CHAPTER lxxxiii.

An Act to confirm the Provisional Order for the regulation of certain Lands forming part of East Stainmore Common, and situated in the township of East Stainmore, in the parish of Brough, in the county of Westmorland, and the Provisional Order for the inclosure of certain other Lands forming the remainder of the same common, and situated in the same parish, in pursuance of a Report of the Inclosure Commissioners for England and Wales. [3d July 1879.] A.D. 1879.

WHEREAS the Inclosure Commissioners for England and Wales did, in pursuance of the Inclosure Acts, 1845–1878, issue in the year one thousand eight hundred and seventy-nine the Provisional Order of Inclosure and the Provisional Order of Regulation set forth in the schedule hereto, and in a special report certified that it was expedient that the same should be confirmed by Parliament:

And whereas a Committee of the House of Commons, to which the same Provisional Orders were referred, recommended that the same should be confirmed without modification:

And whereas the said inclosure and regulation cannot be proceeded with without the previous authority of Parliament:

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:

Confirmation of Provisional Orders.

1. The Provisional Order of Inclosure and the Provisional Order of Regulation set forth in the schedule to this Act are hereby confirmed.

Short title.

2. This Act may be cited as the Inclosure and Regulation (East Stainmore) Provisional Orders Confirmation Act, 1879.

A.D. 1879.

SCHEDULE.

Provisional Order for the Regulation of a Common.

WHEREAS persons interested in certain lands called or known as East Stainmore Common, situate in the township of East Stainmore, in the parish of Brough, in the county of Westmorland, such lands being a common within the meaning of the Inclosure Acts, 1845 to 1878, have made application to the Inclosure Commissioners for England and Wales to issue Provisional Orders for the regulation of part, and for the inclosure of the residue, of such common, and to certify that it is expedient that such Provisional Orders should be confirmed by Parliament:

And whereas it has been made to appear to the said Commissioners that the persons making the said application represent at least one third in value of such interests in the said common as are proposed to be affected by the Provisional Orders:

And whereas the said Commissioners, having taken the said application into consideration, were satisfied that a primâ facie case had been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it was expedient to proceed further in the matter, and accordingly ordered a local inquiry to be held by an Assistant Inclosure Commissioner:

And whereas the said Assistant Commissioner, having caused public notices to be given as required by the Acts, held, pursuant to the said notices, public meetings at the Slip Inn, in the said township, on the sixth day of April one thousand eight hundred and seventy-seven, at eleven o'clock in the forenoon and at seven o'clock in the evening, and on the tenth and eleventh days of December one thousand eight hundred and seventy-eight, at the respective hours of seven in the evening and eleven in the forenoon, to hear all persons desirous of being heard on the subject matter of the said application, and any information or evidence which might be offered in relation thereto, and inquired into the correctness of the statements in the said application, and otherwise into the expediency of making the Provisional Orders applied for, and into the nature of the provisions to be inserted in such Provisional Orders:

And whereas the said Assistant Commissioner inspected the said common, as required by the said Acts:

And whereas the said Assistant Commissioner duly reported in writing to the said Commissioners the result of the local inquiry and of the public meetings held by him, together with the information obtained by him as to the several particulars in the said application, and all other information required by the said Acts, and annexed to his report a map of the said common, a copy of which map, so far as it relates to the subject matter of this Order, is hereto annexed:

And whereas the part of the said common proposed to be regulated is delineated on the map hereto annexed, and thereon edged with green:

And whereas Sir Henry James Tufton, Bart., as lord of the lordship of East Stainmore, within the manor of Brough, is entitled to the soil of the said common:

Now, therefore, in pursuance of the powers given to us by the said Acts, we, the Inclosure Commissioners of England and Wales, being satisfied that, having regard to the benefit of the neighbourhood as well as to private interests, the regulation of part of the said common is desirable, have framed for the consideration of the persons interested this our draft Provisional Order, specifying the provisions for the adjustment of rights and the improvement of the common which are to be put in force, and the terms and conditions on which, provided the necessary consents are given thereto, we are prepared to certify that it is expedient the Provisional Order should be confirmed by Parliament; that is to say,

That the part of the said common to be regulated be that which is included within an edging of green colour on the map hereto annexed.

That for the adjustment of rights the following provisions be put in force; that is to say, provisions for—

1. As respects rights of common of pasture, the determination of the persons by whom, the stock by which, and the times at which, such common of pasture is to be exercised.
2. As respects rights of common of turbary, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the part of the said common to be regulated, the determination of the persons by whom, and the mode and place or places in which, and the times at which, such rights, or any of them which may be proved to exist, are to be exercised.
3. The determination of any rights, and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, should any such disputes be found to exist.

That for the improvement of the part of the said common to be regulated the following provisions be put in force; that is to say, provisions for—

1. The draining, manuring, and levelling of such part of the said common as may be found necessary.
2. The planting of trees, whether for shelter or otherwise, or in any other way improving or adding to the beauty of such part of the said common.
3. The making of byelaws and regulations for the prevention of or protection from nuisances, and for keeping order on such part of the said common.
4. The general management of such part of the said common.
5. The appointment from time to time of conservators of such part of the said common for the purposes of such improvement, such conservators being persons interested in such part of the said common.

That the aforesaid provisions for adjustment of rights and for improvement shall apply to all that part of the said common which is to be regulated.

That quarries for the repair of roads within the said township, and for the use of the persons interested in the part of the said common to be regulated, on their lands within the lordships of East Stainmore, Brough, and Brough Sowerby, but not otherwise or for sale, be set out to the satisfaction of the Inclosure Commissioners.

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That, if found necessary, carriage roads, bridle roads, and footpaths be set out to the satisfaction of the Inclosure Commissioners, as may be most convenient for public use.

That one-sixteenth part in value of the rights of common of pasture over the part of the said common to be regulated, be allotted under the provisions of the said Acts to the said Sir Henry James Tufton, as lord of the said lordship, in lieu of his right and interest in the soil of such part of the said common, so far as the same is affected by this Order, such allotment to be without prejudice to any right of pasture, or other right of common or interest in the nature of a right of common, which may have been usually enjoyed by such lord or his tenants upon such part of the said common, and which said right of pasturage or other right, if any, is to be compensated for and determined under the provisions herein-before referred to, for the adjustment and determination of rights of common of pasture.

That the mines, minerals, stone, and other substrata under the part of the said common to be regulated (except quarries to be set out as aforesaid) be reserved to the lord of the lordship, together with a right to enter such part of the said common for the purpose of opening, working, or winning such mines, minerals, stone, and other substrata except as aforesaid.

Provided always, that the person or persons exercising such rights shall, in the exercise thereof, do as little damage to the surface of the common as reasonably may be, and shall not prejudicially affect any quarry, carriage road, bridle road, or footpath to be set out as aforesaid, and shall pay compensation for any damage done thereby to any drain made, tree planted, or improvement executed under the powers aforesaid, such compensation to be paid to the conservators for the time being, to be applied by them in improving the part of the said common to be regulated, and the conservators for the time being shall have power to sue for, recover, receive, and give effectual receipts for, and to settle all questions relating to such compensation.

That the right of the lord of the said lordship to all manner of game upon the part of the said common to be regulated, together with the right of hunting, hawking, and fowling over the same, with full power and authority for him, and all persons authorised by him, to enter upon such part of the said common for the convenient exercise of such rights, and to watch and preserve the game, and prevent unauthorised persons from the destruction or pursuit thereof, be reserved to the lord of the said lordship.

That there may be raised by the conservators for the time being such sums as the said Inclosure Commissioners shall think fit, and by order from time to time, under their seal, at the request of the conservators, direct, to be applied towards the improvement or protection of the part of the said common to be regulated and to be raised by means of rates to be levied upon the respective owners of rights of common of pasture, according to the value of such rights as ascertained from the award, and to be recoverable by the conservators or any officer appointed by them for the purpose in such manner, as nearly as circumstances will permit, as if the same had been rates recoverable by a field reeve appointed under the powers of the said Acts, or any of them.

That for the purposes of giving complete effect to this Provisional Order, and to enable the conservators to carry out their duties in the most efficient manner,

there shall be inserted in the award to be made in pursuance of the said Acts such provisions not inconsistent with such Acts as the said Inclosure Commissioners shall think desirable and proper.

In witness whereof we have hereunto set our official seal this thirtieth day of January one thousand eight hundred and seventy-nine.

L. S.

Provisional Order for the Inclosure of a Common.

Whereas persons interested in certain lands called or known as East Stainmore Common, situate in the township of East Stainmore, in the parish of Brough, in the county of Westmorland, such lands being a common within the meaning of the Inclosure Acts, 1845 to 1878, have made application to the Inclosure Commissioners for England and Wales to issue Provisional Orders for the regulation of part, and for the inclosure of the residue, of such common, and to certify that it is expedient that such Provisional Orders should be confirmed by Parliament:

And whereas it has been made to appear to the said Commissioners that the persons making the said application represent at least one third in value of such interests in the said common as are proposed to be affected by the Provisional Orders:

And whereas the said Commissioners, having taken the said application into consideration, were satisfied that a primâ facie case had been made out, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it was expedient to proceed further in the matter, and accordingly ordered a local inquiry to be held by an Assistant Inclosure Commissioner:

And whereas the said Assistant Commissioner, having caused public notices to be given as required by the said Acts, held, pursuant to the said notices, public meetings at the Slip Inn, in the said township, on the sixth day of April one thousand eight hundred and seventy-seven, at eleven o'clock in the forenoon and at seven o'clock in the evening, and on the tenth and eleventh days of December one thousand eight hundred and seventy-eight, at the respective hours of seven in the evening and eleven in the forenoon, to hear all persons desirous of being heard on the subject matter of the said application, and any information or evidence which might be afforded in relation thereto, and inquired into the correctness of the statements in the said application, and otherwise into the expediency of making the Provisional Orders applied for, and into the nature of the provisions to be inserted in such Provisional Orders:

And whereas the said Assistant Commissioner inspected the said common, as required by the said Acts:

And whereas the said Assistant Commissioner duly reported in writing to the said Commissioners the result of the local inquiry and of the public meetings held by him, together with the information obtained by him as to the several

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particulars in the said application, and all other information required by the said Acts, and annexed to his report a map of the said common, a copy of which map, so far as it relates to the subject matter of this Order, is hereto annexed:

And whereas the part of the said common proposed to be inclosed is delineated on the map hereto annexed, and thereon edged with red:

And whereas Sir Henry James Tufton, Bart., as lord of the lordship of East Stainmore, within the manor of Brough, is entitled to the soil of the said common:

Now, therefore, in pursuance of the powers given to us by the said Acts, we, the Inclosure Commissioners for England and Wales, being satisfied that, having regard to the benefit of the neighbourhood as well as to private interests, the inclosure of part of the said common is desirable, have framed for the consideration of the persons interested this our draft Provisional Order, specifying the terms and conditions on which, provided the necessary consents are given thereto, we are prepared to certify that it is expedient the Provisional Order should be confirmed by Parliament; that is to say,

That the part of the said common to be inclosed be that which is included within an edging of red colour on the map hereto annexed.

That forty acres be allotted for recreation ground in the following situations; that is to say,

Fifteen acres in Brough Riggs, at the end nearest the town.

Six acres near the Slip Inn, at the spot marked A. on the map hereto annexed.

Six acres near the Punch Bowl Inn, at the spot marked B. on the said map.

Four acres on the summit of the hill near "Maiden Castle," at the spot marked C. on the said map, and nine acres at and around "Maiden Castle."

That ten acres on Buscoe Moor, at or near the spot marked D. on the said map, be allotted for field gardens.

That ten acres at or near the spot marked E. and six acres at or near the spot marked F. on the said map be set out as public turbary grounds for the use of the inhabitants of the said township.

That quarries for the repair of roads within the said township, and for the use of the allottees under the inclosure on their respective allotments, and on their lands in respect of which allotments are set out within the lordships of East Stainmore, Brough, and Brough Sowerby, but not otherwise or for sale, be set out to the satisfaction of the Inclosure Commissioners.

That there be reserved to the owners of allotments which are set out in respect of their ancient lands under the inclosure the right to get stone on their respective allotments for their own use thereon, and on their ancient lands in respect of which such allotments are set out within the said lordships of East Stainmore, Brough, and Brough Sowerby, but not otherwise or for sale.

That, if found necessary, carriage roads, bridle roads, and footpaths be set out to the satisfaction of the Inclosure Commissioners as may be most convenient for public use.

That one-sixteenth part in value of the residue of the part of the said common to be inclosed be allotted under the provisions of the said Acts to the said Sir Henry James Tufton, as lord of the said lordship, in lieu of his right and

interest in the soil of such part of the said common, exclusively of his right and interest in all mines, minerals, stone, and other substrata (except as aforesaid) under the same, and also exclusively of any right of pasturage or other right of common, or interest in the nature of a right of common, which may have been usually enjoyed by such lord or his tenants upon such part of the said common, which said right of pasturage, or other right, if any, is to be compensated by allotments or otherwise, independently of the allotment hereby stipulated in respect of his right and interest in the soil.

And in respect of the mines, minerals, stone, and other substrata (except as aforesaid) under such part of the said common, which are hereby excepted from the inclosure and reserved to the lord of the lordship, it is hereby specified as follows; that is to say,

That a right to enter such part of the said common when inclosed for the purpose of opening, working, or winning such mines, minerals, stone, and other substrata (except as aforesaid) be reserved to such lord of the lordship, compensation to be made by the persons exercising such right for any damage to the surface which may hereby be done.

In witness whereof we have hereunto set our official seal this thirtieth day of January one thousand eight hundred and seventy-nine.

L.S.

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