ANNO QUINQUAGESIMO TERTIO

GEORGII III. REGIS.

Cap. 108.

An Act for incloſing Lands in the Pariſh of *Elvetham*, in the County of *Southampton*. [21ſt *May* 1813.]

WHEREAS there are within the Pariſh of *Elvetham*, in the County of *Southampton*, divers Commonable and Waſte Lands and Grounds, containing in the whole One thouſand ſeven hundred Acres, or thereabouts: And whereas the Right Honourable *George* Lord *Calthorpe* is Lord of the Manors of *Elvetham Bernard* and *Elvetham Sturmy*, and as ſuch is entitled to the Soil of the ſaid Commonable and Waſte Lands and Grounds, and to the Timber and other Trees growing and being thereon: And whereas the ſaid *George* Lord *Calthorpe* is Patron of the Rectory and Pariſh Church of *Elvetham* aforeſaid, and the Reverend *John Spooner* is the preſent Rector and Incumbent thereof, and as ſuch is entitled to a Meſſuage and Glebe Lands within the ſaid Pariſh, to which Right of Common in, upon, and over the ſaid Commonable and Waſte Lands is attached or doth belong; and the ſaid *John Spooner*, as ſuch Rector, is alſo entitled to the Tythes, both Great and Small, ariſing within the ſaid Pariſh of *Elvetham*: And whereas the ſaid *George* Lord *Calthorpe*, Sir *John Cope* Baronet, and divers other Perſons, are the Owners and Proprietors of divers Meſſuages, Cottages, Lands, and Hereditaments, within the ſaid Pariſh of *Elvetham*, and in reſpect thereof are reſpectively entitled to Rights of Common, or other Rights or Intereſts in, upon, and over the ſaid Commonable and Waſte Lands and Grounds: And whereas an Act was paſſed in the Forty-firſt Year of the Reign of His preſent Majeſty, intituled *An Act for conſolidating in One Act certain Pro-*

visions 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 said Commonable and Waste Lands and Grounds in their present State yield but little Profit, and it would be a great Advantage to the several Persons interested therein, if the said Rights of Common and other Rights were extinguished, and the said Lands and Grounds were divided and inclosed, and specific Parts and Shares thereof allotted to the same several Persons, according to their respective Rights and Interests; but such Extinguishment, Inclosure, Division, and Allotment, cannot be made without the Aid and 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 *George Barnes* of *Andover*, in the County of *Southampton*, and his Successor, to be appointed in Manner herein-after mentioned, shall be and he is hereby appointed the sole Commissioner for the Purpose of valuing, dividing, allotting, laying in Severalty and inclosing the said Commonable Waste Lands and Grounds, and for putting this Act in Execution, subject to the Rules, Orders, and Directions herein-after contained, and with such of the Powers, and subject to such of the Rules, Orders, Directions, Restrictions, and Provisions, contained in the said recited Act, as are not repugnant to, and as the same are not respectively varied or altered by any of the Clauses, Provisoes, or Regulations, contained in this Act; and that the said *George Barnes*, or such other Commissioner as shall be hereafter appointed in his Stead as aforesaid, shall have full Power and Authority, from Time to Time, to call to his Assistance and employ such Person as he shall think proper, as an Assistant or Clerk, for executing the several Powers by this Act reposed in him the said Commissioner.

Commissioner.

Appointment of new Commissioner.

II. And be it further enacted, That if the said *George Barnes*, or any other Commissioner to be appointed in his Stead, as herein-after mentioned, shall die, or shall refuse or neglect to qualify and take upon himself the Execution of the Powers hereby vested in him, for the Space of Two Calendar Months next after the passing this Act, or after such his Appointment, or having qualified himself, shall, before the Execution of all the Powers and Authorities hereby vested in him, die, refuse to act, or become incapable of acting in such Powers and Authorities, then and in every such Case a new Commissioner shall be chosen and appointed by a Majority in Value (to be ascertained by the Land Tax Assessment) of the Persons who for the Time being shall be interested in the said Division and Inclosure, and who shall by themselves or their Agents be present at a Meeting to be convened for that Purpose, by any Two or more of such Persons interested as aforesaid, within Two Calendar Months next after such Death, Refusal, Neglect, or Incapacity, of which Meeting Ten Days previous Notice at least shall be given in Writing, to be affixed upon the principal Outer Door of the Parish Church of *Elvetham* aforesaid; and in case the Proprietors or Persons interested as aforesaid, shall make Default in appointing any such Commissioner, within Two Calendar Months next after such Death or Neglect, Refusal or Incapacity, of any such Commissioner as aforesaid, then and in every such Case it shall be lawful for the Lord or Lords, Lady or Ladies, for the Time being, of the said Manors of *Elvetham Bernard* and *Elvetham Sturmy*, and he, she, and

and they is and are hereby required, within Fourteen Days next after the Expiration of the ſaid Two Calendar Months, to appoint ſome Perſon not intereſted in the ſaid Incloſure, to be a Commiſſioner in the Place of the Commiſſioner ſo dying or neglecting, or refuſing or becoming incapable to act as aforeſaid; and every ſuch new Commiſſioner ſo to be appointed, ſhall have the like Powers and Authorities for putting this and the ſaid recited Act into Execution, in all Reſpects, as the Commiſſioner to whoſe Place he ſhall ſucceed was inveſted by virtue of this Act.

Declaring what ſhall be a Refuſal to act.

III. And be it further enacted, That if the Commiſſioner hereby appointed, or the Perſon to be appointed as his Succeſſor as aforeſaid, ſhall not attend on having Thirty Days Notice given to him in Writing by the Lord or Lady of the ſaid Manors of *Elvetham Bernard* and *Elvetham Sturmy* for the Time being, ſuch Abſence ſhall be deemed and taken to be a Refuſal to act.

Commiſſioner to give Notice of Meetings.

IV. And be it further enacted, That the ſaid Commiſſioner for the Time being ſhall and he is hereby required to cauſe public Notice to be given in the Pariſh Church of *Elvetham* aforeſaid, upon ſome *Sunday* immediately after Divine Service, or by Writing under his Hand, to be affixed to the principal or moſt public Outer Door of the ſaid Pariſh Church, and alſo by Advertiſement to be inſerted in *The Hampſhire Chronicle*, if then publiſhed, and if not, then in ſome other Newſpaper publiſhed and circulated within the ſaid County of *Southampton*, of the Time and Place of the Firſt and every other Attendance or Meeting for the Execution of this Act and the ſaid recited Act, Fourteen Days at leaſt before ſuch Attendance or Meeting (Attendances or Meetings by Adjournment only excepted); and it ſhall be lawful for the ſaid Commiſſioner to adjourn ſuch Attendance or Meeting from Time to Time, as he ſhall think proper, for the due Execution of this Act and the ſaid recited Act; and every Attendance of the ſaid Commiſſioner for the Execution of this Act and the ſaid recited Act ſhall be held at ſome convenient Place at *Elvetham* aforeſaid, or within Eight Miles thereof.

Other Notices how to be given.

V. And be it further enacted, That all other Notices neceſſary or requiſite to be made and given by the ſaid Commiſſioner, in purſuance of this Act or the ſaid recited Act, for any Purpoſe whatſoever (except ſuch Notices as are in and by this Act or the ſaid recited Act authorized or particularly directed to be given in any other Manner), ſhall be publiſhed and given in and by an Advertiſement, to be inſerted in the ſaid Newſpaper called *The Hampſhire Chronicle* if then publiſhed, and if not, then in ſome one or more of the public Newſpapers publiſhed in the ſaid County of *Southampton*, and all ſuch Notices ſo given ſhall be deemed to be well and ſufficiently publiſhed and given, and to be full and ſufficient Notice to all Parties concerned, reſpecting all the Matters and Things to which ſuch Notice ſhall relate.

Meeting for receiving Applications from Proprietors as to Situation of their Allotments.

VI. And be it further enacted, That the ſaid Commiſſioner ſhall and he is hereby required to appoint a Meeting, and the Time and Place when and where the ſame is to be held, by Notice to be given in Manner herein-before directed, for receiving Applications from the ſeveral Proprietors, touching the Situations they would reſpectively chooſe to have their Allotments ſet out and allotted in.

VII. And

Meeting for receiving Objections to Allotments.

VII. And be it further enacted, That when and ſo ſoon as the ſaid Commiſſioner ſhall have aſcertained the reſpective Rights and Intereſts of the ſaid Proprietors in the Commonable and Waſte Lands and Grounds to be divided and incloſed by virtue of this Act, and alſo the reſpective Shares and Proportions by him propoſed to be allotted to ſuch Proprietors reſpectively in lieu thereof, the ſaid Commiſſioner ſhall give Notice of a Meeting to be held at ſome convenient Time and Place, when and where the ſaid Proprietors may be informed of ſuch intended Allotments, and ſee the Scheme thereof ſet out and delineated upon a Map or Plan thereof, to be produced for their Inſpection; and as ſome Proprietors may, upon Inſpection of ſuch Map, be diſſatisfied with the intended Allotments, the ſaid Commiſſioner ſhall at ſuch Time and Place as laſt aforeſaid, or ſome other Time or Place to be appointed by him for that Purpoſe, receive Statements in Writing of the Complaints and Objections againſt ſuch Allotments, and ſhall forthwith, or as ſoon after as conveniently may be, determine the ſame, and his Determination ſhall be final and concluſive upon all Parties.

Deciſion of Claims objected to.

VIII. And be it further enacted, That if any Claim of Right of Common, or other Right or Intereſt, in or to the ſaid Commonable and Waſte Lands and Grounds intended to be divided, allotted, and incloſed by virtue of this Act, delivered to the ſaid Commiſſioner in purſuance of the ſaid recited Act, ſhall be objected to by any Perſon or Perſons, Body or Bodies Politic, Corporate, or Collegiate, claiming to be intereſted in the ſaid Commonable and Waſte Lands or Grounds, and the Party or Parties making ſuch Claim ſhall perſiſt therein, then the ſaid Commiſſioner ſhall and he is hereby required, at a Meeting to be by him held for that Purpoſe, of which he ſhall give public Notice at leaſt Ten Days before the Time for holding the ſame, by Examination of Witneſſes upon Oath, and by ſuch other Ways and Means as he ſhall think proper, to hear and determine the Matter of every ſuch Claim ſo made, objected to, and perſiſted in as aforeſaid.

Commiſſioners not to determine Titles nor moleſt Poſſeſſion.

IX. Provided always, and be it further enacted, That nothing in this Act contained ſhall extend to enable the ſaid Commiſſioner to determine the Title to any Meſſuages, Cottages, Lands, Tenements, or Hereditaments whatſoever, nor to determine any Right between any Parties contrary to the Poſſeſſion of any of ſuch Parties, except in Caſes of Encroachments, as herein-after mentioned; but in caſe the ſaid Commiſſioner ſhall be of opinion againſt the Right of the Perſon or Perſons ſo in Poſſeſſion, he ſhall forbear to make any Determination thereupon, until the Poſſeſſion ſhall have been given up by ſuch Perſon or Perſons, or recovered from ſuch Perſon or Perſons by Ejectment, or other due Courſe of Law or Equity.

Commiſſioner may aſſeſs Coſts.

X. And be it further enacted, That the ſaid Commiſſioner ſhall and he is hereby empowered to aſſeſs and award ſuch Coſts and Charges as he ſhall think reaſonable, to be paid to the Party or Parties in whoſe Favour any ſuch Determination ſhall be made, by the Party or Parties againſt whom the ſame ſhall be made, and the ſame Coſts and Charges ſhall be paid within ſuch Time as the ſaid Commiſſioner ſhall appoint; and if the Perſon or Perſons, Body or Bodies Politic, Corporate, or Collegiate, who ſhall be ordered or required to pay ſuch Coſts and Charges,

Charges, ſhall neglect or refuſe to pay the ſame within Ten Days next after Demand thereof made, the ſame ſhall or may be levied by Diſtreſs and Sale of the Goods and Chattels of the Party or Parties ſo neglecting or refuſing, by Warrant under the Hand and Seal of the ſaid Commiſſioner, which Warrant the ſaid Commiſſioner is hereby authorized and required to grant, upon Proof on Oath of ſuch Neglect or Refuſal and of ſuch Demand as aforeſaid, and the Overplus (if any) after the Charges of levying the ſame ſhall have been deducted, ſhall be returned on Demand to the Owner of ſuch Goods and Chattels: Provided always, that every Objection to ſuch Claim or Claims as aforeſaid, ſhall be delivered to the Perſon or Perſons, Body or Bodies Politic, Corporate, or Collegiate, whoſe Claim or Claims ſhall be ſo objected to, in ſuch Manner and at ſuch Time or Times as the ſaid Commiſſioner ſhall direct or appoint for that Purpoſe.

How Objections to be made to Claims.

XI. 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 Commiſſioner, touching or concerning any Claim or Claims of any Right of Common, or any other Right or Intereſt in, over, or upon the Commonable and Waſte Lands and Grounds hereby directed to be divided, allotted, and incloſed, by virtue of this Act or the ſaid recited Act, or any Part thereof, or touching or concerning any other Matter or Thing relating to the ſaid Diviſion, Allotment, and Incloſure, it ſhall be lawful for ſuch Perſon or Perſons, Body or Bodies Politic, Corporate, or Collegiate, ſo diſſatisfied, to proceed to a Trial at Law or in Equity of the Matters ſo determined by the ſaid Commiſſioner; if at Law at the then next Aſſizes to be holden for the ſaid County of *Southampton*, if the ſame ſhall not take place within Three Calendar Months after ſuch Determination; but if the ſaid next Aſſizes ſhall happen within Three Calendar Months after ſuch Determination, then at the next or following Aſſizes after the Expiration of ſuch Three Calendar Months, to be holden for the ſaid County; and if by a Suit in Equity, the Suit to be commenced within Three Calendar Months after ſuch Determination; and for that Purpoſe the Perſon or Perſons, or Body or Bodies Politic, Corporate, or Collegiate, who ſhall be ſo diſſatisfied with the Determination of the ſaid Commiſſioner, if they ſhall chooſe to proceed at Law, ſhall cauſe an Action to be brought upon a feigned Iſſue againſt the Perſon or Perſons, or Body or Bodies Politic, Corporate, or Collegiate, in whoſe Favour ſuch Determination ſhall have been made, within Three Calendar Months after ſuch Determination of the ſaid Commiſſioner; and ſhall, within Twenty Days after ſuch Determination, give Notice in Writing to the ſaid Commiſſioner of his, her, or their being ſo diſſatisfied, and the Defendant or Defendants in ſuch Action or Actions at Law, 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, or enter an Appearance, as the Caſe may require, 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 (ſuch Iſſue or Iſſues to be ſettled by the proper Officer of the Court in which ſuch Action or Actions ſhall be commenced, in caſe the Parties ſhall differ about the ſame); and the Verdict

Perſons diſſatisfied with the Commiſſioner's Diviſion, may try their Rights at Law or in Equity.

or Verdicts which shall be given in such Action or Actions, Suit or Suits, shall be final, binding, and conclusive, upon all and every Persons and Person whomsoever, Body and Bodies Politic, Corporate, or Collegiate, unless the Court wherein such Action or Actions, Suit or Suits, shall be brought, shall set aside such Verdict or Verdicts, and order a new Trial or Hearing to be had therein, which it shall be lawful for the Court to do, as is usual in other Cases; and after such Verdict or Verdicts shall be obtained and not set aside by the Court, the said Commissioner shall and he is 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 every Determination of the said Commissioner touching such Claim or Claims, which shall not be objected to within One Calendar Month, or being objected to, the objecting Party or Parties not causing such Action or Actions at Law to be brought and proceeded in as aforesaid, shall be final and conclusive upon all Parties.

Determination of Commissioner conclusive, if not objected to within a certain Time.

Deaths of Parties not to stay Proceedings.

XII. And be it further enacted, That if any of the Parties in any Action or Suit to be brought in pursuance of this Act, shall die pending the same, such Action or Suit shall not abate by reason thereof, but shall be proceeded in as if no such Event had happened.

Provision in Cases of Deaths of Parties before Actions brought.

XIII. 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, Suit or Suits, might have been brought if living, shall die before any such Action or Actions, Suit or Suits, shall have been brought, and before the Expiration of the Time herein-before limited for bringing such Action or Actions, Suit or Suits, it shall be lawful for the Person or Persons, Bodies Politic, Corporate, or Collegiate, who might have brought such Action or Actions, Suit or Suits, 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 to the said Commissioner with Process for commencing such Action or Actions, Suit or Suits, in the same Manner as the Party or Parties might have been served therewith if living; and it shall thereupon be incumbent on the Heir or Heirs, or other Person or Persons, who shall claim the Benefit of such Determination as aforesaid, to appear to and defend such Action or Actions, Suit or Suits, in the Name or Names of the Person or Persons so dead, and Proceedings shall be had therein in like Manner as if such Person or Persons had been actually living, and the Rights of the Parties shall be equally bound and concluded by the Event of such Action or Actions, Suit or Suits.

Suits respecting Titles not to impede the Execution of the Act.

XIV. And be it further enacted, That if any Suit or Suits shall be commenced or prosecuted touching or concerning the Title of any Person or Persons in or to any Lands, Tenements, or Hereditaments, for or in respect of which any Right or Interest in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, shall be claimed, such Suit or Suits shall not impede, delay, or hinder the said Commissioner from proceeding in the Execution of the Powers vested in him by this Act; but the said Division, Allotment, and Inclosure shall be proceeded in notwithstanding such Suit

or Suits, and the Allotment may be had and taken by the Perſon or Perſons who, upon the Determination of ſuch Suit or Suits, ſhall become entitled to the ſame.

Deaths of Parties not to ſuſpend the Execution of the Act.

XV. And be it further enacted, That if any of the Parties intereſted in the ſaid intended Diviſion or Incloſure ſhall die before the ſame ſhall be completed, the Powers and Authorities hereby given to the ſaid Commiſſioner ſhall not be thereby determined or ſuſpended, but that the ſaid Commiſſioner ſhall proceed in the Execution of the Powers given to him by this Act or the ſaid recited Act, in ſuch Manner as he might have done in caſe ſuch Parties had not died; and that the Share or Shares of the Perſon or Perſons ſo dying, ſhall be allotted to ſuch Perſon or Perſons who by Law ſhall become entitled to the ſame, and ſhall be accepted and fenced by him, her or them, according to the Directions of this or the ſaid recited Act; and he, ſhe, or they, ſhall be liable to the Charges and Expences and other Conditions of this and the ſaid recited Act.

Appointment of Surveyor.

XVI. And be it further enacted, That *William Walmſley* of *Andover* aforeſaid, Gentleman, ſhall be the Surveyor to act under and in Execution of this and the ſaid recited Act, and ſhall be ſubject to the Controul and Direction of the ſaid Commiſſioner; and in caſe the ſaid *William Walmſley*, or any Surveyor to be appointed in his Stead, ſhall die, refuſe, neglect or become incapable to act, before the Powers and Proviſions of this Act ſhall be fully carried into Execution, then and in every ſuch Caſe a new Surveyor (not intereſted in the ſaid Incloſure) ſhall be appointed by the Majority in Value (to be aſcertained as aforeſaid) of the Perſons who for the Time being ſhall be intereſted in the ſaid Diviſion, Incloſure and Allotment, or in caſe of their making Default, then by the Lord or Lords, Lady or Ladies, for the Time being, of the ſaid Manors of *Elvetham Bernard* and *Elvetham Sturmy*, within ſuch Time from the Death, Incapacity or declining to act of ſuch Surveyor; and upon ſuch or the like Notice, and in ſuch or the like Manner in all Reſpects as is herein-before mentioned for chooſing and appointing a new Commiſſioner in the Stead of the ſaid *George Barnes*, in caſe of his Death, Refuſal, Neglect or becoming incapacitated as aforeſaid.

For extinguiſhing or ſuſpending Rights of Common before the Execution of the Award.

XVII. And be it further enacted, That it ſhall be lawful for the ſaid Commiſſioner, and he is hereby empowered, at any Time or Times before the Execution of his Award, by Notice in Writing under his Hand, to be affixed upon the principal Outer Door of the Pariſh Church of *Elvetham* aforeſaid, to order and direct all or any Part of the Rights of Common in, over and upon, the ſaid Commonable and Waſte Lands and 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 in Writing; and that all ſuch Rights of Common as the ſaid Commiſſioner ſhall by ſuch Writing order and direct to be extinguiſhed, or the Exerciſe thereof to be ſuſpended as aforeſaid, ſhall from the Time of affixing ſuch Writing on the ſaid Church Door, ceaſe, determine and be extinguiſhed, or the Exerciſe thereof be ſuſpended accordingly.

Turves, &c. not to be cut without the Conſent

XVIII. And be it further enacted, That it ſhall not be lawful for any Perſon or Perſons, after the paſſing of this Act and before the Execution of the Award of the ſaid Commiſſioner, to cut, dig, pare, grave, break up,

of the Commissioner.

up, flay or carry away the Turf or Soil upon, from, or out of the said Commonable and Waste Lands and Grounds, or any Part thereof, or to fell, lop, top, cut down, burn, take or carry away any Bushes, Thorns or Furze growing thereon, without the Licence and Consent of the said Commissioner, in Writing under his Hand first had and obtained (which Licence and Consent the said Commissioner is hereby empowered to grant, under such Rules, Orders, Regulations and Restrictions, as he shall think proper); and if any Person or Persons shall, after the passing of this Act, and before the Execution of the said Award, cut, dig, pare, grave, break up, flay or carry away any Turf or Soil upon, from, or out of any Part of the said Commonable and Waste Lands and Grounds, or fell, lop, top, cut down, burn, take or carry away any Bushes, Thorns or Furze growing or being in or upon the same, without such Licence or Consent as aforesaid, or having obtained such Licence or Consent, shall act in any Manner contrary thereto, or to the Orders, Rules, Regulations and Restrictions therein contained, every such Person, being convicted thereof either by his or her own Confession, or upon the Oath or Oaths of one or more credible Witness or Witnesses, before any Justice of the Peace acting in and for the said County of *Southampton*, (not being interested in the said Commonable and Waste Lands and Grounds, and which Oath or Oaths such Justice is hereby authorized to administer, and to summon the Person or Persons complained of, and to examine such Witness or Witnesses relating to the said Complaints), shall for every Offence forfeit and pay such Sum of Money as the said Justice shall direct, not exceeding Five Pounds over and above the Value of such Turf, Soil, Bushes, Thorns or Furze, the same to be applied by the said Commissioner for the Purposes of this Act; and it shall be lawful for such Justice, by Warrant under his Hand and Seal, directed to any Person or Persons whomsoever, to cause the said Penalty to be raised and levied by Distress and Sale of the Goods and Chattels of the Person or Persons offending, (Demand having first been made thereof), renderingthe Overplus (if any), after deducting the Charges of such Distress and Sale, to the Owner of such Goods and Chattels; and no Person shall be incompetent to give Evidence of any such Offence, by reason of his being a Proprietor or Occupier of Lands within or an Inhabitant of the aforesaid Parish.

Encroachments on the Waste of Twenty Years standing.

XIX. And be it further enacted, That all Cottages, Erections and Encroachments, which have been erected or made upon, or taken out of the said Commonable or Waste Lands and Grounds intended to be divided, inclosed, and allotted, by virtue of this Act, for the Space of Twenty Years or upwards, before the passing of this Act, and for which no annual or other Rent hath been paid to the Lord or Lords, Lady or Ladies, of the said Manors of *Elvetham Bernard* and *Elvetham Sturmy* aforesaid, shall as against such Lord or Lords, Lady or Ladies, be deemed to be the Property of the Possessor or Possessors thereof, and that all other Cottages, Erections, Encroachments and Inclosures, which have been erected or made upon, or taken out of the said Commonable Waste Lands or Grounds, for the Space of Twenty Years and upwards before the passing of this Act, shall be deemed to be the Property of the Lord or Lords of the said Manors of *Elvetham Bernard* and *Elvetham Sturmy*, or such Person or Persons as shall claim the same from or through him or them, or shall otherwise have a lawful Title thereto; but no Allotment shall be made for or in lieu of any Common Right, which shall or may be

claimed

claimed in respect of any Cottage, Erection, Encroachment or Enclosure, which hath at any Time, for the Space of Twenty Years or upwards, been erected or made upon or taken out of the said Commonable Waste Lands or Grounds.

Encroachments made within Twenty Years.

XX. And be it further enacted, That all Encroachments and Inclosures made upon or taken out of the said Commons or Waste Lands and Grounds, at any Time or Times within Twenty Years, to be computed from the passing of this Act, shall be deemed Parts and Parcels of the said Commons and Waste Lands and Grounds; and such of them as shall have been made by any Freeholder or Freeholders, his, her, or their Tenant or Tenants, in respect of, or laid to and occupied with his, her, or their Freehold Messuages, Lands, or Tenements, within the said Manors of *Elvetham Bernard* and *Elvetham Sturmy*, and for which no Rent has been paid to the said *George* Lord *Calthorpe* or his Ancestors, shall, with all Buildings and Erections thereon, be set out and allotted to such Freeholder or Freeholders as shall be in the Possession thereof respectively, in Part of or in full for the Allotments to which he, she, or they shall be entitled, in case the same shall not, in the Judgment of the said Commissioner, be more than equivalent thereto; and in case any of the said Encroachments shall, in the Judgment of the said Commissioner, be of greater Value than his, her, or their Share and Proportion of the same Commons and Waste Grounds, then the Person or Persons to whom such Encroachments shall be allotted, shall pay to the said Commissioner, at or within such Time as he shall appoint, such Sum of Money as the said Commissioner shall adjudge to be the Value of such Encroachments, over and above the Value of the Allotments to which such Person or Persons shall be entitled, and the same shall be applied towards Payment of the Expences of obtaining and executing this Act, and shall in case of Non-payment thereof, or of any Part thereof, within the Time so to be appointed, be recovered in Manner provided by the said recited Act for Recovery of the Costs and Expences of obtaining and passing this Act, and carrying the same into Execution; and in case there shall be any Overplus of such Money after Payment of such Costs, Charges, and Expences, such Overplus shall be divided and apportioned among the several Proprietors and Persons interested in the said Commons and Waste Grounds in such Shares as shall be in Proportion to their respective Rights and Interests therein, and the Shares of such of them as shall be Tenants in Fee Simple shall be paid to them respectively, and the Shares of the other Proprietors and Persons of and in such Surplus Money, shall be applied and disposed of in Manner directed by the said recited Act in Cases where any Money is to be paid for the Purchase or Exchange of any Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, and which Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments, to be settled to the same Uses; and the Remainder of the said Encroachments and Inclosures, which shall have been made within Twenty Years, to be computed from the passing of this Act, shall be considered as Part of the Lands to be allotted to and taken by the said *George* Lord *Calthorpe*, or the Lord or Lady, Lords or Ladies, for the Time being, of the said Manors, subject to any Lease or Leases, or Agreement or Agreements for a Lease or Leases thereof, which shall have been made by the said *George* Lord *Calthorpe*, or any of his Ancestors; and the Value of such Encroachments made within the said Twenty Years, to

be computed from the paſſing of this Act, both with reſpect to the ſaid *George* Lord *Calthorpe*, and to ſuch Freeholder or Freeholders as aforeſaid, ſhall be aſcertained and fixed by the ſaid Commiſſioner, or his Succeſſor, according to the yearly Rent or Rents now received and payable to the ſaid *George* Lord *Calthorpe*, or ſuch Freeholder or Freeholders as aforeſaid, for the ſame reſpectively, where any Rent or Rents or other Payments ſhall have been made or agreed upon, and where no yearly Rent or Rents or other Payments ſhall have been made or agreed upon, then according to ſuch yearly Rent or Rents as the ſame, in the Judgment and Opinion of the ſaid Commiſſioner, would have been worth previous to the ſame having been taken in and incloſed from the other Parts of the ſaid Common and Waſte Lands, and having been improved in the Cultivation thereof; and in caſe any Perſon or Perſons poſſeſſed of any Encroachment or Encroachments, ſhall have paid or agreed to pay any Rent for the ſame, and ſhall, after ſuch Payment or Agreement to pay, have added thereto by Encroachment, then the Rent to be paid by him or them, for the additional Quantity of Land ſo taken in and incloſed, ſhall be aſcertained and ſettled by the ſaid Commiſſioner or his Succeſſor, in Manner herein-before mentioned, and added to the Rent or Rents already paid or agreed to be paid for the ſame, and the Value of ſuch Encroachment ſhall be aſcertained as aforeſaid, according to ſuch original and additional Rents; and in caſe any Diſpute or Difference ſhall ariſe touching any ſuch Encroachment or the Extent thereof, ſuch Diſpute or Difference ſhall be determined by the ſaid Commiſſioner: Provided always, that nothing herein contained ſhall be conſtrued to cancel or make void any Leaſe under the Hand or Seal of, or any Agreement in Writing ſigned by the ſaid *George* Lord *Calthorpe*, or any of his Anceſtors, for the letting and ſetting any Part or Parts of the ſaid Commons or Waſte Lands and Grounds, but that the ſame ſhall continue in Force for the Term, and ſubject to the Exceptions, Reſervations, Rents, Covenants, Clauſes, Proviſoes, and Agreements, therein reſpectively contained to the contrary in anywiſe notwithſtanding.

Certain Leaſes of Waſte Lands to continue in force.

Unneceſſary Roads may be ſtopped.

XXI. And be it further enacted, That it ſhall be lawful for the ſaid Commiſſioner, and he is hereby authorized and empowered, with the Concurrence and Order of Two Juſtices of the Peace acting in and for the Diviſion of the County of *Southampton*, in which the Road or Roads, Footpath or Footpaths herein-after mentioned ſhall be ſituate, and not intereſted in the Repair of ſuch Road or Roads, Footpath or Footpaths, to ſtop up and direct to be diſcontinued any public Road or Roads, Footpath or Footpaths, through any Part or Parts of the Lands or Grounds in the ſaid Pariſh of *Elvetham*, which to the ſaid Commiſſioner ſhall appear to be uſeleſs or unneceſſary: Provided always, that ſuch Order ſo to be made, ſhall be ſubject to an Appeal to the Quarter Seſſions, in like Manner and under the ſame Regulations and Reſtrictions as if the ſame had been originally made by ſuch Juſtices as aforeſaid: Provided alſo, that none of the preſent Roads or public Highways within the ſaid Pariſh of *Elvetham* ſhall be ſhut up or diſcontinued, until the Roads intended to remain public Highways within the ſaid Pariſh ſhall be ſet out according to the Directions of the ſaid recited Act, and the ſame ſhall be properly formed and made ſafe and convenient for Horſes, Cattle, and Carriages.

XXII. And

Drains and Bridges may be scoured, repaired, &c. by Commissioner.

XXII. And be it further enacted, That it shall be lawful for the said Commissioner to order and direct to be scoured out, repaired, and widened, all ancient Brooks, Drains, Ditches, Watercourses, Tunnels, Watergates, Sluices, Banks and Bridges, in, over, and upon the Lands and Grounds intended to be divided, allotted, and inclosed, by virtue of this Act, and also to make, set out and appoint such new Ditches, Drains, Watercourses, Tunnels, Watergates, Sluices, Banks and Bridges, as well in, through and over the Lands and Grounds hereby intended to be divided and inclosed as aforesaid, as in, through and over any ancient Inclosures or other Lands and Grounds within the said Parish of *Elvetham*, making such Satisfaction to the Proprietor of such ancient Inclosures or other Lands and Grounds not hereby directed to be divided and inclosed, for Damage done thereby, as the said Commissioner shall think reasonable, and to be of such Depth, Dimensions, and Breadth, and in such Directions as the said Commissioner shall think fit; and the said Commissioner shall and he is hereby directed, in and by his Award, to appoint and order by whom and at whose Expence, and at what Times and in what Manner the said Brooks, Drains, Ditches, Watercourses, Tunnels, Watergates, Sluices, Banks and Bridges shall be made, and thereafter repaired, cleansed, scoured, and maintained; and also shall and may direct, order, and award, all or any of the Streams and Springs of Water within the said Commonable and Waste Lands and Grounds hereby directed to be divided and inclosed, or adjoining to the same, or on any inclosed Lands within the said Parish, to be conveyed, carried, or turned into such Courses, and through, over, and across such Parts of the Lands or Grounds hereby directed to be divided, allotted, and inclosed, or any other Lands in the said Parish, as he the said Commissioner shall in his Discretion judge proper, for the watering of the several Allotments to be made by virtue of this Act, or discharging such Streams or Springs of Water to their Outfall; provided, that no such Stream or Spring of Water be diverted or turned, without the Consent in Writing of the Person or Persons from or out of whose Lands the same shall be intended to be turned, and of the Person or Persons through or into whose Lands respectively the same shall be diverted or turned.

Allotment for Gravel Pits.

XXIII. And be it further enacted, That it shall be lawful for the said Commissioner and he is hereby required, previously to the Division and Inclosure hereby directed to be made, to set out, allot, and award so much or such Part of the said Commonable and Waste Lands and Grounds intended to be divided, allotted, and inclosed as aforesaid, as he shall think proper, not exceeding in the whole Four Acres, as and for public Stone, Sand, and Gravel Pits, public Chalk, Marl, Clay, or Mortar Pits, with convenient Ways to and from the same, for the Purpose of making and repairing the public and private Roads within the said Parish, which said Part or Parts of the said Commonable and Waste Lands and Grounds shall be fenced, in such Manner, and by such Person or Persons as the said Commissioner shall order, direct, or appoint, and the Herbage growing or renewing upon the Quantity of Land to be set out as last mentioned, shall be and the same is hereby vested in the Surveyor or Surveyors of the Highways of the aforesaid Parish, in Trust to set and let the same, and to apply the Rents and Profits thereof towards the Repairs of the Roads and Ways within the said Parish; and such Surveyor or Surveyors shall account for such Rents and Profits, in the same Manner as he or they

they is or are or shall be accountable for other Money which shall come to his or their Hands as such Surveyor or Surveyors of the Highways, and shall be under and subject to the like Penalties for any Neglect thereof.

Allotment to be made to the Lord, of 1-20th Part in respect of his Interest in the Soil.

XXIV. And be it further enacted, That the said Commissioner, after he shall have set out the public Roads and Ways and private Roads, and the said Drains and Watercourses, shall in the next Place assign, set out, and allot unto the said *George* Lord *Calthorpe*, or the Lord or Lords, Lady or Ladies, for the Time being, of the said Manors of *Elvetham Bernard* and *Elvetham Sturmy*, so much and such Part and Parts of the Residue of the said Commonable Waste Lands and Grounds (including the Encroachments herein-before directed to be allotted to him or them) as in the Judgment of the said Commissioner shall be equal in Value to One-Twentieth Part thereof; and such Allotment or Allotments shall be in full Compensation, Recompence, and Satisfaction, to the said *George* Lord *Calthorpe*, Lord or Lords, Lady or Ladies, for the Time being, as aforesaid, for all his, her, or their Right and Interest in and to the Soil of the said Commons and Waste Lands and Grounds; but the same shall be exclusive of the Timber and other Trees standing and being upon the said Commonable and Waste Lands and Grounds intended to be hereby allotted and divided, and shall be exclusive of the Allotments of and in the said Commonable and Waste Lands and Grounds, which shall, in pursuance of this Act, be allotted to him, her, or them in lieu of his, her, or their Right of Common.

Allotment to the Rector.

XXV. And be it further enacted, That after making the Allotments aforesaid, the said Commissioner shall and he is hereby directed and required to set out, allot, and award, unto and for the said *John Spooner*, or the Rector of the said Rectory and Parish Church of *Elvetham* for the Time being, for and in respect of the Rights of Common in and over the said Commonable Waste Lands and Grounds hereby directed to be divided, allotted, and inclosed, belonging to or attached to his said Messuage and Glebe Lands, such Part or Parcel of the same Commonable Waste Lands and Grounds as in the Judgment of the said Commissioner the said Rector shall be entitled to.

Allotment of the Residue.

XXVI. And be it further enacted, That after the several Allotments herein-before directed to be made shall have been made and set out in the Manner herein-before directed, the said Commissioner shall divide, set out, allot, and award all the Residue and Remainder of the said Commonable and Waste Lands and Grounds intended to be divided, allotted, and inclosed as aforesaid, unto and amongst the several Persons and Bodies Politic, Corporate, or Collegiate, who at the Time of such Division and Allotment shall be interested therein, in Proportion and according to their respective Shares, Rights, Interest and Property.

Rector's Allotment to be ring-fenced.

XXVII. And be it further enacted, That the Allotment to be made and set out to and for the said *John Spooner* and his Successors, Rectors as aforesaid, shall be inclosed, hedged, ditched, and fenced by and at the Expence of such of the other Owners or Proprietors of Messuages, Lands, Tenements, and Hereditaments, within the said Parish of *Elvetham*, to whom any Allotment or Allotments shall be made, and within such Time or Times, and in such Manner, Shares, and Proportions, as the said Commissioner

missioner shall in and by his said Award order and direct; and from and after the making of the said Fences, the same shall be for ever thereafter maintained and kept in Repair by and at the Expence, Costs, and Charges of the said *John Spooner* or his Successors, Rectors as aforesaid for the Time being; and the said several other Allotments of the said Commonable and Waste Lands and Grounds, after the Division thereof, shall be inclosed, hedged, ditched, and fenced, at the proper Costs and Charges of the respective Persons to whom the same shall be respectively allotted, within such Time, and in such Manner, Shares, and Proportions, as the said Commissioner shall in and by his said Award order and direct; and in case any such Person who shall be made subject or liable, by such Order and Direction of the said Commissioner, to make, or to repair, support, or maintain any such Fences, shall neglect or refuse to make, or to repair, support, or maintain the same, according to such Direction of the said Commissioner, it shall be lawful for the Person or Persons interested in the Lands next adjoining the Lands allotted to the Person or Persons so neglecting or refusing to make and raise, or to repair such Fences, to recover the Costs and Charges of doing thereof by Action of Debt in any of His Majesty's Courts of Record at *Westminster*. Fencing other Allotments.

XXVIII. Provided always, and be it further enacted, That convenient Gaps and Openings shall be left in all the Fences to be made in pursuance of this Act, for the Space of Six Calendar Months next after the Execution of the said Award, for the Passage of Cattle, Carts, and Carriages into and through the same, unless the said Commissioner shall, by his Award or other Instrument in Writing under his Hand, order that the same be sooner fenced in, made up, and inclosed. For leaving Gaps.

XXIX. And be it further enacted, That it shall and may be lawful to and for any Person or Persons interested in the said Division and Inclosure, at any Time or Times before the Execution of the Award of the said Commissioner to sell his, her, or their Right of Common, and other Rights and Interests, or any Part thereof, in, over, or upon the said Commonable and Waste Lands and Grounds, to any Person or Persons whomsoever, separate and apart from the Property in respect of which such Person or Persons is, are, or shall be respectively entitled to such Right of Common, and other Rights and Interests; and the said Commissioner shall and he is hereby authorized and required (on receiving the Deed of Sale signed by the Vender and Vendee) to make an Allotment or Allotments of the said Commonable and Waste Lands, in respect of such Rights and Interests which shall be so sold unto the Vendee or Purchaser thereof under such Sale, or to his, her, or their Heirs or Assigns for or in respect of the Estate under which the Vender claims such Right of Common, Interest, and other Rights which shall be so sold as aforesaid; and every such Vendee or Purchaser, and his or her Heirs and Assigns, shall, from and after the Execution of the said Award, hold and enjoy the Lands so to be allotted to him or her as aforesaid, in the same Manner and subject to the same Incumbrances, to all Intents and Purposes, as the Vender in every such Sale might, could, or ought to have held and enjoyed the same in case such Sale had not been made, or such Right of Common, Interest, or other Right, had still remained vested in such Vender at the Time of making such Allotment as aforesaid. Persons interested may, before Award made, sell their Right of Common.

Allotments to be held under the same Tenures, &c. as the Lands in respect of which such Allotments shall be made.

XXX. And be it further enacted, That all such Lands and Grounds as shall by the Authority and in pursuance of this Act be allotted to any of the said Proprietors, shall be held by such Proprietors respectively, under the same Tenures, Rents, Customs, and Services as the Lands or other Property in respect of which such Allotments shall be made, were respectively held and enjoyed by the said Proprietors before the passing of this Act, or would have been held and enjoyed in case this Act had not been passed; and the several Lands and Grounds which in the said Award shall be distinguished to have been allotted in lieu of Freehold or Copyhold Lands or Hereditaments, shall, from the Execution of the said Award, be deemed Freehold or Copyhold respectively, and shall from thenceforth be held of the Lord of the Fee under the same Rents, and by the same Services as the Freehold or Copyhold Lands or other Hereditaments, in lieu of which they were so allotted, were before that Time held, and the Lands and Grounds which shall be therein distinguished to have been allotted in lieu of Leasehold Lands or Hereditaments (except as herein-after mentioned) shall in like Manner be deemed Leasehold, and shall be held under the same Rent or Rents as the Lands or other Hereditaments, in lieu whereof they were so respectively allotted, were held, and the Reversion or Remainder thereof shall be vested in the same Lessors or Persons respectively, as the Reversion or Remainder of such other Lands and Property was vested before the passing of this Act.

Exchanges.

XXXI. And be it further enacted, That it shall be lawful for the said Commissioner to set out, allot, and award any Messuages, Buildings, Lands, Tenements, new Allotments, old Inclosures, or Hereditaments within the said Parish of *Elvetham*, in Lieu of or in Exchange for any other Messuages, Buildings, Lands, Tenements, new Allotments, old Inclosures, or Hereditaments within the said Parish, or within any adjoining Parish, Hamlet, Township, or Place; provided that all such Exchanges be ascertained, specified, and declared in the Award of the said Commissioner, and be made with the Consent of the Owner or Owners, Proprietor or Proprietors, for the Time being, who shall be legally or equitably entitled in Possession to the Hereditaments which shall be so exchanged, or be in the actual Receipt of the Rents, Issues, and Profits thereof, (whether such Owner or Owners, Proprietor or Proprietors, shall be a Body or Bodies Politic or Corporate, or a Body or Bodies Collegiate, Corporation Aggregate or Sole, 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, or the major Part of such Trustees or Feoffees respectively, Husbands, Committees, or Attornies of or acting for any such Proprietors or Owners as aforesaid, who at the Time of making such Exchange or Exchanges shall be respectively Infants, Femes Covert, Lunatics, or under any other legal Incapacity, or shall be beyond the Seas, or otherwise disabled to act for themselves, himself, or herself, such Consent to be testified in Writing under the Common Seal of the Body Politic, Corporate, or Collegiate, and under the Hands and Seals of the other 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, 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 Lord Biſhop of the Dioceſe in which ſuch Lands, Tenements, and Hereditaments, ſo to be exchanged, ſhall lie or be ſituate.

Coſts by whom paid.

XXXII. Provided always, and be it further enacted, That the Coſts, Charges, and Expences attending the making and completing any Exchange and Partition, ſhall be borne and paid by the ſeveral Perſons, Bodies Politic, Corporate, or Collegiate, making ſuch Exchange or Partition, in ſuch Manner and in ſuch Proportions as the ſaid Commiſſioner ſhall order and direct; and the ſame ſhall and may be recovered in Manner directed by the ſaid recited Act, with reſpect to Perſons refuſing or neglecting to pay his, her, or their Proportion of the Coſts and Expences of obtaining this Act, and carrying the ſame into Execution.

Subſiſting Leaſes to be void as to Allotments.

XXXIII. And be it further enacted, That all and every Leaſe and Leaſes, and Agreement or Agreements for any Leaſe or Leaſes at Rack or Extended Rents, which is or are now ſubſiſting, of or upon all or any Part of the Meſſuages, Buildings, Lands, Grounds, Tenements, or Hereditaments within the ſaid Pariſh, either alone or together with any other Lands, Tenements, or Hereditaments, ſhall ceaſe, determine, and be void, ſo far as ſuch Leaſe or Leaſes, Agreement or Agreements, affect or concern any Allotment or Allotments of the Common and Waſte Lands, which ſhall be made to any Perſon or Perſons whomſoever, for or in reſpect of any Meſſuages, Lands, Tenements, or Hereditaments compriſed in any ſuch Leaſe or Leaſes, Agreement or Agreements; and it ſhall be lawful for the Leſſor or Leſſors, Landlord or Landlords of any ſuch Meſſuages, Lands, Tenements, or Hereditaments, to enter into and upon ſuch Allotment or Allotments, and to hold and enjoy the ſame during all ſuch Time and Term as the ſaid Leſſee or Leſſees, Tenant or Tenants, ſhall or may have to come and be unexpired of and in ſuch Leaſe or Leaſes, Agreement or Agreements reſpectively, making ſuch yearly Deduction or Allowance out of the Rent or Rents in and by ſuch Leaſe or Leaſes, or Agreement or Agreements, reſerved or agreed to be paid by ſuch Leſſees or Tenants reſpectively, for and during all the Reſidue of ſuch Term or Terms therein, as the ſaid Commiſſioner ſhall, in and by ſome Inſtrument or Inſtruments in Writing under his Hand for that Purpoſe, aſcertain and determine to be a reaſonable Compenſation for the Loſs of the Right or Rights of Common, which hath or have been accuſtomed to be uſed by ſuch Leſſee or Leſſees, Tenant or Tenants, in Right of the ſaid Meſſuages, Lands, Tenements, or Hereditaments ſo leaſed to or agreed to be held by him, her, or them reſpectively, (unleſs in Caſes when the Right of Common is excepted, and reſerved in and by ſuch Leaſe or Agreement to the Landlord); but in caſe any ſuch Leſſor or Leſſors, Landlord or Landlords, ſhall not, within One Calendar Month after the ſaid Commiſſioner ſhall have made ſuch Allotment or Allotments, and exhibited a Map or Scheme thereof as herein-after directed, give Notice in Writing of his, her, or their Intention of taking and holding the Allotment or Allotments ſo to be made, of the ſaid Commonable and Waſte Lands and Grounds, to the Leſſee or Leſſees, Tenant or Tenants thereof reſpectively, (ſuch Notice to be left at his, her, or their laſt or moſt uſual Place or Places of Abode) then and in every ſuch Caſe it ſhall be lawful for ſuch Leſſee or Leſſees, Tenant or Tenants reſpectively, to

Leſſors may enter thereon, making a Deduction of Rent.

enter

enter upon the ſaid Allotment or Allotments ſo to be made to ſuch Leſſor or Leſſors, Landlord or Landlords as aforeſaid, and to hold and enjoy the ſame during all ſuch Term and Terms as he, ſhe, or they ſhall have to come and unexpired in ſuch Meſſuages, Lands, Tenements, or Hereditaments by virtue of ſuch Leaſe or Leaſes, Agreement or Agreements, upon paying ſuch further or advanced Rent or Rents to their Leſſor or Leſſors, Landlord or Landlords, and under and ſubject to ſuch Orders and Regulations reſpecting the Tillage and Management thereof, as ſhall be aſcertained and determined by the ſaid Commiſſioner, to be ſpecified in and by ſome Inſtrument or Inſtruments in Writing under his Hand, to be made at the joint Expence of ſuch Leſſors and Leſſees reſpectively, which Rent or Rents ſhall be paid at ſuch Time or Times and in ſuch Manner as the ſaid Commiſſioner ſhall by ſuch Inſtrument or Inſtruments reſpectively appoint, and ſuch Leſſor or Leſſors, Landlord or Landlords, ſhall have ſuch Powers and Remedies for the recovering and obtaining ſuch additional Rent or Rents as he, ſhe, or they had, or was, or were entitled to have had for obtaining and recovering the original Rent reſerved by ſuch Leaſe or Leaſes, Agreement or Agreements; but if ſuch Leſſee or Leſſees, Tenant or Tenants, ſhall not, within One Calendar Month next after the Date of ſuch Inſtrument or Inſtruments as laſtly mentioned, give or leave Notice in Writing of his, her, or their Intention of holding ſuch Allotment or Allotments, and by Writing under his, her, or their Hand or Hands, agree to pay for the ſame ſuch Rent or Rents as the ſaid Commiſſioner ſhall ſo appoint to be paid to the Leſſor or Leſſors, Landlord or Landlords thereof, (ſuch Notice to the Leſſor or Leſſors, Landlord or Landlords, to be left at his, her, or their laſt or moſt uſual Place of Abode) then and in ſuch Caſe the Allotment or Allotments ſo to be made in Right of the ſaid Meſſuages, Lands, Tenements, and Hereditaments reſpectively, leaſed to or agreed to be held by ſuch Leſſee or Leſſees, Tenant or Tenants, ſo neglecting or refuſing to give Notice as aforeſaid, ſhall go to and remain unto, and be held and enjoyed by his, her, or their Leſſor or Leſſors, Landlord or Landlords, freed and diſcharged of and from all Right and Intereſt, under or by virtue of ſuch reſpective Leaſes.

Leſſees to pay advanced Rents.

Leſſees to give Notice of Intention to hold Allotments, or the ſame to go to the Leſſors.

Act not to make void beneficial Leaſes.

XXXIV. Provided always, and be it further enacted, That nothing in this Act contained ſhall extend to ſet aſide or make void any beneficial Leaſe or Leaſes of any Lands, Tenements or Hereditaments, within the ſaid Pariſh of *Elvetham;* but the Perſon or Perſons entitled to ſuch beneficial Leaſe or Leaſes ſhall and may hold and enjoy his, her and their Allotment or Allotments during his, her or their Term or Terms, and under the ſame Rents and Covenants as are ſpecified in his, her or their Leaſe or Leaſes.

Act not to revoke Wills, &c.

XXXV. Provided always, and be it further enacted, That nothing in this Act contained ſhall extend or be conſtrued to extend to revoke, make void, alter or annul any Will or Settlement, or to prejudice any Perſon or Perſons having any Right or Claim of Dower, Jointure, Portion, Debt or Incumbrance, out of, upon, or affecting any of the Lands or Grounds to be ſet out, divided, allotted and incloſed as aforeſaid, or any Part or Parts thereof reſpectively; but that the reſpective Perſons unto or for whom any Lands or Hereditaments ſhall be ſet out, aſſigned, allotted or given in Exchange by virtue of this Act, ſhall ſtand and be ſeiſed of the

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same to such and the same Uses, and for such and the same Estates, and subject to such and the same Wills, Jointures, Limitations, Trusts, Charges and Incumbrances, and no other, as the same Messuages, Lands, Tenements or Hereditaments, for or in respect whereof such Allotments or Exchanges shall be made, would have been subject or liable to be charged with or affected by in case this Act had not been made.

Allotments to be Tythe-free during Four Years.

XXXVI. And be it further enacted, That it shall not be lawful for the said *John Spooner* or his Successors, Rectors as aforesaid, or his or their Lessees or Assigns, to demand or take any Tythes whatsoever, or any Composition or Satisfaction in lieu thereof, from the Owner or Owners, Occupier or Occupiers of any Part or Parts, Allotment or Allotments, of the said Commonable Waste Lands and Grounds hereby intended to be divided and inclosed, for or in respect of any Tythes arising, renewing or increasing on any such Part or Parts, Allotment or Allotments, for the Term of Four Years, to be computed from the passing of this Act; but that the said Part or Parts, Allotment or Allotments, shall be held and enjoyed wholly freed and discharged of and from all Manner of Tythes, and all Dues, Payments and Compositions, in lieu thereof, for the said Term of Four Years as aforesaid, and no longer: Provided always, that this Act shall not be construed to restrain the said Rector or his Successors, Lessees or Assigns, from demanding or taking any Tythes, or any Composition or Satisfaction in lieu thereof, from the Owner or Owners, Occupier or Occupiers, of any Part or Parts, Allotment or Allotments, which previously to the passing of this Act were in a State of Cultivation, and in respect of which Tythes have been actually rendered or paid.

Cattle, &c. not to be kept in Allotments for Seven Years.

XXXVII. And be it further enacted, That no Cattle, Sheep or Lambs, shall be kept in any of the Allotments to be made by virtue of this Act, or in or by the Side of any of the Roads to be set out in pursuance of this or the said recited Act, during the Space of Seven Years next after the Execution of the Award of the said Commissioner, unless the Person or Persons keeping the same shall first, at his or their own Expence, make and constantly maintain a Fence sufficient to guard the young Quick Fences adjoining such Allotments or Roads from being cropped, hurt or damaged by such Cattle, Sheep or Lambs, whether such Quick Fences be planted or set by the Owners or Occupiers of such Allotments as aforesaid, or by the Owners or Occupiers of the Allotment or Allotments adjoining thereto; and that if any Person or Persons shall keep any such Cattle, Sheep or Lambs, without first making and maintaining such sufficient Fence as aforesaid, then and in every such Case the Person or Persons keeping such Cattle, Sheep or Lambs, shall pay unto the Person or Persons whose Quick Fence shall be cropped, hurt or damaged by such Cattle, Sheep or Lambs, all Damages sustained by so keeping such Cattle, Sheep or Lambs; such Damages, in case of Non-payment thereof on Demand, to be recovered by the Person or Persons whose Quick Fence shall be cropped, hurt or damaged as aforesaid, by Action of Debt or on the Case in any of His Majesty's Courts of Record at *Westminster*.

Expences of the Act, &c. how to be paid.

XXXVIII. And be it further enacted, That the Costs, Charges and Expences incident to and attending the obtaining this Act, and the surveying, measuring, planning, valuing, dividing and allotting the Commonable

monable and Waſte Lands and Grounds to be allotted by virtue of this Act, and of preparing and inrolling the Award of the ſaid Commiſſioner, and all Charges and Expences of the ſaid Commiſſioner, his Clerk, Aſſiſtants and Servants, and other neceſſary Expences of the Perſons to be employed by the ſaid Commiſſioner in and about the Premiſes, either before or after the Execution of the ſaid Award, and all other Expences of carrying this Act into Execution, ſhall be borne and defrayed by the ſeveral Perſons to whom any Allotment or Allotments ſhall be made by virtue of this Act (ſave and except the ſaid Rector and his Succeſſors for the Time being, for and in reſpect of the Allotment hereby authorized to be made to him and them as aforeſaid), which ſaid Coſts, Charges and Expences, together with the Proportions thereof to be paid by the ſeveral Perſons hereby made liable to the Payment thereof, ſhall be ſettled and adjuſted by the ſaid Commiſſioner, and ſhall be paid at ſuch Time and Place, and to ſuch Perſon or Perſons, as the ſaid Commiſſioner ſhall appoint; and in caſe any Perſon hereby made ſubject to the Payment of any Money towards ſuch Coſts, Charges, and Expences as aforeſaid, ſhall refuſe or neglect to pay his or her Share or Proportion, or Shares or Proportions thereof, within the Time or Times to be appointed as aforeſaid, or at any Time after, upon Demand, the ſame, with Intereſt, ſhall and may be levied and recovered in the Manner directed by the ſaid recited Act.

Timber Trees, &c. growing on the Waſte, to be ſold.

XXXIX. And be it further enacted, That the Timber and other Trees and Saplings ſtanding, growing or being in or upon the Commonable and Waſte Lands and Grounds hereby directed to be divided, allotted and incloſed (except Buſhes, Furze or Thorn, and alſo except the Timber and other Trees and Saplings which ſhall be ſtanding, growing or being upon any Part thereof, which ſhall be allotted to the ſaid *George* Lord *Calthorpe*, as Lord of the ſaid Manors of *Elvetham Bernard* and *Elvetham Sturmy*, or in reſpect of any Meſſuages, Lands, Tenements or Hereditaments lying and being within the ſaid Pariſh of *Elvetham*, and which now ſtand ſettled or limited to the ſame Uſes as the ſaid Manors of *Elvetham Bernard* and *Elvetham Sturmy*), ſhall be ſold by or under the Direction of the ſaid Commiſſioner, either before or after the Execution of his Award, and ſhall be removed and taken away (if neceſſary) within ſuch Time or Times as he ſhall appoint; and the ſaid Commiſſioner is hereby authorized and required, by and out of the Monies to ariſe by the Sale of ſuch Timber and other Trees and Saplings, to defray and pay the Proportion of the Expence incident to and attending this Act, and of all other Expences in or about the carrying this Act into Execution, and in exerciſing the Powers and Authorities veſted in him in and by this Act and the ſaid recited Act, as herein-before mentioned, which ſhall be charged upon the Lands or Grounds to be allotted to the ſaid *George* Lord *Calthorpe*, or the Lord or Lords, Lady or Ladies, of the ſaid Manors of *Elvetham Bernard* and *Elvetham Sturmy*, in lieu or in reſpect of the Soil of the ſaid Commonable and Waſte Lands and Grounds, or of any Meſſuages, Lands, Tenements or Hereditaments, ſettled or limited to the ſame Uſes as the ſaid Manor, or upon him, her or them, in reſpect of ſuch Allotment or Allotments: And in caſe any Surplus ſhall remain after Payment of ſuch Expences as aforeſaid, ſuch Surplus ſhall be paid to the Perſon or Perſons entitled thereto, if ſeiſed in Fee of ſuch Lands, or otherwiſe ſuch Surplus ſhall be paid into the Bank of *England*, in the Manner directed by the ſaid recited Act with reſpect to Money to be paid for the Purchaſe or Exchange

Application of Surplus Money.

of Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, and which Money ought to be laid out in the Purchase of other Lands, Tenements or Hereditaments, to be settled to the same Uses.

Money advanced for defraying Expences of Act to be repaid with Interest.

XL. And be it further enacted, That if any of the Proprietors aforesaid, or any other Person, shall advance and lend any Money for defraying the Expences of applying for and obtaining this Act, or for carrying the same into Execution, every such Person shall be repaid such Money, with lawful Interest for the same, out of the Money which shall be first raised by virtue of this Act.

Allowance to Commissioner.

XLI. And be it further enacted, That the said Commissioner, and his Successor for the Time being, shall be paid the Sum of Three Pounds Three Shillings and no more, for each entire Day he shall be employed in carrying this Act and the said recited Act into Execution, or in exercising any of the Powers hereby vested in him, (Days of Travelling from and to Home included), the same to be in full Satisfaction for the Trouble and Expences he shall be put unto, (other than and except the Expence of Fire and Candle, and Use of the Room in which the Meetings shall be holden); and that the Clerk to the said Commissioner shall be paid the like Sum of Three Pounds Three Shillings and no more, for each entire Day he shall attend upon the said Commissioner in the Execution of the said Act and this Act; and every Proprietor and other Person interested in the Execution of this Act, and his Solicitor and Agent, who shall attend any Sitting, to be held by the said Commissioner in pursuance of this Act, shall bear and pay his own Expences of such Attendance.

Commissioner's Account to be audited at least once a Year.

XLII. And be it further enacted, That once at least in each Year during the Execution of this Act, (such Year to be computed from the passing of this Act,) the said Commissioner shall and he is hereby required to make a true and just Statement or Account of all Sums of Money by him received and expended, or due to him for his own Trouble and Expences in the Execution of this and the said recited Act, and such Statement or Account, when so made, together with the Vouchers relating thereto, shall be by him laid before some Justice of the Peace in and for the County of *Southampton*, not interested in the Premises, to be by him examined and balanced, and such Balance shall be by such Justice stated in the Book of Accounts to be kept in the Office of the Clerk of the said Commissioner; and no Charge or Item in such Account shall be binding on the Parties concerned, or valid in Law, unless the same shall have been duly allowed by such Justice.

Award to be deposited in the Parish Church of Elvetham.

XLIII. And be it further enacted, That the Award to be made by the said Commissioner, under the Direction of the said recited Act, together with such Maps or Plans as shall be annexed thereto, when enrolled in Manner directed by the said recited Act, shall be deposited in the Parish Church of *Elvetham* aforesaid.

Persons aggrieved may appeal.

XLIV. 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 or omitted to be done in pursuance of the said recited Act or this Act, (other than and except

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in such Cases where the Orders and Determinations of the said Commissioner are by the said recited Act or this Act directed to be final, binding and conclusive, and except in such Cases where an Issue at Law shall be tried as herein-before mentioned), then and in every such Case he, she or they may appeal to the General Quarter Sessions of the Peace which shall be holden in and for the said County of *Southampton*, within Four Calendar Months next after the Cause of Complaint shall have arisen, on giving the said Commissioner, and the Party or Parties concerned, Fourteen Days Notice in Writing of such Appeal, and of the Matter thereof; and the Justices, not interested in the Premises, in their said General Quarter Sessions, are hereby authorized and required to hear and determine the Matter of every such Appeal, and to make such Order therein, and to award such Costs and Damages, as to them in their Discretion shall seem reasonable; and in case of Non-payment thereof before the then next General Quarter Sessions, to levy by their Order or Warrant 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), on Demand, to the Owner or Owners of such Goods and Chattels, after deducting the reasonable Charges of such Distress and Sale, which Determination of the said Justices shall be final and conclusive on all Parties concerned, and shall not be removed or removeable 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 Justices to be frivolous or without Foundation, then the said Justices shall award such Costs to be paid by the Appellant or Appellants as to them the said Justices in their Discretion shall seem reasonable, and the same shall be levied in Manner aforesaid.

Sessions may award Costs.

General Saving.

XLV. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and also to all and every 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 could or ought to have had and enjoyed, of, in, to, from or out of the said Commonable and Waste Lands and Grounds hereby directed to be divided, allotted and inclosed, in case this Act had not been passed.

Act to be printed and given in Evidence.

XLVI. And be it further enacted, That this Act shall be printed by the several Printers to the King's most Excellent Majesty, duly authorized to print the Statutes of the United Kingdom, and a Copy thereof, so printed by any of them, 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. 1813.