



Inclosure Act 1848

1848 CHAPTER 99

An Act to further extend the Provisions of the Act for the Inclosure and Improvement of Commons. [4th September 1848]

WHEREAS an Act was passed in the Session of Parliament holden in the Eighth and Ninth Years of the Reign of Her present Majesty, intituled *An Act to facilitate the Inclosure and Improvement of Commons and Lands held in common, the Exchange of Lands, and the Division of intermixed Lands, to provide Remedies for defective or incomplete Executions, and for the Nonexecution, of the Powers of General and Local Inclosure Acts, and to provide for the Revival of such Powers in certain Cases* : And whereas an Act was passed in the Session of Parliament holden in the Ninth and Tenth Years of Her present Majesty, intituled *An Act to amend the Act to facilitate the Inclosure and Improvement of Commons* : And whereas an Act was passed in the Session of Parliament holden in the Tenth and Eleventh Years of Her present Majesty, intituled *An Act to extend the Provisions of the Act for the Inclosure and Improvement of Commons* : And whereas it is expedient that the Provisions of the said Acts should be further extended :

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,

Persons not interested in Lands to be inclosed may apply to submit Land to Operation of Inclosure.

That it shall be lawful for the Commissioners in their Provisional Order in the Matter of any Inclosure to set forth any special Agreement or Matter concerning or affecting the Lands to be inclosed, and to make the same a Condition of such Inclosure and that where, after an Application shall have been made to the Commissioners to sanction an Inclosure, or to certify the Expediency of an Inclosure, under the Provisions of the said firstly-recited Act, any Person interested within the Meaning of the said Act in Land not subject to the Operation of the Inclosure proposed to be made under such Application shall, by Application in Writing to the Commissioners, submit to the Operation of the proposed Inclosure such Land, or any Easement or other Right or Interest in such Land, in consideration of any Allotment, Easement, or Benefit to be made or secured under such Inclosure, and shall specify his Estate and Interest

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in such Land, the Commissioners, if they shall think the Proposal beneficial, may embody in their Provisional Order in the Matter of the said Inclosure any Directions and Agreements in reference to such Proposal, and make such Directions and Agreements a Condition of such Inclosure ; and an Award made in the Matter of such Inclosure, in pursuance of any Provisional Order containing such Condition, and signed by the Person making such Application, shall have as full Effect and be as binding, as well as respects the Land or Right or Interest in Land which shall have been so submitted to the Operation thereof as the Lands subject to be inclosed under the original Application, as if the Land or Right or Interest in Land so submitted, had been Land subject to be inclosed under the original Application, and as if such Person so interested had signed the same Application : Provided always, that if such Person shall refuse or neglect to sign such Provisional Order, such Inclosure may proceed as regards the Land the immediate Subject of such Inclosure as if no Application by such Person had been made, and as if the Directions and Agreements in reference to such Proposal had not been embodied in such Provisional Order : Provided also, that no such Direction or Agreement as last aforesaid shall be embodied in a Provisional Order unless Notice of the Intention so to do shall have been given by Advertisement in Two successive Weeks, and One Calendar Month shall have elapsed from the Publication of the last of such Advertisements ; and in case before the Expiration of such Month any Person entitled to any Estate in or to any Charge upon the Land to be so submitted to the Operation of the Inclosure shall give Notice to the Commissioners of his Dissent from such Direction or Agreement, the Commissioners shall not embody such Direction or Agreement in such Provisional Order unless such Dissent shall be withdrawn, or it shall be shown to the Commissioners that the Estate or Charge of the Party so dissenting shall have ceased.

II Maps of old inclosed Lands may be dispensed with.

And whereas the Provision of the said firstly-recited Act, that the Map to be annexed to the Valuer's Report shall comprise and show the Lands in respect of which any Allotments have been made occasions unnecessary Expense in certain Cases: Be it enacted, That it shall be lawful for the Commissioners, in the Matter of any Inclosure, if they shall think fit, by Order under their Seal, to direct that such Lands shall not be comprised nor shown in such Map, and after such Direction shall have been made by any such Order in the Matter of any Inclosure, it shall not be necessary for the Valuer to comprise or show any such Lands in any such Map to be annexed to his Report.

III Allotments of less than Five Pounds Value may be compensated in Money.

And be it enacted, That where the Valuer, acting in the Matter of any Inclosure, shall certify in Writing to the Commissioners that the Value of the Allotment of any Person interested in the Lands to be inclosed, in case such Allotment should be made, would not exceed Five Pounds in Value, it shall be lawful for the Commissioners, with the Consent of such Person, to direct the Valuer under their Seal to award to such Person, in lieu of such Allotment, a Sum of Money which he shall deem equivalent in Value to the Allotment which would have been made to him in respect of his Right and Interest under the said recited Act; and every such Sum shall be set forth in the Valuer's Report before the same is deposited; and the Sum of Money which may be awarded in respect of such Right and Interest may be raised in the same Way that Money may be raised for Expenses incident to Inclosures under the Provisions of the said recited Act, and shall be paid to the Party for the Time being interested, as in the Case of Surplus of Purchase Money on the Sale of Part of an Allotment for Expenses.

IV Valuer may set out Private and Occupation Roads in certain Cases for use of Lands other than Lands to be inclosed.

And be it enacted, That the Valuer acting in the Matter of any Inclosure may, where he shall think fit, set out such Private or Occupation Roads and Ways through the Land to be inclosed as by reason of the Alteration of public Roads or Ways, or otherwise, he shall think requisite for the Use, wholly or in part, of Persons interested in other Lands; and any Expenses which the Valuer may incur in relation to the setting out or Formation or Completion of such private Roads, or any of them, shall, unless the Valuer shall otherwise direct, be paid by such of the Owners for the Time being of the Land the Subject Matter of such Inclosure, and of the Owners of Land for whose Use the said Roads shall have been set out, or of either of such Classes, and in such Shares and Proportion as the Valuer shall direct; and after the Formation and Completion of such private Roads and Ways, the same shall be maintained and kept in Repair by and at the Expense of such of the said several Owners, in such Shares and Proportions and in such Manner as the Valuer shall direct: Provided always, that the Grass and Herbage on such Roads shall be subject to the same Regulations as if they had been Private or Occupation Roads set out under the said firstly-recited Act.

V Expenses of maintaining private Roads, &c. may be raised by a Rate on Owners.

And be it enacted, That it shall be lawful for the Valuer, with the Sanction of the Commissioners, by his Award to direct that the Expenses of repairing, cleansing, and maintaining all or any of the private Roads and Ways, Common Ponds, Ditches, Watercourses, Embankments, Tunnels, and Bridges, thereby directed to be set out and made, enlarged, or altered and maintained, shall be raised by Rate to be levied on the Lands of which the Owners for the Time being might have been directed by such Award to repair, cleanse, and maintain the same Roads, Ponds, Ditches, Watercourses, Embankments, Tunnels, and Bridges respectively, in such Proportions shall by his Award direct.

VI Rating Officer may be appointed for repairing private and common Ponds, Ditches, &c.

And be it enacted, That where the Expenses of repairing, cleansing, and maintaining any private or Occupation Roads and Ways, Common Ponds, Ditches, Watercourses, Embankments, Tunnels, or Bridges shall have been directed to be raised by Rate as aforesaid, a Meeting shall be called by the Commissioners of the Owners of the Lands subject to such Rate, at such Time after the Confirmation of the Award as the Commissioners shall by Notice on the Church Door appoint; and the major Part in Value of such Owners present, by themselves or their Agent authorized in this Behalf, at such Meeting, shall elect a fit Person to be Rating Officer; and every such Officer so to be elected as aforesaid, or to be elected or re-elected at any subsequent Meeting, shall continue in Office until the Expiration of Fifteen Days after the Day of the Annual Meeting of such Owners then next following, and no longer, unless he shall be re-elected at such Annual Meeting; and such Owners shall ever after such first Meeting meet for the Election of a Rating Officer on the First Monday in February in every Year; and the Owners assembled at such Meetings shall from Time to Time fix, increase, or diminish the Salary or Payment to be made to every such Rating Officer ; and any such Rating Officer may be removed by Four Fifths in Value of the Owners of such Lands present, by themselves or their Agents authorized in this Behalf at any Meeting called for the Purpose, by Fourteen Days Notice on the Church Door, under the Hands of any Two such Owners; and in case any such Rating Officer shall die

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while he shall hold such Office, or shall be removed as aforesaid, it shall be lawful for the Majority in Value of Owners of such Lands present as aforesaid at any Meeting, which upon such Vacancy any Two Owners may call, by Fourteen Days Notice on the Church Door, to appoint a Rating Officer in his Place, who shall hold the Office until the Expiration of Fifteen Days after the then next Annual Meeting; and a Certificate in Writing, under the Hands and Seals of Two Justices of the Peace, of the Election of any Rating Officer (which Certificate any Two Justices of the Peace are authorized, if they think fit, to give, on the Request and upon the Declaration of any Owner of such Lands, or the Agent of any such Owner, present at the Meeting at which the Election shall have taken place,) shall, in all Matters and Proceedings whatsoever in which any Acts done by any Rating Officer in the Execution of his Office shall be in question, be Evidence that he was duly appointed Rating Officer.

VII How Rates to be raised.

And be it enacted, That the Rating Officer for the Time being shall, subject to such Orders and Instructions in Writing as may from Time to Time be agreed on by the Majority in Value of the Owners of such Lands as aforesaid at their yearly Meetings, maintain and keep in order the said Roads, Ways, Common Ponds, Ditches, Drains, Watercourses, Embankments, Tunnels, and Bridges, and shall, for the Payment to be made to Rating Officers, and all Expenses in and about the Premises under the Directions of any such Meeting of Owners from Time to Time, make a Rate on the respective Owners for such Sum as the Majority in Value of Owners present at such Meeting shall think requisite, and every such Rate shall be apportioned and paid by the Owners according to the Proportions directed by the Award as aforesaid, and shall be paid to the Rating Officer on demand thereof, and in case the same shall not be paid within Fourteen Days after Demand thereof shall be recoverable by such Rating Officer by Distress; and any such Demand or Distress may be made of or on the Occupier of any such Land as if the Occupier were the Owner liable to the Payment of such Rate, and such Rate may be paid by any such Occupier on demand thereof; and the Money so paid by such Occupier shall be deemed a Payment on account of his Rent, and shall be allowed by his Landlord accordingly.

VIII Money-raised for Expenses to be paid to Commissioners.

And be it enacted, That "where any Persons shall, under the Provisions of the said first-recited Act, mortgage their Allotments or demise the same in trust, for the Purpose of raising Money to defray the Inclosure Expenses, the said Money shall be paid to the Commissioners, and the Receipt of the Commissioners shall be a sufficient Discharge to the Mortgagee or Lessee for the Receipt of such Money ; and such Money shall be applied by the Commissioners for the Purpose for which it may be raised under the said recited Act.

IX How Claims may be made.

And be it enacted, That notwithstanding anything in the said first-recited Act contained it shall be lawful for the Valuer in the Matter of any Inclosure to receive any Claims in Writing made by any Persons claiming any Common or other Right or Interest in such Inclosure, although such Claims may not contain the several Particulars in respect whereof they are made, nor distinguish the Claims in respect of Freehold, Copyhold, or Customary and Leasehold Property from each other, nor mention therein the Places of Abode of the respective Claimants or their Agents; but such Claims shall be good

and valid if the Persons making the same shall state therein that they claim Common or other Right or Interest in the Land proposed to be inclosed in respect of the Land, Premises, or Right named in such Claims: Provided always, that it shall be lawful for the Valuer to require Persons delivering any Claims to amend the same in such Particulars and on such Conditions as the said Valuer shall think just and reasonable, and no such Claims shall be inserted in the Statement of Claims to be deposited by him under the Provisions of the said Act until the Places of Abode of the respective Claimants, or their Agents, shall have been given in Writing in the said Claims or indorsed thereon.

X How Person trespassing where Rights suspended or extinguished, or Allotments entered upon, may be proceeded against.

And be it enacted, That where the Valuer acting in the Matter of any Inclosure shall, under the Authority and Direction of the Commissioners, and in manner provided by the said first-recited Act, have ordered all or any Part of the Rights of Sheep-walk, Common, or other Rights in or over the Land to be inclosed, or any Part thereof, to be extinguished, or the Exercise thereof to be suspended, or where such Valuer shall have directed any of the Allotments to be made in such Inclosure to be entered upon by the Persons respectively for whom the same shall be intended, if any Person shall wilfully or maliciously commit any Damage, Injury, or Spoil to or upon any Fences, Ditches, or other Works made or done for the Purposes of such Inclosure, or to or upon any such Allotment, the Person so offending, being convicted thereof before Two Justices of the Peace having Jurisdiction in the County or Place, shall forfeit and pay such Sum of Money as shall appear to such Justices to be a reasonable Compensation for the Damage, Injury, or Spoil so committed, not exceeding the Sum of Five Pounds, and such Sum shall be paid to the Valuer, to be applied by him in aid of the Expenses in such Inclosure, or to the Person in possession of such Allotment, as the Justices may think fit and direct; and the Provisions of the Act of the Seventh and Eighth Years of King George the Fourth, intituled *An Act for consolidating and amending the Laws in England relative to malicious Injuries to Property*, concerning the Apprehension of Offenders and the Prosecution of Offences punishable on summary Conviction under such Act, and the Form of such Conviction, and concerning the Cases of a summary Conviction under such Act, where the Sum which shall be forfeited for the Amount of the Injury done shall not be paid, and ail other Provisions of such Act consequent upon or in relation to such Proceedings and Conviction, shall be applicable to the Offences under this Act, and the Prosecution and Conviction for the same respectively, save that any Matter by the said Act directed to be done by the Justice shall be done by Two Justices as aforesaid.

XI Person having taken possession of Allotment may maintain Action for Damage.

And be it enacted, That where the Valuer acting in the Matter of any Inclosure shall have directed any of the Allotments to be entered upon by the Persons for whom the same shall be intended, it shall be lawful for any Person who shall have entered upon or taken Possession of any such Allotment by virtue of such Direction, or his Tenant, to commence, prosecute, and maintain any Action of Trespass, Ejectment, or other Suit at Law for any Entry upon or Injury or Damage that may be done or committed to such Allotment, or the Soil or Herbage thereof, or the Fences thereof, or for the Recovery of the Possession thereof, although the Award in the Matter of such Inclosure may not have been made, without Prejudice nevertheless to the Power of the Valuer, under the said Acts, to make Alterations in Allotments.

XII On Neglect of Owner of an Allotment to fence, Owner of any other Allotment prejudiced by his Neglect may obtain Possession and do the necessary Work.

And be it enacted, That where any Person to whom an Allotment shall have been made by an Award in the Matter of any Inclosure, or the Owner for the Time being of such Allotment, shall refuse or neglect to make any Ditch or Fence which, according to the Directions of such Award, ought to be made by or at the Expense of the Owner of such Allotment, it shall be lawful for the Owner or Occupier of any other Allotment made in the same Inclosure, who shall be aggrieved in the Enjoyment of his Allotment by such Refusal or Neglect, to cause the Person so refusing or neglecting to be served, in the Manner herein-after mentioned, with a written Notice, signed by the Owner or Occupier so aggrieved, or his Agent, of his Intention to proceed under the Authority of this Act to make such Ditch or Fence, in case the same should not be made within Three Calendar Months from the Time of serving such Notice; and in case such Ditch or Fence shall not be made within such Three Calendar Months, it shall be lawful for the Owner or Occupier so aggrieved, or his Agent (if such Owner or Occupier shall so think fit), to make or cause to be made such Ditch or Fence in such Manner as the same ought to have been made, according to the Directions of the said Award, by the Owner so neglecting or refusing as aforesaid, and for such Purpose, with Labourers and Workmen, to enter upon the Allotment by the Owner of which such Ditch or Fence ought to have been made, and to do all such Acts as may be necessary or proper; and all Costs and Expenses incurred in such Work by the Owner or Occupier so aggrieved shall be reimbursed to him by the Owner so neglecting or refusing as aforesaid, and may be recovered by Action of Debt or on the Case, and if the Amount claimed in respect thereof, shall not be more than Twenty Pounds shall be recoverable in the County Court of the District where the Work shall be done; and any Notice as aforesaid may be served either personally or by leaving the same with some Person being in and apparently residing at the Place of Abode of the Owner for the Time being of the Allotment to which such Notice shall relate ; but if such Owner cannot be found, and his Place of Abode shall not be known, or Admission thereto cannot be obtained for serving such Notice, the posting of such Notice conspicuously on the Allotment to which the same shall relate shall be deemed good Service on the Owner thereof: Provided always, that neither the Power herein-before contained, nor the making of such Ditch or Fence by the Owner or Occupier so aggrieved as aforesaid, shall affect any Right or Remedy which such Owner or Occupier would otherwise have had in respect of the Neglect to make such Ditch or Fence, or of any Trespass or Damage occasioned thereby.

XIII Provisions of Inclosure Acts concerning Exchanges of Land not subject to be inclosed, &c. extended to Partition.

And whereas it is expedient that the Provisions of the said recited Acts concerning Exchanges should extend to Partition: Be it enacted, That it shall be lawful for the Commissioners, upon the Application in Writing of the Persons interested, according to the Definitions in the said first-recited Act contained, in the several undivided Parts or Shares of any Land not subject to be inclosed under the said first-recited Act, or in Land subject, to be inclosed under such Act as to which no Proceedings for an Inclosure shall be pending, and who shall desire to effect a Partition of such Land, to direct Inquiries whether such proposed Partition would be beneficial to the Owners of such undivided Parts or Shares, and in case the Commissioners shall be of opinion that such Partition would be beneficial, and that the Terms of the proposed Partition are just and reasonable, they shall, unless Notice of Dissent to the proposed Partition shall be given, under the Provision herein by Reference contained, cause to be framed

and confirmed an Order of Partition, with a Map or Plan thereunto annexed, in which Order shall be specified and shown the Land allotted in severalty to each Person so interested in respect of the undivided Part or Share in which he shall be so interested respectively; and the Land allotted in Severalty upon every such Partition, in respect of each such undivided Part or Share, shall be and enure to, for, and upon the same Uses, Trusts, Intents, and Purposes, and subject to the same Conditions, Charges, and Incumbrances, as the undivided Part or Share in respect whereof the same shall be allotted would have stood limited or been subject to in case such Order had not been made.

XIV Provisions of Inclosure Acts applicable to such Exchange to apply to Partition under this Act.

And be it enacted, That the Provisions of the said first-recited Act concerning Notice, Dissent, and Confirmation and Expenses with respect to an Exchange of Lands not subject to be inclosed under such Act, or of Lands subject to be inclosed under such Act, as to which no Proceedings for an Inclosure shall be pending, and all other Provisions of the said first-recited Act and of the Acts for amending and extending the same, applicable to such Exchange as aforesaid, shall be applicable to a Partition of Land under this Act.

XV In Common Wood Inclosure Power to pay Value of Allotments to Crown in Money.

And whereas by the Provisional Order made by the Inclosure Commissioners in the Matter of the Inclosure of Common Wood situate in the Parish of *Holt* in the County of *Denbigh*, dated the Twenty-ninth Day of *January* One thousand eight hundred and forty-six, it was declared that One Twentieth Part in Value of the said Common Wood should be allotted to Her Majesty as Lady of the Manor of *Bromfield* and *Yale* in respect of Her Right and Interest in the Soil, exclusively of all Right and Interest of Her Majesty in all Mines, Minerals, Stone, and other Substrata under the said Common Wood : And whereas it is expedient that the said One Twentieth Part in Value of the said Common Wood should be compensated by a Money Payment, and not by an Allotment of Land: Be it therefore enacted, That it shall be lawful for the Valuer in the Matter of the said Inclosure to award, and for the Commissioners of Her Majesty's Woods, Forests, Land Revenues, Works, and Buildings for the Time being to receive, on Behalf of Her Majesty, the Value of the said One Twentieth Part of the said Common Wood in Money, the same to be accounted for and applied in the same Manner as Monies received by them in respect of Sales of the Possessions and Land Revenues of the Crown in *England*; and from and immediately after Payment thereof as aforesaid such Payment shall be in full Satisfaction of all the Right, Title, and Interest of Her Majesty, Her Heirs and Successors, in, to, over, and upon the said Common Wood, save and except of the Rights and Interest in Mines, Minerals, Stone, and other Substrata reserved to Her Majesty, Her Heirs and Successors, by the said Provisional Order.

XVI Recited Acts Part of this Act.

And be it enacted, That this Act shall be taken to be Part of the said recited Acts of the Eighth and Ninth, of the Ninth and Tenth, and of the Tenth and Eleventh Years of the Reign of Her present Majesty.