CHAP. viii.

An Act to ascertain and commute Commonable and certain other Rights in the Abbot's Wood in the Forest of Dean in Gloucestershire. [12th May 1870.]

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Letters patent of the 42d Henry III. (1258).

WHEREAS King Henry III., by letters patent dated the 28th day of May in the 42nd year of his reign, granted in perpetual alms to the abbot and monks of Flaxley of the Cistercian order a certain portion of wood in the Forest of Dean, the boundaries whereof are described in the said letters patent, in lieu of the right theretofore enjoyed by the said abbot and monks of cutting two oaks every week in the King's Forest of Dean for the supply of their forge in the said forest by the donation of King Henry II. confirmed by King Henry III. in perpetual alms, the said portion of the forest being so assigned after inquisition by commissioners upon the oath, as well of knights as of other free and lawful men, as being the most convenient to assign to the said abbot and monks in recompense of the aforesaid two oaks, but the said letters patent reserve the King's venation and the herbage of the said wood, and the aeries of goshawks, falcons, and sparhawks, and mines, if any should be found, and leave is reserved in the said letters patent to the abbot and monks to enclose a tenth part of the said wood with a hedge, which should be a fence against all animals except the King's game, and to leave the said fence standing for four years, then to be destroyed, and similar enclosures of a tenth part from time to time made:

And whereas the portion of wood so granted by the said letters patent has long been known by the name of "the Abbot's Wood," and is computed to contain 872 acres:

Grant from Henry VIII. (1545).

And whereas King Henry VIII., by grant dated the 22nd day of May in the 36th year of his reign, confirmed the said grant of Henry the III. in all particulars in favour of Sir Anthony Kyngeston and his heirs, the said Sir Anthony Kyngeston being at that time

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Purchase by Mr. William Crawshay.

possessed of the Flaxley Abbey Estate, and in the year 1836 all the estate and interest of the grantees under both the said grants were purchased by William Crawshay, of Caversham Park in the county of Berks, Esquire, since deceased, and the same are now vested or claimed to be vested for an estate in fee simple in Henry Crawshay, of Oaklands Park, in the county of Gloucester, Esquire, subject nevertheless to the reservations contained in the original grant from Henry III.:

Mr. N. Wetherell's award as to rights of Crown.

And whereas by virtue of an award of Nathan Wetherell, Esquire, of Lincoln's Inn, barrister-at-law, made the 22nd day of July 1869, in pursuance of an agreement dated the 3rd day of September 1866, and made between Her Majesty of the first part, the Honourable James Kenneth Howard, the Commissioner of Her Majesty's Woods, Forests, and Land Revenues, to whom the management of the Forest of Dean is assigned, of the second part, and the said Henry Crawshay of the third part, the said arbitrator ascertained and determined the nature and extent of the forestal and other rights belonging to the Crown in the Abbot's Wood, and the price to be paid to the Crown by the said Henry Crawshay for the release or transfer of such rights, which price the said arbitrator fixed at the sum of 12,162*l.*, but he excepted from rights to be so released or transferred the right of the Crown to the mines and minerals in and under the said wood, and the rights, if any, reserved to or conferred upon the Crown by the Act of Parliament passed in the first and second years of Her present Majesty, intituled "An Act for regulating the opening "and working of mines and quarries in the Forest of Dean and "hundred of Saint Briavels in the county of Gloucester;" and by another Act of Parliament passed in the 24th and 25th years of Her present Majesty, intituled "An Act to make further provisions "for the management of Her Majesty's Forest of Dean, and of the "mines and quarries therein and in the hundred of Saint Briavels "in the county of Gloucester:"

Purchase thereof by Mr. Henry Crawshay.

And whereas the said Henry Crawshay having paid the said sum of 12,162*l.*, he has, by deed of conveyance dated the eleventh day of November 1869, and made between Her Majesty of the first part, the said James Kenneth Howard of the second part, and the said Henry Crawshay of the third part, acquired the rights of the Crown reserved by the original grant of Henry III., limited nevertheless by the provisions of the Act 20 Charles II. cap. 3, being "An Act for "the increase and preservation of timber within the Forest of Dean," which restricts to eight hundred the head of deer which may be kept in the forest, and excepting the rights reserved to the Crown in and by the said award and deed of conveyance:

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And whereas the expression "the owner" when herein-after used is intended to mean the said Henry Crawshay and other the owner for the time being of the Abbot's Wood:

As to rights of way and commonable rights.

And whereas certain rights of way exist or are claimed to exist in and over the Abbot's Wood, and it is doubtful whether rights of common (if any) which may exist over the whole of Dean Forest may not also be exercised over the Abbot's Wood, subject nevertheless to the rights defined in the said letters patent of Henry III. limited as aforesaid, and it is also doubtful who are entitled to exercise such rights if any such rights exist:

As to encroachments.

And whereas upon a portion of the Abbot's Wood "The Forest of Dean branch of the Great Western Railway" has been constructed, and upon other portions thereof encroachments have been made, to some whereof an indefeasible title may have been acquired against the Crown, and upon other portions dwellings have been erected and enclosures made with the concurrence of the owner or of his immediate predecessor in title, all which things have been done in disparagement of any rights of common which may exist in the Abbot's Wood:

And whereas portions of the Abbot's Wood might advantageously be used for the erection of dwellings for the accommodation of the increasing population of the Forest of Dean, but so long as any doubts exist as to the existence of rights of common over the Abbot's Wood, and as to the nature and extent of such rights and the persons to whom such rights (if any) belong, a satisfactory title cannot be made to any portion of the Abbot's Wood for the purpose of building:

Dean Forest excluded from Inclosure Acts.

And whereas the Forest of Dean is expressly excluded by the 13th section of the Act 8 & 9 Vict. cap. 118. from the operation of the Acts to facilitate the inclosure and improvement of commons and lands held in common:

And it is expedient that provision should be made—

Objects of Act.

(1.) For ascertaining and declaring what (if any) rights of common, rights of way, or other rights exist in or over the Abbot's Wood, and by whom such rights respectively may be exercised, and for commuting such common rights either by the allotment of portions of the said wood to the persons entitled to exercise such rights, or for the purchase of such rights for a pecuniary or other consideration, and for maintaining or commuting any rights of way by the setting out of portions of the Abbot's Wood for public or occupation roads:

(2.) For ascertaining what encroachments have been made upon the Abbot's Wood inconsistent with the rights (if any) of

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commoners, and for determining upon what conditions pecuniary or otherwise, the said encroachments may be maintained:

But inasmuch as the objects aforesaid cannot be effected without the authority of Parliament, may it please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as "The Abbot's Wood (Dean Forest) Act, 1870."

Act to be executed by Commissioner.

2. The provisions of this Act shall be carried into execution by a Commissioner to be appointed in writing by two of the Inclosure Commissioners for England and Wales within three months after the passing of this Act, and in case of the death, resignation, or incapacity of such Commissioner, a new Commissioner shall be appointed in like manner as often as the same shall be necessary, and the remuneration of the said Commissioner shall be fixed by the said Inclosure Commissioners, and shall be paid by the owner.

As to appointment of surveyor.

3. The said Commissioner may appoint a surveyor or valuer, and may in case of his death, resignation, or incapacity appoint another surveyor, and so from time to time, and the remuneration of such surveyor shall be fixed by the Commissioner and be paid by the owner.

Functions of Commissioner.

4. The Commissioner shall with all due despatch do the following acts:

(1.) He shall define the boundaries of the land known as the Abbot's Wood, and he shall ascertain the encroachments that have been made thereon, and the rights of way (if any) existing in and over the same, and whether any, and what rights of common or other rights, excepting those rights reserved to Her Majesty by the said award and the said deed of conveyance dated the eleventh day of November one thousand eight hundred and sixty-nine, exist in the said wood, and by whom any such rights of common may be exercised, and he shall cause a map or plan to be made showing the said boundaries and the said encroachments, and indicating the said rights of way:

(2.) Subject to the provisions of this Act he shall set out such public and occupation roads in the Abbot's Wood as he thinks fit in the stead or in the maintenance of such rights

of way, and the said roads shall be made by or under the direction of the Commissioner at the expense of the owner, who shall from time to time provide all necessary funds for the purpose, and the Commissioner may by his award declare any of the said roads to be public highways, and they shall become such accordingly, and all other of such roads shall be maintained at the expense of the owner unless the Commissioner shall in any case decide otherwise, which he is by this Act authorized to do:

(3.) He shall determine the pecuniary value (if any) of such commonable rights as he may ascertain to exist in and over the Abbot's Wood, and shall take into account the rights reserved to the Crown by the letters patent of Henry III., limited as aforesaid by the said Act of Charles II., and he shall also take into account any benefit which the persons entitled to exercise such rights may derive by the formation of any roads in the Abbot's Wood, and he shall determine whether such rights in and over the Abbot's Wood shall be compensated by the allotment of any land out of the said wood or by pecuniary payment, and he shall, as the case may be, make such allotments accordingly, which shall vest in the persons to whom the said lands are allotted, or he shall determine the amounts to be paid and the persons to whom they are payable:

(4.) He shall determine whether any of the encroachments which he shall have ascertained to have been made on the Abbot's Wood ought to be abated and subject to any and what conditions, compensation, or otherwise on the part of the owner, and which of such encroachments may be maintained subject to any and what payments to the owner:

(5.) He shall hold a meeting or meetings to hear any parties having or claiming rights in or over the Abbot's Wood, and he shall hear any information or evidence which may be offered in relation thereto, and may adjourn the said meetings respectively, and shall cause notice of such meeting to be given on the door of the Speech House in the Forest of Dean, and also a like notice to be given by advertisement in some paper published in Gloucestershire and circulating in the Forest of Dean of the time and place of every such meeting fourteen days at least before every such meeting (meetings by adjournment only excepted), and he may examine (and if he think fit upon oath or upon declaration) all such persons as may attend before

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him for the purpose of giving evidence upon any matter or proceeding under the authority of this Act and for that purpose may administer or receive oaths or declarations. If any person or persons examined on his or their oath or declaration under the provisions of this Act shall wilfully give false evidence, or shall make or subscribe a false declaration, he shall be guilty of perjury in case he shall have been sworn, or of a misdemeanor if he shall have made a declaration:

(6.) He may from time to time give his decision in writing upon any of the matters hereby referred to him, and deliver the same to the parties interested therein, and such writing shall be sufficient evidence of such his decision:

(7.) He shall within two years from the passing of this Act make his award in writing as regards all the matters and things hereby by him directed to be done, and such award, with the said map annexed thereto, shall be executed in duplicate, and one part thereof shall be deposited at the Office of Land Revenue Records and Enrolments, and the other part thereof shall be deposited with the clerk of the peace for the county of Gloucester, there to remain and to be examined by all persons at all reasonable times on payment of a fee of one shilling for each examination, and until the Commissioner has made his award any writing under his hand shall be sufficient evidence of any proceeding or decision under the provisions of this Act.

Certain roads to be maintained.

5. And whereas a plan of the Abbot's Wood has been signed by the Honourable James Kenneth Howard, a Commissioner of Her Majesty's Woods, Forests, and Land Revenues, and has been deposited at the office of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, on which plan certain existing roads or ways necessary as the means of communication with other parts of Her Majesty's Forest of Dean are shown by the colour brown: Therefore such roads shall be set out by the Commissioner as public highways: Provided always, that if at any time before the award is made the owner shall, with the consent in writing of one of the Commissioners of Her Majesty's Woods, Forests, and Land Revenues, make and metal a sufficient road between the point A and the point B on the said plan, the road between the points C and D on the said plan may be abandoned and stopped up under the direction of the Commissioner, and in such case the road to be made between the point A and the point B on the said plan shall, on the making of the award, become and be a public highway.

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Power of appeal.

...e. In case any person shall be dissatisfied with any decision of ...e Commissioner in reference to the existence of any of the rights of common, which he is by this Act directed to ascertain and determine, or as to the lands over which such rights extend or are exercisable, or to which they are limited, or with respect to the persons who are entitled to exercise such rights, or with respect to any encroachments which he may have ascertained to have been made on the Abbot's Wood, or the mode of dealing with the said encroachments, the Commissioner shall, on the application of the person so dissatisfied, prepare a case to be submitted to Her Majesty's Court of Common Pleas, to be argued before and decided on by the said Court; and the judgment and determination of such court shall be taken as the judgment of the Commissioner, who shall, if necessary, notwithstanding the expiration of the said two years, make such supplemental award as may be required to give effect to the judgment of the said court: Provided always, that no such application shall be received by the Commissioner unless the same is made to him within one month from the time when the decision to which it relates was given, and the costs of any such appeal shall be paid as the said court shall direct.

Duties of the owner under the award.

7. Subject to the said power of appeal the owner shall do all such acts as the award shall direct for quieting the title of encroachments on the Abbot's Wood, and for confirming the title to such land as may be allotted under the award, whether for roads or in compensation for commonable rights, and he shall pay any such sums of money as the award shall direct at the times and to the persons prescribed by the said award, and he shall likewise pay all such costs and expenses of the said inquiry and award and incidental thereto, as the Commissioner shall determine ought properly to be discharged by him.

Other results of award.

8. When the said award with the map annexed thereto shall have been deposited as aforesaid, and when the owner has to the satisfaction of the Commissioner (certified in writing in duplicate under his seal, and to be deposited in like manner as the award, and to be kept with the award,) done such acts as the award shall have required him to do, the Abbot's Wood, and the said branch of the Great Western Railway and the said encroachments which the award shall authorise to be maintained, shall be from the date of the said certificate freed and discharged from all rights of common and rights of way other than the rights of way specified in this Act and in the award, and all such rights of common and such rights of way other than as aforesaid shall thenceforth be extinguished, and the owner shall be entitled to inclose the unallotted portions of the Abbot's

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Wood as he may think fit, and the said wood shall be disafforest subject nevertheless to the rights by the said award and deed conveyance and by this Act reserved to Her Majesty, and subject also to the rights of the free miners of the Forest of Dean.

The Abbot's Wood to continue within Dean Forest for the purposes of certain Acts of Parliament.

9. Notwithstanding any dissafforestation or inclosure of the Abbot's Wood which may take place under the provisions of this Act, the Abbot's Wood shall for all the purposes of the said Act of the first and second Victoria cap. 43, and of the said Act of the twenty-fourth and twenty-fifth Victoria cap. 40, as between Her Majesty, her heirs and successors on the one hand, and the owner on the other, be deemed to continue uninclosed land within the Forest of Dean, and the owner and his successors in title shall not at any time become entitled under the 67th section of the former of those Acts or otherwise to one moiety or any other share of any galeage, rent, royalty, or tonnage duty, or other moneys to be received by Her Majesty, or her successors, from or in respect of any coal or iron or other mine or minerals within or under the Abbot's Wood.

Saving rights of the Crown and of free miners.

10. Nothing contained in this Act, or in the award to be made by virtue hereof, shall prejudice or affect the right of Her Majesty and her successors to the mines and minerals in and under the Abbot's Wood, all which mines and minerals are as between Her Majesty, her heirs and successors, on the one hand, and the owner on the other, by this Act reserved to the Queen's most Excellent Majesty, nor shall anything in this Act or in such award prejudice or affect the rights (if any) reserved to or conferred upon Her Majesty and her successors by the herein-before recited Acts of the first and second Victoria, cap. 43, or the twenty-fourth and twenty-fifth Victoria, cap. 40; nor shall anything in this Act or in the said award prejudice or affect the rights of any free miners under the said Act of first and second Victoria or otherwise.

Costs of Act.

11. The costs, charges, and expenses attending or incident to the obtaining and passing of this Act shall be paid by the owner.

LONDON: Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1870.