said Commissioners of Sewers, but in all cases where any person who by prescription, by reason of tenure, by law, or otherwise, is or may be liable to maintain or do any repairs to any watercourses, outfalls for water, banks, defences against water, or other works whatsoever situate within the level survey and area of the jurisdiction of, or in anywise under and subject to the control of, the said Commissioners of Sewers, is sought to be charged with any part of the expense of the maintenance or repair done and executed by the Commissioners in, to, and about such watercourses, outfalls for water, banks, defences against water, and other works as aforesaid, then and in such case the proportion of such expense with which such persons so liable as aforesaid are to be charged shall be settled and adjusted and determined by the said Commissioners of Sewers, and not by the Commissioners under this Act.

Commis-
sioners may
purchase
lands or
easements.

38. It shall be lawful for the Commissioners, for the purposes of the Act of 1798, or of this Act, by agreement, but not otherwise, to purchase or to take on lease for such time as they think fit any land, or any right or easement over any land, or in, over, or arising out of any river, navigation, canal, beck, stream, or watercourse, which they may deem necessary or expedient for the execution of the powers of this Act.

39. It shall not be lawful for any person to throw or to cause or suffer to pass or fall into the portion of the River Hull herein-before referred to, or into the said Driffeld Navigation, any weeds, earth, stone, soil, or other article or thing which may be likely to create an obstacle, shoal, or impediment therein (except weeds mown or cut within the bed or between the banks of the River Hull, which shall be allowed and suffered to fall into the said river and pass down the stream thereof as heretofore), and in case any such person shall wilfully cause or suffer to pass or fall into such portion of river or navigation any such weeds or other articles as aforesaid, or shall for the space of seven days after being required in writing by the Commissioners to remove any such weeds or other articles which may have been caused or suffered by such person to pass or fall into such portion of river or navigation neglect or refuse so to do, every such person so neglecting or refusing shall for every such offence, in addition to the cost of removing any such weeds or other articles, forfeit and pay any sum not exceeding five pounds, and the amount thereof, together with all charges and expenses caused by such refusal or neglect as aforesaid, may be recovered in the same manner as if such sum of money were rates in arrear.

A.D. 1880.
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Penalty for
throwing
weeds, &c.
into River
Hull and
navigation.

VI.—FINANCIAL.

40. Subject to the provisions of this Act, the Commissioners shall have power from time to time, and in addition to all powers of levying a tax, rate, or assessment (herein-after called a tax) conferred upon the Commissioners by the Act of 1798 for the purposes of such last-mentioned Act, as and when they think fit, to levy upon the proprietors of all the low grounds and Carrs, and the rights of common and common of pasture therein within their jurisdiction, such additional tax as they shall consider requisite for providing funds to be applied in carrying into execution the powers of this Act, or they may raise such funds by exercising the powers of levying a tax contained in the Act of 1798 as if the various powers of improvement conferred by this Act had been contained in such last-mentioned Act: Provided always, that the Commissioners shall not levy upon the Hull-end proprietors any tax in respect of moneys expended or to be expended solely and exclusively for the benefit of lands north of the barrier, and that the Commissioners shall not levy upon the Sea-end proprietors any tax in respect of moneys expended or to be expended solely and exclusively for the benefit of lands south of the barrier.

Power to
levy addi-
tional rates.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880.

Powers for
recovery of
rates.

41. The Commissioners shall have all the same powers, rights, and remedies for recovering any tax, leviable under the powers of this Act which they now have for recovering any tax leviable under the powers of the Act of 1798.

Power to
borrow.

42. The Commissioners may from time to time borrow, on the security of any tax leviable under the powers of the Act of 1798 and of any tax leviable under the powers of this Act, or in either of the said ways, such sums of money as they may from time to time think requisite for the execution of the Act of 1798 or of this Act, but so nevertheless that the sums so borrowed shall not exceed in the whole twenty-five thousand pounds upon the security of any tax leviable in respect of lands south of the barrier, and shall not exceed in the whole five thousand pounds upon the security of any tax leviable in respect of lands north of the barrier, and may mortgage such taxes respectively to secure the repayment of the money so borrowed with interest.

Money
borrowed
to be
charged in
manner
determined
by Commis-
sioners.

43. In case of any sum of money being borrowed upon the security of the tax leviable either under the Act of 1798 or of this Act for services or work common to the lands both north and south of the barrier the Commissioners shall, before such money is borrowed, determine by resolution in what proportions and in what manner such money is to be charged upon the taxes leviable upon lands north of the barrier and south of the barrier respectively, and in all other cases the Commissioners shall by resolution determine whether and in what manner the money to be borrowed is to be charged upon the tax leviable upon lands north or south of the barrier, and from thenceforth the repayment of such moneys, with interest, shall be charged only in accordance with such resolution, and all rights and remedies for the recovery thereof shall take effect accordingly.

Form of
mortgage.

44. Every mortgage made by the Commissioners shall be by deed under the seals of at least two of the Commissioners elected either by the Hull-end proprietors or the Sea-end proprietors, as the case may be, and of their clerk, duly stamped and truly stating the consideration, and shall also contain a copy of the resolution of the Commissioners determining upon the security of which tax the money secured by such mortgage deed is borrowed.

Mortgagees
may appoint
receiver.

45. The mortgagees may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages by the appointment of a receiver. In order to authorise the appointment of a receiver in respect of arrears of principal, the amount owing to

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.

the mortgagees by whom the application for a receiver is made shall in respect of moneys borrowed upon the security of any tax leviable upon the Hull-end proprietors not be less than two thousand pounds in the whole, and in respect of moneys borrowed upon the security of any tax leviable upon the Sea-end proprietors shall not be less than five hundred pounds in the whole. A.D. 1880.

46. The Commissioners shall not be bound to see to the execution of any trust whatsoever, expressed, implied, or constructive, to which a mortgage issued under this Act may be subject, and the receipt of the person in whose name a mortgage stands in the register of mortgages, or if it stands in the name of more persons than one the receipt of one of the persons named in that register, shall from time to time be a sufficient discharge to the Commissioners for any interest payable in respect of such mortgage, notwithstanding any trusts to which the same is then subject, and whether or not the Commissioners have had notice of such trusts, and the Commissioners shall not be bound to see to the application of any money paid upon such receipt. Commissioners not bound by trusts affecting mortgages.

47. If at any time the Commissioners fail to exercise or discharge all or any of their powers and duties for assessing, collecting, and enforcing payment of any tax, so as to provide for payment of and to fully pay the interest and principal money payable on any mortgage, then any receiver appointed on behalf of or by the mortgagees, or by the Chancery Division of Her Majesty's High Court of Justice, shall have and may, in the name of the Commissioners, exercise with respect to such tax the like powers, rights, and remedies for assessing, collecting, and enforcing payment of the same as are by the Act of 1798 or by this Act given to the Commissioners. Power for receiver to levy rate.

48. The books of account of the Commissioners shall be open at all reasonable times to the inspection of the mortgagees of the Commissioners, with liberty to take extracts therefrom without payment. Accounts open to mortgagees.

49. The Commissioners shall pay off any money borrowed by them on mortgage either by instalments or by means of a sinking fund appropriated for that purpose, and with the accumulations thereof (if any) from time to time applied for that purpose as follows; (that is to say,) as regards any money borrowed before the expiration of ten years from the passing of this Act within sixty years after the expiration of those ten years, and as regards any money borrowed after the expiration of the ten years within sixty years after the same is borrowed, and such instalments or sinking Payment off of mortgages by instalments.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880. fund, as the case may be, shall be paid or provided by equal annual payments extending over the whole period of sixty years.

Power to re-borrow.

50. If the Commissioners at any time pay off, otherwise than by instalments or by means of a sinking fund, any money borrowed by them on mortgage they may from time to time re-borrow the same or any less amount on mortgage, subject and according to the provisions of this Act relating to borrowing on mortgage: Provided always, that such money shall only be re-borrowed upon the security of the tax upon which any such money was originally borrowed.

Annual return to the Inclosure Commissioners with respect to sinking fund.

51. The clerk to the Commissioners shall, within twenty-one days after the expiration of each year during which any sum is required to be set apart for a sinking fund and other methods of repayment under this Act, transmit to the Inclosure Commissioners a return, in such form as may be prescribed by them and verified by statutory declaration if so required by them, showing the amount which has been invested for the purpose of such sinking fund or repaid by instalments during the year preceding the making of such return, and the description of the securities upon which the same has been invested, and also showing the purposes to which any portion of the moneys invested for the sinking fund and all interest thereon have been applied during the same period, and the total amount remaining invested at the end of the year, and in the event of any wilful default in making such return the said clerk shall be liable to a penalty not exceeding twenty pounds. If it appear to the Inclosure Commissioners, by such return or otherwise, that the Commissioners have failed to set apart the sum required by this Act for the sinking fund, or have applied any portion of the moneys set apart for that fund or any interest thereon to any purposes other than those authorised by this Act, the Inclosure Commissioners may by order direct that a sum not exceeding double the amount in respect of which such default shall have been made shall be set apart and invested as part of the sinking fund, and such order shall be enforceable by writ of Mandamus to be obtained by the Inclosure Commissioners out of the High Court of Justice, and the provisions of this section shall, mutatis mutandis, apply to annual instalments and appropriations.

Protection of lenders from inquiry.

52. Any person lending money to the Commissioners shall not be bound or entitled to inquire as to the observance by them of any provision of this Act or of the Act of 1798, or be bound to see to the application or be answerable for any loss or non-application of such money or of any part thereof.

Separate accounts to be kept.

53. The Commissioners shall keep separate accounts of the receipts and expenditure, both on capital and revenue account, in

[43 & 44 VICT.] *Beverley and Barmston Drainage* [Ch. cxxviii.]
Act, 1880.

respect of lands south and north of the barrier respectively (hereinafter referred to as the Hull-end and Sea-end Capital and Revenue Accounts), and shall apportion as they may think equitable between such accounts any receipts and expenditure common to lands on both sides of the barrier: Provided always, that the proportion of such expenditure chargeable against the Sea-end Revenue Account in respect of management and other similar expenses shall not exceed one sixth of the whole of such last-mentioned expenditure.

A.D. 1880.

54. All money received by the Commissioners from borrowing or as consideration for lands sold, or being otherwise in the nature of capital, shall be carried to the Hull-end or Sea-end Capital Account, as the case may be, and shall be applied by them in the manner and in the order following, and charged upon the Hull-end or Sea-end Capital Account, as the case may be, and not otherwise; (that is to say,)

Application
of capital.

(1.) In paying the costs, charges, and expenses preliminary to and of and incidental to the preparing of and applying for and the obtaining and passing of this Act: Provided that the proportion of all such costs, charges, and expenses which may be charged upon the Sea-end Capital Account shall not exceed one sixth of the whole of such amount.

(2.) In carrying into effect other the purposes of this Act, except maintenance of works and other purposes properly chargeable against revenue.

55. All money received by the Commissioners, not being money received from borrowing or as consideration for lands sold, and not being otherwise in the nature of capital, shall be carried to the Hull-end or Sea-end Revenue Account, as the case may be, and shall be applied by them in the manner and in the order following, and charged upon the Hull-end or Sea-end Revenue Account, as the case may be, and not otherwise; that is to say,

Application
of revenue.

(1.) In paying their necessary and proper establishment and working expenses (including the costs, charges, and expenses of obtaining this Act herein-before referred to, so far as the same are not paid out of money borrowed, to be charged in the proportions herein-before mentioned) and the expenses of maintenance of their works:

(2.) In paying the interest, instalments, and sums from time to time accruing due and payable under their mortgages, and in providing any sinking fund required for payment off of money borrowed on mortgage:

(3.) In executing works and otherwise carrying into effect the purposes of this Act.

[Ch. cxxviii.] *Beverley and Barmston Drainage* [43 & 44 VICT.]
Act, 1880.

A.D. 1880.

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Saving for
Corporation
of Hull.

56. Except only as is by this Act expressly provided, nothing in this Act contained shall extend or be construed to extend to take away, lessen, prejudice, or alter any of the powers, rights, privileges, or jurisdictions of the mayor, aldermen, and burgesses of the borough of Kingston-upon-Hull.

Application
of penalties
and costs of
proceedings.

57. Where under this Act any penalty or sum of money is recoverable by or payable to the Commissioners the same shall, when received, be carried by the Commissioners to and form part of their general funds, and be applicable as revenue, and the cost of any proceedings taken by order of the Commissioners for the recovery of any such penalty or sum of money as aforesaid, or for the punishment of any person offending against this Act, may be charged by the Commissioners upon their general funds and payable out of their revenue account.

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