A DIGEST

OF

LAWS AND ORDINANCES

RELATING TO

FAIRMOUNT PARK.
A DIGEST

OF THE

Acts of Assembly and Ordinances of Councils

RELATING TO

FAIRMOUNT PARK.

BY

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SOLICITOR TO THE PARK COMMISSIONERS.

PHILADELPHIA:
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1872.
At a meeting of the Commissioners of Fairmount Park, held June 15th, 1873, the following resolution was adopted:

Resolved, That the Park Solicitor be requested to prepare a digest of the acts of Assembly and ordinances of the City Councils relating to Fairmount Park.

(3)
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FAIRMOUNT PARK.

ACTS OF ASSEMBLY

Act of March 26, 1867. P. L. 547.

AN ACT

Appropriating ground for public purposes, in the City of Philadelphia.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of same. That the title to, and ownership of, the area of ground which is bounded as follows: (a) Beginning at a point on the river Schuylkill, at the intersection of the north line of Bridge street and low water mark in said river; thence along said north line of Bridge street, to Bridgewater street; thence along the easterly side of Bridgewater street, to north line of Haverford street, as now used; thence along the northeast line of said Haverford street to the Pennsylvania railroad; thence along said Pennsylvania railroad, to the Junction railroad; thence along the said Junction railroad, its several courses and distances, to a point where it intersects

(a) Boundary of the Park modified by Act of April 14, 1868, Sec. 1, post, page 25. See also, Sec. 4 of said Act, post, page 29.
Girard avenue; thence westwardly, along the north line of Girard avenue, to Forty-first street; thence northward, along Forty-first street, to Lansdowne avenue; thence along said Lansdowne avenue, westwardly, to Belmont avenue; thence along said Belmont avenue, northwardly, to Montgomery avenue; thence eastward, along said Montgomery avenue, in a direct line, to the water line of Fairmount dam; thence down the river Schuylkill, along the low water line thereof, to the place of beginning, excepting therefrom and thereout, that part of which the Schuylkill Navigation, the Pennsylvania Central, the Junction and the Connecting Railroad Companies, are respectively seized, for the execution of their franchises,\(^{(a)}\) shall be vested in the City of Philadelphia, to be laid out and maintained forever, as an open public place and park, for the health and enjoyment of the people of said city, and the preservation of the purity of the water supply of the City of Philadelphia.

**Sect. 2.** That the Mayor, the Presidents of the Select and Common Councils, Commissioner of City Property, the Chief Engineer and Surveyor, and the Chief Engineer of the Water Works of said city, together with ten citizens of said city, who shall be appointed for five years, five of them by the District Court, and five of them by the Court of Common Pleas of said city, be and the same are hereby constituted Commissioners of said Park; they shall organize annually on the first Monday of June, by the election of a president and secretary,\(^{(b)}\) but they shall

\(^{(a)}\) See also, Sec. 3 Act of April 14, 1868, post, page 28.

\(^{(b)}\) So much of the section as requires that the Secretary shall be chosen from the Commissioners, repealed by Act of April 14, 1868, Sec. 12, post, page 33.
receive no compensation for their services as Commissioners: *Provided*, That whenever a vacancy shall occur in that part of the said Commissioners appointed by the courts, the court from which the appointment was made shall fill the vacancy.

Sect. 3. That the owners of the said ground, *(a)* by the first section of this act appropriated for public purposes, shall be paid *(b)* for the same by the City of Philadelphia, according to the value *(c)* which shall be ascertained by a jury of twelve *(d)* disinterested freeholders, to be appointed *(e)* by the Court of Quarter Sessions of said city, upon the petition of said Commissioners; and if the said Commissioners shall delay petitioning as aforesaid for the period of sixty days after notice given of their taking possession of said ground, then said jury shall be appointed upon the petition of any person whose property shall be so taken: *Provided, however*, That in any case the said Commissioners may negotiate and agree with the owners of any part of said ground as to the price thereof, and said price shall be reported to the said Court of Quarter Ses-

*(a)* A tenant for years is such an owner: 4 Wh. 90; 8 II. 91; 10 H. 29; 1 C. 229; 16 P. F. Smith, 425. A ground landlord is not such an owner: 6 C. 362. See 28 Leg. Int. 356. The purchaser of an estate cannot claim damages for an injury done to it before his purchase. Such claim remains in the hands of the vendor: 10 H. 32.

*(b)* Either under the Act of April 14, 1868, or by a common law action of debt, the land owner may recover the damages assessed or agreed on immediately upon confirmation of the report relating to damages: 18 P. F. Smith, 49.

*(c)* The basis of compensation is not to be measured solely by the value of the land taken. The advantages likely to accrue, enter largely into the estimate: 4 H. 192; 11 Wright, 435; 29 Leg. Int. 220.

*(d)* Reduced to six by Sec. 10 of the Act of April 14, 1868, post, page 31.

*(e)* See Act of January 27, 1870, Sec. 3, post, page 40.
sions, and if confirmed and approved by said court, shall be conclusive upon said city: And provided further, That whenever it shall be necessary to have recourse to a jury to assess the damages for any property to be taken as aforesaid [the said jury shall estimate the advantage to property adjoining or in the vicinity(a) and] (b) said jury (c) shall proceed and their award shall be reviewed and enforced in the same manner as provided by law in the opening of roads in the City of Philadelphia.(d)

Sect. 4. That the Commissioners of the said Park, after they shall have secured possession of the ground, shall

(a) The term vicinity does not denote any particular, definite distance from the Park: 6 H. 26. Such assessments are constitutional:
3 W. 296; 7 Barr 175; 6 H. 26; 3 Philadelphia, 265; 11 C. 231; 22 Leg. Int. (1865) 365; 4 N. Y. (4 Const.) 419; 8 Wendell, 85; Ibid. 101; 3 Paige, 45; 7 Hill, 9; 5 Ohio State Reports, 636; 19 Ohio, 418; 26 Ill. 351; 28 Mo. 537.

(b) Repealed by Act of June 15, 1871, post, page 54.

(c) See Act of January 27, 1870, Sec. 3, post, page 49.

(d) See Act of April 14, 1868, Sec. 10, post, page 31. See also, 18 P. F. Smith, 47. When the Court of Quarter Sessions have appointed a full set of jurors, one or more of the number may be stricken off and others substituted, and it is not necessary to give notice that it will be done: 3 C. 69. The jury must be sworn before they enter upon their duties: 2 P. R. 207. And it must be stated in the report: 3 S. & R. 210. See 4 Wh. 514. Any of the jurors are competent to administer an oath to one of their number: 2 C. 222. The report of the jury must be accompanied by a draft: 3 Binney, 5; 10 S. & R. 120. Five of the six jurors appointed must view the property: 6 H. 2:0; 3 C. 69. All the jurors must deliberate, but a majority may decide: 5 C. 20. It is no objection to the report of viewers appointed to assess damages, that they conversed with the owners of property adjoining, in the absence of the parties interested. An inquest of this sort is restrained to no peculiar species of evidence, and may resort to any source of information which the members of it may think proper, even the evidence of their senses: 4 R. 192. The jury are to judge for themselves on view of the premises, and not by the opinions of witnesses: 2 Wh. 277. The jury are to consider the matter just as if they were called on to value the injury at the moment when compensation could first be demanded: 11 Wr. 434.
adopt a plan for the improvement and maintenance thereof, and shall have power to proceed with the same; and all moneys expended shall be under their supervision, but no contracts shall be made for said improvement unless an appropriation therefor shall have been first made by the Councils of said city.\(^{(a)}\)

**Sect. 5.** That as soon as the said Commissioners shall have fully organized, they shall have the care and management of Fairmount Park, on both banks of the river Schuylkill, and all plans and expenditures for the improvement and maintenance of the same shall be under their control, subject to such appropriations\(^{(a)}\) as Councils may from time to time make as aforesaid.\(^{(b)}\)

**Sect. 6.** That the Commissioners of said Park are hereby further empowered, whenever the Councils of the City of Philadelphia shall so declare by ordinance, to take such other land as may be deemed proper by said Councils for the extension of said Fairmount Park, between the Spring Garden Water Works and the Columbia Bridge and between the Reading Railroad and the river Schuylkill, according to the value which shall be ascertained by a jury of twelve disinterested freeholders, to be appointed by the Court of Quarter Sessions of said city upon the petition of said commissioners; and if the said commissioners shall delay petitioning as aforesaid for a period of sixty days after notice given of their taking possession of said ground, then said jury shall be ap-

\(^{(a)}\) See Act of April 14, 1868, Sec. 11, post, page 92, and Sec. 19, post, page 85.

\(^{(b)}\) See preceding section.
pointed upon the petition of any person whose property shall be so taken. *Provided, however,* That in any case the said Commissioners may negotiate directly and agree with the owners of any part of said ground as to the price thereof, and said price shall be reported to the said Court of Quarter Sessions, and if confirmed or approved by said court, shall be conclusive upon said city: *And provided further,* That whenever it shall be necessary to have recourse to a jury to assess the damages for any property to be taken as aforesaid, the said jury shall estimate the advantage to property adjoining or in the vicinity, and said jury shall proceed, and their award shall be reviewed and enforced in the same manner as provided by law in the opening of roads in the City of Philadelphia.][a)

(a) The provisions of this section are supplied by subsequent legislation. The land referred to therein is included within the Park boundaries by the Act of April 14, 1868, Sec. 1, post, page 25, and the other provisions are also supplied by the Act of April 14, 1868, Sec. 5, post, page 29, and Sec. 26, post page 41, and the Act of March 26, 1867, Sec. 3, ante, page 21.
Act of April 14, 1868.  P. L. 1083.

A SUPPLEMENT

To an act, entitled "An act appropriating ground for public purposes, in the City of Philadelphia," approved the twenty sixth day of March, Anno Domini one thousand eight hundred and sixty-seven.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the boundaries of the Fairmount Park in the City of Philadelphia shall be the following, to wit: Beginning at a point in the northeasterly line of property owned and occupied by the Reading Railroad Company, near the City bridge over the river Schuylkill at the Falls, where said northeasterly line [is intersected by the line dividing property of H. Duhring from that of F. Stoever and T. Johnson; extending] (a) from thence in a southwesterly direction upon said dividing line and its prolongation to the middle of the Ford road; from thence by a line passing through the southeast corner of Forty-ninth and Lebanon streets to George's run; thence along the several courses of said run to a point fourteen hundred and eighty-seven and a half feet from the middle of the Pennsylvania Railroad, measured at right angles thereto; thence by a straight line through the northeast corner of Forty-third and Hancock streets to the northerly side of Girard avenue near Fortieth street; thence by the said northerly side of Girard avenue to the easterly side of the

(a) Amended by Act of April 21, 1869, Sec. 8, post, page 46.
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 south- easterly 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; (a) 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. (b)

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, (c) 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 re-

(a) See Act of April 21, 1869, Sec. 2, post, page 43, and Sec. 5, post, page 45.
(b) See, for further exceptions, Act of April 14, 1868, Sec. 3, post, page 28. See also Act of March 15, 1871, Sec. 1, post, page 53, and Act of March 26, 1867, Sec. 1, ante, page 20.
(c) See Act of March 26, 1867, Section 2, ante, page 20.
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 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.

Title to Park vested in the City.

Excepting franchises of Schuylkill Navigation, Philadelphia and Reading, Junction and Connecting Railroad Companies.

Sect. 3. That the title to and ownership of the ground within said boundaries shall be vested 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 Rail-

(a) 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 vested in the City of Philadelphia, and if the landowner 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, 1839, Sec. 4, post, page 44, and Act of April 14, 1868, Sec. 9, post page 31.
road Companies for the execution of their franchises as now provided by law. (a)

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, (b) is hereby released from all claim of title by the said city, with the same effect as if it had never been included. (c)

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; (d) 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. (e)

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.

(a) See Act of April 14, 1868, Sec. 1, ante, page 27, for further exception.
(b) See ante, Sec. 1, page 25, and Sec. 2, page 27.
(c) See Act of March 26, 1867, Sec. 1, ante, page 19. This release applies only to the triangular piece of ground bounded by Girard avenue, Forty-first street and Elm avenue.
(d) Act of March 26, 1867, ante, page 19. See also Act of April 21, 1869, Sec. 8, post, page 46.
(e) See Act of April 14, 1868, Sec. 20, post, page 41. See also Act of March 26, 1867, Section 3, ante, page 21.
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 Ward 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 established 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.

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.

(a) 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.
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, as well as the ground taken; but all buildings and machinery and fixtures not required by the Park Commission, 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. If any owner or lessee of ground taken cannot be found, notice of the taking and valuation 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.

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 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,
Six jurors may be appointed on 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. (a)

Sect. 11. The City of Philadelphia shall be authorized and required to raise by loans, from time to time, such sums of money (b) as shall be necessary to make compensation for all grounds heretofore taken or to be taken for 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.

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; (c) and they shall prescribe the duties and the compensation to

(a) 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, 1863, see Act of April 21, 1863, Sec. 9, post, page 47.

(b) See Act of April 21, 1863, Sec. 3, post, page 44.

(c) See Act of April 14, 1868, Sec. 27, post, page 41, and also Act of January 27, 1870, Sec. 5, post, page 49.
be paid them; and so much of the second section (a) 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.

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] (b) 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 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.

(a) Ante, page 20.
(b) Altered to "without" by Sec. 2, of the Act of January 27, 1870, post, page 48.
Sect. 14. The said Board of Commissioners shall, annually hereafter, [in the month of December, make, to the Mayor of the City of Philadelphia,] (a) a report of their proceedings, and a statement of their expenditures for the preceding year.

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.

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

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,

(a) 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 49.
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.

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.

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; (a) and to construct all proper bridges, buildings, railways, (b) and other improvements therein, and to repress all disorders therein under the provisions hereinafter contained. (c)

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. (b)

Sect. 21. The said Park shall be under the following Rules and Regulations.

(a) See also Act of March 26, 1867, Sec. 4, ante, page 22, and Sec. 5, ante, page 23.
(b) See Act of March 16, 1870, Sec. 1, post, page 51.
(c) See post, Sec. 21.
rules and regulations, and such others as the Park Commissioners may from time to time ordain: (a)

(a) The following additional rules and regulations have been ordained by the Park Commissioners:

I. No person shall throw any dead animal or offensive matter or substance of any kind, into the river Schuylkill, within the boundaries of Fairmount Park.

II. No person shall injure, deface or destroy any notices, rules or regulations for the government of the Park, posted or in any other manner permanently fixed by order or permission of the Commissioners of Fairmount Park within the limits of the same.

III. No person shall be permitted to bring led horses within the limits of Fairmount Park, or a horse that is not harnessed and attached to a vehicle, or mounted by an equestrian.

IV. No military or other parade or procession, or funeral shall take place in or pass through the limits of the Park, without the license of the Park Commissioners.

V. No person shall engage in any play, at base ball, cricket, shinney, foot ball, croquet, or at any other games with ball and bat, nor shall any foot race or horse race be permitted within the limits of the Park, except on such grounds only as shall be specially designated for such purpose.

VI. No person shall be permitted to use the shores of the river Schuylkill within the boundaries of Fairmount Park as a landing place for boats, or keep thereat boats for hire, nor floating boat houses with pleasure boats for hire, except by special license or lease granted by the Commissioners, to be paid for as the Commissioners shall from time to time direct, and only at places designated by and under restrictions determined upon by said Commissioners.

VII. No regatta or boat race by boat clubs, whose houses are built upon any part of the Park grounds, shall take place within the boundaries of the Park without special permission granted by the Commissioners, or by their Committee on Superintendence and Police.

VIII. No velocipedes shall be permitted to be used in Fairmount Park, except upon places that may be specially assigned for their use by the Committee on Superintendence and Police.

IX. Belmont avenue within the Park limits shall be kept in order, and used as a highway for burden traffic, as well as general travel for
ACT OF APRIL 14, 1868.

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

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.

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.

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

the accommodation of the public, in such manner as shall from time to time be directed by the Commissioners of Fairmount Park. (Resolution of October 16th, 1869.)

X. The passage of funeral trains and of droves of cattle, hogs, sheep and other animals over Belmont avenue within the boundaries of Fairmount Park is prohibited.

XI. No cattle, horses, sheep or hogs, shall be driven over any bridge across the river Schuylkill within the Park between the hours of ten A. M. and ten P. M.; nor during other hours of the day in greater numbers than ten cattle or horses, or twenty sheep or hogs, at any one time, nor such droves nearer together than three hundred feet, each drove being in charge of a man; nor shall any bull be driven in any such drove along with cows; and it shall be the duty of the Park Guard to enforce this regulation of the Park, by causing the separation of the animals at least three hundred feet from the bridge; and any driver of such animals who shall violate this regulation, or resist the Park Guard in its enforcement, shall pay a fine not exceeding five dollars, to be recovered as provided by law in respect to other Park fines.

XII. No person shall annoy, strike, injure, maim or kill any animal kept by direction of the Commissioners, either running at large or confined in a close.
V. No one shall ride or drive therein, upon any other than upon the avenues and roads.

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.

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. (a)

VIII. No street railroad car (b) shall come within the lines of the Park without the license of the Park Commission.

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

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.

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

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

XIII. No person shall go in to bathe within the Park.

(a) See ante, page 36, note (a), rule IX.
(b) See Act of March 10, 1870, post, page 51.
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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.

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

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

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.

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

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 a misdemeanor, and shall pay such fine as may be prescribed by said Park Commissioners, (a) not to exceed five

(a) The fine prescribed by the Commissioners is five dollars.
How recovered.

All licenses may be with compensation.

Further liability for violation of rules.

Tenant shall forfeit lease, &c., for violation of rules.

Lease and license shall contain clause of forfeiture.

Park police shall arrest offenders without warrant.

And take them forthwith before a magistrate.

All rents, license charges, fines, &c., shall be paid dollars for each and every violation thereof, to be recovered before any alderman of said city, as debts of that amount are recoverable, which fines shall be paid into the city treasury: Provided, That if said Park Commissioners should license the taking of ice in said Park, or the entry of any street railroad car(a) therein, or articles for sale, or musical entertainments, it may be with such compensation as they may think proper, to be paid into the city treasury: And provided, That any person violating any of said rules and regulations shall be further liable to the full extent of any damage by him or her committed, in trespass or other action; and any tenant or licensed party who shall violate the said rules, or any of them, or consent to or permit the same to be violated on his or her or their premises, shall forfeit his or her or their lease or license, and shall be liable to be forthwith removed by a vote of the Park Commission; and every lease and license shall contain a clause making it cause of forfeiture thereof for the lessee or party licensed to violate or permit or suffer any violation of said rules and regulations or any of them. It shall be the duty of the police appointed to duty in the Park, without warrant, forthwith to arrest any offender against the preceding rules and regulations, whom they may detect in the commission of such offence, and to take the person or persons so arrested forthwith before a magistrate having competent jurisdiction.

Sect. 23. All rents, license charges and fees; all fines, proceeds of all sales, except of lands purchased,(b) and profits of whatsoever kind to be collected, received, or

(a) See Act of March 16, 1870, post, page 51.
(b) See Sec. 13, ante, page 33.
howsoever realized, shall be paid into the city treasury, as a fund to be exclusively appropriated by Councils for Park purposes, under the direction of said Commission:

Provided, That moneys or property given or bequeathed to the Park Commissioners upon specified trusts (a) shall be received and receipted for by their Treasurer, and held and applied according to the trust specified.

Sect. 24. That the Councils of the City of Philadelphia be and they are hereby authorized to widen and straighten any street laid upon the public plans of said city, as they may think requisite to improve the approaches to Fairmount Park.

Sect. 25. That nothing in this act contained shall suspend or affect any proceeding pending in court under any existing law; but the same shall be proceeded in as if this act had not been passed.

Sect. 26. The damages for ground and property taken for the purpose of this act shall be ascertained, adjusted and assessed in like manner as is prescribed by the act to which this is a supplement.(b)

Sect. 27. The said Park Commissioners shall employ, equip, and pay a Park force, adequate to maintain good order therein and in all houses thereupon; which force shall be subject to the orders of the Mayor upon any emergency; and so far as said force shall consist of others

(a) See Sec. 17, ante, page 34.
(b) See Act of March 26, 1807, Sec. 3, ante, page 21, and Act of April 14, 1868, Sec. 5, ante, page 29.
than the hands employed to labor in the Park, it shall be appointed and controlled as the other police of the city.

Sect. 28. [There shall be an additional assistant appointed by the City Solicitor, whose duty it shall be, under the direction of the City Solicitor, to attend to the assessments of damages, and to such other business of a legal nature connected with the Park as said Commissioners may require.] (a)

(a) Repealed by the 5th section of the Act of January 27, 1870, post, page 49.
Act of April 21, 1869. P. L. 1194.

A FURTHER SUPPLEMENT

To an act entitled "An act appropriating ground for public purposes in the City of Philadelphia," approved the twenty-sixth day of March, Anno Domini eighteen hundred and sixty-seven.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That it shall be lawful for the Fairmount Park Commissioners, in the name of the City of Philadelphia, to prevent and restrain the damage or the destruction of any trees and shrubbery upon any premises within the bounds described for the Fairmount Park, by the supplement to the act creating said Park, approved the fourteenth day of April, eighteen hundred and sixty-eight, although the compensation to the owners may not have been assessed or paid.

Sect. 2. That the Fairmount Park Commissioners shall have power, on behalf of the City of Philadelphia, to adjust the boundaries(a) of said Park with any railroad or canal company whose track, tow-path or canal navigation lies within or is bordering upon said Park, and with any other owner bounding upon the Park, and to receive and make the proper conveyances or releases in adjusting said boundaries as now provided by law,(b) and if an increase of width be conceded to any company or companies, or individuals, or an exchange of property be made, it shall be

(a) See post, page 45, Sec. 5.
(b) See Act of April 14, 1868, Sec. 13, ante, page 33.
Act of April 31, 1869.

Rate of compensation for property released or exchanged, to be paid into sinking fund at a rate of compensation not less than a just and proportionate share of the cost of the whole property paid at any time by the City of Philadelphia, with lawful interest thereon, which compensation shall be paid into the sinking fund of said city, for the extinguishment of the Park loan.

Sect. 3. That all moneys raised by the City of Philadelphia by loans for the purchase of grounds for the Fairmount Park, and the construction and laying out the same, shall be kept separately by the treasurer of the said city, and shall be appropriated and paid for no other purposes. (a)

Sect. 4. It shall be lawful for the said Park Commissioners, after having given sixty days' notice of an intention so to do, to take actual possession of any lands or property included within the boundaries of the Park, although the compensation or damages for the said grounds or property may not have been assessed or paid; (b) and the City of Philadelphia shall thereupon become liable for the payment of the compensation or damages which may be awarded for taking such grounds, as of the date when said grounds and property were actually taken into possession, and with interest from such date: Provided, That before any such notice be given as hereinabove provided, the said Park Commissioners shall have made an application to the court for the appointment of a jury according to the provisions of law. (c)

(a) See Act of April 14, 1868, Sec. 11, ante, page 32.
(b) See ante, page 23, note (a). See also Act of April 14, 1868, Sec. 9, ante, page 31.
(c) See Act of March 23, 1867, Sec. 3, ante, page 21.
Sect. 5. If in laying out and adjusting the grades of the boundary avenues of Fairmount Park, the configuration of the ground shall make it advantageous to vary from the boundaries(a) as now authorized by law, said Park Commissioners are hereby authorized and empowered to negotiate and agree with any owner or owners of ground bounding upon the Park, and so required for the proper location and adjustment of said boundary avenues, as to the price and conveyance thereof; and to that end may take and receive additional ground, or make exchanges or releases as the case may require: Provided, That the area of the said Park shall not be increased thereby.

In case of inability from any cause to fix the price of any land, or to adjust the terms of any exchange of ground required for the purpose aforesaid, the same shall be determined by a jury appointed for the purpose, in the manner provided in the act to which this is a supplement.(b)

Sect. 6. That it shall and may be lawful for the City Councils to confer upon said Park Commission, and for the Commission to accept, the care and management from time to time of any other grounds now appropriated or hereafter to be appropriated for park purposes within the City of Philadelphia.

Sect. 7. No Park Commissioner, and no Solicitor acting for said Commission, and no person exercising any office, or holding any appointment under such Commission shall

(a) See ante, page 43, Sec. 2.
(b) See Act of March 26, 1867, Sec. 3, ante, page 21. Under authority conferred upon them by the above section, the Park Commissioners have varied the northwest boundary of the Park.
receive, either directly or indirectly, any compensation for any service rendered to any party having any claim of any kind, whether for land damages, or in any other manner arising against said Commission, or the city, excepting only the proper salary or compensation, if any, attached to his office, and any offence against the provisions of this section shall be deemed a misdemeanor, and punishable by expulsion from office.

Section 8. The first section (a) of an act of Assembly, approved the fourteenth day of April, Anno Domini one thousand eight hundred and sixty-eight, entitled “A supplement to an act entitled ‘An act appropriating ground for public purposes in the City of Philadelphia,’” approved the twenty-sixth day of March, Anno Domini one thousand eight hundred and sixty-seven, shall be amended so that the same in describing the boundaries of Fairmount Park shall read as follows: “Beginning at a point in the northeasterly line of property owned and occupied by the Reading Railroad Company, near the City bridge over the river Schuylkill at the Falls, where said northeasterly line would be intersected by the line dividing the property of H. Duhring, from that of F. Stoever and T. Johnson, if the same were extended; from thence in a southwesterly direction upon said dividing line and its prolongation to the middle of the Ford road;” and from thence the said boundary line shall proceed as in said first section is described. And furthermore, it is hereby declared to be the true intent and meaning of the fifth section (b) of said act, that all the

(a) Ante, page 25.
(b) Ante, page 29.
grounds pertaining to Fairmount Park, and mentioned and described in any of the sections of said act of Assembly, shall be subject to all the powers, control and authority which is by force of law conferred upon the Commissioners of Fairmount Park.

Sect. 9. It is the true intent and meaning of the act entitled "An act appropriating ground for public purposes in the City of Philadelphia," approved March twenty-sixth, one thousand eight hundred and sixty-seven,\(^{(a)}\) and of the supplement thereto, passed April fourteenth, one thousand eight hundred and sixty-eight,\(^{(b)}\) and of the provisions of this further supplement, that no interest shall be allowed on damages for ground taken up to the time of their payment, or the issue of any warrant for their payment by the City of Philadelphia, excepting only such cases as are provided in the fourth section of this act.\(^{(c)}\)

\(^{(a)}\) Ante, page 19.
\(^{(b)}\) Ante, page 25.
\(^{(c)}\) Ante, page 44. See also, as to interest on Park damages before the passage of this act, ante, page 32, note\(^{(a)}\).
ACT OF JANUARY 27, 1870.


A FURTHER SUPPLEMENT

To an act entitled "An act appropriating ground for public purposes in the City of Philadelphia," approved the twenty-sixth day of March, Anne Domini eighteen hundred and sixty-seven.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That it shall be lawful for the Court of Quarter Sessions of Philadelphia county to confirm the partial or special reports of Park juries, and to order payment by the City of Philadelphia, of the damages awarded to one or more owners of land from time to time, although the jury shall not specify therein by whom the damages are to be paid without prejudice to the right and power of the same or any other jury appointed by the court to subsequently make inquiry as to the advantages of opening said Park to properties adjoining, or in the vicinity of the same, and by a subsequent partial or special report to determine what amount, if any, of said damages shall be paid by the City of Philadelphia, and what amount, if any, shall be paid by the property owners benefited, as now provided by law.  

Sec. 2. That the word "within" in section thirteen of the act of the fourteenth of April, Anne Domini one thousand eight hundred and sixty-eight, relating to Fair-  

mount Park, next after the words "beyond or" be altered to "without."

**Sect. 3.** That should any vacancy happen in any jury now appointed or hereafter to be appointed, by death or resignation, removal or otherwise, it shall be lawful for the court to fill such vacancy from time to time as it may happen without prejudice to the validity of the proceedings: *Provided, That every claimant shall have the opportunity of being fully heard by the whole jury or a quorum thereof after any such new appointment.*

**(a)**

**Sect. 4.** That the Board of Park Commissioners shall make their annual report to the Councils of the City of Philadelphia during the month of January, and not to the Mayor of said city as now provided by law.

**(b)**

**Sect. 5.** That the twenty-eighth section of the act entitled "A supplement to an act entitled 'An act appropriating ground for public purposes in the City of Philadelphia,' approved the twenty-sixth day of March, Anno Domini one thousand eight hundred and sixty-seven," approved the fourteenth day of April, Anno Domini eighteen hundred and sixty-eight, shall be and the same is hereby repealed; and there shall be appointed by the Commissioners of Fairmount Park, a Solicitor, whose duty it shall be under their direction to attend to the assessment of damages, and to such other business of a legal nature connected with the Park as the said Com-

(a) See Act of March 26, 1867, Sec. 3, and notes, ante, pages 21 and 22.
(b) See Act of April 14, 1867, Sec. 14, ante, page 34.
(c) See ante, page 42.
Compensation. Commissioners may require, he shall receive during the present year and hereafter, until otherwise ordered by Councils, the same compensation as is now provided for the Assistant Solicitor named in the said twenty-eighth section.
AN ACT

To secure to the citizens of the Commonwealth the free use and enjoyment of Fairmount Park in the City of Philadelphia, and to prevent the construction of any railroad therein.

Whereas, The City of Philadelphia under authority conferred by an act of Assembly approved March twenty-sixth, Anno Domini one thousand eight hundred and sixty-seven, and the several supplements thereto, has purchased a large body of land within the limits of said city, and laid out and improved the same as a public Park known as Fairmount Park, and has expended several millions of dollars in the purchase and improvement of the same:

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the City of Philadelphia is hereby required to maintain and keep open the said Fairmount Park for the free use and enjoyment of all the citizens of this State, subject to the rules adopted for the good order and government of the same, and in consideration of the compliance of the said city with the requirements of this Act, the State of Pennsylvania hereby declares and agrees that no railroad shall ever hereafter be constructed within the limits of the said Fairmount Park.

(a) See ante, page 35, Sec. 21.
(b) See Act of Apr. 14, 1868, Sections 19 and 20, ante, page 35.
Rights already acquired by railroad companies preserved, videlicet, That nothing in this act shall be construed to interfere with the rights already acquired by any railroad company whose tracks are now laid within the limits of said Fairmount Park.
Act of March 15, 1871. P. L. 363

A FURTHER SUPPLEMENT

To an act appropriating ground for public purposes in the City of Philadelphia, approved the twenty-sixth day of March, Anno Domini, one thousand eight hundred and sixty-seven.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the said Park Commissioners shall have power to exclude from the Park manufactories therein, so as to leave the ownership in the owners thereof, with defined boundaries under agreements to be made between the said owner and the City of Philadelphia, to run with the title, in manner to protect the purity of the waters of the Schuylkill and the Wissahickon, and to preserve good order in the Park, and to prevent the sale of intoxicating liquors upon any part of the premises to be so left in private ownership; and such exemption from being taken for public use, may be for a term of years or in fee.

Section 2. That it shall be lawful for the Fairmount Park Commissioners to agree with the Ridge Avenue Turnpike Company for the taking of said Ridge avenue, from Dauphin street northward to the Wissahickon, and if they cannot agree, to petition for a jury in manner authorized by the acts relating to said Park; and such jury shall proceed, and the court have all the power in said acts contained, for the ascertainment and payment of the damages for freeing said avenue from tolls. (a)

(a) See Act of March 26, 1867, Sec. 3, ante, page 21.

AN ACT

Relating to the assessment of damage for the appropriation of land for public use.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That in all cases of the appropriation of land for public use, other than for roads, streets or highways, it shall not be lawful to assess, apportion or charge the whole or any portion of the damage done to or value of the land so appropriated, to, among or against the other property adjoining or in the vicinity of the land so appropriated, nor the owners thereof; and all acts, or parts of acts, inconsistent herewith, are hereby repealed.(a)

(a) See Act of March 26, 1867, Sec. 3, ante, page 22. This act does not apply to cases where part of the same tract of land is taken, and part is not. In that case the jury is bound, in ascertaining the damages, to take into consideration the advantages to that portion of the tract which is left: 29 Leg. Int. 220.
ORDINANCES.

Ordinance of March 4, 1868, Ordinances 1868, page 88.

AN ORDINANCE

Appropriating ground for public purposes, pursuant to the Acts of Assembly empowering the City of Philadelphia so to do; also defining the limits, and providing for the improvement of Fairmount Park.

Section 1. The Select and Common Councils of the City of Philadelphia do ordain, That Fairmount Park shall consist of the area of water and of ground which is embraced within the following limits, to wit, beginning at a point in the northeasterly line of property owned and occupied by the Reading Railroad Company, near the city bridge over the river Schuylkill at the Falls, where said northeasterly line is intersected by the line dividing property of H. Duhring from that of F. Stoever and T. Johnson, extending from thence in a southwesterly direction upon said dividing line and its prolongation to the middle of the Ford road; from thence by a line passing through the southeast corner of Forty-ninth and Lebanon streets to George's Run; thence along the several courses of said run to a point fourteen hundred and eighty-seven and a half feet from the middle of the Pennsylvania railroad, measured at right angles thereto; thence by a straight line through the northeast corner of Forty-third and Hancock streets to the north-
erly side of Girard avenue near Fortieth street; thence by the said northerly line of Girard avenue to the easterly side of 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 the 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 said southwesterly side of Pennsylvania avenue to the west side of Thirty-third street; thence along the westerly line 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 Huntington 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 the 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
ORDINANCE OF MARCH 4, 1868.

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 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. Excepting, nevertheless, hereout 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 this section, as the city may from time to time require for the purposes of its Water Department; (a) and saving the rights and franchises of the Schuylkill Navigation Company, and the Philadelphia and Reading, Connecting and Junction Railroad Companies, as now provided by law. (b)

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 the said hollow and the river Schuylkill to the foot of City avenue; laid out with ground contiguous thereto for ornamentation, of such width and so constructed as the Commissioners of Fairmount Park, appointed under authority of Roberts' Hollow drive provided for.

(a) See Act of April 14, 1868, Sec. 1, ante, page 25, wherein the same boundaries are defined by act of Assembly.

(b) The franchises of the above corporations are also excepted by the Act of April 14, 1868, Sec. 3, ante, page 23.
the act of the General Assembly of the Commonwealth, may determine. And the City of Philadelphia hereby declares its design and intent to make such road and its contiguous ground a part of the aforesaid Park; and it hereby authorizes said Commissioners to ascertain by proper survey, and report its boundaries, so that the same may be duly appropriated. (a) And the said Commissioners shall in like manner lay out and cause to be opened an avenue outside of and extending along so much of the boundary of the Park as is between the point of beginning in the description given in the first section of this Ordinance and Girard avenue; which new avenue shall be not less than one hundred feet in width; and in like manner on the easterly side of the river they shall lay out and cause to be opened a similar avenue, extending outside of and along the Park boundary, from the intersection of Thirty-third street and Pennsylvania avenue; northwardly and westwardly to the river Schuylkill. And the said Commission are hereby authorized and empowered to exercise over the said new avenues, and also over so much of Girard avenue (b) as is included within the limits of the Park, such authority as may be requisite for their proper laying out, decoration, and improvement, and for their preservation as public highways adjacent to the Park. (c)

(a) See Act of April 14, 1868, Sec. 2, ante, page 27, wherein the Roberts' Hollow drive is provided for by act of Assembly.

(b) As a general proposition, but by no means universal, bridges are treated as portions of the highways which cross them, and are to be maintained by the same persons to whom the duty of repairing the highways is committed: 18 P. F. Smith, 406.

(c) So much of the above section as relates to the laying out and control of boundary avenues, has been modified by Sections 7 and 8 of the Act of April 14, 1863, ante, page 30.
ORDINANCE OF MARCH 4, 1868.

Sect. 3. The City of Philadelphia hereby declares its intention to appropriate the shores of the Wissahickon creek, on both sides of the same, from its mouth to such point as may hereafter be determined, by said Park Commissioners, and of such width as may embrace the road now passing along the same, and may also protect the purity of the water of said creek, and preserve the beauty of the scenery upon its banks, so that the same may be hereafter added to Fairmount Park, and constitute a part of the same. And the said Commissioners of Fairmount Park are hereby authorized and empowered, with the aid of a proper survey, to define the appropriate limits of the ground proper to be taken for Park uses upon both shores of the Wissahickon, and to report the same for such definite legislation thereon as may be requisite and proper for the Councils of the City of Philadelphia.\(^{(a)}\)

Sect. 4. The City of Philadelphia in pursuance of the several acts of Assembly enabling it so to do, and of any and all acts of the General Assembly of the Commonwealth conferring such power upon it,\(^{(b)}\) does hereby appropriate and set apart forever the area of land and water comprised within the limits prescribed in the preceding sections of this ordinance, as an open public ground and Park for the preservation of the purity of the Schuylkill water, and of the health and enjoyment of the people forever.\(^{(c)}\)

\(^{(a)}\) The appropriation of the shores of the Wissahickon creek, and the manner of defining the Park boundaries thereon, is provided for by the 2d Section of the Act of April 14, 1868, ante, page 28.

\(^{(b)}\) See post, page 63.

\(^{(c)}\) See Act of April 14, 1868, ante, page 25.
ORDINANCE OF MARCH 4, 1868.

Sect. 5. That in addition to the powers conferred, by the act of Assembly creating the Commission, upon the Commissioners of Fairmount Park, the City of Philadelphia hereby authorizes and empowers said Commission to take possession of so much of the ground contained within the limits set forth in the preceding sections of this ordinance as may be beyond the limits of the ground appropriated by or under the act of Assembly establishing said Commission, and to exercise over the same, as part of Fairmount Park, all the powers and authorities which are requisite for its appropriation, its laying out and adornment, as part of the Park; (a) subject, nevertheless, to such appropriation as may, from time to time, be made for such purposes by the Councils of the city. (b)

Sect. 6. That the said Commission be and they are hereby authorized and empowered to negotiate with the owners of so much of the land included within the aforesaid limits as is beyond the boundaries mentioned in the act of Assembly establishing the Commission (c) and to agree with them if it be practicable as to the price of their land, (d) and if it is not practicable so to do, that the Law Department of the city be and the same is hereby authorized and directed, upon the request of said

(a) See Act of March 26, 1867, Sec. 1, ante, page 19, and Act of April 14, 1868, Sec. 3, ante, page 28, and Sec. 5, ante, page 29, and Act of April 21, 1869, Sec. 8, ante, page 46.

(b) So much of the above section as relates to appropriations, is modified by the 4th and 5th Sections of the Act of March 26, 1867, ante, pages 22 and 23, and by the 11th Section of the Act of April 14, 1868, ante, page 32.

(c) Act of March 26, 1867, ante, page 19.

(d) The same power is conferred upon the Commissioners by the Act of April 14, 1868, Sec. 26, ante, page 41.
Commission, to take proper steps in the law for the ascertaining and adjusting of the damages attending the taking of such land. (a)

(a) The clause relating to the Law Department is superseded by 3d Section of Act of March 26, 1867, ante, page 21, and 5th Section of Act of January 27, 1870, ante, page 49.

RESOLUTION

Of request to the Commissioners of Fairmount Park and to the Legislature.

Resolved by the Select and Common Councils of the City of Philadelphia, That the Commissioners of Fairmount Park be requested to construct within the Park suitable fire-proof buildings for a public art gallery and museum for free exhibition at all times.
HUNTING PARK

AND

LEGACY OF ELLIOTT CRESSON.


A FURTHER SUPPLEMENT

To an act, entitled "An act to incorporate the City of Philadelphia."

Section 39. * * * * * * *

That it shall be the duty of the City Councils to obtain by dedication or purchase, within the limits of the said city, an adequate number of squares or other areas of ground, convenient of access to all its inhabitants, and lay out and maintain such squares and areas of ground as open public places, for the health and enjoyment of the people forever.

AN ORDINANCE


Section 1. The Select and Common Councils of the City of Philadelphia, do ordain, That all that certain tract, piece or parcel of ground, situate in the Twenty-third Ward of the City of Philadelphia, commencing at a point in the easterly line of the Old York road, now called York avenue, and the middle of Nicetown lane (formerly thirty-three feet wide, and now increased to the width of sixty feet, by the addition of thirteen feet six inches on each side, as agreed upon by the owners of property on each side thereof); thence along the middle of said Nicetown lane south, sixty degrees east, eighty-three perches and forty-seven hundredths of a perch to a point; thence by land of ——— ———, north, thirty degrees east, thirty one perches and seven-tenths of a perch to a corner; thence by land of ——— ———, north, twenty-seven degrees five minutes west, eighty-six perches and two-tenths of a perch to a corner; thence by land of the said Jacob Steinmetz, north, one and one-half degrees east, twenty-six perches and eight-tenths of a perch to a corner; thence by the same west forty-five perches and eight-tenths of a perch to the easterly line of the York avenue aforesaid; thence along said easterly line of said York avenue south, two degrees twenty-five minutes west,
ORDINANCE OF JULY 10, 1856.

eighty-nine perches and twenty-nine hundredths of a perch more or less to the place of beginning; containing about forty-three acres twenty-one and two-tenths square perches of land, the which premises were generously given to the City of Philadelphia by several of her citizens, as a free gift, to be used as a public park, free of access for all the inhabitants of the city, and for the health and enjoyment of the people, forever, be and the same is hereby devoted and dedicated to public use as and for a Park, and the said area of ground shall be called "Hunting Park."

Sect. 2. It shall not be lawful for any person or persons to sell or dispose of intoxicating liquors, or of merchandise of any kind whatsoever, within the boundaries of said Park; and if any person shall offend against the provisions of this ordinance, he or she so offending shall forfeit and pay for each offence the sum of twenty dollars, which penalty shall be sued for before any alderman of the City of Philadelphia, and the same being recovered, the informer shall be entitled to the one-half part thereof.

Sect. 3. It shall be the duty of the Commissioner of City Property to cause the said Park to be laid out by some suitable and competent person, who shall be approved by the joint special Committee of Councils having charge of this subject, and upon such plan as the said Committee may, in conjunction with the Committee of the donors, consent to and approve; the said Committee shall report to Councils such plan and cost of same. And he shall also, subject to the like supervision and approval, cause the same to be planted with suitable and appropriate trees, and otherwise prepared for its future uses.
Appropriation therefor.

Sect. 4. That the sum of four thousand dollars be and the same is hereby appropriated to meet the expenses which may be incurred in the execution of this ordinance, the same to be in lieu of any previous appropriation to this purpose.

AN ACT

Enlarging the duties and powers of the Commissioners of Fairmount Park, by requiring them to take charge of Hunting Park in the City of Philadelphia, and of the legacy of Elliott Cresson, providing for the planting of trees in said city.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the care and management of Hunting Park, in the City of Philadelphia, is hereby transferred and committed to the Commissioners of Fairmount Park, who shall be and they are hereby authorized and required to take charge of the same, and lay out, enclose, plant, and adorn the same; and who shall possess and exercise the like powers and authorities, in every particular, over the said Hunting Park, as now by existing laws, or hereafter by such as may be passed, they now have, or may hereafter come to have, over Fairmount Park, in the City of Philadelphia.

SECTION 2. It shall and may be lawful for said Commissioners to survey, locate, lay out and established an avenue, (a) which shall not be less than one hundred feet in width, which shall extend from Hunting Park to Fairmount Park, connecting the two Parks with each other, at such points as the Commissioners aforesaid may think best; and all and singular the provisions of exist-

(a) See Act of April 4, 1873, Sec. 1, post, page 70.
acquired under laws pertaining to the acquisition of land for Fairmount Park. Said avenue shall be a Park road, and shall be under the control of the Commissioners.

Commissioners may make exchanges of land for the purpose of squaring said Park before Jan. 1st, 1872.

Sect. 3. That for the purpose of squaring the said Hunting Park, and making the same more suitable in shape for use as a park, the Park Commissioners may negotiate with the owner of ground on the east side of said Hunting Park, and south side of Bristol street, and acquire the title to an area of ground, at least as large as all that part of the said Hunting Park situate north of the line of said Bristol street, which latter ground shall be given in exchange for the ground so acquired east of the said Hunting Park and south of said Bristol street, and a deed or deeds so agreed to be given in even exchange to the person entitled to receive the same, shall be executed by the Mayor of the City of Philadelphia whenever he shall be requested so to do by the Park Commissioners; and the said exchange to be made on or before the first day of January, one thousand eight hundred and seventy-two. (a)

Sect. 4. It shall be the duty of the Councils of the City of Philadelphia from time to time, on the request of said Commissioners to provide such moneys as the said

(a) See Sec. 2, of the Act of April 4, 1872, post, page 71.
Commission may require for the proper execution of the duties imposed upon them by this act.

Sect. 5. The care and management of the legacy(a) made to the City of Philadelphia by the late Elliott Cresson of the sum of five thousand dollars, the income of which is to be applied to the planting of shade trees in said city, in accordance with the provisions of his will, is hereby assigned, appointed, and transferred to the Commissioners of Fairmount Park, who are hereby authorized and directed to receive, execute and discharge the said trust, and to whom the City of Philadelphia is hereby authorized to pay over any accumulation of interest and income now existing, and such as from time to time accrues for that purpose.

(a) Extract from the will of Elliott Cresson, deceased. "Item.—I give and bequeath to the Mayor and Councils of Philadelphia the sum of $5,000 in trust, as a perpetual fund, the income from which I desire shall be annually forever expended in planting and renewing shade trees, especially in situations now exposing my fellow-citizens to the heat of the sun—desiring that due care be taken to select the best varieties of fine trees, and excluding such foreign trash, as the Lombardy Poplar, Ailanthus, Paper Mulberry and similar exotics." This is a good charitable bequest: 6 C. 437.

A SUPPLEMENT

To an act, entitled "An act enlarging the duties and powers of the Commissioners of Fairmount Park, by requiring them to take charge of Hunting Park, in the City of Philadelphia and of the legacy of Elliott Cresson, providing for the planting of trees in said city."

Whereas, By the second section of the act to which this is a supplement, it is enacted that it shall and may be lawful for said Commissioners to survey, locate, lay out and establish an avenue which shall not be less than one hundred feet in width, which shall extend from Hunting Park to Fairmount Park, et cetera; now therefore,

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the said Commissioners of Fairmount Park be authorized in their discretion, and they are hereby authorized to open, within a reasonable time, the street known as, or designated, Bristol street, on the plan of the City of Philadelphia, from Hunting Park to Fairmount Park, in the place and stead of the avenue authorized by the said second section(a) of the said act to be located, laid out and established; and that all and singular, the provisions of existing laws relating to Fairmount Park, concerning the mode of acquiring possession of land, and

(a) See Act of May 15, 1871, Sec. 2, ante, page 67.
of the title to land, are hereby extended to the land and property necessary, in the judgment of said Commissioners, to be required in order to the opening of said street; the said street may be opened, macadamized, adorned and kept in repair as a Park road by said Commissioners, and shall be under their police control and supervision.

Sect. 2. That in order to square the said Hunting Park, and to make the same suitable and more attractive in shape for the purposes of a Park, the said Commissioners may, in their discretion, negotiate with the owner of ground on the east side of Hunting Park and the south side of Bristol street, and may acquire the title to an area of ground as large as all that part of the said Hunting Park situate north of the line of the said Bristol street; which latter ground may be given in exchange for the ground so acquired east of the said Hunting Park and south of the said Bristol street, and a deed or deeds so agreed to be given in exchange to the person entitled to receive the same, shall be executed by the Mayor of the City of Philadelphia, whenever he shall be requested so to do by the Park Commissioners, and the said exchange to be made on or before the first day of July, one thousand eight hundred and seventy-three.(a)

(a) See Act of May 15, 1871, Sec. 3, ante, page 63.