# CHAPTER lxxxvi.

An Act to confirm a Scheme under "The Metropolitan Commons Act, 1866," relating to Tooting Beck Common. A.D. 1873.

[7th July 1873.]

WHEREAS the Inclosure Commissioners for England and Wales have, in pursuance of "The Metropolitan Commons Act, 1866," duly certified a scheme for the establishment of local management with respect to Tooting Beck Common, situate in the parish of Streatham in the county of Surrey, and it is by the said Act provided that no such scheme shall have any operation until such scheme shall have been confirmed by Parliament, and it is expedient that the said scheme should be so confirmed: 29 & 30 Vict. c. 122.

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:

Scheme as to TootingBeck Common certified by Inclosure Commissioners confirmed.

**1.** That the scheme for the establishment of local management with respect to Tooting Beck Common, situate in the parish of Streatham in the county of Surrey, certified by the Inclosure Commissioners for England and Wales under their seal on the thirteenth day of February one thousand eight hundred and seventy-three, and contained in the schedule hereunto annexed, be hereby confirmed, and from and after the passing of this Act shall be deemed to be a Public General Act of Parliament, of the like force and effect as if the provisions of the same had been enacted in the body of this Act.

Short title.

**2.** This Act may be cited for all purposes as "The Metropolitan Commons Supplemental Act, 1873."

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# SCHEDULE.

## Scheme for the Establishment of Local Management with respect to Tooting Beck Common.

Whereas by Articles of Agreement dated the 10th day of July 1868, and made between Robert Hudson, therein described, claiming to be owner in fee simple of one undivided moiety of the Manor of Tooting Beck in the county of Surrey, of the first part; Henry Willis, therein described, claiming to be a trustee for sale of the other undivided moiety of the said manor, of the second part; John Kymer the younger, David Wilson and Sophia his wife, Charles Telford the younger, Susanna Ommaney McTaggart, James Church and Sarah his wife, Charles Church and James McLean, Eliza Kinder, and Mary Ann Sophia Kymer, therein respectively described, claiming to be persons entitled to the proceeds of a sale of the last-mentioned undivided moiety of the said manor, of the third part; and Beriah Drew and Philip William Flower, therein respectively described, of the fourth part; the said Robert Hudson and Henry Willis, with the consent of the several persons parties thereto of the third part, agreed to sell, and the said Beriah Drew and Philip William Flower agreed to purchase, at the price of 10,200*l.*, the manor of Tooting Beck, with its rights, members, and appurtenances, as the same was and were then held and enjoyed by the vendors, except as and subject to the stipulations therein mentioned, and as set out in the schedule to these presents:

And whereas by an agreement bearing date the 25th day of June 1869, and made between the said Beriah Drew and Philip William Flower of the one part, and the Metropolitan Board of Works of the other part, after reciting as or to the effect herein-before recited, and also reciting that the said agreement was entered into by the said Beriah Drew and Philip William Flower with the knowledge and approval of the said Metropolitan Board of Works, to the intent that the commons or waste lands belonging to the said manor might be dedicated to the public as a recreation ground under the provisions of the Metropolitan Commons Act, 1866; and that the said Beriah Drew and Philip William Flower accepted the title shown to the said manor and premises, and paid the said purchase money, and completed their purchase on the 17th day of December 1868, having borrowed the whole of the purchase money, with interest thereon up to the 17th day of December 1868, amounting together to 11,086*l.* 19*s.* 11*d.*, from their bankers, to whom they agreed to pay interest on the loan at the rate of 5*l.* per cent. per annum, and that the said manor and premises were conveyed to them by an indenture dated the 17th day of December 1868, subject to stipulations authorised by the said articles of agreement as modified or explained in an indenture dated the 31st day of May 1869, endorsed on the said conveyance, and that the Metropolitan Board of Works intended to take proceedings under the Metro-

politan Commons Act, 1866, in reference to the said commons or waste lands. And that it was alleged by the vendors under the therein-before recited agreement that the only copyhold hereditaments then held of the said manor consisted of a small tenement and the appurtenances formerly in the possession of one Livesy, and alleged to have been by him devised to trustees for the benefit of the poor in the parish of Streatham, and that all other hereditaments formerly copyhold of the said manor had been enfranchised, and that the commonable rights of the owners of such other hereditaments were, upon the enfranchisement thereof, extinguished and merged, with the exceptions of the commonable rights of a Mr. Phillips and a Mr. Brown respectively in respect of certain hereditaments which were respectively enfranchised under the provisions of some or one of the statutes relating to the enfranchisement of copyhold hereditaments, all commonable rights which they respectively had previously had as commoners being reserved to them respectively. It is by the agreement now in recital agreed between the parties thereto as follows, that is to say:—First, the said Beriah Drew and Philip William Flower, in pursuance of the object with which they bought the said manor, and to the intent that the same might be dedicated to the public, as above mentioned, would transfer their purchase of and all their interest in the said manor, commons, and waste lands, under the therein-before recited agreement and conveyance and the endorsement thereon respectively, to the Board of Works, and the said Board of Works would accept the transfer thereof upon the terms mentioned in the same agreement, and all the terms of the agreement should be considered as embodied mutatis mutandis in the agreement now in recital, the said Beriah Drew and Philip William Flower assuming the place of the vendors, and the said Board of Works assuming the place of the purchasers, in the recited agreement, and the said Board of Works should purchase the premises at the said price of 10,200*l.*, and should pay the same and all interest thereon already paid under the recited agreement, and which should become payable for the loan of the said purchase money and interest, to the said Beriah Drew and Philip William Flower, and should also pay the said Beriah Drew and Philip William Flower all their costs then already incurred and to be thereafter incurred in relation to the said agreement and the contract now in recital. Secondly, the said Beriah Drew and Philip William Flower should, if required by the Board, concur in the memorial to be presented by the Board under the Metropolitan Commons Act, 1866, for a scheme in reference to the said commons or waste lands, and in all consequential proceedings under such Act, and the said Board should defray all the costs and expenses of the said Beriah Drew and Philip William Flower, as well as of the Board, in relation to such proceedings. And the articles of agreement now in recital contained a proviso enabling the said Metropolitan Board of Works to determine that agreement in case, at any time before a scheme as to the said commons or waste lands should have been confirmed by Act of Parliament, the Board should be of opinion that there would become payable under a scheme under the said Act, in respect of any rights and interests not comprised in the said recited articles of agreement, sums exceeding the sum of 4,000*l.*, or in case a scheme as to the said commons or waste lands should not receive the sanction of Parliament under the said Act within three years from the date of that contract:

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And whereas the exception referred to in the first herein-before recited agreement was an exception out of the agreement for sale and purchase therein contained of a piece of land and certain cottages not forming any part of the commons or waste lands of the said manor, and such land and cottages were excepted from the conveyance made by the said indenture of the 17th day of December 1868:

And whereas the stipulations authorised by the herein-before recited articles of agreement of the 10th day of July 1868, as modified or explained in the said indenture of the 31st day of May 1869, endorsed on the said indenture of the 17th day of December 1868, are to the effect set forth in the schedule to this scheme:

And whereas the commons or waste lands belonging to the said manor are delineated in a plan deposited with the Inclosure Commissioners for England and Wales, and therein edged with green:

And whereas it is intended that the Metropolitan Board of Works (hereinafter referred to as "the Board") shall carry into effect the said agreement of the 25th day of June 1869, and take a conveyance to the Board of the said manor and premises thereby agreed to be sold, and shall acquire all estates, interests, and rights of a profitable or beneficial nature in, over, or affecting the said commons or waste lands, making or providing compensation for the same (if necessary), as provided by the 15th section of the Metropolitan Commons Act, 1866. Now it is proposed and provided as follows:

1. From and after the completion of the said purchase by the Board, the commons or waste lands delineated in the said plan, and therein edged with green (in this scheme referred to as "the common"), shall for the purposes of this scheme be regulated and managed by the Board.

2. The powers of the Board generally, as to appointing or employing officers and servants and paying them under the general Acts applicable to the Board, shall apply to all such persons as in the judgment of the Board may be necessary and proper for the preservation of order on, and the enforcement of byelaws with respect to, the common or recreation ground, and otherwise, for the purposes of this scheme; and the Board may make rules for regulating the duties and conduct of the several officers and servants so appointed and employed, altering such rules as occasion may require.

3. The Board may drain, plant, ornament, and improve the common as may be necessary, and for the purpose of preserving the turf and grass may inclose by fences for short periods such portions as may require rest to revive the same, and for the further protection of the common may put up a post and chain defence against the straying of cattle along such portion of it as is marked by a dotted line in red on the said plan. No house or any other buildings shall be erected on the common, except such lodges or other buildings as may be necessary for the maintenance or management of the said common or recreation ground. The Board may from time to time erect on the common such lodges and other buildings as may be necessary for the maintenance or management of the said common or recreation ground.

4. The Board shall frame byelaws and regulations for the prevention of nuisances and the preservation of order on the common or recreation ground, and particularly for preventing the deposit of rubbish on, and the illegal taking,

cutting, felling, and sale of turf, sods, bog-earth, gravel, sand, loam, clay, gorse, furze, fern, brushwood, trees, and the like, from the common or recreation ground: Provided that all such byelaws made by the Board shall be in writing under their seal. And the Board may by any such byelaws impose upon offenders against the same such reasonable penalties as they shall think fit, not exceeding the sum of 5*l.* for each offence, and in case of a continuing offence a further penalty not exceeding the sum of 40*s.* for each day after written notice of the offence, and the Board may alter or repeal any such byelaws, and may make any such other byelaws as may from time to time appear desirable: Provided always, that all byelaws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty: Provided always, that no such byelaws shall be repugnant to the laws of England or the provisions of this scheme, and no such byelaws shall, as against any person entitled to any estate, interest, or right of a profitable or beneficial nature in, over, or affecting the common which shall not be purchased or acquired by the Board under this scheme, operate or be construed so as to take away or injuriously affect such estate, interest, or right, and no such byelaws shall be of any force or effect unless and until the same be submitted to and confirmed by Her Majesty's First Commissioner of Works for the time being, who is hereby empowered to confirm or disallow the same, as he may think proper: Provided that any certificate of confirmation purporting to be signed by the First Commissioner of Works for the time being shall be primâ facie evidence of such confirmation in all courts and places whatsoever: Provided also, that no such byelaws shall be confirmed unless notice of intention to apply for confirmation of the same shall have been given in one or more of the London daily newspapers one calendar month at least before the making of such application; and for one calendar month at least before any such application a copy of the proposed byelaws shall be kept at the office of the Board, and be open during office hours thereat to the inspection of any metropolitan ratepayer without fee or reward, and the clerk of the Board shall furnish every such ratepayer who shall apply for the same with a copy thereof, or of any part thereof, on payment of 6*d.* for every one hundred words contained in such copy.

5. All byelaws made by the Board in pursuance of this scheme shall be printed, and shall be sold to any person who may apply for the same at such price, not exceeding 1*s.* per copy, as the Board may determine.

6. The Board shall be at liberty to receive and apply for the purposes of this scheme, or any of them, any subscriptions or donations applicable thereto respectively that may come to their hands.

7. The purchase and other moneys which shall become payable under the said agreement of the 25th day of June 1869, and all other compensation which shall become payable under this scheme, and all expenses which have been already incurred by the Board in relation to this scheme and the memorial for a scheme, and all costs and expenses which shall hereafter be incurred by the Board in or about the execution of this scheme, shall be deemed to be expenses of the Board in the execution of the Metropolis Management Acts, and be raised accordingly.

8. All the powers of the Board as to borrowing contained in the Metropolis Management Act, 1855, and the Metropolis Management Amendment Act,

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1862, as varied by "The Metropolitan Board of Works (Loans) Acts, 1869 to 1871," shall apply to this scheme, but the total amount borrowed for the purposes of this scheme shall not at any time exceed 20,000*l.*, but such sum shall be in addition to any sums which the Board are, under the powers of the said Acts, now authorised to borrow.

9. Any penalty imposed by or under the authority of this scheme, or any byelaw made under this scheme, may be recovered, together with the costs of the proceedings, in such manner and with such remedies, by distress or otherwise, as are given in the Metropolis Management Act, 1855, and the Acts amending the same; but all proceedings for the recovery of a penalty incurred under the provisions of this scheme, or any byelaw made under this scheme, shall be had or taken by the Board, and the penalty recovered shall be paid to the Board and shall be applied for the purposes of this scheme.

10. No proceeding touching the conviction of any offender under this scheme, nor any order or other matter or thing whatsoever made, done, or transacted in or relating to the execution of this scheme, shall be vacated, quashed, or set aside for want of form.

11. The trustees for the poor of the parish of Streatham, the devisees of the late Mr. George Phillips, Mr. Samuel Martin, and the trustees of the will of Robert Brown Russel, deceased, claim to be entitled to rights of common of pasturage over and upon Tooting Beck Common. The Master, Fellows, and Scholars of Emmanuel College, Cambridge, claim to be entitled to the soil and herbage of a certain portion (about 3 roods) of the land included in this scheme, and Mr. John Kymer claims a certain small strip.

This scheme affects the several rights and interests in, over, and upon Tooting Beck Common by conferring on the Board power to purchase the same compulsorily, with a view to their absolute extinction.

The trustees for the poor of Streatham consent to the scheme provided compensation be given for any rights taken away or prejudicially affected by it. The Master, Fellows, and Scholars of Emmanuel College, Mr. John Kymer, the devisees of the late Mr. George Phillips, and the trustees of the will of Robert Brown Russel, deceased, do not consent to the scheme. Mr. Samuel Martin does not oppose the scheme.

12. Printed copies of this scheme shall at all times be sold at the office of the Board to all persons desiring to buy the same, at a price not exceeding 2*s.* 6*d.* each.

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The SCHEDULE above referred to.

1. In the event of the whole of the commons or waste lands belonging to the manor not being given or dedicated to the public as a common or recreation ground, under the provisions of the Metropolitan Commons Act, 1866, or any other Act of Parliament, and in such way that no part thereof be at any time, without the consent in writing of the said Charles Telford, Susanna Ommaney McTaggart, Sarah Church, and Eliza Kinder, their respective executors, administrators, or assigns, sold or let on building or any other lease for the

purpose of defraying the expenses of making or maintaining the said common or recreation ground, or for any other purpose whatsoever, and so that no house or any other buildings be erected on such commons or waste lands, except such lodges or other buildings as may be necessary for the maintenance or management of the said recreation ground, within a period of five years from the date of the said indenture of the 17th day of December 1868, then at the expiration of such period of five years the said Charles Telford, his executors, administrators, or assigns, shall purchase, and the said Beriah Drew and Philip William Flower respectively, and their respective heirs and assigns, shall convey to him or them, one undivided 24th part or share of the hereditaments and premises comprised in the said indenture of the 17th day of December 1868, at or for the price or sum of 425*l.*; and in like manner, but as a separate and independent covenant, the said Susanna Ommaney McTaggart, her executors, administrators, or assigns, shall purchase, and the said Beriah Drew and Philip William Flower shall convey to her or them, one other undivided 24th part or share of the said hereditaments and premises, at or for the like sum of 425*l.*; and in like manner, but as a separate and independent covenant, the said Sarah Church, her executors, administrators, or assigns, or the said Charles Church and James McLean, or other the trustees or trustee for the time being of the settlement executed in contemplation of the marriage of the said James Church and Sarah Church, shall purchase, and the said Beriah Drew and Philip William Flower shall convey to her, them, or him, one other undivided 24th part or share of the said hereditaments and premises, at or for the like sum of 425*l.*; and in like manner, but as a separate and independent covenant, the said Eliza Kinder, her executors, administrators, or assigns, shall purchase, and the said Beriah Drew and Philip William Flower shall convey to her or them, one other undivided 24th part or share of the said hereditaments and premises, at or for the like sum of 425*l.*

2. The provisions for purchase herein-before contained shall not interfere with the power of the said Beriah Drew and Philip William Flower, or the survivor of them, or the heirs of such survivor, as lords or lord of the said manor, to memorialize the Inclosure Commissioners for England and Wales, and the Metropolitan Board of Works, or the Local Board, as the case may require, to cause or authorise the said commons to be inclosed, under the provisions of the Metropolitan Commons Act, 1866, provided the inclosure scheme be not inconsistent with the said indenture of the 31st day of May 1869, or with the said agreement of the 10th day of July 1868, and to act in all respects not inconsistent as aforesaid as lords or lord of the said manor in relation to such inclosure.

3. If at any time within the said period of five years the dedication in manner aforesaid of the said commons and waste lands to the public shall be found to be, in the opinion of the said Beriah Drew and Philip William Flower, or the survivor of them, impracticable, then the said Beriah Drew and Philip William Flower, or the survivor of them, or their or his heirs or assigns, shall be at liberty to give to the respective vendors aforesaid, or the heirs, executors, or administrators of such of the said respective vendors as shall then be dead, notice in writing that the appropriation and dedication of the said commons and waste lands to the public in manner aforesaid has

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been found to be impracticable; and immediately upon the giving of such notice the provision in the first article should come into operation and take effect in the same manner as if the said period of five years had then expired, and the commons and waste lands had not been dedicated to the public in manner aforesaid.

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The Inclosure Commissioners for England and Wales, pursuant to the provisions of "The Metropolitan Commons Act, 1866," hereby certify the above written scheme.

In witness whereof they, the said Inclosure Commissioners, have caused their official seal to be hereunto affixed, this thirteenth day of February one thousand eight hundred and seventy-three.

L.S.

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