



# Commons Act 1876

## 1876 CHAPTER 56

### PART II

#### AMENDMENT OF THE INCLOSURE ACTS

##### *Field Gardens and Recreation Grounds*

#### **21 Expenses of clearing, draining, and fencing field gardens**

Whereas it is expedient that the expenses of clearing any allotments made for field gardens may be included in the expenses of an inclosure : Be it enacted, that the valuer shall, unless the Inclosure Commissioners otherwise direct, cause every allotment made for a field garden to be cleared, drained, fenced, levelled, and otherwise made fit for immediate use and occupation ; and the expenses incurred by the valuer under this section shall be paid as part of the general expenses of the inclosure.

#### **22 Substituted allotments for recreation grounds and field gardens**

The provisions of the Inclosure Acts, 1845 to 1868. which authorise the Inclosure Commissioners to allow an equal quantity of the land proposed to be inclosed to be allotted for the purpose of a recreation ground or field garden, or for any other public purpose, in lieu of that directed to be allotted by any provisional order, shall extend to authorise them to allow the allotment of land of equal value although it may not be of equal quantity.

#### **23 Situation of allotments for recreation grounds and field gardens**

Every allotment made for the purpose of a recreation ground or field garden shall be in such part of the land proposed to be inclosed as is best suited for the purpose for which it is appropriated, and where any land proposed to be inclosed consists partly of common being waste land of a manor (in this section referred to as the first-mentioned land), and partly of common not being waste land of a manor (in this section referred to as the second-mentioned land), and the Commissioners are satisfied that it

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would be advantageous that the allotment for a recreation ground or a field garden, or any part thereof, should be made out of the second-mentioned land instead of out of the first-mentioned land, the Commissioners may, in the provisional order relating to such land, specify as one of the terms and conditions of the inclosure thereof that the said allotments or the said part thereof shall be made accordingly out of the second-mentioned land, and shall out of the first-mentioned land allot land of equal value; by way of exchange to the persons interested in the second-mentioned land.

#### **24 Field gardens to be free of rentcharge**

There shall be repealed so much of the Inclosure Acts, 1845 to 1868, as relates to the charging of an allotment made for the purpose of a field garden with a rentcharge, and every such allotment made after the passing of this Act shall be made free of any such rentcharge.

#### **25 Allotments for recreation grounds to be vested in churchwardens and overseers**

There shall be repealed so much of the Inclosure Acts, 1845 to 1868, as provides that an allotment made for the purpose of a recreation ground may be allotted to any person entitled to an allotment under the inclosure, and every such allotment made after the passing of this Act shall be vested in the churchwardens and overseers for the time being of the parish in which the same shall be situate, and shall be held by them as provided by the Inclosure Acts, 1845 to 1868.

#### **26 Amendment of law as to letting field gardens**

Whereas by the Inclosure Act, 1845, allotment wardens are required to let the allotments under their management to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, and are further required to demand in respect of such letting, a rent not below the full yearly value of the land to be ascertained in manner in the said Act mentioned ; and whereas it is expedient to amend the said provisions: Be it enacted that allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same or any unlet portion thereof, in gardens not exceeding an acre each to such inhabitants as aforesaid: Further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates, taxes, tithes, tithes rentcharge, and the rentcharge charged on the said allotments under the provisions of "The General Inclosure Act, 1845," but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet to any person whatever at the best annual rent which can be obtained for the same, without any premium or 'fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

This section shall apply to all land allotted to the poor for the purpose of cultivation under an Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector, or vicar and churchwardens, overseers, managers, or any other person or persons whatever, and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall

have like powers and duties as are herein-before given to and imposed upon allotment wardens.

## **27 Application of surplus rents of recreation grounds and field gardens**

Whereas by section seventy-three of the Inclosure Act, 1845, the surplus rents arising from recreation grounds are applicable in aid of the rates for the repair of the public highways in the parish or respective parishes in which the said grounds are situate, and by section one hundred and twelve of the same Act the surplus rents arising from field gardens are payable to the overseers of the poor in aid of the poor rates of the parish: And whereas it is expedient to amend the said provisions : Be it enacted, that the surplus rents arising from recreation grounds shall from and after the passing of this Act cease to be applied in manner provided by the said seventy-third section, and shall be applied to all or any of the following purposes, and to no other purpose ; that is to say, in improving the recreation grounds or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood; and the surplus rents arising from field gardens shall, from and after the passing of this Act, cease to be applied in manner provided by the said one hundred and twelfth section, and shall be applied to all or any of the following purposes, and to no other purpose ; that is to say, in improving the field gardens or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood.

The trustees of any recreation ground and the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners, sell all or any part of the allotment vested in them, and out of the proceeds of such sale purchase any fit and suitable land in the same parish or neighbourhood : Provided, that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others; and provided, that the Inclosure Commissioners shall not sanction" any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased; and the proceeds of any such sale shall be paid to the Inclosure Commissioners, and shall remain in their hands until such purchase of other land as aforesaid.

## **28 Reports to be made by managers of recreation grounds and field gardens**

The trustees of recreation grounds, where such trustees are the overseers or churchwardens of a parish, and the allotment wardens of field gardens shall, from time to time, and at such intervals of not less than three years nor more than five years, as the Inclosure Commissioners direct, make such reports to the said Commissioners in respect of the recreation grounds and field gardens under their management, with such particulars of the rents received by them, as the Commissioners may require.

## **29 Amendment of law as to town and village greens**

Whereas by the Inclosure Act, 1857, provision is made for the protection of town and village greens, and recreation grounds, and it is expedient to amend such provision: Be it enacted as follows, that is to say, an encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment

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of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section twelve of the said Inclosure Act, 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of such persons as in the said section mentioned.

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

### **30 Jurisdiction of county court in respect of illegal inclosures**

A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure, encroachment, or nuisance, or to make an order for the removal or abatement of such inclosure, encroachment, or nuisance.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the High Court of Justice in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the Supreme Court of Judicature in manner provided by the seventeenth section of the Supreme Court of Judicature Act, 1875.

The appellate court may on hearing the appeal reverse, modify, or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure, encroachment, or nuisance, such order shall be suspended during such time as such appeal is pending.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment on any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

### **31 Three months notice of claim to inclose to be given in the local papers**

Any person intending to inclose or approve a common or part of a common otherwise than under the provisions of this Act shall give notice to all persons claiming any legal right in such common or part of a common, by publishing, at least three months beforehand, a statement of his intention to make such inclosure, for three successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate;

but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor.

A production of a newspaper containing such advertisement as aforesaid shall be evidence of the same having been issued, and the inclosure shall, until the contrary is proved, be deemed to have taken place at the time specified in such advertisement.

### **32 Appointment of valuer to be confirmed by Commissioners**

An appointment of a valuer after the passing of this Act shall not be valid until it has been confirmed by the Commissioners. The Commissioners may disapprove of a valuer on the ground of his incompetency, interest, want of impartiality, or any reasonable cause, and where they so disapprove of a valuer may call a meeting, and a meeting may be held to appoint, and another person appointed (subject to the approval of the Commissioners) to be valuer in like manner as if no previous meeting had been held and no valuer had been previously appointed, and so on until a valuer approved by the Commissioners is appointed.