



Improvement of Land Act 1864

1864 CHAPTER 114

Proceedings preliminary to Sanction of Improvements

And with regard to the Proceedings preliminary to the Sanction of any Improvements, be it enacted as follows :

11 Application to Commissioners to sanction Improvements.

When any Landowner shall be desirous of borrowing or advancing Money under this Act for the Improvement of his Land, he shall make an Application to the Commissioners to sanction the proposed Improvements in such Manner and Form and stating such Particulars as the Commissioners shall from Time to Time direct; and until the proposed Improvements shall have been sanctioned by the Commissioners in manner herein-after mentioned, the Application may be withdrawn or altered, or consolidated with any other Application, at the Pleasure of the Applicant, but without Prejudice to his Liability as herein-after mentioned for the Expenses incurred by the Commissioners or their Officers in consequence of his Application.

12 Joint Application by several Landowners.

Any Two or more Landowners may, with the Consent of the Commissioners, join in an Application to them to sanction the Improvement of the Lands of such Landowners respectively, but the Sum to be charged in pursuance of any such joint Application shall be apportioned so that a separate and distinct Sum may become charged on the Land of each Landowner.

13 Commissioners may issue Forms.

The Commissioners may from Time to Time frame and circulate, as they shall see Occasion, Forms indicating the Particulars of the Information to be furnished to them by Landowners for the Purposes of this Act, and such other Forms as the Commissioners may deem expedient for facilitating any Proceedings under this Act.

14 Require Security for Expenses.

The Commissioners may require Security to be given to them by the Landowner, by Bond, Deposit, or otherwise, in such Form as they may think fit, for the Payment to them of the Expenses which they or their Officers shall incur in respect of the Investigation on any Application, and, if they shall issue such provisional or other sanctioning Order as herein-after mentioned, of the Expenses which they or their Officers shall incur in inspecting and ascertaining the due Execution of the Works; but unless the Commissioners shall issue such absolute Order as herein-after mentioned, such Payment shall not be a Charge on the Land to which such Application relates, but shall be a Debt due by the Person making such Application to the Commissioners, and shall be recoverable by them as in the Nature of a Crown Debt.

15 Cause Application to be investigated.

If the Commissioners shall think fit to entertain the Application so made to them, they may cause the Land to be inspected and examined by an Assistant Commissioner, or an Engineer or Surveyor, who shall have regard to and examine the Proposals and Statements contained in such Application, and shall report his Opinion thereon, and who shall also report whether in his Judgment the proposed Improvements will effect a permanent Increase of the yearly Value of the Land exceeding the yearly Amount proposed to be charged thereon in respect of the Improvements applied for; and the Commissioners may by themselves, or any Assistant Commissioner, Engineer, or Surveyor, make such other Inquiries in relation to any such Application as they shall think fit: Provided that the above Requisition as to increased annual Value shall not apply to any Outlay proposed to be made upon or in respect of planting only.

16 And require proposed Improvements to be modified.

The Commissioners shall have Power to require such Alterations as they shall think expedient to be made in the Improvements proposed, or in the proposed Mode of executing them.

17 Advertisements and Notices preliminary to Sanction.

Before the Commissioners shall sanction any Improvements, Notice shall be given of the Application as well by Advertisement 'inserted in Two successive Weeks in some Newspaper published in the County in which the Land to be improved lies, or in case there shall be no such Newspaper published in such County then in some County adjoining thereto, as by a Notice in Writing given, where such Lands are situate in *England* or *Ireland*, to every Person entitled to any Estate in such Land, or any Part thereof, in reversion or remainder up to and inclusive of the Person entitled to the first vested Estate of Inheritance therein, and to every Person entitled to any Mortgage upon such Land or any Part thereof who by reasonable Inquiry shall be known to be so interested, and given, where such Lands are situate in *Scotland*, to the nearest Heir or Heirs of Entail, not exceeding Three, and to the Holders of every Heritable Security on such Lands appearing upon the Records; and in such Advertisements and Notices respectively shall be stated the maximum Amount which it is proposed to charge in respect of the Improvements, and the greatest and least Terms over which it is proposed that the Rentcharge should be spread ; and the Commissioners shall not sanction the Improvements until One Month shall have elapsed from the Publication of the Second of such Advertisements and the Service of such Notices (if any) respectively, of which Publication, and of the Service of all necessary Notices as aforesaid, the

Landowner shall, if required by the Commissioners, satisfy them by One or more Statutory Declarations made by him or on his Behalf.

18 Power of Dissent by Persons interested, and Protection of Landowner's Infant Children.

In case any Person having any Estate in or Charge or Security on the Land to be improved shall within the Month named in the last preceding Section signify in Writing to the Commissioners his Dissent from such Application, stating therein the Nature of his Estate in or Charge or Security on such Land, the Commissioners shall certify such Dissent to the Landowner by whom the Application was made, and shall not make any provisional or other Order sanctioning the Improvements unless or until such Dissent be withdrawn, or an Order be made by the High Court of Chancery in *England* or *Ireland* respectively, or by the Court of Session in *Scotland*, in manner herein-after provided, authorizing the Commissioners to sanction the same ; nor shall they make any provisional or other Order sanctioning the Improvement of any Land in the Case of which the Landowner, or the Husband of the Landowner, shall be the Father of the Person or Persons entitled either at Law or in Equity to any Estate in such Land, or any Part thereof, in reversion or remainder, up to and inclusive of the Person entitled to the first vested Estate of Inheritance, and such Person or Persons, or any of them, shall be an Infant or Infants, or a Minor or Minors, unless or until such an Order as herein-before mentioned shall be made by such Court as aforesaid.

19 The same in case of navigable Rivers and Canals.

If the Commissioners shall consider that any proposed Improvement would interfere with any navigable River or Canal respectively vested in or under the Management or Control of any Commissioners, Trustees, Conservators, Undertakers, Company, or other Body or Individuals, or the Banks or other Works or Conveniences thereof, or would occasion the Flow or Discharge into such River or Canal of any Drainage or other Matter, the Landowner shall give Notice of the Application in Writing, together with a Plan and Section of the proposed Improvement, to such Commissioners, Trustees, Conservators, Undertakers, Company or other Body, or Individuals ; and in case they shall, within One Month after the Receipt of such Notice, signify in Writing to the Commissioners their Dissent from such Application, and state the Nature of their Interest in or Authority over such River or Canal, the Commissioners shall certify such Dissent to the Landowner by whom the Application was made, and shall not sanction the Improvement unless or until such Dissent be withdrawn, or an Order be made by the High Court of Chancery in *England* or *Ireland* respectively, or by the Court of Session in *Scotland*, in manner herein-after provided, authorizing the Commissioners to sanction the Improvement.

20 Consents necessary in case of Church Lands.

When the Land to which the Application relates, or any Part of such Land, is held in right of any Church, Chapel, or other Ecclesiastical Benefice, the Commissioners shall not sanction any Improvement of such Land, or of so much thereof as is so held, unless and until the Patron of the Benefice, and in *England* and *Ireland* the Bishop of the Diocese, and in *Scotland* the Presbytery of the Bounds, shall signify to the Commissioners, by Writing under their Hands, their respective Consents to such Application.

21 In case of Dissent, or when Landowner's Infant Children are to be protected, Court of Chancery or Session may authorize Commissioners to proceed.

If and when any Dissent from any such Application to the Commissioners for their Sanction of proposed Improvements shall have been notified in Writing to the Commissioners, either by a Party interested in the Lands proposed to be improved (not being Lands held in right of any Church, Chapel, or other Ecclesiastical Benefice), or by the Commissioners, Trustees, Company, or other Body or Individuals interested in any River or Canal which would or might be interfered with as herein-before mentioned, or if the Landowner, or the Husband of the Landowner, shall be the Father of the Person or Persons entitled either at Law or in Equity to any Estate in the Land to be improved, or any Part thereof, in reversion or remainder, up to and inclusive of the Person entitled to the first vested Estate of Inheritance, and such Person or Persons, or any of them, shall be an Infant or Infants, or a Minor or Minors, the Landowner desiring, such Improvements may apply to the High Court of Chancery in *England* or *Ireland* where such Lands are situate in *England* or *Ireland* respectively, or to the Court of Session where such Lands are situate in *Scotland*, for an Order of such Court authorizing the Commissioners to entertain and proceed upon the Application for such proposed Improvements notwithstanding such Dissent or Circumstance; and such Application shall be made, as to Lands in *England*, to the Master of the Rolls or any One of the Vice Chancellors sitting at Chambers, by Summons, calling on the Party dissenting to show Cause why such Order should not be made; as to Lands in *Ireland*, to the Master of the Rolls, by summary Petition or otherwise, as he shall by any General Order direct; and as to Lands in *Scotland*, to either Division of the Court of Session in Time of Session, or to the Lord Ordinary sitting on Bills in Time of Vacation, by summary Petition; and the Court or single Judge, as the Case may be, to whom such Application shall be made, shall hear and determine such Application, and for that Purpose shall have Power to make or direct to be made all such Inquiries, and receive and entertain all such Statements and Evidence, on Oath or by Affidavit as such Court or Judge may consider necessary or desirable, or as may be produced before, them or him; and if upon a Consideration of all the Circumstances such Court or Judge shall be of opinion that the Commissioners should entertain and proceed upon such Application, an Order shall be made authorizing and requiring them to proceed thereon, and to deal with the same according to the Provisions of this Act authorizing them in that Behalf, notwithstanding such Dissent or Circumstance as aforesaid: Provided that if at any Time after Notification of such Dissent, and before any such Order shall have been applied for and made as aforesaid, such Dissent shall be withdrawn by a like Notification in Writing, it shall not be necessary to make or proceed with such Application, or to obtain such Order.

22 Service of Notice under preceding Clause.

Where any Party dissenting shall be out of the Jurisdiction of the Court, it shall be lawful for the Court or Judge to order Service to be made in such Manner as such Court or Judge may think fit, and upon Proof to the Satisfaction of such Court or Judge that such Party has had actual Notice within a reasonable Time of such intended Application, it shall be lawful for such Court or Judge thereupon to hear and determine such Application.

23 And Costs may be given by the Court.

The Costs of and incidental to every Application under the Twenty-first and Twenty-second Sections, and the Mode in which such Costs shall be settled or taxed, shall

be in the Discretion of the Court or Judge who shall hear such Application, and if such Court or Judge shall so direct, the said Costs shall be deemed to be Part of the Expenses of and incidental to the Application for the proposed Improvements.

24 Representation of Persons under Disability for Applications and Dissents under preceding Clauses.

All Husbands, Guardians, Tutors, Committees, Curators, Feoffees, Trustees, Judicial Factors, Executors, and Administrators shall respectively have the same Rights and Powers of making Applications and signifying Dissents, and taking other Proceedings under this Act, as their respective Wives, Infants, Minors, Lunatics, Idiots, and furious or fatuous Persons would have had if free from Disability, or as such Feoffees, Trustees, Judicial Factors, Executors, or Administrators respectively would have had if the Estates, Charges, or Interests of which they shall be such Feoffees, Trustees, or Judicial Factors, or which shall be vested in them as such Executors or Administrators, had been vested in them in their own Right; but no Guardian, Tutor, Committee, Curator, Feoffee, Trustee, Judicial Factor, Executor, or Administrator shall be in anywise compelled or obliged to signify a Dissent from any Application under this Act, or be in anywise responsible for the Consequences of such Application, or of any Charge made in pursuance thereof.