CHAPTER 54.

An Act to amend the Tithe Commutation Acts as to Extraordinary Tithe Rentcharge on hop grounds, orchards, fruit plantations, and market gardens, and to provide for fixing the capital value thereof and the redemption of the same. [25th June 1886.]

A.D. 1886.

WHEREAS by the Acts relating to the commutation of tithes in England and Wales power is given to impose an extraordinary charge and an additional rentcharge by way of extraordinary charge (both which charges are herein-after included under the expression "extraordinary charge") on hop grounds, orchards, fruit plantations, and market gardens:

And whereas the extraordinary charge levied under these Acts is an impediment to agriculture, and it is expedient that the same be limited in manner herein-after appearing, and that power be given to redeem the same in the manner and upon the terms herein-after mentioned:

Be it therefore 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:

Limitation of extraordinary charge.

1. From the date of the passing of this Act no extraordinary charge shall be charged or levied under the Tithe Commutation Acts on any hop ground, orchard, fruit plantation, or market garden, newly cultivated as such after the passing of this Act.

Fixing of capital value of extraordinary charge.

2. The Land Commissioners for England, herein-after referred to as "the Commissioners," shall as soon as may be after the passing of this Act ascertain in each parish in England and Wales and certify the capital value of the extraordinary charge on each farm, or where not a farm on each parcel of land, in respect of which the said charge is payable at the date of the passing of this Act.

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Manner in which capital value is to be ascertained.

3. For the purpose of estimating the capital value of the said charge the Commissioners shall take into consideration the net annual value of the same after allowing for the expenses of collection, rates, taxes (except income tax) and other outgoings, the value of the land subject to the said charge, the length of time during which the said charge has been paid, the prospect of the continuance or discontinuance of the special cultivation in respect of which the said charge is imposed, the right of the cultivator to discontinue such special cultivation at any time and thereby to cause the suspension of the said charge, the prospect of the substitution of other land on the same farm for such cultivation, notwithstanding the provisions of the first section of this Act, and any other special circumstances applicable to the farm or parcel of land under consideration, and shall, if so advised or requested, hear evidence on behalf of the landowner, the tithe payer, and the tithe owner. The Commissioners shall then determine and certify under their seal the capital value of the said charge, and the value so certified shall, for the purposes of this Act, be the capital value of the charge: Provided that where the tithe owner is absolutely entitled to the charge in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the Commissioners may, on the joint application of the tithe owner, the tithe payer, and the landowner, or of the tithe owner and the landowner in cases where the last named is also the tithe payer, certify such amount as may be agreed on between them to be the capital value of the charge included in such application.

Interest on capitalised value of extraordinary charge to be until redemption first charge on land.

4. (1.) Subject to the provisions of this Act with respect to the redemption of charges, land in respect of which at the date of the passing of this Act extraordinary charge is payable shall, so soon as the capital value of the said charge shall have been certified under the provisions of this Act, be charged with the payment of an annual rentcharge equal to four per centum on such capital value, in lieu of the extraordinary charge which shall cease on the half-yearly day of payment thereof which shall immediately precede the date of the said certificate, such rentcharge to be a charge upon the particular farm or parcel of land in respect of which the same has been assessed.

(2.) Provided that the Commissioners may from time to time, if they think fit, on application by or on behalf of any person interested in land so charged, by order under their seal exonerate from the charge the whole or any part of that land, and may, if necessary, substitute other land for the land so exonerated, provided that the value of the land charged with the payment of the rentcharge

shall be in their opinion equal to at least three times the capital value of the rentcharge and that such land is held under the same title, and subject to the same limitations as the land so exonerated.

(3.) The rentcharge shall be payable half-yearly on the days on which the extraordinary charge in the parish has hitherto been payable, and the first payment thereof shall be made on the one of the said two days which shall first occur after the capital value shall have been certified as aforesaid, the first payment to be a full half-yearly payment. The rentcharge shall have priority over all existing and future estates, interests, and incumbrances whatever.

(4.) The rentcharge shall be payable to the person who would but for this Act have been for the time being entitled to receive the extraordinary charge, and shall be held on the trusts and subject to the provisions and conditions (if any) applicable to that charge.

(5.) If default is made in payment of any instalment of the rentcharge it may be recovered by action in Her Majesty's High Court of Justice, or a county court, or in the same way that rentcharge in lieu of ordinary tithe is recoverable and subject to like conditions, or by entry upon and perception of the rents and profits of the land subject to such rentcharge. The said rentcharge shall not be subject to any parochial, county, or other rate, charge, or assessment.

Redemption of charge.

5. (1.) The owner of or any person interested in any land subject either to an extraordinary charge or to a rentcharge substituted therefor under this Act may at any time redeem the charge in manner by this section provided.

(2.) Where the person entitled to the charge is the incumbent of a benefice, the owner or any person interested in the land may pay the amount of the capital value of the extraordinary charge to the Governors of Queen Anne's Bounty (the receipt of whose treasurer shall be a sufficient discharge for the same), to be held or applied for the benefit of the incumbent for the time being, as if the same were money paid in redemption of ordinary rentcharge.

(3.) Where the person entitled to the charge is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of or any person interested in the land may, after giving one month's notice to the person entitled to the charge, pay or tender to him the amount of the capital value of the extraordinary charge or any less sum which may be agreed on.

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(4.) In any other case the owner of or any person interested in the land may pay the amount of the capital value of the extraordinary charge into the Bank of England, to be placed to the account of the Paymaster-General, in the matter of the landowner and the tithe owner (naming them), and in the matter of this Act; and the money so paid shall be applicable to the like purposes and may be dealt with in like manner as if it were money paid into the bank under the Tithe Commutation Acts.

(5.) On proof to the Commissioners that payment or tender has been made as by this section provided in respect of any extraordinary charge or substituted rentcharge, they shall certify that the charge is redeemed, and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the charge from the date of the next half-yearly payment.

Redemption in case of settled land.

6. (1.) Money applicable to the purchase of land to be settled to or on any uses or trusts shall be applicable in or towards the redemption of an extraordinary charge or a rentcharge under this Act on land settled to or on the like uses or trusts.

(2.) Where a person is tenant for life of land subject to an extraordinary charge or a rentcharge under this Act he may borrow any money required for redemption thereof, and may charge the inheritance with repayment of the money so borrowed with interest, and the charge so created shall have the like priority as a rentcharge under this Act.

(3.) Where a person is tenant for life of land subject to an extraordinary charge or a rentcharge under this Act he may sell the land, or any part thereof, or any land settled to or on the like uses or trusts, and apply the proceeds in or towards redemption of the charge.

Charge to be borne by landlord.

7. (1.) Where a tenant of land subject to an extraordinary charge has before the passing of this Act contracted to pay the charge or any part thereof he shall whilst his tenancy subsists be liable to pay to his landlord the rentcharge substituted for the extraordinary charge; and any sum which a tenant is so liable to pay may be recovered by the landlord as the tenant's rent is for the time being recoverable.

(2.) For the purposes of this section a tenancy from year to year or a tenancy at will shall be deemed to determine at the time when it would by law become determinable if notice or warning to determine the same were given at the date of the passing of this Act.

(3.) Subject as aforesaid a rentcharge under this Act shall as between landlord and tenant be payable by the landlord, any agreement to the contrary notwithstanding.

Land Commissioners may call for information from overseers.

8. The Commissioners in carrying out the provisions of this Act may require the overseers of any parish to supply such information as to the extraordinary charge (if any) in such parish as they, the said Commissioners, may consider necessary.

Provisions of Tithe Acts to apply.

9. All the provisions of the Tithe Commutation Acts in relation to any award or apportionment, including power for the Commissioners to hold meetings either by an Assistant Commissioner or otherwise, and to require and hear evidence and to employ valuers and other persons, shall be applicable to proceedings under this Act.

Expenses.

10. All expenses incurred by the Commissioners in carrying out the provisions of this Act shall be paid by the landowners, in rateable proportion to the sum certified as the capital value on their respective lands, and shall be recoverable in like manner as the expenses of and relating to an apportionment under the Tithe Commutation Acts.

Filing of certificates of Commissioners.

11. (1.) Every certificate made by the Commissioners under this Act shall be filed in their office.

(2.) An office copy of any certificate so filed shall be delivered out of their office to any person requiring the same on payment of the proper fee, and shall be sufficient evidence of the certificate whereof it purports to be a copy.

Power to Queen Anne's Bounty to modify mortgages.

12. When it shall appear to the Governors of Queen Anne's Bounty that the income of any benefice on which a mortgage to the said Governors exists has been diminished by the operation of this Act, it shall be lawful for the said Governors, by resolution of their board on the application of the incumbent, with the consent of the patron, to make such modification in the conditions of such mortgage or the term fixed for the repayment of the principal secured thereby as may seem to them just and reasonable.

The date of any such resolution, the term of extension, and the altered rate of payments or of instalments, shall be endorsed on the respective mortgage deeds free of charge to the incumbent.

The application of the provisions of this Act shall not in any way invalidate the instruments of security under which loans have been granted by the Governors; the said provisions shall extend and apply to such instruments as if originally, fully, and expressly inserted therein.

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Power to adjust charges on one benefice in favour of another.

13. Whereas under the provisions of Acts of Parliament certain fixed charges have been made on the income of benefices in receipt of extraordinary tithes in favour of other benefices or of district churches or chapelries situated within the limits of parishes of which the incumbents are in receipt of extraordinary tithes: Be it enacted that after the passing of this Act the Ecclesiastical Commissioners may make such alterations in the charges aforesaid, having in view the altered state of things created by this Act, as the said Commissioners may deem most equitable.

Definitions.

14. For the purposes of this Act—

"Landowner" means the person for the time being receiving the rackrent of land, whether on his own account or as trustee for any other person, or who would so receive it if the land were let at a rackrent:

"Tithe payer" means the person for the time being paying an extraordinary charge under the Tithe Commutation Acts:

"Tithe owner" means the person for the time being receiving an extraordinary charge under the Tithe Commutation Acts, whether on his own account or as trustee for any other person, and includes any person so receiving a rentcharge substituted under this Act for an extraordinary charge:

"Person" includes a body of persons corporate or unincorporate.

Short title.

15. This Act may be cited as the Extraordinary Tithe Redemption Act, 1886.

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