

ANNO VICESIMO PRIMO & VICESIMO SECUNDO

VICTORIÆ REGINÆ.

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CAP. XXXVII.

An Act to provide for the Allotment of the Commonable Lands within the Boundaries of the late Forest of *Hainault* in the County of *Essex*.

[23d *July* 1858.]

WHEREAS by an Act passed in the Session of Parliament held in the Fourteenth and Fifteenth Years of Her Majesty's Reign, intituled *An Act for disafforesting the Forest of* Hainault *in the County of* Essex, after reciting (amongst other things) that the Queen's most Excellent Majesty, in right of Her Crown, was or claimed to be seised to Herself, Her Heirs and Successors, of and in *Waltham Forest*, formerly called the Forest of *Essex* in the County of *Essex*, One Portion of which was usually called or known by the name of *Hainault Forest*; and reciting that Her Majesty, in right of Her Crown, was or claimed to be seised to Herself, Her Heirs and Successors, of the Soil of that Portion of the said Forest of *Hainault* which was commonly called the *King's Forest* or *King's Woods*, and of the Timber and other Trees, Bushes, and Underwood standing and growing thereon, and that the said Forest of *Hainault* was subject to divers Claims or Rights of Common and other Rights and Interests of Her Majesty's Subjects in and over the same, and that Her Majesty had been graciously pleased to signify Her

14 & 15 Vict. c. 43.

Her Consent that the said Forest of *Hainault* should be disafforested, and the Royal Deer therein removed or destroyed with all convenient Speed; it was enacted that the now-reciting Act should be carried into execution by Commissioners to be appointed as therein directed, and that the said Commissioners when appointed should proceed to ascertain the Boundaries of the said Forest of *Hainault*, and also of that Portion of the said Forest called the *King's Forest* or *King's Woods*, and that the said Commissioners, so soon as they should have ascertained the aforesaid Boundaries, should proceed to set out and allot to Her Majesty such Part or Parts of the said *King's Forest* or *King's Woods* as they should think a sufficient Compensation to Her Majesty for all Her Forestal Rights in and over the said Forest of *Hainault*, for Her Rights of Soil in the said *King's Forest* or *King's Woods* and in other the uninclosed Portions of the said Forest of *Hainault*, if any, for Her Right of Timber and other Trees, Bushes, and Underwood in the said Woods or elsewhere in the said Forest, and that such Allotment or Allotments, when made, should be vested in Her Majesty, Her Heirs and Successors, as Part of the Hereditary Possessions and Land Revenues of Her Crown, freed and discharged from all Right or Claims of Common of Pasture, Estovers, or Assignments of Fuel, Wood, and all other Rights and Claims whatsoever, and that on the making of such Award the said Forest of *Hainault* should be for ever disafforested, and that the Residue of the said *King's Forest* or *King's Woods* and all other Parts of the said Forest of *Hainault* (not then inclosed) should become the Property of the Queen's Majesty and the several Persons entitled to Rights of Common in and over the said Forest or any Part thereof, as they then were entitled to the same, freed and discharged from all Right of Soil, Rights of Timber, and all Forestal Rights of Her Majesty, Her Heirs and Successors; and in the said Act were contained Provisions for a Trial at Law between Sir *Charles Hulse* Baronet on the one hand, and Her Majesty's Attorney General and the Commissioners of Her Majesty's Woods on the other hand, for the Purpose of determining whether Her Majesty or the said Sir *Charles Hulse* was entitled to the Right of Soil in the said *King's Forest* or *King's Woods* or in some Portion thereof (which Right of Soil was claimed by the said Sir *Charles Hulse*), with Power for the Commissioners of Her Majesty's Woods to accept Proposals from the said Sir *Charles Hulse* for compromising the Matters in dispute, all which Compromises were by the said Act declared to be binding and conclusive, and if the Verdict in any such Trial as before mentioned should be in favour of the said Sir *Charles Hulse*, then the Commissioners under the Act now in recital were to set out and allot to the said Sir *Charles Hulse* so much and such Part of the Allotment thereinbefore directed to be set out to Her Majesty as the said Commissioners

sioners should by Writing under their Hands award to be a just Equivalent and Compensation for and in lieu of the Right of Soil claimed by the said Sir *Charles Hulse*, and to which he should appear entitled by such Verdict; and it was by the said Act enacted that nothing therein contained should in anywise extend to or prejudice the Title, Right, or Claim of Her Majesty to any Right of Common appended or appurtenant to any anciently inclosed Lands of Her Majesty, or the Title, Right, or Claim of Her Majesty, or any Person or Persons, to the inclosed Part of the said Forest of *Hainault*, or otherwise, as therein is mentioned: And whereas certain Commissioners were, in the Manner directed by the said recited Act, duly appointed for carrying the said Act into execution, and they did by their Award, bearing Date the Sixth Day of *November* One thousand eight hundred and fifty-two, in pursuance of the Powers of the said Act, ascertain and award the Boundaries of the said Forest of *Hainault* and of the said *King's Forest* or *King's Woods*, and which said Boundaries were described in their Award and the Map therein referred to, and by the said Award, after reciting that by an Instrument in Writing, dated the Twenty-sixth Day of *August* One thousand eight hundred and fifty-two, and made between the Commissioners of Her Majesty's Woods of the One Part, Her Majesty's Attorney General of the Second Part, and the said Sir *Charles Hulse* Baronet of the Third Part, it was among other things agreed that the Claim made by Sir *Charles Hulse*, therein and in this Act before mentioned, should be compromised, upon the Terms therein-after contained, and that it should for the Purpose of such Compromise be considered that the said Sir *Charles Hulse* had proceeded to a Trial of the Action before mentioned, and had obtained a Verdict in his Favour, and that the said Commissioners should allot to Her Majesty the Lands coloured Red on the Plan therein referred to, and should allot to the said Sir *Charles Hulse* the Lands coloured Green on such Plan, the said Commissioners did set out and allot to Her Majesty certain Parts of the *King's Forest* or *King's Woods* containing One thousand nine hundred and seventeen Acres or thereabouts, and in the said Award mentioned, and the said Commissioners did declare what Portion of the said Allotment was by the said Compromise to become the Property of the said Sir *Charles Hulse*, and they did by their Award, so far as they had Power so to do, award and allot such Portion to the said Sir *Charles Hulse*, and other Parts of the said *King's Forest* or *King's Woods*, which on the Map referred to in the said Award are stated to contain in the whole Nine hundred and sixty-nine Acres Three Roods and Seventeen Perches, remain unallotted and uninclosed: And whereas Her Majesty, in right of Her Crown, and divers of Her Majesty's Subjects, are or claim to be entitled to certain Rights of Common of Estovers or of cutting Wood for Fuel commonly called Fuel Assignments in the late Forest of *Hainault*:

And

And whereas there are within the Boundary of the late Forest of *Hainault*, in addition to the Commonable Lands within that Part of the said Forest which is situate within the Parishes of *Barking* and *Dagenham*, and usually known as the *King's Forest* or *King's Woods*, divers other Commonable Lands situate in various other Parishes, and Doubts exist whether the Queen's Majesty and the Persons possessing Rights of Common within the Boundaries of the said late Forest are entitled to exercise them over all Commonable Lands within the Boundaries of such Forest, or only over such as lie in the same Parish or District as the Lands in respect of which such Rights are claimed: And whereas it is expedient that Provision should be made for setting out a Part of the unallotted Portion of the *King's Forest* or *King's Woods* to the Queen's Majesty and other the Persons entitled to Common of Estovers or Fuel Assignments, and for dividing and allotting such Part between them in satisfaction of their said Rights, and it is also expedient to ascertain and define the Commonable Lands within the Boundaries of the said late Forest, to make such Provisions in respect thereof as are after contained, and that such other Provisions should be made as after mentioned: May it therefore 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:

Act to be executed by a Commissioner appointed by Inclosure Commissioners.

I. 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* for the Time being, within Three Calendar Months from 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.

Power for the Commissioner to appoint a Surveyor.

II. It shall and may be lawful for the said Commissioner so to be appointed to appoint a Surveyor or Valuer for the Purposes of this Act; and the said Commissioner shall be paid such Sum of Money not exceeding Three hundred Pounds as the said Inclosure Commissioners shall think reasonable; and the said Surveyor or Valuer shall be paid such a Sum of Money by way of Remuneration, not exceeding Two hundred Pounds, as the said Inclosure Commissioners shall think reasonable.

Commissioner to make Allotments to

III. The Commissioner so to be appointed as aforesaid shall, immediately after his Appointment, ascertain and determine the Persons, including Her Majesty, respectively entitled to such Common of Estovers

Estovers or Fuel Assignments, as herein-before recited, and shall estimate in the Manner herein-after directed the Value of such Rights at the Time of the passing of the said Act of the Fifteenth Year of Her present Majesty; and in estimating the Value at the Time aforesaid of the said Rights of Common of Estovers or Fuel Assignments, the Commissioner shall have regard, not only to the Value of such Rights alone, but also to the Value of the other Rights of Common exerciseable over the Land subject to the said Fuel Assignments, and the Amount to which the other Rights of Common would be lessened in Value by the Exercise or Existence of the said Rights of Common of Estovers, in such Manner that the Value of the Fee Simple and Inheritance of the Land over which the said several Rights are exerciseable may be fairly and justly apportioned between the Owners of the said Rights of Common of Estovers or Fuel Assignments on the one hand, and the Owners of other Rights of Common on the other hand; and the Commissioner shall set out such Part of the unallotted Portion of the said *King's Forest* or *King's Woods*, estimated to contain Nine hundred and sixty-nine Acres Three Roods and Seventeen Perches, as he may consider equivalent to the Value of the said Fuel Assignments at the Time aforesaid, after deducting from such Value a fair and reasonable Proportion of the estimated Expense of the passing of this Act and of carrying the same into execution, other than and except the Expenses of making the Fences between Allotments which the Commissioner is by this Act authorized to cause to be made, and except as herein-after provided with respect to the Cost of making and forming Roads, and shall allot and divide the same Part in Severalty by his Award under his Hand and Seal unto and among the Queen's Majesty and other the Persons respectively entitled to such Rights, in proportion to the Extent or Value of such Rights respectively, and the said Allotments shall respectively go and be held with and as Part of the Hereditaments in respect of which such Fuel Assignments exist, subject to such Conditions as to Fencing or Rights of Way or otherwise as the Commissioner may think proper, but freed and discharged from all Rights of Common and other Rights; and the same Award shall be accompanied by a Plan defining the Situation and Extent of the Allotment made to every Person entitled to a Fuel Assignment; and any Allotments to be made to Her Majesty, Her Heirs and Successors, shall go and be held as by the said recited Act is provided with respect to the Allotment thereby directed to be made to Her; and from and after such Award shall be made all the Commonable Lands in the said late Forest shall be discharged from all such Rights of Common of Estovers or Fuel Rights in all respects whatsoever; and for the Purpose of ascertaining

Persons entitled to Fuel Assignments.

taining the Right or Title to the said Fuel Assignments the said Commissioner may hear or receive such Evidence, at such Time and in such Manner as he may think fit to require; and the Award of the said Commissioner shall be binding on all Parties; and the Commissioner may call for the Production of any Books, Papers, or Writings, or require the Attendance of any Witness, and examine him or her upon Oath, as he may think fit; and the said Commissioner may by his said Award give such Directions as to the fencing of the said Allotments to be made as aforesaid and the keeping the same in repair as he shall think fit.

Power to Persons to sell Rights of Common of Fuel Assignments before Execution of Award.

IV. It shall be lawful for any Person or Persons at any Time before the Execution of the Award of the said Commissioner, to sell any Right of Common of Estovers or Fuel Assignment upon or over the said unallotted Lands in the *King's Woods*, and the Right to any Allotment or Allotments to be made in respect thereof, by virtue of this Act, separate and apart from the Estate in respect whereof the said Right of Common exists, and in every Case of any such Sale, the Commissioner is hereby authorized and required to make the Allotment in respect of the Rights purchased to the Purchaser or Purchasers thereof respectively, who shall, on the Execution of the Award of the said Commissioner, become entitled to such Allotment or Allotments, in the same Manner as the former Proprietor of the said Rights would have been entitled in case such Sale or Sales had not been made.

Power for the Commissioner to sell unallotted Lands for Expenses of Act, &c.

V. The said Commissioner may, with the Consent of the Inclosure Commissioners, to be signified in Writing under the Hand of One of such Commissioners, sell any Part of the said unallotted Lands in the *King's Forest* or *King's Woods*, containing, according to the said Award and Map, Nine hundred and sixty-nine Acres Three Roods and Seventeen Perches, which may not be set apart by him as the Portion to be allotted in respect of the said Fuel Assignments, as he may think necessary for the Purpose of defraying the Expenses of the passing of this Act of Parliament and the Expenses of carrying this Act into execution, and any such Sale may be made before the Allotment shall have been actually made in respect of such Fuel Assignments, and may be made by Public Auction or Private Contract, and subject to any Provisions or Stipulations as to fencing, Rights of Way, or otherwise, as the said Commissioners shall think fit; and any Parts so sold shall be conveyed by the said Commissioner to the Purchasers, or as they shall direct; and no Purchaser shall inquire as to the Title to the said Part so sold, or as to the Amount of the Money necessary to be raised by any such Sale; and the Receipts of the said Commissioner shall be good Discharges to the Purchasers for the Purchase Monies;

Monies; and the Monies shall, when received, be applied, under the Direction of the said Inclosure Commissioners, in the paying the Costs and Expenses herein-before mentioned, and if there should be any Surplus the same shall be applied as the said Inclosure Commissioners shall direct.

Commissioner to cause a Plan to be made of the Commonable Lands in Hainault Forest.

VI. The said Commissioner shall cause a Plan or Plans to be made, showing what Commonable Lands there are now situate within the Boundaries of the said late Forest, other than the Commonable Lands within the Boundaries of the *King's Forest* or *King's Woods*, as such several Boundaries are respectively defined by the Award of the said Commissioners and the Plan therein referred to, and the Plan so to be made shall also show the said unallotted Lands containing Nine hundred and sixty-nine Acres Three Roods and Seventeen Perches in the *King's Forest* or *King's Woods*, and what Portions thereof have been allotted to the said Fuel Rights, and have been sold under the Power by this Act given, and in making such Plan the said Commissioner is to adopt as far as in his Opinion is practicable the Plan made by the said Commissioners under the said recited Act; and further the said Commissioner shall ascertain and determine by his said Award whether the Rights of Common, or any of them, other than the said Fuel Rights, in the said late Forest of *Hainault*, extend indiscriminately over all the said Commonable Lands which he may find to be situate within the Boundaries of the said late Forest, including the unallotted Portion of the *King's Forest* or *King's Woods* containing Nine hundred and sixty-nine Acres Three Roods and Seventeen Perches, or whether such Rights or any of them are limited to the Commons in the particular Parish, District, or Place in which are situate the Lands in respect of which the Rights are claimed, or what is the Nature of such Rights; and in case the said Commissioner shall find that the Rights of Common or any of them are exerciseable generally over all the Commonable Lands within the said late Forest, or over any other Commonable Lands than those in the Parish, District, or Place in respect of which the Rights exist, or if the Commissioner shall find that Inhabitants of the Parishes in which the Commonable Lands in the *King's Forest* or *King's Woods* are situate are alone entitled to Rights of Common over such Lands, then the said Commissioner shall by his Award set out a specific Portion of the said Commonable Lands in any Part of the said late Forest of *Hainault* to each Parish, District, or Place in which the Inhabitants have Rights of Common as and for a Common for such Parish, District, or Place, and thenceforth the Right of such Parish, District, or Place, or of the Persons therein entitled to any such Rights of Common, shall, as regards such Rights of Common,

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be confined to such specific Portion so set out and apportioned as aforesaid, and in lieu of the general or other Right of Common over the whole or any Part of the uninclosed Lands aforesaid; and all Rights of Intercommonage shall upon the Execution of the Commissioner's Award cease and determine, and such Allotments of specific Rights of Common in respect of each such Parish, District, or Place shall be made with reference to the whole Amount of Commonable Land, and the Extent of the Rights of the Commoners in respect of each such Parish, District, or Place for which an Allotment shall be so made as aforesaid; and for all or any of the Purposes aforesaid the said Commissioner may hear or receive such Evidence at such Time and Place and in such Manner as he may think fit; and the Commissioner may call for the Production of any Books, Papers, or Writings, and require the Attendance of any Witness, and examine him or her upon Oath, as he may think fit; and his Decision in the Premises shall be final and binding on all Parties; and the said Commissioner shall have Power to cause such Fences, if any, as he may think fit, to be made between the different Commonable Lands in the *King's Forest* or *King's Woods* to be allotted to different Parishes, Districts, or Places, and to direct how and by whom such Fences shall be kept in repair, and the Expenses of making such Fences shall be taken as Part of the Costs of carrying this Act into execution, except that no Part of such Expenses shall be chargeable upon the Allotments by this Act directed to be made to the Owners of Fuel Assignments; and the Commissioner shall have regard to the Costs of any Fences which he may think fit to be made in considering the Extent of the Commonable Land to be allotted to each such Parish, District, or Place, and the Commissioner shall have Power to set out such Ways in the *King's Forest* or *King's Woods*, but not elsewhere, and generally to make such Regulations with respect to the said Allotments, as he may deem expedient: All Encroachments made since the Award of the Commissioner under the said recited Act on any Part of the said unallotted Lands containing by Estimation Nine hundred and sixty-nine Acres Three Roods and Seventeen Perches, within the Boundaries of the *King's Forest* or *King's Woods*, shall be deemed to be Part of the Lands to be allotted under the Provisions of this Act.

Power of Appeal.

VII. In case any Person shall be dissatisfied with any Decision of the Commissioner in reference to the Nature of any of the Rights of Common which he is by the last preceding Section of this Act directed to ascertain and determine, or as to the Lands over which such Rights extend or are exerciseable, or to which they are limited, the Commissioner shall, on the Application of the Person so dissatisfied, prepare a Case

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: Provided always, that no such Application shall be received by the Commissioner unless the same is made to him within One Calendar Month from the Time when the Decision to which it relates was given.

No Allotment or Consent in respect of the Soil to be made or given to the Inclosure of Land in the King's Forest or King's Woods.

VIII. Notwithstanding anything contained in any Act relating to the Inclosure of Land, it shall not, in any Proceeding before the said Inclosure Commissioners or otherwise, for the Inclosure or Appropriation as a regulated Pasture of any Part of the *King's Forest* or *King's Woods* aforesaid which may under the Provisions of this Act in manner aforesaid have been allotted as Commonable Lands for any such Parish, District, or Place as aforesaid, be necessary to procure the Consent of Her Majesty or of any other Person claiming any Right or Interest in the Soil of the Lands to be inclosed, either as Lord or otherwise; and the whole of any such Lands which may have been allotted to any Parish, District, or Place as Commonable Lands shall be allotted to and amongst the Persons entitled to Rights of Common over the same, and according to their several Rights of Common, and without making any Allotment to the Lord or other Person claiming any Interest in the Soil; and after the Execution of the Award by this Act directed to be made, neither the Queen's Majesty nor any other Person shall be entitled to exercise any other Right than a Right of Common of Pasture in, upon, or over the Portion of the said Lands containing Nine hundred and sixty-nine Acres Three Roods and Seventeen Perches, which may not have been sold or allotted to the Owners of Fuel Assignments under the Provisions of this Act, unless and until the said Portion or any Part thereof shall have been inclosed under the Provisions of any General Act relative to the Inclosure of Land.

Power for the Commissioner to set out Roads and declare them Highways.

IX. The Commissioner may, if he shall so think fit, set out, and may also, if he shall so think fit, cause to be made any Road or Roads in the *King's Forest* or *King's Woods*, but not elsewhere, for the more convenient Occupation of any of the Allotments in the same Forest or Woods by this Act directed to be made, and may cause the same to be fenced, and the Cost of making and fencing any such Roads shall be deemed to be Part of the Costs of carrying this Act into execution, and the Commissioner may declare any of the said Roads to be public Highways, and the same shall in that Case, upon the Execution of the Commissioner's Award, become and be public Highways, and shall thereafter be maintained as such, and the Com-

missioner's Award shall be conclusive that the Roads therein mentioned have been duly set out and made and fenced, as the Case may be.

Commissioner to set out an Allotment to be annexed to the District Chapelry of Barkingside.

X. The Commissioner shall set out and award a Portion containing Twenty Acres of the said unallotted Part of the *King's Forest* or *King's Woods* as and for Glebe Land to be annexed to the Ecclesiastical District Chapelry of *Barkingside*, and the same shall upon the Execution of the Commissioner's Award become and thenceforth shall continue annexed to the said District Chapelry as Glebe Land for the Use and Benefit of the Incumbent for the Time being of such Chapelry, and shall be vested in such Incumbent for the Time being, and such Allotment shall thereupon be freed and discharged from all Rights of Common and other Rights, and shall be fenced in such Manner and by such Persons as the Commissioner may direct.

Award to be made in Three Years, and to be executed in Duplicate.

XI. The said Commissioner shall make his Award in Writing as regards all the Matters and Things hereby by him directed to be done within Three Years from the passing of this Act; and such Award shall be executed in Duplicate, and one Part thereof shall be deposited at the Office of Land Revenue Records and Inrolments, and the other Part thereof shall be deposited with the Clerk of the Peace for the said County of *Essex*, 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.

Power for Commissioner to examine Witnesses on Oath.

XII. The said Commissioner may examine upon Oath or upon Declaration, as he may think fit, all such Persons as may attend before 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.

Saving Rights under recited Act of 14 & 15 Vict. c. 43.

XIII. Nothing herein contained shall authorize the Commissioner in any Manner to deal or interfere with any Lands which were allotted to Her Majesty or to any other Person by the Award made under the said recited Act of the Fifteenth Year of the Reign of Her present Majesty,

Majesty, or with any other inclosed Lands in the Possession of Her Majesty or Her Lessees or Tenants.

XIV. In citing this Act in other Acts of Parliament and in legal Instruments it shall be sufficient to use the Expression "*Hainault Forest* (Allotment of Commons) Act, 1858." Short Title.

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