



Improvement of Land Act 1864

1864 CHAPTER 114

Charges for Improvements

And with regard to Charges for Improvements under this Act, be it enacted as follows :

49 Commissioners to execute Charge on Completion of Works, or of some Part thereof.

When the Commissioners are satisfied that the Improvements sanctioned by them, or some Part thereof, have been properly executed, either according to the Specifications and Plans or Drawings approved of by them, or with such Deviations therefrom as in their Judgment will not diminish the permanent Benefit accruing from such Improvements to the Lands wherein they have been made, they shall execute a Charge under their Hands and Seal upon the Inheritance or Fee of the Lands comprised in the provisional or other sanctioning Order, or some sufficient Part thereof, for the Sum by the same Order expressed to be chargeable in respect of such Improvements, if all the said Improvements have been completed, or for a proportional Part of such Sum if a Part only of the said Improvements has been executed, together, in either Case, with the Interest by the same Order expressed, and with the Amount (if any) which shall have been paid in respect of the Purchase of adjoining Lands, or of any Easement, Authority, or Right in, through, over, or affecting adjoining Lands, with Interest thereon at the like Rate.

50 Expenses of Application and certain Contracts may be included in Charge.

If the Landowner is desirous that the Inheritance or Fee of the Lands improved should be charged with the Expenses of and incident to his Application to the Commissioners, or his Contract with any Company or Person relating to the Execution of the 'Improvements, or to the Advance of Money for their Execution, the Commissioners may ascertain the Amount of the Costs, Charges, and Expenses properly incurred preparatory or in relation' to and consequent on such Contract, and the Application to the Commissioners or either of them, and may include in the Principal Money charged on the Inheritance or Fee of such Lands the Amount of such Costs, Charges, and Expenses, and of the settled or taxed Costs, if any, which a Court or Judge shall have ordered as aforesaid to be deemed and taken to be Part of the Expenses of and incident

to the Application for Improvements, or such Part thereof as the Commissioners think fit; and the Commissioners may also include in such Principal Money Interest at a Rate not exceeding Five Pounds *per Centum per Annum* on all Payments forming Part of the same Principal Money from the respective Dates of such Payments to that of the Absolute Order, but so that no Interest shall be allowed on any such Payment for more than Six Years; provided that the total Amount of the Principal Money to be charged on the Lands improved under the Provisions of this Act shall not in any Case exceed that to which, in the Opinion of the Commissioners, the Inheritance or Fee of the Lands improved will be durably benefited by the Improvements.

51 The Charges to be by way of Rentcharge created by Absolute Order.

Every Charge under this Act shall be created by way of Rentcharge, payable half-yearly, extending over the Term of Years fixed by the provisional or other sanctioning Order, and the first Payment thereof to be made Six Months after the Time when the Works in respect of which the same was granted were executed to the Satisfaction of the Commissioners ; and the Payment for each Half Year shall be, and be expressed to be, as to Part thereof a Repayment of a certain Amount of Principal Money, and as to the Remainder thereof a Payment of Interest; and the Charge shall be duly stamped for denoting Payment of the proper ad valorem Stamp Duty which would be payable on a Mortgage for securing the like Amount as the Principal Money thereby charged, and shall be called an Absolute Order; and a Copy of every such Absolute Order shall be authenticated by the Seal of the Commissioners, and shall be kept by them and such Copy, and any Copy thereof authenticated by their Seal, shall be Evidence of the Contents and Purport of the same Absolute Order,

52 And may be made according to Form in Schedule (B).

Charges under this Act shall be made according to the Form in the Schedule (B.) hereto annexed, or as near thereto as the Circumstances of the Case will admit.

53 Expenditure made under this Act may be charged under Acts of Improvement Companies.

Whenever, by Assignment, under the Twenty-sixth Section hereof or otherwise, a Company having Power to execute or advance Money for the Improvement of Land shall become entitled to the Creation of any Charge under either the Forty-ninth or the Seventy-eighth Section hereof, the Commissioners shall, if required, but subject to the Provisions herein-before contained, create such Charge in the Form of, and so that it may also operate as, an absolute or other corresponding Order under the Act or Acts applying to such Company.

54 Improvement Companies may exercise the Powers of this Act, on conforming to its Procedure.

Any Company authorized by Act of Parliament to execute or advance Money for the Improvement of Land, by giving Notice to the Commissioners of their Intention to avail themselves of any of the Powers given by this Act, shall be held to have adopted the same, and thenceforth all the Procedure of such Company shall be carried on under and in accordance with this Act only ; and any such Company which shall adopt this Act as herein-before provided may, with the Sanction of Three Fourths of the Shareholders present at an Extraordinary Meeting of the Company specially convened

for the Purpose, execute or advance Money for the Execution of any Improvement authorized by this Act in any Part of the United Kingdom, although not so authorized by any Act or Acts relating to the Company.

55 Absolute Order to be conclusive Evidence of Charge.

The Execution of the Absolute Order by the Commissioners shall be conclusive Evidence in all Courts, and for all Purposes, of the Validity of the Charge thereby expressed to be made, and no Inquiry shall be permitted either into the Title or Estate of the Landowner, or into the due Performance of anything required to be done by this Act, or as to any other Matter on which the Validity of such Charge might but for this Enactment have depended.

56 Registry of Rentcharges in Ireland, Middlesex, Yorkshire, and Scotland.

A Memorial of every Absolute Order of the Commissioners whereby a Rentcharge is created on Land in *England* and *Wales*, in pursuance of this Act, shall be registered at the Office of the Land Registry in *England*, and a Memorial of every Absolute Order of the Commissioners whereby a Rentcharge is created on Land in *Ireland*, in pursuance of this Act, shall be entered in the proper Office for the Registration of Deeds and Wills, and such Memorials respectively shall express and contain the Date of the Order, the Name and Address of the Landowner, the Particulars of the Lands charged, the Amount of the Rentcharge, and the Period during which the same shall be made payable ; and the Production of the Absolute Order, sealed with the Seal of the Commissioners, shall be a sufficient Authority to the Registrar for the Entry of such Memorial at the proper Registry Office; and all Grants of Rent-charges on Lands in *Scotland* shall be registered in the General or Particular Register of Sasines: Provided that every Rentcharge to which the present Clause applies shall have Priority as hereinafter declared, any Law or Usage to the contrary notwithstanding.

57 Landowner may borrow the Amount of certain Public Assessments, and charge same on Inheritance.

Whenever by or under the Provisions of any Act of Parliament, Royal Charter, or Commission under the Great Seal or the Seal of the Duchy of *Lancaster* any public or general Works of Drainage or other Improvements shall be required or authorized to be executed, and the Cost thereof shall be directed or authorized to be assessed or charged upon the Inheritance of the Lands improved, then any Landowner who shall, under such Act, Charter, or Commission, have been assessed, and shall have become liable to pay any Sum of Money so chargeable for or towards such Works and Improvements, or any of them, in respect of his Land, may apply to the Commissioners to sanction the Money so assessed being charged upon the Land in respect of which such Landowner shall have been so assessed; and if the Commissioners shall be satisfied that the Works or Improvements have been executed in accordance with the Requirement or Authority in such Act, Charter, or Commission contained, they may, after the Money shall have been duly paid by such Landowner, by an Absolute Order within the Meaning of the Fifty-first Section hereof, charge upon the Inheritance or Fee of the Land in respect of which such Landowner shall have been so assessed the Amount so assessed and paid, or such Part of it as the Commissioners may be willing to sanction, to be repaid with Interest.

58 In Form specified, together with Costs of Application.

Such Absolute Order and Charge may be made in any Form and for any Term permitted by this Act, and all the Provisions hereof, shall apply thereto in the same Manner and with the same Effect and Operation in all respects as if such Order and Charge had been made in respect of Improvements upon the said Land executed under the Powers of this Act; and if the Landowner is desirous that the Inheritance or Fee of the said Land should be charged with the Costs Charges, and Expenses of and incident to the said Application and Order, or any Contract connected therewith, the Provisions of the Fiftieth Section hereof shall extend and apply to the present Case in the same Manner as to the Costs, Charges, and Expenses of the Application and Contracts in the said Fiftieth Section mentioned.

59 Grantee to have Charge for Principal Money from Time to Time unpaid, with Priority over other Incumbrances.

From the Date of the Absolute Order, the Grantee thereof, and his Executors, Administrators, Successors, and Assigns, shall have a Charge on the Lands therein comprised for the Principal Money from Time to Time remaining undischarged, by Payment of the Rentcharge, with Interest, at the Rates in the several Cases hereinbefore respectively expressed, and such Charge shall have Priority over every other then existing and future Charge and Incumbrance affecting such Lands or Estates and Interests respectively, whether created under the Powers of any Act of Parliament or otherwise, except Quit Rent, Crown Rents, Chief Rents, Feu Duties, Ground Annuals, and other Charges incident to Tenure, Tithe Commutation Rentcharges and Teinds, Charges created or to be created under any Act authorizing Advances of public Money for the Improvement of Land, and any Charges created under this Act or Charges of prior Date created under any other existing Act of Parliament authorizing the charging of Lands with the Expense of and incident to their Improvement : Provided that in case a Part only of the Land charged is subject to a Mortgage or other Incumbrance, the Charge created under the Authority of this Act shall have Priority over the Mortgage or other Incumbrance only to the Extent of a due Proportion of such Charge, when and so soon as the same shall be ascertained under and pursuant to the Sixty-sixth Section of this Act.

60 Charges to be Personal Property, but Money authorized to be invested on Real Security may be invested therein, or on Mortgages thereof.

Every Charge under this Act shall, as regards the Holder thereof, be deemed to be" Personal Property, except that any Holder of such a Charge, who shall desire to extinguish the same by reuniting it to the Land charged, shall have Power for that Purpose to direct by any Deed that it shall be reunited to and merge in the beneficial Interest in the said Land, as if it were of the same Nature and Tenure therewith; but all Trustees, Directors, and other Persons who may be directed or authorized to invest any Money on Real Security shall (unless the contrary be provided by the Instrument directing or authorizing such Investment) have Power, at their Discretion, to invest Money in such Charges, or on Mortgages thereof.

61 Charges not to preclude Trustees from investing in Purchase or on Mortgage of Lands.

No Charge on Land made by any Absolute Order by virtue of this Act shall be deemed such an Incumbrance as shall preclude a Trustee of Money, with Power to invest the

same in the Purchase of Land or on Mortgage, from investing it in a Purchase or upon a Mortgage of the Land so charged, unless the Terms of his Trust or Power expressly provide that the Land to be so purchased or taken in Mortgage be not subject to any prior Charge.

62 Proprietor of Scotch Entailed Estate may avail-himself of Act, and Rentcharge to be Charge on such Estate.

No Proprietor of an Entailed Estate in *Scotland* shall be held to have contravened the Conditions of the Entail by reason of his having availed himself of the Provisions of this Act, and no Rentcharge imposed or created on any Entailed Lands in *Scotland* under the Authority of this Act shall be made use of as a Ground for adjudging, selling, or evicting such Lands, or any Part thereof, contrary to the Provisions and Conditions of the Entail, but every such Rentcharge shall be a good and effectual Charge upon and against such Entailed Lands to every other Effect, and upon and against the Rents and Profits thereof.

63 Rentcharges to be recoverable as Tithe Rentcharges or Feu Duties.

Every Rentcharge on Land by virtue of this Act may be recovered by the Person or Company for the Time being entitled to the same, as to Lands in *England* or *Ireland*, by the same Means, and with the like Powers, and in like Manner in all respects as a Rentcharge in lieu of Tithes would be recoverable if charged on the same Land under the Act of the Seventh Year of King *William* the Fourth for the Commutation of Tithes in *England* and *Wales*, or under the Act of the First and Second Years of the Reign of Her present Majesty to abolish Compositions for Tithes in *Ireland* and to substitute Rentcharges in lieu thereof, and the several Acts passed for amending the same, as the Case may be, and as if such Rentcharge by virtue of this Act were a Rentcharge in lieu of Tithes made payable to such Person or Company under the said Acts respectively, and as to Lands in *Scotland* by the same Means and in the like Manner in all respects as any Feu Duties or Rent or annual Rent or other Payment out of the same Lands would be recoverable.

64 Interest on Arrears of Rentcharges.

If any Rentcharge payable under this Act shall be in arrear, such Arrear shall not bear Interest for a longer Period than Six Months, but Interest at Five Pounds *per Centum per Annum* in respect of the same, for any Period not exceeding Six Months, may be recovered in the same Manner as the Sum in arrear: Provided that if, at the Expiration of Six Months from the Time of any Payment falling into arrear, there shall not be upon the Land charged a sufficient Distress to answer and satisfy the said Payment and Interest thereon for the said Period of Six Months, together with the Costs and Charges of such Distress, then the Arrears of such Payment shall continue to bear Interest at the Rate of Five Pounds *per Centum per Annum* until Payment or Satisfaction thereof, and such Interest may be recovered in the same Manner as the Sum in arrear.

65 Assignment of Charges.

The Grantee or other Person for the Time being entitled to any Rentcharge created under this Act may assign the same by Deed duly stamped, and wherein the Consideration is truly stated; and such Assignment may be according to the Form in Schedule (C.) to this Act annexed, or to the like Effect; and all Assignments made

in such Form, or as near thereto as the Circumstances of the Case will admit, shall be effectual to vest, both at Law and in Equity, the Charge thereby assigned, and all the Powers, Authorities, Rights, and Remedies of the Assignor with reference to such Charge, in the Assignee, his Successors, Executors, Administrators, and Assigns respectively, and Notice of such Assignment shall be sent to the Commissioners at their Office in *London*.

66 Tenants for Life to keep down Rentcharges.

Every Landowner on whose Land a Charge shall have been made under this Act, and every succeeding Tenant for Life, Tenant in Tail, and other Person having a limited Interest in the Land so charged, shall, as between himself and the Persons in remainder or reversion, be bound to pay the yearly or other periodical Payments of such Charge which shall become payable during the Continuance of his Interest; and in case he be in the actual Occupation or entitled to an apportioned Part of the Rents and Profits of such Land up to the Time of the Termination of his Interest, he shall also be bound to pay an apportioned Part of the yearly Rent or other periodical Payment of such Charge which shall become due next after the Termination of his Interest, proportional to the Time which elapsed between the Day for the previous Payment and the Day of such Termination : Provided that no Person becoming entitled in possession to any Estate or Interest in the Land shall be liable, as between himself and the Persons entitled to the Rentcharge, to pay any Arrears of the Charge remaining unpaid at the Time of his becoming so entitled in possession beyond the Amount of Two Years Payment of such Charge : Provided also, that the Amount paid by any Person in respect of such Arrears, and any Costs occasioned by Nonpayment thereof, shall be a Debt from the Person who in the first instance ought to have paid the same, or from his Estate, to the Person who paid the same, and shall be recoverable accordingly.

67 Tenant may deduct Rentcharge, unless he has agreed to pay it.

If any Tenant or Occupier at a Rent join in the Application for an Improvement, or by Writing under his Hand signify to the Commissioners, or to an Assistant Commissioner or Engineer, his Consent to become charged with the Charge, or an apportioned Part thereof as herein-after mentioned, such Tenant or Occupier shall during his Tenancy or Occupation be liable to pay the Charge, or an apportioned Part thereof as herein-after mentioned; and in case the Charge be made in respect of the Improvement as well of other Land as of the Land included in such Tenancy or Occupation, the Commissioners may, upon such Consent of the Tenant or Occupier, declare in the Absolute Order what Portion of the whole Charge payable in respect of the Improvement shall be payable by such Tenant or Occupier during his Tenancy of Occupancy in respect of the probable Improvement of the Land included in his Tenancy or Occupation; but, except as aforesaid, every Tenant or Occupier who pays such Charge shall be entitled to deduct the Amount thereof from the Rent payable by him to the Landowner, and shall be allowed the same in Account with him.

68 Rentcharges may be apportioned, or Part of the Land charged released therefrom.

If at any Time Land charged under this Act, or under any other Act authorizing the Creation of Charges by the Commissioners, is occupied in separate Farms or other Holdings, or has become the Property of separate Owners, or the Owner thereof is entitled thereto under separate Titles or for distinct and separate Interests, or is desirous

to sell or dispose of Part of such Land, or Part only of such Land is subject to any Mortgage or other Incumbrance, or for any other Reason it would be desirable that the Charge should be apportioned or a Part of the Land charged released therefrom, the Commissioners may, with the Consent of the Landowner, or if the Land has become the Property of separate Owners, or a Part thereof is subject to any Mortgage or Incumbrance, then upon the Application of any One of such Owners, or of such Mortgagee or Incumbrancer, but in every Case with due Notice to the Grantee or Assignee of the Charge, or the Husband, Guardian, Tutor, Curator, Committee, or Trustee of such Grantee or Assignee, if a married Woman, Infant, Lunatic, Idiot, or furious or fatuous Person, and to such other Parties (if any) as the Commissioners think right, either release from such Charge any Part of the Land charged therewith, or apportion such Charge so that a separate and distinct Charge may become charged on each separate Farm or Holding, or on the Land of each Landowner, or on the Land held under each separate Title or for each distinct and separate Interest, or on the Part or each Part which the Landowner is desirous to sell or dispose of and the Part intended to be retained by him, or on the Part subject to such Mortgage or other Incumbrance and on the Residue, or on any other separate Parts of the Land, but so that no Charge charged under such Apportionment shall be less than Twenty Shillings for each half-yearly Payment: Provided that no Lands shall, in consequence of any such Apportionment or Release, become charged with any greater Amount than that to which, in the Opinion of the Commissioners, they have been durably benefited by the Improvements in respect of which such Charge was created.

69 Form, Registry, and Effect of Orders of Apportionment and Release.

Every such Apportionment or Release shall be made by an Order under the Hands and Seal of the Commissioners, and shall be in the Form set out in Schedule (D.) or (E.) to this Act, as the Case may be, or as near thereto as Circumstances will permit, and as to Lands in *England* and *Wales*, or in *Ireland* or *Scotland*, shall be registered in the Manner mentioned in the Fifty-fourth Section hereof, or as near thereto as Circumstances will permit; and a Copy of every such Order shall be authenticated by the Seal of the Commissioners, and shall be kept by them; and such Copy, or any Copy thereof authenticated by their Seal, shall be conclusive Evidence in all Courts and for all Purposes of the Contents and Purport of the same Order, and of the Validity of the Apportionment or Release thereby expressed to be made; and such Order shall take effect from the Date thereof, subject to the Continuance of all Rights and Remedies for the Recovery of Monies which before the Date thereof may have become payable out of any Lands under the Charge, so apportioned or released.

70 Charges apportioned, or from which Part of the Lands have been released, to be deemed original Charges.

Every Charge apportioned or released as aforesaid shall be recoverable out of the Lands on which the same is charged by the Order of Apportionment, or which shall not by the Order of Release be released therefrom, in the same Manner as if the same had been originally charged on such Lands respectively, and shall, for all the Purposes of this Act, or of the Act under which the original Charge was created, be deemed to be an original Charge on such Lands by Absolute Order.

71 Several Charges may be dealt with in one Order of Apportionment or Release

Where any Lands are charged by more than One Absolute Order, any Order of Apportionment or Release under the preceding Sections hereof may comprise all or any Number of the Rentcharges existing by virtue of such Absolute Orders.