ANNO QUINQUAGESIMO

GEORGII III. REGIS.

Cap. 64.

An Act for incloſing Lands in the Pariſhes of *Eling* and *Fawley*, in the County of *Southampton*.

[18th *April* 1810.]

WHEREAS there are within the Pariſhes of *Eling* and *Fawley* in the County of *Southampton* certain Common Fields, Common Paſtures, Common Meadows, Common Marſhes, Feedings, Waſte Lands, Common Woods, Woody Grounds, and other Commonable Lands: And whereas the Warden and Scholars, Clerks, of *Saint Mary* College of *Wincheſter*, near *Wincheſter* in the ſaid County of *Southampton*, are Lords of the Manor of *Eling* in the ſaid Pariſhes of *Eling* and *Fawley*, and as ſuch are entitled to the Soil of the Common Paſtures, Common Meadows, Common Marſhes, Feedings, Waſte Lands, Common Woods, Woody Grounds, and other Commonable Lands within the ſaid Manor of *Eling*: And whereas Sir *Charles Mill*, Baronet, is Lord of the Manors of *Colebury*, *Langley*, and *Durley*, in the Pariſh of *Eling* aforeſaid, and as ſuch is entitled to the Soil of the Common Paſtures, Common Meadows, Common Marſhes, Feedings, Waſte Lands, Common Woods, and Woody Grounds, and other Commonable Lands within the ſaid laſt-mentioned Manors: And whereas the Honourable and Reverend *Thomas de Grey* is Rector of the ſaid Pariſh of *Fawley*, and as ſuch entitled to all Tithes both Great and Small ariſing or renewing within the ſaid Pariſh of *Fawley*: And whereas the Reverend *William Joſeph George Phillips* is Vicar of the Pariſh of *Eling* aforeſaid, and as ſuch entitled to all Vicarial or Small Tithes ariſing or renewing within the ſaid Pariſh of *Eling*: And whereas *John Silveſter*, Eſquire, and *Harriet* his Wife, late *Harriet Myles Speed*, Widow, the Reverend *William Joſeph George Phillips*, *Peter Serle*, Eſquire, the Guardians and Truſtees of *Louiſa Breton*, an Infant, under the Age of Twenty-one Years, *Henry Thomas Timſon*, Eſquire, *Richard Wake*, Yeoman,

Rector of Fawley.

Vicar of Eling.

Yeoman, and divers other Persons are seised or possessed of several separate Portions or Parts of Tithes within the said Manors, some or one of them: And whereas Sir *John Keane*, Baronet, *Andrew Berkley Drummond*, Esquire, the said *William Joseph George Phillips*, *William Phillips*, Esquire, *William Smith*, Esquire, *Blastus Godly Wright*, Esquire, *George Fort*, Esquire, *Richard Park*, Esquire, *Andrew Saunders* and *John Saunders*, Timber Merchants, *Richard Light*, Yeoman, and divers other Persons, Owners of Messuages, Lands, Tenements, Tithes, and other Hereditaments within the said Parishes of *Eling* and *Fawley*, are entitled to Rights of Common and other Rights in and upon the said Common Pastures, Common Meadows, Common Marshes, Feedings, Waste Lands, Common Woods, and Woody Grounds, and other Commonable Lands within the said Parishes of *Eling* and *Fawley* respectively: And whereas an Act was passed in the Forty-first Year of the Reign of His present Majesty intituled, *An Act for consolidating into one Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts*: And whereas the Common Pastures, Common Meadows, Common Marshes, Feedings, Waste Lands, Common Woods, and Woody Grounds, and other Commonable Lands within the said Parishes of *Eling* and *Fawley* respectively, lie wide and much dispersed, and are partly covered with Timber, Furze, and Bushes, and in their present Situation are incapable of any considerable Improvement; but if the same were to be inclosed and divided into specific Shares, and allotted amongst all the Persons interested therein, in Proportion to their respective Rights and Interests, great Advantage would arise to the Public as well as to the Parties concerned: But as such Improvement cannot be completed without the Authority of Parliament, May it therefore please Your Majesty, That it may be enacted, and be it enacted by the King'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 *Richard Richardson*, of *Lincoln's-Inn-Fields*, in the County of *Middlesex*, Gentleman; *George Barnes*, of *Andover*, in the said County of *Southampton*, Gentleman; and *Francis Webb*, of the City of *New Sarum*, in the County of *Wilts*, Gentleman, and their Successors to be elected in Manner hereinafter mentioned, shall be and they are hereby appointed Commissioners for dividing, setting out, allotting and inclosing the said Common Pastures, Common Meadows, Common Marshes, Feedings, Waste Lands, Common Woods and Woody Grounds, and other Commonable Lands, amongst the said Proprietors and Persons interested therein respectively, according to their several and respective Estates, Rights and Interests, and otherwise carrying this Act and the said recited Act into Execution, subject to the Regulations of the said recited Act, (except in such Cases only where the same are hereby varied or altered,) and that all Powers, Authorities, Directions, Acts, Matters and Things by this Act and the said recited Act given to, or directed to be done and executed by the said Commissioners, may be done and executed by or before any Two of them, and the same when so done, shall be as valid and effectual as if done and executed by or before all the said Commissioners.

Appointment of Commissioners.

II. And be it further enacted, That in case the said *Richard Richardson* shall die, neglect or refuse to act, or shall be rendered incapable of acting in

Appointment of New Commissioners.

in the Execution of this Act, then and in ſuch Caſe the ſurviving or remaining Commiſſioners or Commiſſioner ſhall, within Thirty Days next after ſuch Death, Neglect, Refuſal or Incapacity to act of the ſaid *Richard Richardſon*, give Notice thereof in Writing to the ſaid Warden and Scholars, Clerks of *Wincheſter* College, and the ſaid Warden and Scholars, Clerks, within Thirty Days after ſuch Notice being given, ſhall by Writing under their Common Seal nominate one other Perſon, not intereſted in the ſaid intended Incloſure, Diviſion and Allotment, to be a Commiſſioner in the Room and Stead of the ſaid *Richard Richardſon*, and ſo from Time to Time, as often as any Commiſſioner to be appointed by the ſaid Warden and Scholars, Clerks, for the Time being, ſhall die, neglect or refuſe to act, or ſhall be rendered incapable of acting as aforeſaid; and that in caſe the ſaid *George Barnes* ſhall die, neglect or refuſe to act, or ſhall be rendered incapable of acting in the Execution of this Act, then and in ſuch Caſe the ſurviving or remaining Commiſſioners or Commiſſioner ſhall, within Thirty Days next after ſuch Death, Neglect, Refuſal or Incapacity to act of the ſaid *George Barnes* as aforeſaid, give Notice in Writing thereof to the ſaid Sir *Charles Mill*, or to the then Lord or Lords of the ſaid Manors of *Colebury*, *Langley*, and *Durley*, and the ſaid Sir *Charles Mill*, or the then Lord or Lords of the ſaid laſt mentioned Manors, within Thirty Days next after ſuch Notice being given, ſhall by Writing under his or their Hand or Hands, nominate and appoint one other Perſon, not intereſted in the ſaid intended Incloſure, Diviſion and Allotment, to be a Commiſſioner in the Room and Stead of the ſaid *George Barnes*, and ſo from Time to Time, as often as any Commiſſioner to be appointed by the ſaid Sir *Charles Mill*, or the Lord or Lords of the ſaid Manors of *Colebury*, *Langley*, and *Durley* for the Time being ſhall die, neglect, or refuſe to act, or be rendered incapable of acting as aforeſaid; and that in caſe the ſaid *Francis Webb* ſhall die, neglect or refuſe to act, or be rendered incapable of acting in the Execution of this Act, then and in ſuch Caſe the ſurviving or remaining Commiſſioners or Commiſſioner ſhall, within Thirty Days next after ſuch Death, Neglect, Refuſal or Incapacity to act of the ſaid *Francis Webb* as aforeſaid, give Notice thereof to the Owners or Proprietors of Lands, Tythes, or other Hereditaments within the ſaid Pariſhes of *Eling* and *Fawley* reſpectively, intereſted in the ſaid Allotment, Diviſion, and Incloſure of the Lands to be incloſed, divided, and allotted by virtue of this Act, except the ſaid Warden and Scholars, Clerks, and the ſaid Sir *Charles Mill*; (ſuch Notice to be given in the *Saliſbury* and *Wincheſter* Journal, and alſo in the ſaid Pariſh Churches of *Eling* and *Fawley* upon ſome *Sunday* immediately after Divine Service, and by Notice in Writing affixed on the principal outer Doors of the ſaid Pariſh Churches reſpectively;) and in ſuch Notice the remaining or ſurviving Commiſſioners or Commiſſioner ſhall appoint a Day for the Owners or Proprietors of Lands within the ſaid Pariſhes of *Eling* and *Fawley* intereſted as aforeſaid, to meet in the ſaid Pariſh Church of *Eling*, within Thirty Days next after ſuch Notice for the Appointment of another Perſon not intereſted in the ſaid intended Incloſure, Diviſion, and Allotment, in the Place and Stead of the ſaid *Francis Webb*; and the Majority, in Value, of the Owners or Proprietors of Lands in the ſaid Pariſhes intereſted in the ſaid Allotment and Incloſure (except the ſaid Warden and Scholars, Clerks, and the ſaid Sir *Charles Mill*,) who ſhall by themſelves

or

or their Agents, duly authorized by Writing, attend such Meeting, shall and may, by Writing under their Hands, appoint another Person not interested in the said intended Allotment and Inclosure to be a Commissioner in the Place and Stead of the said *Francis Webb*; but in case the said Warden and Scholars, Clerks of *Winchester* College, or the said Sir *Charles Mill*, or the Lord or Lords for the Time being of the said Manors of *Eling*, *Colebury*, *Langley*, and *Durley*, or the said Owners and Proprietors of Lands within the said Parishes of *Eling* and *Fawley*, shall respectively refuse or neglect to appoint such Commissioners or Commissioner so dying, neglecting, refusing or becoming incapable to act as aforesaid, within Thirty Days next after such Notice or Notices shall have been given as aforesaid, then and in such respective Cases the surviving or remaining Commissioners or Commissioner shall within the Space of Thirty Days after such last-mentioned Refusal or Neglect, by Writing under their or his Hands or Hand; appoint a Commissioner or Commissioners not interested in the said intended Inclosure, Division, and Allotment in the Place and Stead of each such Commissioners or Commissioner so dying, neglecting, refusing, or becoming incapable to act as aforesaid, whose Place shall not have been filled up by the Person or respective Persons hereby authorized and enabled to elect or appoint such new Commissioners or Commissioner as aforesaid; and every Commissioner so to be nominated and appointed shall have the same Powers and Authorities to act in the Execution of this Act as the Commissioners or Commissioner in whose Places or Place they or he shall succeed, were or was vested with; and every Appointment of new Commissioners or a new Commissioner shall be inrolled at the same Time and at the same Place as the Award or Instrument of the said Commissioners.

Appointment of Surveyor.

III. And be it further enacted, That *Thomas Phillips* of *Andover* in the said County of *Southampton*, Land Surveyor, shall be, and he is hereby appointed Surveyor to the said Commissioners for making such Surveys, Admeasurements, or Plans, and reducing the same into Writing, and specifying and setting forth such Particulars as are in that Behalf directed under or by virtue of the said recited Act, or any other Particulars which the said Commissioners may direct or require; and in case the said *Thomas Phillips* shall die, refuse, or neglect to act, or become incapable of acting, the said Commissioners shall, and they are hereby authorized and required forthwith to appoint another Surveyor in his Stead, and so from Time to Time as often as the Surveyor for the Time being shall die, refuse, or neglect to act, or become incapable of acting; and no Person shall act as such Surveyor until he shall have taken and subscribed before the said Commissioners the Oath or Affirmation following, *videlicet*:

'I *A. B.* do swear (*or*, solemnly affirm), That I will faithfully, impartially, and honestly, according to the best of my Skill and Judgement, execute and perform the Trust and Power vested in me as a Surveyor by virtue of an Act passed in the Fiftieth Year of the Reign of His present Majesty, for inclosing Lands in the Parishes of *Eling* and *Fawley* in the County of *Southampton*, according to Equity and good Conscience, and without Favour, Affection, Partiality, or Prejudice to any Person or Persons whomsoever, So help me GOD.'

Which

Which Oath or Affirmation ſuch Commiſſioners are hereby directed and authorized to adminiſter; and every Oath or Affirmation ſo taken ſhall be ſubſcribed and inrolled in like Manner as the Oath or Affirmation of the ſaid Commiſſioners.

Notice of Meetings.

IV. And be it further enacted, That the ſaid Commiſſioners ſhall and they are hereby required to give public Notice in the Pariſh Churches of *Eling* and *Fawley* aforeſaid, upon ſome *Sunday* immediately after Divine Service, or by Notice in Writing, to be affixed on the principal outer Doors of the ſaid Pariſh Churches reſpectively, of the Time and Place of their Firſt Meeting for executing the Powers hereby veſted in them, at leaſt Fourteen Days before ſuch Meeting, and ſhall give Fourteen Days Notice of every ſubſequent Meeting for the like Purpoſe, (Meetings by Adjournment only excepted,) and ſhall hold their Meetings in the ſaid Pariſh of *Eling*, or within Seven Miles thereof, and it ſhall be lawful for the ſaid Commiſſioners to adjourn their Meetings, from Time to Time, as they ſhall ſee Occaſion: And if two of the ſaid Commiſſioners ſhall not appear at the Firſt Meeting, in purſuance of this Act, then and in ſuch Caſe, any one of the ſaid Commiſſioners then preſent, may adjourn ſuch Meeting to a future Day, not exceeding Fourteen Days from the Adjournment, and ſhall give Notice thereof to the abſent Commiſſioners, and in Caſe no one of the ſaid Commiſſioners ſhall appear at ſuch Meeting, then the Clerk or Clerks of the ſaid Commiſſioners ſhall and may adjourn the ſaid Meeting to, and appoint the ſaid Commiſſioners to meet at the Place where the laſt Meeting was appointed to be held, within Fourteen Days next after the Day on which ſuch laſt Meeting was appointed to be held, and ſhall, and he is hereby required forthwith to give Notice of ſuch Adjournment to the ſaid Commiſſioners; any Thing herein contained to the contrary notwithſtanding.

Other Notices.

V. And be it further enacted, That all other Notices neceſſary and requiſite to be made and given, ſhall be made and given by Writing affixed on the principal outer Doors of the ſaid Pariſh Churches of *Eling* and *Fawley* reſpectively, or by Advertiſement in the Newſpaper called *The Saliſbury and Wincheſter Journal*, or in ſome other Newſpaper uſually circulated in the ſaid County of *Southampton*.

Commiſſioners not attending.

VI. Provided always, and be it further enacted and declared, That if any or either of the ſaid Commiſſioners nominated by this Act, ſhall not attend at the Firſt or Second Meeting of the ſaid Commiſſioners appointed to be holden for putting this Act into Execution, having at leaſt Twenty-one Days previous Notice thereof, or if any Commiſſioner to be appointed by virtue of this Act, ſhall not attend at the Firſt or Second Meeting of the ſaid Commiſſioners, ſubſequent to his Appointment, on having ſuch previous Notice thereof, as aforeſaid, ſuch Abſence ſhall be deemed and taken to be a Refuſal to act.

Incroachments.

VII. And be it further enacted, That all Incroachments which at any Time within Twenty Years laſt paſt have been made on the ſaid open Lands, ſhall be deemed Part thereof, and be divided, allotted, and incloſed accordingly, and in Caſe any Diſpute or Difference ſhall ariſe touching any ſuch Incroachment or the Extent thereof, ſuch Diſpute ſhall be determined by the ſaid Commiſſioners.

Power to alter and discontinue Roads.

VIII. And be it further enacted, That in case it shall appear to the said Commissioners that any of the Public Highways, Bridle Roads, or Footways in, through, over, or on the Sides of any old Inclosures or Commonable Lands hereby intended to be inclosed, may in the Judgment of the said Commissioners be diverted and turned without Inconvenience to the Public, or be stopped up and discontinued as superfluous and unnecessary, it shall be lawful for the said Commissioners, with the Concurrence and Order of Two Justices of the Peace, acting in and for the Division of the said County in which the said Parishes are situate, and according to the Directions of the said recited Act, and subject to Appeal as in the said recited Act is mentioned, to order and direct any of such Public Highways, Bridle Roads, or Footways to be altered, turned, stopped up, or discontinued in such Manner as the said Commissioners with the Concurrence of the said Justices shall think proper and reasonable.

Commissioners to settle Disputes.

IX. And be it further enacted, That if any Dispute or Difference shall arise between any of the Parties who now are, or shall before the Execution of the said Award, be interested, or claim to be interested, in the said intended Division, Allotment, or Inclosure, or any of them, touching or concerning the respective Rights, Shares, Interests, and Proportions, which they, or any of them, shall have, or claim to have, of and in the said Commons, Waste Lands, and Grounds, hereby directed to be divided, allotted, and inclosed, or concerning the respective Shares which they, or any or either of them ought to have of or in the said Division, Allotment, or Inclosure, it shall and may be lawful to and for the said Commissioners, by Examination of Witnesses upon Oath (which Oath any one of the said Commissioners is hereby empowered to administer), and upon other proper and sufficient Inquiry, Evidence, and Satisfaction, to hear and determine the same, and to make such Order therein as they shall think fit; and if the said Commissioners shall, upon any Dispute or Difference being brought before them, apprehend it to be expedient to require the Advice or Assistance of Counsel learned in the Law, then it shall and may be lawful for the said Commissioners to call in or to take the Opinion of one or more such learned Counsel as they the said Commissioners shall think proper to select and consult previous to the Determination of such Dispute or Difference.

Rights may be tried.

X. Provided always, and be it further enacted, That in case any Person or Persons, Body or Bodies Politic, Corporate or Collegiate, interested, or claiming to be interested, in the said intended Division, Allotment, and Inclosure, shall be dissatisfied with any Determination of the said Commissioners, touching or concerning any Claim or Claims of the Right to the Soil of the said Commons and Waste Lands, or any or either of them, or of any Rights of Common, or other Rights or Interests in, over, or upon the Lands and Grounds herein directed to be divided, allotted, and inclosed, or any Part thereof, it shall and may be lawful to and for the Person or Persons so dissatisfied, to proceed to a Trial at Law of the Matter so determined by the said Commissioners, and for that Purpose the Person or Persons who shall be dissatisfied with the Determination of the said Commissioners, shall cause an Action to be brought upon a feigned Issue against the Person or Persons in whose Favour such Determination shall have been made within Six Calendar

dar Months next after such Determination of the said Commissioners, which Issue shall be tried at the first or second Assizes at farthest which shall be holden in and for the said County of *Southampton*, after the Commencement of the said Action, and the Defendant or Defendants in such Action or Actions shall, and he, she, or they is and are hereby required to name an Attorney or Attornies, who shall appear thereto, and file common Bail, and accept one or more Issue or Issues whereby such Claim or Claims, and the Right or Rights thereby insisted on may be tried and determined, and such Issue or Issues shall be settled by the proper Officer or Officers of the Court in which the said Action or Actions shall be commenced, in case the Parties shall differ about the same, and the Verdict or Verdicts which shall be given in such Action or Actions shall be final, binding, and conclusive upon and to all and every Person and Persons whomsoever, Body or Bodies Politic, Corporate or Collegiate, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, and order a new Trial to be had thereon, which it shall be lawful for the Court to do, as is usual in other Cases, and that after such Verdict or Verdicts shall be obtained, and not set aside by the Court, the said Commissioners shall; and they are hereby required to act in Conformity thereto, and to allow or disallow the Claim or Claims thereby determined, according to the Event of such Trial or Trials: Provided always, That the Determination of the said Commissioners touching such Claim or Claims of Right to the Soil of Common, or other Rights or Interests in, over, or upon the said Common or Waste Lands, or any Part thereof, which shall not be objected to, or being objected to, the Party or Parties objecting shall not cause such Action or Actions at Law to be brought and proceeded in as aforesaid, shall be final and conclusive upon all Parties: Provided also, that no Difference or Suit touching the Title to any Lands, Tenements, or Hereditaments, shall impede or delay the said Commissioners in Execution of the Powers vested in them by virtue of this Act, but the Division and Allotment hereby directed to be made shall be proceeded in notwithstanding such Difference or Suit.

In case of Death of Parties.

XI. Provided always, and be it further enacted, That if any Person or Persons in whose Favour any such Determination as aforesaid shall have been made, and against whom any such Action or Actions might have been brought, if living, shall die before any such Action or Actions shall have been brought, and before the Expiration of the Time hereinbefore limited for bringing such Action or Actions, it shall be lawful for the Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, who might have brought such Action or Actions against the Person or Persons so dying, to bring the same within the Time so limited as aforesaid, against such Person or Persons as if actually living, and to serve the Clerk or Clerks of the said Commissioners with Process for commencing such Action or Actions in the same Manner as the Party or Parties might have been served therewith if living, and it shall be thereupon incumbent on the Heir or Heirs, or the other Person or Persons who shall claim the Benefit of such Determination as aforesaid, to appear and defend such Action or Actions in the Name or Names of the Person or Persons so dead, and Proceeding shall be had therein in the same Manner as if such Person or Persons had been actually living, and the Rights of all such

such Parties shall be equally bound and concluded by the Event of such Action or Actions.

Persons in Possession not to be molested.

XII. Provided also, and be it further enacted, That nothing in this Act contained shall extend to enable the said Commissioners to determine any Rights between any Parties contrary to the Possession of any such Parties (except in cases of Incroachments made within the Period of Twenty Years, as hereinbefore mentioned); but in case the said Commissioners shall be of Opinion against the Right of the Person or Persons so in Possession, they shall forbear to make any Determination thereupon until the Possession shall have been given up by or recovered from such Person or Persons by Ejectment, or other due Course of Law.

Allotment to the Lords of the Manor of Eling.

XIII. And be it further enacted, That the said Commissioners do and shall, and they are hereby authorized and required to set out, allot, and award to and for the said Warden and Scholars, Clerks of *Winchester* College, and their Successors, One Sixteenth Part of all the said Waste Lands, Common Woods, and Woody Grounds, and other Commonable Lands within the said Manor of *Eling* hereby directed to be divided and inclosed as aforesaid, which shall be deemed and adjudged as a full and adequate Compensation and Satisfaction for the Right and Interest of the said Warden and Scholars, Clerks, as Lords of the said Manor of *Eling*, in and to the Soil of the Waste Lands and Grounds within the said Manor, which said One Sixteenth Part, and the Timber, Bushes, and Underwood, growing thereon, shall be the exclusive Property of the said Warden and Scholars, Clerks, and their Successors, and shall be fenced in with a Ditch and a Bank, which said Ditch shall be Five Feet in Width, and Two Feet in Depth, and Five Feet in Heighth from the Bottom to the Top of the Bank; the Expence of which said Ditch and Bank shall be paid in Manner hereinafter mentioned.

Clause respecting Fletchwood, &c.

XIV. And be it further enacted, That the said Commissioners do, and shall, and they are hereby authorized and required to set out, allot and award unto the said Warden and Scholars, Clerks, of *Winchester* College, and their Successors, the Whole or all such Part or Parts of certain Lands within said the Manor of *Eling*, called *Fletchwood* and *Palsham*, otherwise *Palsham Bushes*, as shall be deemed and determined under the Authority of this Act to be Part or Parcel of the said Waste Lands, Common, Woods and Woody Grounds, and other Commonable Lands within the said Manor of *Eling*, hereby directed to be divided, allotted, and inclosed as aforesaid, in Part of, and so far as the same Lands called *Fletchwood* and *Palsham*, otherwise *Palsham Bushes*, or such Part or Parts thereof as aforesaid, will go or extend towards making up such Sixteenth Part of the said Commons or Waste Lands, to and for the said Warden and Scholars, Clerks, and their Successors as aforesaid.

Allotment to Sir Charles Mill.

XV. And be it further enacted, That the said Commissioners do and shall, and they are hereby authorized and required to set out, allot and award for the said Sir *Charles Mill* One Sixteenth Part of the said Waste Lands, Common Woods and Woody Grounds, and other Commonable Lands within the said Manors of *Colebury*, *Langley*, and *Durley*, hereby directed

directed to be divided and incloſed as aforeſaid, as a full and adequate Compenſation and Satisfaction for the Right and Intereſt of the ſaid Sir *Charles Mill*, as Lord of the ſaid Manors of *Colebury*, *Langley*, and *Durley*, in and to the Soil of the Waſte Lands and Grounds, within the ſaid laſt-mentioned Manors reſpectively, which One Sixteenth Part, and the Timber, Buſhes, and Underwood growing thereon, ſhall be the excluſive Property of the ſaid Sir *Charles Mill*, his Heirs, and Aſſigns.

Allotment to the Proprietors of Tythes.

XVI. And be it further enacted, That the ſaid Commiſſioners ſhall and they are hereby authorized and required to ſet out and allot unto and for ſuch Perſon and Perſons reſpectively, as are and ſhall be ſeiſed of any Parts or Portions of Tythes yearly ariſing and iſſuing out of or from ſuch Part of the Open Commons, Waſte Grounds, and Commonable Lands hereinbefore directed or intended to be divided, allotted and incloſed as lies within the ſaid Pariſh of *Eling*, ſuch Allotments Part of the ſame Open Commons, Waſte Grounds, and other Commonable Lands, as in the Judgement of the ſaid Commiſſioners, (Quantity, Quality, and Situation conſidered,) ſhall be equal in Value to, or a full, fair and adequate Compenſation to them the ſaid Owners and Proprietors of Tythes reſpectively, for his, her, or their reſpective Part or Portion of ſuch Tythes as aforeſaid, which ſaid ſeveral Allotments to be ſet out, allotted, and awarded for and in lieu of Tythes as aforeſaid, ſhall be in full Satisfaction and Diſcharge of all Tythes iſſuing and ariſing within ſuch Parts of the ſaid Open Commons, Waſte Grounds, and other Commonable Lands, as ſhall be ſo divided, allotted, and incloſed as aforeſaid, by virtue of this Act, to which ſuch Owners or Proprietors of Tythes would otherwiſe have been reſpectively entitled.

Saving Rights of Reverend Thomas de Grey.

XVII. Provided always nevertheleſs, and be it further enacted, That nothing in this Act ſhall extend, or be conſtrued to extend, to affect the Right, Title or Intereſt of the ſaid Honourable and Reverend *Thomas de Grey* to or in the Tythes to ariſe, accrue or become due in, upon, or out of ſo much of the ſaid Open Common Fields, Common Downs, and Commonable Places and Waſte Lands hereby intended to be divided, allotted and incloſed, which are ſituate in ſuch Part of the ſaid Manor of *Eling* as lies within the Pariſh of *Fawley* aforeſaid, or to the Exoneration or Diſcharge of the ſame from the Payment of ſuch Tythes to the ſaid Honourable and Reverend *Thomas de Grey* and his Succeſſors, Rectors of the ſaid Pariſh of *Fawley*.

Saving the Rights of Mr. and Mrs. Silveſter.

XVIII. Provided always nevertheleſs, and be it further enacted, That nothing in this Act ſhall extend, or be conſtrued to extend, to affect the Right, Title or Intereſt of the ſaid *John Silveſter* Eſquire, and *Harriot* his Wife, to or in the Tithes to ariſe, accrue or become due in, upon, or out of the ſaid Open Common Fields, Common Downs, and Commonable Places and Waſte Lands intended to be divided, allotted or incloſed, which are ſituate in the Pariſh of *Eling* aforeſaid, or to the Exoneration or Diſcharge of the ſame from the Payment of ſuch Tithes to the ſaid *John Silveſter* Eſquire, and *Harriot* his Wife, his, her, or their Heirs and Aſſigns, as Lay Impropriators of the Tithes aforeſaid.

Gravel and Sand Pits.

XIX. And be it further enacted, That the ſaid Commiſſioners ſhall, and they are hereby authorized and required to ſet out and allot ſuch Plots or Parcels of Land, Parts of the ſaid Commons and Waſte Lands ſo intended to be allotted, divided, and incloſed as aforeſaid, as the ſaid Commiſſioners ſhall think proper and ſufficient for public Sand Pits and Gravel Pits, with convenient Roads to and from the ſame reſpectively, which ſaid public Pits ſhall for ever hereafter be uſed and enjoyed by the Owners and Proprietors of the ſeveral Lands within the ſaid reſpective Manors and other Places, and their Tenants, for their own neceſſary Uſe, and for repairing the ſeveral Roads within the ſaid Manors and Places reſpectively, and not elſewhere; and the Graſs and Herbage of the ſaid Plots or Parcels of Land ſo to be ſet out ſhall belong to ſuch Perſon or Perſons as the ſaid Commiſſioners ſhall by their Award order and direct, he, ſhe, or they keeping in repair the Fences for incloſing the ſame as ſuch Commiſſioners ſhall appoint.

Allotment or Fuel.

XX. And be it further enacted, That the ſaid Commiſſioners ſhall, and they are hereby authorized and required to ſet out and allot unto the Lords of the ſaid Manor of *Eling*, in Truſt for the Occupiers for the Time being, of all ſuch Cottages and Tenements as are entitled to or poſſeſs Rights of Turbary in or upon any of the ſaid Commons or Waſte Lands within the ſaid Manor of *Eling*, in lieu of their ſaid Rights or Cuſtom of cutting Turves in or upon ſuch Part of the ſaid laſt-mentioned Commons or Waſte Lands as ſhall by virtue of this Act be divided, allotted, and incloſed as aforeſaid, ſo much and ſuch Part or Parts of the ſaid Commons or Waſte Lands within the ſaid Manor of *Eling*, as ſhall in the Judgement of the ſaid Commiſſioners be proper and ſufficient for ſupplying Turves for Fuel for the Uſe of the ſaid Occupiers of ſuch Cottages or Tenements, and which Allotment ſhall for ever afterwards be managed, and the Turf ariſing therefrom ſhall be cut, taken and uſed by the Occupiers of ſuch Cottages or Tenements in ſuch Manner as the ſaid Lords of the ſaid Manor of *Eling* ſhall from Time to Time order and appoint; and that it ſhall and may be lawful for the ſaid Lords of the ſaid Manor for the Time being to act in the Execution of the Truſts hereby repoſed in them by their Agents or Proxies reſpectively, ſuch Agents or Proxies being appointed by Writing under the Hands of the Lords of the ſaid Manor, or any of them, and producing their reſpective Appointments at the Time of their acting by virtue thereof.

Allotment of Reſidue.

XXI. And be it further enacted, That the ſaid Commiſſioners ſhall, and they are hereby required, after the making ſuch Allotments as aforeſaid, to divide, ſet out, allot, and award all the Reſidue and Remainder of the ſaid Common Paſtures, Common Meadows, Common Marſhes, Feedings, Waſte Lands, Common Woods, and Woody Grounds, and other Commonable Lands intended to be by this Act incloſed, divided, and allotted unto and amongſt the ſeveral Owners and Proprietors thereof reſpectively, and other Perſons entitled thereto or intereſted therein, including the ſaid Honourable and Reverend *Thomas de Grey*, if intitled to any Right of Common, in ſuch Quantities, Shares, and Proportions as by the ſaid Commiſſioners ſhall be deemed to be juſt, and to be a full Compenſation and Satisfaction for and equal to their ſeveral and reſpective Rights of Common and other Rights and Intereſts therein.

XXII. And

Exchanges.

XXII. And be it further enacted, That it shall and may be lawful to and for the said Commissioners to set out, allot and award any Lands, Tenements, Tythes or other Hereditaments, new Allotments or old Inclosures within the said Parishes of *Eling* and *Fawley* respectively, in lieu of or in exchange for any other Lands, Tenements, Tythes or other Hereditaments, new Allotments or old Inclosures within the said Parishes of *Eling* and *Fawley*, or either of them, or within any adjoining Parish, Township, Hamlet or Place, provided that all such Exchanges be ascertained, specified and declared in the said Award of the said Commissioners, and be made with the Consent of the Owner or Owners, Proprietor or Proprietors, or other Persons seised or possessed of, or interested in the Lands, Tenements, Tythes or other Hereditaments which shall be so exchanged, whether such Owner or Owners, Proprietor or Proprietors, or other Person or Persons, shall be a Body or Bodies Politic, Corporate or Collegiate, or a Tenant or Tenants in Fee Simple, or for Life, or in Fee Tail, general or special, or by the Courtesy of *England*, or for Years determinable on any Life or Lives, or with the Consent of the Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees or Attornies of or acting for any such Owners or Proprietors as aforesaid, who at the Time of making such Exchange or Exchanges, shall be respectively Infants, Femes Covert, Lunatics, or under any other legal Disability, or who shall be beyond the Seas, or otherwise incapable of acting for himself, herself or themselves, such Consent to be testified in Writing under the Common Seal of the Body Politic, Corporate or Collegiate, and under the Hands of the other consenting Parties respectively, and all and every such Exchange and Exchanges so to be made, shall be good, valid and effectual in the Law, to all Intents and Purposes whatsoever: Provided nevertheless, that no Exchange shall be made of any Lands, Tenements, Tythes or Hereditaments, held in Right of any Church or Chapel, or other Ecclesiastical Benefice, without the Consent, testified as aforesaid, of the Patron thereof, and of the Bishop of the Diocese for the Time being in which such Lands, Tenements, Tythes or Hereditaments so to be exchanged shall lie and be situated.

Wills and Settlements not to be affected, and Lands allotted or exchanged to enure to the same Uses as before.

XXIII. And be it further enacted, That nothing in this Act contained shall extend, or be construed or adjudged to extend to, revoke, make void, alter, or annul any Will or Settlement, or to prejudice any Person having any Right or Claim of Dower, Jointure, Annuity, Rent, Debt, Charge, Incumbrance, or Interest whatsoever, in, out of, upon, or affecting any of the Lands, Tenements, or Hereditaments hereby intended to be divided, allotted, and inclosed, or which shall be exchanged or assigned in Compensation for any other Estate or Right in pursuance of this or the said recited Act respectively; but as well the Lands allotted as the Tenements and other Hereditaments which shall be exchanged or assigned in Compensation for any other Estate or Right, shall, immediately after such Allotment, Exchange, or Assignment be made, be vested, remain, and enure, and the several Persons to whom the same shall be allotted, assigned or given in Exchange as aforesaid, shall thenceforth stand and be seised and possessed thereof respectively, to, for and upon such and the same Uses, Estates, Interests, Trusts, and Purposes respectively, and subject and liable to such and the same Wills, Settlements, Limitations and Remainders, Conditions, Charges, and Incumbrances, as the several Lands, Tenements, and

and Hereditaments, in respect whereof such Allotments, Assignments, and Exchanges shall have been made, should or would have stood severally limited, vested, or subject or liable to, or been held by, in case the same had not been allotted, assigned, or exchanged, and this Act had not been made, save and except such Leases and Tenancies at Rack Rent as shall become void by virtue of this Act.

Allotments to be of the same Tenure as enclosed Lands.

XXIV. And be it further enacted, That all and singular the Lands and other Premises which shall be allotted under or by virtue of this Act, shall (immediately after such Allotments are made) be held by and be subject to such and the same Tenures, Customs, Heriots, Rents, and Services as the several and respective Messuages, Buildings, Lands, Tenements, and Hereditaments in respect whereof such allotted Lands shall be made are now subject to.

No increased Fine to be taken by the Lords of the Manor of Eling for Fourteen Years.

XXV. Provided always, and be it further enacted, That no additional or increased Fine shall be had, received, or taken by the said Warden and Scholars, Clerks, or their Successors as Lords of the said Manor of *Eling*, on the Death or Alienation of any Copyhold Tenant of the said Manor of *Eling*, for or on Account of any Allotment to be made by virtue of this Act to such Copyhold Tenant, or for or on Account of the improved or increased Value of any of the customary Messuages, Lands, Tenements, Hereditaments, and Premises in right of or in respect of which such Allotment shall be made, or any Part thereof, for and until the Expiration of the Term of Fourteen Years from the Time of passing this Act, but such Fine only as the said Warden and Scholars, Clerks, were or would have been entitled to, at or before the Time of passing this Act; and that the said Commissioners shall, and they are hereby authorized and required to make an Estimate under their Hands of the annual Value of the several customary Messuages, Lands, Tenements and Hereditaments within the said last mentioned Manor held by Copies of Court Roll of the said Manor of *Eling*; which said Estimate or Valuation shall, during the said Term of Fourteen Years, be deemed, taken, and considered as the full annual Value of the said customary Messuages, Lands, Tenements, and Hereditaments respectively, for the Purpose of calculating or extending the Amount of all Fines which shall accrue due to the said Warden and Scholars, Clerks, during the said Term, and which said Estimate or Valuation shall be duly enrolled with the Award of the said Commissioners.

Commissioners may suspend Common Rights.

XXVI. And be it further enacted, That it shall and may be lawful to and for the said Commissioners, and they are hereby authorized at any Time or Times before the Execution of the said Award, by Notice in Writing under their Hands, to be affixed on the principal outer Doors of the Parish Churches of *Eling* and *Fawley* aforesaid, to order and direct all or any Part of the Rights of Common in, over, and upon the said Commonable or Waste Grounds, or any Part thereof, to be extinguished, or the Exercise thereof to be suspended for and during such Time as shall be expressed in such Notice, and that all such Rights of Common as the said Commissioners shall by such Notice order and direct to be extinguished, or the Exercise thereof to be suspended as aforesaid, shall from the Time mentioned in such Notice on the said Church Doors respectively, cease, determine, and be extinguished, or the Exercise thereof be suspended accordingly.

XXVII. And

Leaſes at Rack Rent.

XXVII. And be it further enacted, That all and every Tenant and Occupier under any Leaſe or Agreement at Rack or extended Rent, for any Term of Years, of any of the ſaid Lands and Grounds which ſhall be allotted or exchanged by virtue of this Act, ſhall immediately after the ſigning the ſaid Award of the ſaid Commiſſioners, or at ſuch other Time or Times as the ſaid Commiſſioners ſhall appoint, and whereof at leaſt Six Months Notice in Writing ſhall be given for that Purpoſe, give and reſign up the full and peaceable Poſſeſſion of ſuch allotted or exchanged Lands to the Perſon or Perſons to or with whom the ſame ſhall be reſpectively allotted or exchanged, ſuch reſpective Tenants and Occupiers of ſuch allotted and exchanged Lands, receiving from the ſaid reſpective Owners and Proprietors thereof ſuch Allowance in Rent, for the Reſidue of the Term mentioned in ſuch Leaſe or Agreement as the ſaid Commiſſioners ſhall by Writing under their Hands aſcertain, order, or appoint to be made to ſuch Tenant or Tenants reſpectively on Account thereof, as an Equivalent for the Loſs or Loſſes he, ſhe, or they ſhall reſpectively ſuſtain thereby; or otherwiſe if the ſaid Commiſſioners ſhall think it proper and reaſonable for any or either of ſuch Tenants or Occupiers to hold ſuch allotted Lands or exchanged Premiſes during the Remainder of ſuch Leaſes or Agreements, then ſuch Tenants or Occupiers ſhall pay to the Owners or Proprietors thereof reſpectively, ſuch additional Rents, and manage the ſaid Lands and Premiſes, in ſuch Manner, and ſubject to ſuch Conditions as the ſaid Commiſſioners ſhall by any Writing or Writings under their Hands for that Purpoſe, order and appoint: Provided always, That if there ſhall be any Leaſe of ſuch Lands as aforeſaid, Part of which ſhall lie in either of the ſaid Pariſhes, and Part in any other Pariſh, all and every ſuch Leaſe and Leaſes upon Rack Rent now ſubſiſting, may be vacated; but where any Land ſhall have been taken in Exchange, which ſhall be under Leaſe and wholly ſituate in another Pariſh, the Leaſe or Leaſes of ſuch laſt mentioned Land ſhall not be vacated without the Conſent of the Party or Parties intereſted therein, ſignified by Writing under his or their Hand or Hands.

Expences of this Act.

XXVIII. And be it further enacted, That the Coſts, Charges, and Expences of paſſing this Act, and all Coſts and Charges attending the ſame, and the Coſts and Charges of forming and completing, and putting into good and ſufficient Repair the public Carriage Roads, and the Coſts and Charges of ſurveying, planning, valuing, dividing, and allotting the Lands and Grounds hereby directed to be divided, allotted and incloſed, as aforeſaid, and of preparing and inrolling the ſaid Award, and alſo the Expences of making ſuch Ditch and Bank for fencing and incloſing the ſaid Allotment ſo to be allotted and awarded to and for the ſaid Warden and Scholars, Clerks, as before mentioned, and all the Expences attending the Execution of this Act and the ſaid recited Act, ſhall be borne and defrayed by the ſeveral Owners of Lands, Grounds, and Hereditaments, within the ſaid reſpective Manors and Places to be divided and allotted by virtue of this Act, in ſuch Shares and Proportions, at ſuch Time or Times, Manner, and Places, and by ſuch Perſon or Perſons as the ſaid Commiſſioners, either before or after the Execution of the ſaid Award, by any Writing under their Hands to be affixed on the principal outer Doors of the Pariſh Churches of *Eling* and *Fawley* aforeſaid, at leaſt

Thirty Days before the Day appointed for each Payment ſhall order or direct, and the Determination of ſuch Commiſſioners therein ſhall be final and concluſive: Provided always, that the ſaid Proprietors, their Attornies and Agents, ſhall pay their own Expences when they or any of them ſhall attend the ſaid Commiſſioners, at any of their Meetings to be holden in purſuance of this Act: Provided alſo, that all Coſts, Charges, and Expences attending the making and completing any Exchanges and Partitions ſhall be paid or borne by the ſeveral Perſons making ſuch Exchanges or Partitions, in ſuch Manner and Proportions as the ſaid Commiſſioners ſhall order and direct.

Winchester College exempt from Expence.

XXIX. Provided always, and be it further enacted, That nothing herein contained ſhall extend, or be conſtrued to extend, to charge the ſaid Warden and Scholars, Clerks, of *Saint Mary* College, *Wincheſter*, near *Wincheſter*, with any Fees or Expences whatſoever concerning the ſaid intended Incloſure.

Rector of Fawley exempt from Expence.

XXX. Provided alſo, and be it further enacted, That nothing herein contained ſhall extend, or be conſtrued to extend, to charge the ſaid *Thomas de Grey*, as Rector of *Fawley* aforeſaid, or any future Rector of the ſame Pariſh, with any Fees or Expences for or in reſpect of any Allotment or Allotments to be made to him.

Vicar of Eling exempt from Expences.

XXXI. Provided alſo, and be it further enacted, That nothing herein contained ſhall extend, or be conſtrued to extend to charge the ſaid *William Joſeph George Phillips*, as Vicar of *Eling* aforeſaid, or any future Vicar of the ſame Pariſh, with any Fees or Expences whatſoever for or in reſpect of any Allotment or Allotments to be made to him in lieu of Vicarial or Small Tythes ariſing or renewing, or which may ariſe or renew in, upon, from, or out of the Common or Waſte Grounds to be incloſed by virtue of this Act.

Intereſt of Expences.

XXXII. And be it further enacted, That if any Perſon or Perſons ſhall advance any Sum or Sums of Money for the Purpoſes of defraying the Expences of obtaining and paſſing this Act, or of carrying the ſame into Execution, every ſuch Perſon or Perſons ſhall be repaid the ſame with Intereſt at the Rate of Five Pounds *per Centum per Annum* out of the firſt Monies that ſhall be raiſed for defraying ſuch Expences by virtue of this Act.

Award to be depoſited, &c.

XXXIII. And be it further enacted, That the Award to be made by the ſaid Commiſſioners when inrolled in the Manner directed by the ſaid recited Act, ſhall be depoſited in a Tin Box in the Pariſh Church of *Eling*, and that a Copy of the ſaid Award ſhall be had, if required, at the Expence of the ſaid Warden and Scholars, Clerks, for their own ſeparate Uſe and Benefit.

Accounts to be laid before a Magiſtrate.

XXXIV. And be it further enacted, That once at leaſt in each and every Year during the Execution of this Act (ſuch Year to be computed from the Day of paſſing thereof,) the ſaid Commiſſioners ſhall, and they are hereby required to make a true and juſt Account of all Sums of Money by them

received

received or expended, or due to them for their own Trouble or Expences in the Execution of this Act; and such Statement or Account, when so made, together with the Vouchers relating thereto, shall be by them laid before One of His Majesty's Justices of the Peace for the said County of *Southampton*, to be by him examined and balanced, and such Balance shall be by the said Justice stated in the Book of Accounts to be kept in the Office of the Clerk of the said Commissioners; and no Charge or Item in such Accounts shall be binding on the Parties concerned, or valid in Law, unless the same shall have been duly allowed by such Justice.

Appeal to the Quarter Sessions.

XXXV. And be it further enacted, That if any Person or Persons, Body or Bodies Politic, Corporate or Collegiate, shall think himself, herself, or themselves aggrieved by any Thing done in pursuance of the said recited Act or this Act, (except as to such Claims, Matters and Things as are hereinbefore directed or authorized to be tried, settled or determined by the Verdict of a Jury, or where any of the Clauses or Provisions of the said recited Act or this Act, shall express that the same shall be final and conclusive,) then and in every such Case he, she, or they may appeal to the General Quarter Sessions of the Peace which shall be holden for the said County of *Southampton*, within Three Calendar Months next after the Cause of Complaint shall have arisen, on giving to the said Commissioners, and to the Party or Parties concerned, Twenty Days' Notice in Writing of such Appeal, and of the Matter thereof, and the Justices not interested in the Premises, at their said General Quarter Sessions, are hereby required to hear and determine the Matter of every such Appeal, and to make such Order and award such Costs and Damages as to them in their Discretion shall seem reasonable, and by their Order or Warrant to levy the Costs and Damages which shall be so awarded, by Distress and Sale of the Goods and Chattels of the Party or Parties liable to pay the same, rendering the Overplus (if any) to the Owner or Owners of such Goods and Chattels, after deducting the reasonable Charges of such Warrant, Distress and Sale, and the Determination of the said Justices shall be final and conclusive to all Parties concerned, and shall not be removed by *Certiorari*, or any other Writ or Process whatsoever, into any of His Majesty's Courts of Record at *Westminster*, or elsewhere; but in case such Appeal shall appear to the said Justices to be frivolous and vexatious, or without Foundation, then the said Justices shall award such Costs to be paid by the Appellant or Appellants, as to them in their Discretion shall seem reasonable, and to be levied in Manner aforesaid.

General Saving.

XXXVI. Saving always to the King's Most Excellent Majesty, his Heirs and Successors, and to all and every other Person and Persons, Bodies Politic, Corporate and Collegiate, his, her and their Heirs, Successors, Executors and Administrators, all such Estate, Right, Title and Interest, (other than such as are intended to be barred and destroyed by virtue of this Act,) as he, they or any of them had and enjoyed to or out of the said Commons, Lands, Wastes and Waste Grounds hereby intended to be divided, allotted and inclosed, at any Time before the passing of this Act, or could or ought to have had in case this Act had not been made.

XXXVII. And

Evidence Clause.

XXXVII. And be it further enacted, That this Act shall be printed by the Printer to the King's most Excellent Majesty; and a Copy thereof so printed shall be admitted as Evidence thereof by all Judges, Justices, and others.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN, Printers to the King's most Excellent Majesty. 1810.