ANNO QUADRAGESIMO NONO

GEORGII III. REGIS.

Cap. 60.

An Act for incloſing Lands in the Townſhip of *Kelſal*, in the Pariſh of *Tarvin*, in the County Palatine of *Cheſter*. [12th *May* 1809.]

WHEREAS there are within the Townſhip of *Kelſal*, in the Pariſh of *Tarvin*, in the County Palatine of *Cheſter*, certain Commons or Waſte Lands, containing together in Statute Meaſure Three hundred Acres or thereabouts: And whereas a Part of ſuch Commons or Waſte Lands conſiſts of a Piece or Parcel of Ground, commonly called or known by the Name of *Longley*, with a Stone Quarry therein; which ſaid Piece or Parcel of Ground contains, in Statute Meaſure, One hundred and forty-one Acres or thereabouts: And whereas *John Arden* Eſquire is Lord of the Soil of the ſaid Piece or Parcel of Waſte Ground called *Longley*: And whereas the Right Honourable *Other Archer*, Earl of *Plymouth*, and the ſaid *John Arden*, are joint Lords of the Manor of *Kelſal*, in which Manor the Commons or Waſte Lands intended to be divided and incloſed do lie: And whereas the ſaid *Other Archer* Earl of *Plymouth*, *John Arden*, *John Egerton* Eſquire, *Thomas Hitchcock* Eſquire, *Edward Briſcoe* Gentleman, *Thomas Dean* Gentleman, and others, are Owners and Proprietors of the ſaid Commons or Waſte Lands within the Townſhip of *Kelſal* aforeſaid: And whereas an Act was paſſed in the Forty-firſt Year of His preſent Majeſty's Reign, intituled, *An Act for conſolidating in 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 ſaid Commons or Waſte Lands in the Townſhip of *Kelſal* aforeſaid afford at preſent little Profit, but the ſame would, if divided and incloſed, be of great Advantage to the ſeveral

Persons interested therein, and be of public Utility; but such Division and Inclosure cannot be effected 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 the several Commons or Waste Lands, situate and being within the said Townships of *Kelsal*, shall be set out, allotted, and divided as soon as conveniently may be after the passing of this Act, by *Josiah Boydell*, of *Cil-Hendre* in the County of *Salop*, Land Surveyor, and his Successors to be elected in Manner herein-after mentioned, and that he and his Successors shall be, and he is hereby appointed the Commissioner for dividing, allotting, setting out, and inclosing the said Commons or Waste Lands, and for putting in Execution the several Powers and Authorities herein-after mentioned, but subject to the Rules, Orders, and Regulations of the said recited Act (except in such Cases where the same are hereby varied or altered).

Commissioners.

For appointing new Commissioners.

II. And be it further enacted, That if the said *Josiah Boydell*, or any Commissioner or Commissioners to be appointed by virtue of this present Clause, shall die, refuse or neglect to act, or be rendered incapable of acting before the Execution of the several Powers and Authorities in him vested, then and in such Case, and as often as such Event shall happen, the major Part in Value of the several Persons respectively entitled to or interested in the said Lands and Grounds within the said Township of *Kelsal* (assembled at a Meeting for that Purpose by any Two or more of such Proprietors, within Twenty-one Days next after such Death, Refusal, Neglect, or Incapacity as aforesaid shall happen), shall and may, by any Writing under their Hands, nominate and appoint a fit and proper Person (not interested in the said intended Division and Inclosure) to be a Commissioner in the Room of the said *Josiah Boydell*, or of any Commissioner or Commissioners succeeding him, of which said Meeting Ten Days previous Notice shall be given by Writing to be affixed on the principal outer Door of the Parish Church of *Tarvin* aforesaid, and to be inserted in One of the *Chester* Newspapers, in case any such shall be then printed, or if not, then in some other Newspaper circulated in the said County of *Chester*; and every Commissioner, so to be elected and appointed, shall have the like Power and Authority to act in the Execution of the said recited Act and this Act, as if he or they had been named and appointed a Commissioner or Commissioners in and by this Act.

For making a Survey and Valuation.

III. And be it further enacted, That a Survey, Admeasurement, and Valuation of the Lands and Grounds to be divided and inclosed, and also of all the Messuages, Cottages, Orchards, Gardens, Homesteads, ancient inclosed Lands or Grounds, and Open or Town Fields within the said Township of *Kelsal*, shall be made and signed by the said Commissioner in the Manner directed by the said recited Act, and left at the *Globe* Inn at *Kelsal* aforesaid, for the Space of Twenty-one Days, for the Inspection and Examination of all Persons interested therein, and that such Notice as herein-before is mentioned for the Election of a new Commissioner or Commissioners, shall be given of such Survey, Admeasurement, and Valuation being left as aforesaid; and if any Person or Persons shall think himself, herself, or themselves aggrieved by any Part of such Survey, Admeasurement,

ſurement, and Valuation, then and in every ſuch Caſe he, ſhe, or they may appeal to *John Maughan* of *Hitchin* in the County of *Hertford*, *Thomas Highfield* of *Bank* near *Tarporley* in the ſaid County of *Cheſter*, and *John Foſter* of *Oulton* in the ſame County, Land Surveyors, or the Survivors or Survivor of them, within Twenty-one Days next after ſuch Survey, Admeaſurement, and Valuation ſhall be left as aforeſaid, every ſuch Appellant or Appellants giving Notice in Writing to any One of the ſaid Referees perſonally, or by leaving ſuch Notice at his uſual Place of Abode, of his, her, or their Intention of appealing, to the ſaid Referees, which Notice ſhall ſpecify the Grounds of ſuch Appeal, and the Reaſons of his, her, or their being diſſatisfied with the Survey, Admeaſurement, or Valuation ſo appealed againſt; and the ſaid *John Maughan*, *Thomas Highfield*, and *John Foſter*, and the Survivors and Survivor of them, are and is hereby empowered and required to meet at the *Globe* Inn in *Kelſal* aforeſaid, within Two Months next after the Receipt of ſuch Notice, to hear and determine the Matter of every ſuch Appeal, and to make ſuch Order and Orders therein as to them ſhall ſeem reaſonable, a Copy of which Order or Orders the ſaid Referees, or the Survivors or Survivor of them, are or is to ſerve or cauſe to be ſerved perſonally on the Party or Parties appealing, or to be left at his, her, or their uſual Place or Places of Abode, and ſuch Order or Orders, when ſo made and ſerved, ſhall be final and concluſive on the Parties; and in order to prevent frivolous and vexatious Appeals, in caſe any ſuch Appeal, ſo made as aforeſaid, ſhall appear to the ſaid *John Maughan*, *Thomas Highfield*, and *John Foſter*, or the Survivors or Survivor of them, to be groundleſs and without Foundation, it ſhall and may be lawful to and for the ſaid *John Maughan*, *Thomas Highfield*, and *John Foſter*, or the Survivor or Survivors of them, to award the Coſts of and reaſonable Expences attending ſuch Appeal to be paid by the Appellant or Appellants, to ſuch Perſon or Perſons as the ſaid Referees, or the Survivors or Survivor of them ſhall appoint, within Seven Days next after ſuch their Award ſhall be made; and in caſe of Nonpayment, the ſaid Referees, and the Survivors and Survivor of them, are and is hereby authorized and empowered to iſſue their Order and Warrant to ſuch Perſon or Perſons as they or he ſhall think fit, to levy or cauſe the ſame Coſts and reaſonable Expences to be levied by Diſtreſs and Sale of the Goods and Chattels of the Party or Parties ordered and made liable to pay the ſame, in ſuch Manner and at ſuch Times as the ſaid Referees, or the Survivors or Survivor of them ſhall appoint in and by ſuch their Order and Warrant, rendering the Overplus (if any) upon Demand, to the Owner or Owners of ſuch Goods and Chattels, after deducting the reaſonable Coſts and Charges of every ſuch Levy, Diſtreſs, and Sale.

Oath to be taken by Referees.

IV. Provided always, and be it further enacted, That none of the ſaid Referees ſhall be capable of acting as a Referee in the Execution of this Act, until he ſhall have taken and ſubſcribed an Oath in the Words or to the Effect following; that is to ſay,

"I Do ſwear, That I will faithfully, impartially, and honeſtly, according "to the beſt of my Skill and Judgement, execute and perform the ſeve- "ral Powers and Authorities veſted and repoſed in me as a Referee, by "virtue of an Act paſſed in the Forty-ninth Year of the Reign of His "Majeſty King *George* the Third, intituled, [*here inſert the Title of this Act*] "according

'according to Equity and good Conſcience, and without Favour or Affec-
'tion, Prejudice or Partiality, to any Perſon or Perſons whomſoever.
'So help me GOD.'

Which Oath the ſaid Commiſſioner and his Succeſſors is and are hereby empowered and required to adminiſter.

Commiſſioners to give Notice of Sittings.

V. And be it further enacted, That the ſaid *Joſiah Boydell* and his Succeſſors ſhall give or cauſe public Notice to be given by Writing to be affixed on the principal outer Door of the ſaid Pariſh Church of *Tarvin* aforeſaid, and inſerted in One of the *Cheſter* Newſpapers, in caſe any ſuch ſhall be printed, and if not, then in any other Newſpaper circulated in the ſaid County of *Cheſter*, of the Time and Place of his Firſt and every ſubſequent Sitting or Attendance to be held for the Execution of this or the ſaid recited Act, at leaſt Ten Days before ſuch Sitting or Attendance (Sittings or Attendances by Adjournment only excepted), and all which Meetings are to be held at the *Globe* Inn in *Kelſal* aforeſaid, or within Eight Miles thereof; and in caſe the ſaid Commiſſioner ſhall not be preſent at the Time and Place to be appointed for ſuch Meeting, then and in ſuch Caſe it ſhall be lawful for the Perſon who ſhall act as Clerk to the ſaid Commiſſioner to adjourn the ſame to any future Day not exceeding Fourteen Days from the Day of Adjournment; and ſuch Clerk ſhall give Notice of ſuch Adjournment to the ſaid Commiſſioner.

Other Notices are to be given.

VI. Provided always, and be it further enacted, That all other Notices neceſſary or requiſite to be made and given by the ſaid Commiſſioner or his Succeſſor, ſhall be ſo made and given by Advertiſement to be inſerted in One of the ſaid *Cheſter* Newſpapers, or in caſe the ſame ſhall not then be publiſhed, then in ſome other Newſpaper circulated in the ſaid County of *Cheſter*.

Differences to be ſettled by the Commiſſioner.

VII. And be it further enacted, That if any Difference or Diſpute ſhall ariſe between any of the Parties intereſted or claiming to be intereſted in the ſaid Commons or Waſte Lands, or any of them, touching or concerning the reſpective Rights and Intereſts which they or any of them ſhall have or claim to have, in, upon, or over the ſame Commons or Waſte Lands, or any Part thereof, or touching or concerning any other Matter or Thing relating to the ſaid Diviſion, Allotment, or Incloſure, it ſhall be lawful for the ſaid Commiſſioner and his Succeſſors to examine into, hear, and determine the ſame: Provided always, that nothing in this Act contained ſhall authorize ſuch Commiſſioner to determine the Title to any Meſſuages, Cottages, Lands, Tenements, or Hereditaments whatſoever.

Commiſſioner not to determine the Title to any Meſſuages or Hereditaments.

Power to award Coſts.

VIII. And be it further enacted, That if the ſaid Commiſſioner or his Succeſſors, upon the Hearing and Determination of any ſuch Claim or Claims, Objection or Objections to be delivered to him or them in purſuance of this or the ſaid recited Act, ſhall ſee Cauſe to award any Coſts, it ſhall be lawful for ſuch Commiſſioner and his Succeſſors, and he and they is and are hereby empowered, upon Application made to him or them for that Purpoſe, to ſettle, aſſeſs, and award ſuch Coſts and Charges as he or they ſhall think reaſonable to be paid to the Party or Parties in whoſe Favour ſuch Determination ſhall be made, by the Perſon or Perſons whoſe

Claim or Claims, Objection or Objections shall be thereby disallowed; and in case the Person or Persons liable to pay such Costs and Charges shall neglect or refuse to pay the same on Demand, then and in such Case it shall be lawful for the said Commissioner or his Successors, having assessed and awarded the same, and he and they is and are hereby authorized and required, by Warrant under his or their Hand or Hands, directed to any Person or Persons whomsoever, to cause such Costs and Charges to be levied, by Distress and Sale of the Goods and Chattels of the Person or Persons so neglecting or refusing to pay the same, rendering the Overplus (if any) upon Demand, to the Person or Persons whose Goods and Chattels shall have been so distrained and sold, after deducting the Costs and Charges attending such Distress and Sale.

Allowing Parties dissatisfied with the Determination of the Commissioner to try their Rights at Law.

IX. Provided always, and be it further enacted, That in case any Person or Persons interested or claiming to be interested in the said intended Division and Inclosure, shall be dissatisfied with the Determination of the said Commissioner or of his Successors, touching or concerning any Right of Common, or other Rights or Interests in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, then and in every such Case it shall be lawful for the Person or Persons so dissatisfied to proceed to a Trial at Law of the Matter so determined by the said Commissioner or his Successors, at the then next Assizes to be holden in and for the said County Palatine of *Chester*, in case the same shall not be holden within Three Calendar Months next after such Determination, but if the next Assizes for the said County shall be holden within Three Calendar Months next after such Determination, then at the following Assizes to be holden in and for the same County; and for that Purpose the Person or Persons who shall be so dissatisfied with the Determination of the said Commissioner or his Successors, shall, within Two Calendar Months after such Determination, give Notice in Writing to the said Commissioner or his Successors, of his, her, or their being so dissatisfied, and 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 Four Calendar Months next after such Determination of the said Commissioner or his Successors; 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 or 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, (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 or Verdicts which shall be given in such Action or Actions shall be final, binding, and conclusive upon all and every Person and Persons whomsoever, 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 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 and his Successors shall, and he and they is and 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, which Allowances or Disallowances shall be final and conclusive

upon all Parties: Provided always, that in caſe the Determination of ſuch Commiſſioner or his Succeſſors touching ſuch Right of Common, or other Rights or Intereſts in, over, or upon the Commons or Waſte Lands hereby directed to be divided, allotted, and incloſed, or any Part thereof, ſhall not be objected to, or being objected to, the Party or Parties objecting ſhall not cauſe ſuch Notice to be given, and Action at Law to be brought and proceeded in within the Time and in Manner herein for that Purpoſe appointed, ſuch Determination ſhall be final and concluſive upon all Parties.

If Perſons die Actions not to abate.

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

In Caſes of Deaths of Parties before Actions brought, the ſame to be carried on and defended in their Names.

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 herein-before limited for bringing ſuch Action or Actions, it ſhall be lawful for the Perſon or Perſons 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 of the ſaid Commiſſioner or his Succeſſors 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 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 and defend ſuch Action or Actions in the Name or Names of the Perſon or Perſons ſo dead, or in his, her, or their own Name or Names, and Proceedings ſhall be had therein in the ſame Manner as if ſuch Perſon or Perſons had been actually living; and the Rights of all Parties ſhall be equally bound and concluded by the Event of ſuch Action or Actions.

Perſons in Poſſeſſion not to be moleſted without due Courſe of Law.

XII. Provided alſo, and be it further enacted, That nothing in this Act contained ſhall extend to enable the ſaid Commiſſioner 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 or recovered from ſuch Perſon or Perſons by Ejectment, or other due Courſe of Law.

Allotment for ſupplying Materials for the Repair of Roads, &c.

XIII. And be it further enacted, That the ſaid Commiſſioner and his Succeſſors ſhall, and he and they is and are hereby authorized to ſet out and allot ſuch Pieces or Parcels of Waſte Land within the ſaid Townſhip of *Kelſal*, as to him or them ſhall ſeem proper, for the Purpoſe of getting Sand, Stone, Gravel, or other Materials from, for repairing the Highways and Roads in the Townſhip aforeſaid, and alſo for the Purpoſe of getting

getting Marl for the Improvement of the reſpective Allotments to be made under the Powers of this Act; and all Perſons whomſoever intereſted in the ſaid intended Diviſion and Incloſure ſhall uſe and have the Benefit of the Materials and Marl in ſuch Manner, and under ſuch Regulations, as the ſaid Commiſſioner or his Succeſſors ſhall direct and appoint.

Allotment to the Lord of the Soil of Longley Grounds.

XIV. And be it further enacted, That the ſaid Commiſſioner and ſuch other Perſon or Perſons as may ſucceed him in the Execution of this and the ſaid recited Act (after the public and private Roads and Allotments for Materials and Marl ſhall have been ſet out as aforeſaid), ſhall, and he and they is and are hereby required to ſet out, allot, and appoint unto and for the ſaid *John Arden*, his Heirs and Aſſigns, ſo much of the ſaid Waſte Land called *Longley*, hereby directed to be divided and incloſed, as in the Judgement of the ſaid Commiſſioner or his Succeſſors ſhall be equal in Value to One-fifteenth Part of the Whole of the ſaid Waſte Land called *Longley*, Quantity, Quality, and Situation conſidered, in lieu of the Rights and Intereſts of the ſaid *John Arden*, as Lord of the Soil thereof.

Allotment to the Lords of the Manor.

XV. And be it further enacted, That the ſaid Commiſſioner and his Succeſſors ſhall in the next Place (after the public and private Roads and Allotments for Materials and Marl ſhall be ſet out as aforeſaid) ſet out, allot, and appoint unto and for the ſaid *Other Archer* Earl of *Plymouth*, and *John Arden*, or the Perſon or Perſons who for the Time being ſhall be Lord or Lords of the ſaid Manor of *Kelſal*, ſo much and ſuch Part or Parts of the Remainder of the Commons or Waſte Lands hereby directed to be divided and incloſed (other than that Part called *Longley*), as in the Judgement of the ſaid Commiſſioner or his Succeſſors ſhall be equal in Value to One-fifteenth Part of the Whole of the ſaid Commons or Waſte Lands laſt-mentioned, in lieu of the Rights and Intereſts of them the ſaid Earl of *Plymouth* and *John Arden*, as joint Lords of the Manor of *Kelſal* aforeſaid, of, in, and to the Soil of the ſaid Commons or Waſte Lands laſt-mentioned, ſo to be divided and incloſed as aforeſaid.

Allotments of the Reſidue.

XVI. And be it further enacted, That the ſaid Commiſſioner and his Succeſſors ſhall ſet out, allot, and appoint all the Reſt, Reſidue, and Remainder of the ſaid Commons or Waſte Lands, by this Act directed to be divided and incloſed (including the Reſidue of *Longley*), unto and amongſt the ſeveral and reſpective Perſons who at the Time of making ſuch Allotments ſhall be entitled to any Eſtate, Property, Common Right, or other Intereſt therein, in proportion to the Value of their ſeveral and reſpective ancient Homeſteads and Lands within the ſaid Townſhip of *Kelſal*: Provided nevertheleſs, that it ſhall be lawful for the ſaid Commiſſioner and his Succeſſors, and he and they is and are hereby required to ſet out and allot unto the ſaid *John Arden* all the Stone Quarries in *Longley* aforeſaid, and a proper Part of the Land adjoining for the Convenience of working the ſame; and the Whole of his remaining Part or Share of and in the

ſaid

said Wastes in general, in that Part of the said Waste Land called *Longley*.

Commissioner to declare by his Award by whom Fences are to be made.

XVII. And be it further enacted, That the said Commissioner and his Successors shall, and he and they is and are hereby required by his and their Award, to direct and declare by whom the Fences between the several Allotments to be made and set out under and by virtue of this Act, shall be made, and by whom the same shall from henceforth be kept in Repair.

Expences to be raised by Assessment.

XVIII. And be it further enacted, That the Charges and Expence incident to and attending the obtaining and passing this Act, and of surveying, admeasuring, planning, dividing, and allotting the said Commons or Waste Lands as aforesaid, and of planning, forming, and completing the necessary Roads in, through, and over the same, and of stopping up and diverting any of the Roads and Ways through and over the Lands and Grounds hereby directed to be divided and inclosed, and of setting out and appointing other convenient Roads and Ways in lieu thereof, and of preparing and depositing the Award of the said Commissioner, and all other the necessary Charges of the said Commissioner and his Successors, and of every other Person employed by him or them in and about the Execution of this Act, shall be borne, defrayed, and paid by the respective Persons to whom Allotments shall be made under or by virtue of this Act, and be levied and raised by a Rate or Assessment upon such Persons in proportion to the Value of their respective Allotments, such Proportions to be settled and ascertained by the said Commissioner and his Successors, and to be paid to such Person or Persons, and at such Time or Times, as the said Commissioner and his Successors shall order and direct; and in case any Person or Persons shall refuse or neglect to pay his, her, or their Share or Proportion of the said Rate or Assessment, then and in such Case the said Commissioner and his Successors is and are hereby empowered and required, by Warrant under his Hand and Seal, to cause the same to be levied, by Distress and Sale of the Goods and Chattels of the Owner or Owners, or of the Occupier or Occupiers of the Allotment or Allotments of the Person or Persons so refusing or neglecting to make any such Payment as aforesaid, together with the Charges of such Warrant, Distress, and Sale, rendering the Overplus (if any) to the Owner or Owners of such Goods and Chattels, upon Demand; and every Occupier or Tenant who shall make such Payment under such Distress, or otherwise, by the Order of the said Commissioner or of his Successors, is hereby authorized to deduct and retain out of his, her, or their then next Payment of Rent or Rents, so much Money as he, she, or they shall so pay on that Account.

Power to make Exchanges.

XIX. And be it further enacted, That it shall and may be lawful for the said Commissioner and his Successors to set out, allot, and award any Lands, Tenements, and Hereditaments whatsoever, within the said Township of *Kelsal*, as well ancient Lands as those intended to be divided, allotted, and inclosed, in lieu of and in Exchange for any other Lands, Tenements, and Hereditaments whatsoever, within the same Township,

or within the ſaid Pariſh of *Tarvin*, 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 or his Succeſſors, and be made with the Conſent of the Owner or Owners, Proprietor or Proprietors of the Lands, Tenements, or Hereditaments which ſhall be ſo exchanged, whether ſuch Owner or Owners, Proprietor or Proprietors, 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 a Life or Lives, or with the Conſent of the Guardians, Truſtees, Feoffees for charitable or other Purpoſes, Huſbands, Committees, or Attornies of or acting for any ſuch Owner or Owners, Proprietor 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 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 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 or Hereditaments, held in Right of any Church, 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, or Hereditaments, ſo to be exchanged, ſhall lie and be ſituate.

Expences of Exchanges to be paid by the Perſons making the ſame.

XX. Provided always, and be it further enacted, That all Coſts, Charges, and Expences, attending the making and completing any Exchanges and Partitions which may be made by virtue of this or the ſaid recited Act, ſhall be borne, paid, and defrayed by the reſpective Parties making ſuch Exchanges or Partitions, diſtinct and apart from the other Expences attending the Execution of this Act, in ſuch Proportions and Manner as the ſaid Commiſſioner and his Succeſſors ſhall order and direct.

Encroachments.

XXI. And be it further enacted, That all Encroachments which have been made on the Waſte or other Lands that have been incloſed at any Time within Twenty-one Years from the paſſing of this Act, and which ſhall have been Part of the ſaid reſpective Commons and Waſte Lands, ſhall be deemed Part thereof, and ſhall be divided and allotted accordingly; and in caſe any Diſpute or Difference ſhall ariſe touching any ſuch Encroachments, or the Extent thereof, ſuch Diſpute ſhall be determined by the ſaid Commiſſioner or his Succeſſors.

Old Roads may be ſtopped up.

XXII. And be it further enacted, That it ſhall be lawful for the ſaid Commiſſioner and his Succeſſors, with the Concurrence and Order of Two

Two Juſtices of the Peace acting in and for the ſaid County, ſubject to Appeal as in the ſaid recited Act mentioned, to divert, ſtop up, diſcontinue, alter, or change any old public Carriage or private Roads or Footways leading into, through, over, or upon the ſaid Commons or Waſte Lands, as to them ſhall appear uſeleſs and unneceſſary; and that ſuch public Carriage Roads only that ſhall be ſo ſtopped up and diſcontinued, ſhall be deemed Part of the Lands and Grounds by this Act directed to be divided, allotted, and incloſed, and ſhall and may be ſold, divided, and incloſed, purſuant to this Act.

In caſe any Perſon ſhall ſell his Right in the Lands to be incloſed, the Allotment to be ſet out to the Purchaſer.

XXIII. And be it further enacted, That if any Perſon or Perſons hath or have ſold, or contracted or agreed to ſell, or ſhall at any Time before the Execution of the Award of the ſaid Commiſſioner or his Succeſſors, ſell or contract, or agree to ſell his, her, or their Right, Intereſt, and Property in the ſaid Lands or Grounds, or any Part thereof, or his, her, or their Allotment or Allotments to any Perſon or Perſons, then and in every ſuch Caſe it ſhall be lawful for the ſaid Commiſſioner and his Succeſſors, and he and they is and are hereby authorized and required to make an Allotment of Land unto the Vendee or Purchaſer, Vendees or Purchaſers in every ſuch Sale, Contract, or Agreement, or to his, her, or their Heirs or Aſſigns, for and in reſpect of ſuch Right, Intereſt, and Property ſo ſold, or contracted and agreed to be ſold as aforeſaid; or if ſuch Allotment or Allotments ſhall have been already made, to award the ſame to ſuch Vendee or Purchaſer, Vendees or Purchaſers, his, her, or their Heirs or Aſſigns; and every ſuch Vendee or Vendees, Purchaſer or Purchaſers, his, her, and their Heirs and Aſſigns, ſhall and may, from and after the Execution of the ſaid Award, hold and enjoy the Lands ſo to be allotted to him, her, or them as aforeſaid, in the ſame Manner to all Intents and Purpoſes as the Vendor or Vendors in every ſuch Sale, Contract, or Agreement, might, could, or ought to have held and enjoyed the ſame in caſe ſuch Sale, Contract, or Agreement had not been made, or ſuch Rights, Intereſt, or Property had remained veſted in ſuch Vendor or Vendors as aforeſaid.

Directing where the Award ſhall be depoſited.

XXIV. And be it further enacted, That the Award directed by the ſaid recited Act to be made by the ſaid Commiſſioner and his Succeſſors, ſhall within Twelve Calendar Months next after the Execution thereof, together with a reduced Map or Plan of the ſaid Commons or Waſte Lands hereby directed to be divided, allotted, and incloſed, in the State in which the ſame will be after they ſhall have been ſo divided and allotted as aforeſaid, to be annexed to ſuch Award, ſhall be delivered to and depoſited with the Clerk of the Peace for the ſaid County Palatine of *Cheſter* for the Time being, who is hereby required to receive and depoſit the ſame among the Records of the ſame County, upon being paid the Sum of One Guinea as a Fee for ſo doing; and the ſaid Clerk of the Peace for the Time being, or his Deputy, ſhall at all reaſonable Times permit the ſame to be inſpected by any Perſon or Perſons, from Time to Time, ſuch Perſon or Perſons reſpectively paying to the ſaid Clerk of he

Peace or his Deputy, for ſuch Inſpection, the Sum of One Shilling and no more.

XXV. 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 carrying the ſame into Execution, every ſuch Perſon ſhall be repaid ſuch Money, with Intereſt for the ſame in the mean Time, after the Rate of Five Pounds *per Centum per Annum*, out of the firſt Monies to be raiſed for effecting the Purpoſes of this Act. Perſons advancing Money to be repaid with Intereſt.

XXVI. Provided always, and be it further enacted, That nothing in this Act contained ſhall extend to revoke, make void, alter, or annul any Will or Settlement, or to prejudice any Perſon or Perſons having or claiming any Right or Claim of Jointure, Dower, Portion, or Incumbrances, out of, upon, or affecting the Lands or Grounds to be divided, allotted, and incloſed, in purſuance of this Act, or which ſhall be exchanged by virtue of this or the ſaid recited Act; but that the ſeveral Lands or Grounds, ſo to be allotted or given in Exchange as aforeſaid, ſhall from thenceforth be, remain, and enure, and the ſeveral Perſons to whom the ſame ſhall be allotted or given in Exchange as aforeſaid, ſhall ſtand and be ſeiſed thereof, to and for the ſame Uſes, Truſts, and Eſtates, and ſubject to the ſame Wills, Settlements, Remainders, Charges, and Incumbrances, as the ſeveral Lands, Tenements, and Hereditaments, for or in reſpect of which or in lieu whereof ſuch Allotments or Exchanges ſhall be made as aforeſaid, would have been ſubject or liable to be charged with or affected by in caſe this Act had not been made. Wills and Settlements not to be affected.

XXVII. And be it further enacted, That no Leaſe or Leaſes affecting any of the Lands and Hereditaments in reſpect of which any Allotment or Allotments of the ſaid Lands and Grounds hereby directed to be divided and incloſed, ſhall be awarded by virtue of this Act, ſhall be made void, but that the ſame ſhall continue and remain in full Force and Effect, and that the Leſſee or Leſſees therein reſpectively ſhall have, hold, and, enjoy, all and every ſuch Allotment or Allotments ſo to be made by virtue of this Act, in reſpect of the ſeveral Lands and Hereditaments in their reſpective Occupations, for the Reſidue of their reſpective Terms or Intereſts then to come and unexpired in ſuch reſpective Leaſes, ſuch Leſſee or Leſſees paying a juſt and fair Proportion in reſpect of ſuch Leaſe or Leaſes of the Charges and Expences of obtaining and executing this Act, to be ſettled and adjuſted by the ſaid Commiſſioner or his Succeſſors, in proportion to their reſpective Intereſts therein; for which Purpoſe all Leſſees intending to take the Benefit of this Act, are required to produce to the ſaid Commiſſioner and his Succeſſors at the Time he, ſhe, or they ſhall make their Claim to any Allotment under this Act, the Leaſe or Agreement under which he, ſhe, or they may be entitled to claim ſuch Allotment, and to authenticate the Validity of ſuch Leaſe or Agreement, and the Exiſtence of any Life or Lives named therein: Provided always, that the ſaid Proprietors, their Attornies and Agents, and each and every of them, ſhall pay their own Expences when they, or any of them, ſhall attend the ſaid Commiſſioner and his Succeſſors at Commiſſioner not to make void Leaſes.

Proprietors, &c. to pay their own Expences at Sittings of the Commiſſioner.

at any of his or their Sittings or Attendances, in purſuance of this or the ſaid recited Act.

Commiſſioner to account.

XXVIII. 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 Day of the paſſing thereof) the ſaid Commiſſioner and his Succeſſors ſhall, and he and they is and are hereby required to make a true and juſt Statement of all Sums of Money by him or them received or expended, or due to him or them for his own Trouble and Expences in the Execution of this Act; and ſuch Statement or Account, when ſo made (together with the Vouchers relating thereto) ſhall be laid before any One or more of His Majeſty's Juſtices of the Peace for the Time being of the County Palatine of *Cheſter* (not intereſted in the ſaid intended Diviſion and Incloſure), to be by ſuch Juſtice or Juſtices examined and balanced, and ſuch Balance ſhall be by him or them ſtated in the Book of Accounts to be kept in the Office of the Clerk to the ſaid Commiſſioner or his Succeſſors; 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 or Juſtices.

Allowing an Appeal.

XXIX. And be it further enacted, That if any Perſon or Perſons ſhall think himſelf, herſelf, or themſelves aggrieved by any Thing done in purſuance of this or the ſaid recited Act (except in ſuch Caſes where the Orders or Determinations of the ſaid Commiſſioner and his Succeſſors, and of the ſaid Referees, are herein-before or by the ſaid recited Act declared to be final and concluſive, and alſo except in ſuch Caſe where an Iſſue at Law ſhall be tried as herein-before mentioned), he, ſhe, or they may appeal to the Great Seſſion or Aſſizes, or to any General Quarter Seſſion of the Peace which ſhall be holden in and for the ſaid County Palatine of *Cheſter*, within Four Calendar Months next after the Cauſe of Complaint ſhall have ariſen, every ſuch Appellant giving Ten Days previous Notice in Writing to the Party or Parties to be appealed againſt, of the Intention of bringing ſuch Appeal; and the Judges of Aſſize at ſuch Great Seſſions, or the Juſtices at their ſaid General Quarter Seſſions, are hereby empowered and required to hear and determine the Matter of every ſuch Appeal, and to make ſuch Order, and award ſuch Coſts as to them in their Diſcretion ſhall ſeem reaſonable, and by their Order or Warrant, to levy or cauſe to be levied the Coſts which ſhall be ſo awarded, by Diſtreſs and Sale of the Goods and Chattels of the Party or Parties ordered or made liable to pay the ſame, rendering the Overplus (if any) upon Demand, to the Owner or Owners of ſuch Goods and Chattels, after deducting the reaſonable Coſts and Expences of every ſuch Levy, Diſtreſs, and Sale; and every Order and Determination of the ſaid Judges, or of the ſaid Juſtices, upon ſuch Appeal, ſhall be final and concluſive upon 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 Judges, or to the ſaid Juſtices, to be frivolous, vexatious, and without Foundation, then the ſaid Judges of Aſſize or Juſtices ſhall award ſuch Coſts to be paid by the Appellant or Appellants as to them in their Diſcretion ſhall ſeem reaſonable;

reaſonable; and ſuch Coſts ſhall be levied and recovered in Manner aforeſaid.

To empower Tenants for Life, &c. to borrow Money.

XXX. And be it further enacted, That it ſhall be lawful for the ſeveral Owners and Proprietors for the Time being of any Allotment or Allotments to be made by virtue of this Act, being a Tenant or Tenants for Life or in Tail, or Leſſee or Leſſees for any Life or Lives, or for Years determinable upon any Life or Lives, and alſo to and for the Huſbands, Guardians, Truſtees, or Committees of any of the ſaid Owners or Proprietors being under Coverture, Minors, Idiots, Lunatics, or beyond the Seas, or labouring under any Diſability or Incapacity whatſoever, by any Deed or Deeds, Writing or Writings, under their reſpective Hands and Seals from Time to Time, to be duly executed in the Preſence of Two or more credible Witneſſes, to charge the ſpecific Parts and Parcels of the ſaid Commons or Waſte Lands, which ſhall be ſo aſſigned and allotted to them as aforeſaid in purſuance of this Act, with any Sum or Sums of Money not exceeding Five Pounds for each and every Statute Acre thereof, to be applied and diſpoſed of towards the Expence of fencing and improving the Allotment or Allotments ſo to be charged therewith, and which ſaid Charge ſhall be binding on every ſucceſſive Owner and Proprietor of ſuch Allotment or Allotments ſo as aforeſaid charged; and for ſecuring the Repayment of ſuch Sum or Sums of Money, with Intereſt, it ſhall be lawful for ſuch Owner or Owners, Proprietor or Proprietors as aforeſaid, to grant, mortgage, or demiſe his, her, or their ſpecific Allotment or Allotments unto ſuch Perſon or Perſons as ſhall advance and lend ſuch Money, and to his, her, or their reſpective Executors, Adminiſtrators, and Aſſigns, for any Term or Number of Years, ſo as every ſuch Grant, Demiſe, or Mortgage, be made with a Proviſo for Redemption of the Premiſes comprized in ſuch Grant, or Mortgage, on Payment by the Owners or Proprietors of ſuch Premiſes for the Time being of ſuch Sum and Sums of Money, and all Intereſt thereon, as ſhall in ſuch Grant, Mortgage, or Demiſe appear to have been advanced; and ſo that in every ſuch Grant, Demiſe, or Mortgage, there be contained a Covenant, that the Owner or Proprietor of the Allotment or Allotments ſo charged ſhall pay and keep down the Intereſt of the Money thereby ſecured, during his, her, or their Life or reſpective Lives, in ſuch Way and Manner that no Perſon or Perſons, afterwards becoming poſſeſſed of the Premiſes ſo charged, ſhall be ſubject or liable to pay any further or longer Arrear of Intereſt than for One Year preceding the Time when the Title to ſuch Poſſeſſion ſhall accrue and commence.

General Saving.

XXXI. Saving always to the King's moſt Excellent Majeſty, His Heirs and Succeſſors, and to all and every other Perſon and Perſons, Bodies Politic and Corporate, his, her, and their reſpective Heirs, Succeſſors, Executors, and Adminiſtrators, all ſuch Eſtate, Right, Title, and Intereſt (other than and except ſuch as are intended to be barred and deſtroyed by this Act) as they, every, or any of them had or enjoyed, of, in, to, out of, or in reſpect of the Lands, Grounds, and Premiſes, ſo directed to be allotted, divided, and incloſed as aforeſaid, before the paſſing of this Act, or could or might have had or enjoyed in caſe the ſame had not been made.

This Act may be given in Evidence.

XXXII. 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. 1809.