

ANNO OCTAVO & NONO

VICTORIÆ REGINÆ.

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CAP. LVI.

An Act to alter and amend an Act passed in the Third and Fourth Year of the Reign of Her present Majesty Queen *Victoria*, intituled *An Act to enable the Owners of Settled Estates to defray the Expences of draining the same by way of Mortgage.* [31st *July* 1845.]

WHEREAS by an Act passed in the Third and Fourth Year of the Reign of Her present Majesty Queen *Victoria*, intituled *An Act to enable the Owners of Settled Estates to defray the Expences of draining the same by way of Mortgage*, after reciting that whereas much of the Land in *England* and *Ireland* would be rendered permanently more productive by improved Draining, and nevertheless, by reason of the great Expence thereof, Proprietors having a limited Interest in such Land were often unable to execute such draining, and that it was expedient, as well for the more abundant Production of Food as for the increased Employment of Farming Labourers, and the extended Investment of Capital in the permanent Improvement of the Soil, that such Proprietors should

3 & 4 Vict. c. 55.

should be relieved from such Disability, due Regard being had to the Interests of those entitled in remainder, it was amongst other things enacted, that it should be lawful for any Tenant for Life, or for Term of Years, as therein mentioned, entitled to any Lands in *England* or *Ireland*, or such Guardian or Guardians as therein mentioned, to apply by Petition to Her Majesty's Court of Chancery or Exchequer in *England* or *Ireland* for Leave to make permanent Improvement in the Lands to which he or she should be so entitled, by draining; and by the said Act Provision is made for the charging the Cost of such Draining on the Lands so drained, and otherwise as in the said Act is mentioned: And whereas the Advantages contemplated by the said recited Act are diminished by reason of the Costs attending the making such Application and such Charge as by the said Act is provided; and it is therefore, and for other Reasons, expedient that the Provisions of the said Act should be repealed, and should be re-enacted, with such Modifications, Extensions, and Alterations as are after mentioned: Be it therefore enacted by the Queen's most Excellent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, That, subject to any Proceedings under the said recited Act which at the Time of the passing of this Act shall be pending, the said recited Act shall be and is hereby repealed.

Recited Act repealed.

II. And be it enacted, That from and after the passing of this Act any Proceedings now pending may be completed under the Provisions of this Act, as if the same had commenced after this Act had passed.

Proceedings now pending may be completed under this Act.

III. And be it enacted, That any Person entitled in possession to any Land as Tenant by the Curtesy, or for his own Life, or any other Life or Lives, or for Years determinable on any Life or Lives, or any Infant entitled as aforesaid by his Guardian or next Friend, or any Idiot or Lunatic entitled as aforesaid by the Committee of his Estate, or any married Woman entitled as aforesaid for her separate Use by her next Friend, or the Husband of any married Woman entitled as aforesaid in her Right, or any Feoffees or Trustees for any charitable (or other) Purposes, or any Ecclesiastical or other Corporation Aggregate or Sole, or any Mortgagee or Incumbrancer in Fee in possession of the Land mortgaged or incumbered, or any Person entitled in Fee to any Equity of Redemption, and in possession of the Land mortgaged, shall be at liberty to apply to the High Court of Chancery, by Petition to the Lord Chancellor or the Master of the Rolls, for Leave to make any permanent Improvements in the Land to which such Person or Corporation shall be so entitled, or

Tenants by Curtesy, Trustees, &c. may petition for Leave to make permanent Improvements in Lands in their Possession.

any Part thereof, by draining the same with Tiles, Stones, or other durable Materials, or by warping, Irrigation, or Embankment in a permanent Manner, or by erecting thereon any Buildings of a permanent Kind incidental or consequential to such draining, warping, Irrigation, or embanking, and immediately connected therewith, and shall in such Petition be at liberty to pray that the Expence of making any such permanent Improvement may be made a Charge on the Inheritance of the Land under the Provisions of this Act.

Such Petition to be referred to the Master, who shall report thereupon.

IV. And be it enacted, That upon the Presentation of any such Petition as aforesaid it shall be lawful for the Court, without requiring the Attendance of any Counsel or Solicitor, to refer it to One of the Masters of the said Court to make all necessary and proper Inquiries, and consider all such Estimates and Valuations as shall be produced before him in relation to the Matter of such Petition, and thereupon to report whether in his Opinion it will be beneficial to all Persons interested in the Land that such permanent Improvements should be made under the Provisions of this Act.

Master's Report to be filed, and on Confirmation thereof by the Court, Improvements may be made.

Certificate to be issued by the Master.

V. And be it enacted, That such Report shall be filed in the Report Office of the said Court, and if no special Application to review the same shall be made within Fourteen Days after the filing thereof, it shall be lawful for the said Court, upon the Petition of the Party obtaining the same, and without the Attendance of any Counsel or Solicitor, to confirm the said Report absolutely, and thereupon to authorize or permit such permanent Improvements to be made; and the Master may thereupon certify that any Person advancing Money for the Purpose of making such permanent Improvements of the Land under the Provisions of this Act will, upon its appearing to the said Master that such Sum of Money has been fully expended in making such Improvements, or in paying the Expence of obtaining the Authority of the said Court, become and be entitled to a Charge on the Land for the Repayment of the Money advanced, with Interest; provided that upon Application to the Court to confirm the Master's Report it shall be lawful for the Court, if in its Opinion the Case shall appear to require the same, to refer it back to the Master to review his Report, or to receive fresh Evidence in support of the Master's Finding, or otherwise for the Purpose of ascertaining in a more satisfactory Manner whether it is proper to make the Improvements proposed under the Provisions of this Act.

After Endorsement of Master's Certificate Inheritance to become

VI. And be it enacted, That the Master, having granted such Certificate as aforesaid, is to be at liberty to inquire and state what Expences have been incurred in and about the Application to the Court, and making the necessary Surveys, Valuations, and Estimates, and

charged with Expences incurred.

and also to inquire and state what Sums of Money have been actually expended in such Improvements; and the Master, being satisfied as to the Amount of such Expences, may endorse upon the said Certificate that it hath been made to appear to him that the whole, or such Part of the Monies so advanced as aforesaid as upon the Evidence shall appear to have been so advanced, hath been fully expended in manner aforesaid, and upon such Endorsement being made the Inheritance of the said Lands shall thereupon become and be charged with the Payment of the said Sum, with Interest as from the Time when the same was advanced; and such Charge shall have Priority over other Charges, except Tithe Commutation Rent-charges, and any Quit or Chief Rents incident to Tenure; and a Memorial of every such Certificate, charging Hereditaments in the Counties of *Middlesex* and *Yorkshire* in *England*, or any Hereditaments in *Ireland*, may in all respects be registered as Deeds are now registered in *Middlesex*, *Yorkshire*, and *Dublin* respectively, and without Payment of any Fee.

Registry of Memorial of Certificate.

Certificate to be filed in the Report Office, and Duplicate to be Evidence.

VII. And be it enacted, That such Certificate as aforesaid shall be filed in the Report Office, and a Duplicate thereof, signed by the Master, shall be delivered to the Person advancing the Money, and shall be legal Evidence of his Title to the Money; and the Security shall take effect as from the granting of the Certificate.

Money advanced to bear Interest not exceeding Five per Cent.

VIII. And be it enacted, That the Money so to be advanced, or so much thereof as shall from Time to Time remain unpaid, shall bear Interest at such Rate as shall be agreed upon, not exceeding the Rate of Five *per Centum per Annum*, from the Time when the same shall be advanced, and such Interest shall be payable half-yearly.

Principal to be repaid by equal annual Instalments.

IX. And be it enacted, That the Principal Money so to be advanced shall be repaid by equal annual Instalments; and such annual Instalments shall, in the Case of Improvements by Drainage, warping, Irrigation, or Embankment, be not less than Twelve nor more than Eighteen in Number, and shall, in the Case of Improvements by the Erection of Buildings, be not less than Fifteen nor more than Twenty-five in Number.

Person in possession of Lands charged bound to pay Interest, &c. during Continuance of his Title.

X. And be it enacted, That any Person on whose Petition such Charge shall be made, and every succeeding Tenant for Life or other Person having only a limited Interest in the Lands charged, shall be bound to pay the Interest and Instalments which become from Time to Time due and payable during the Continuance of his Title to the Land, and on the Termination of such Title by Death or otherwise the Inheritance shall remain chargeable with no more than Six Months Arrears of Interest then due, and One Half of

of the last Instalment then due, and the Interest and Instalments thereafter to become due.

Works, &c. for Irrigation to be kept in repair by Tenant for Life, &c.

XI. And be it enacted, That every Tenant for Life or other Person having a limited Interest shall be bound to keep in repair any Buildings erected or built, or Embankments or Works for Irrigation constructed or made, under the Provisions of this Act, and as if he were Tenant for Life subject to Impeachment for Waste.

Lord Chancellor, &c. to make Orders for facilitating Proceedings.

XII. And be it enacted, That for the simplifying the Proceedings under this Act, and the rendering the same inexpensive, it shall be lawful for the Lord High Chancellors of *Great Britain* and of *Ireland* respectively, or the Lords Commissioners or Keepers of the Great Seal respectively, with the Assistance of the Master of the Rolls of *England* and *Ireland* respectively, from Time to Time to make such Orders and Provisions as they may think proper for the facilitating the Mode of Application to the Court, and of the Proceedings before the Master or otherwise.

Assent of Occupier requisite for Improvement of Lands held by him.

XIII. Provided always, and be it enacted, That where any Portion of Land proposed to be drained or otherwise improved or built on as aforesaid shall be in the actual Occupation of any Person, the Consent in Writing of such Person shall be necessary in order to give Validity to the Application of the Proprietor in respect of the Land, any thing herein-before contained to the contrary notwithstanding.

Appointment of Surveyors and other Officers.

XIV. And be it enacted, That it shall be lawful for the Master either to require the Evidence of a Surveyor to be from Time to Time appointed by him to make such Reports as to the Matters to be referred to him, or, if he shall think fit, to take the Evidence of the Surveyor appointed by any Party applying to the Court; and that it shall be lawful for the Lord High Chancellors of *Great Britain* and of *Ireland* respectively, and the Lords Commissioners or Lords Keepers respectively, from Time to Timeto appoint any Persons respectively as the Persons to report to or give Evidence before the Master to whom the Matter shall be referred: Provided always, that it shall be lawful for any Persons hereby authorized to apply to the Court of Chancery in *Ireland* to apply to the Court of Exchequer in *Dublin* instead of the Lord Chancellor, and the Lord Chief Baron of such Court shall in all respects have the same Powers as are hereby given to and vested in the Lord High Chancellor of *Ireland* or the Lord Commissioner or Keeper of the Great Seal of *Ireland*, and the Matters directed to be done by a Master of the Court of Chancery may in all respects be done and executed by the Chief Remembrancer of the said Court of Exchequer.

Chief Baron of Exchequer in Dublin to have the Powers hereby given to Lord Chancellor of Ireland.

XV. And

Alteration of Act.

XV. And be it enacted, That this Act may be altered, amended, or repealed by any Act to be passed in the present Session of Parliament.

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