ANNO QUINTO & SEXTO

VICTORIÆ REGINÆ.

****

Cap. 14.

An Act for inclosing Lands in the Parish of *Kilmington* in the County of *Devon*.

[22d *June* 1842.]

Lord of the Manor.

WHEREAS there are within the Parish of *Kilmington* in the County of *Devon* certain Commons and Waste Lands, containing Three hundred and eleven Acres, or thereabouts: And whereas *William Tucker* Esquire is, or claims to be, Lord of the Manor of *Kilmington* in the said Parish of *Kilmington*, and as such is, or claims to be, entitled to the Soil of all the Waste Lands in the said Manor, but he relinquishes all Claim to any Portion of the Commons or Waste Lands in lieu of his Right to the Soil of the same: And whereas the said *William Tucker* and divers other Persons are, or claim to be, entitled to Rights of Common, and other Rights and Interests, in, over, and upon the same Commons and Waste Lands, as appendant, appurtenant, or belonging to their inclosed Lands and Tenements within the said Parish: And whereas the said Commons and Waste Lands are, in their present State, of little Value, and it would be advantageous if the same, except such Parts as are after mentioned, were divided and inclosed, and specific Parts thereof allotted unto and amongst the several Persons interested therein, according to their respective Rights and Interests therein,

to be held in Severalty, and all Rights of Common therein extinguished; but the Purposes aforesaid cannot be effected without the Aid and Authority of Parliament: And whereas an Act was passed in the Forty-first Year of the Reign of His Majesty King *George* the Third, 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 another Act was passed in the Second Year of the Reign of His late Majesty King *George* the Fourth, intituled *An Act to amend the Laws respecting the inclosing of Open Fields, Pastures, Moors, Commons, and Waste Lands in* England: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen'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 said Two recited Acts, passed respectively in the Forty-first Year of the Reign of King *George* the Third, and in the Second Year of the Reign of King *George* the Fourth, and the several Enactments and Provisions thereof, shall, from the passing of this Act, be deemed to be and shall be executed as Part of this Act, except in such Cases wherein the same are hereby respectively repealed or varied, or wherein the same shall be inapplicable to the Purposes of this Act.

41 G. 3. c. 109.

1 & 2 G. 4. c. 23.

Recited Inclosure Acts to form Part of this Act.

Appointment of Commissioner.

II. And be it enacted, That *William Dawson* of the City of *Exeter*, Land Surveyor, and his Successors for the Time being, to be elected or appointed in manner herein-after mentioned, shall be the Commissioner for carrying this Act and the said recited Acts into execution; and it shall be lawful for the said Commissioner and he is hereby required to divide, allot, and inclose the said Commons and Waste Lands in the said Parish, according to the Regulations and Provisions contained in the said recited Acts and this Act: Provided always, that no Person shall be capable of acting as such Commissioner (except in signing and giving Notice of the First Meeting of the Commissioner, and in receiving the Declaration herein-after directed,) until he shall have made and subscribed a Declaration in the Words or to the Effect set forth in Schedule (A.) to this Act; and such Declaration shall be in lieu of the Oath or Affirmation required by the said Act of the Forty-first Year of the Reign of King *George* the Third, to be taken and subscribed by Persons acting as Commissioners in the Execution of any Act for dividing, allotting, or inclosing any Lands or Grounds.

Qualification of Commissioner.

Penalty on Persons acting not qualified.

III. And be it enacted, That if any Person not having so qualified himself shall act as a Commissioner, he shall for every such Offence forfeit the Sum of Fifty Pounds, with full Costs of Suit, to any Person who shall sue for the same, by Action of Debt or on the Case, in any of Her Majesty's Courts of Record at *Westminster*.

Appointment of Commissioner on Vacancy.

IV. And be it enacted, That in case the said *William Dawson*, or any Person to be appointed a Commissioner in his Room by virtue of this Act, shall die, or become incapacitated, or neglect or refuse for the Space of Two Months to act as such Commissioner, it shall

be

be lawful for the major Part in Value (such Value to be ascertained by the Land Tax Assessment for the Time being) of the several Persons who for the Time being shall respectively be interested in the Lands and Grounds hereby authorized to be inclosed, divided, and allotted, and then remaining uninclosed, and requiring to be divided, allotted, and inclosed, who shall attend either personally or by their respective Agents at any Meeting to be held for that Purpose, (of which Meeting Notice shall be given by some One or more of the Persons interested in the said Inclosure, by Advertisement, and also on the Church Door, as herein-after directed, at least Fourteen Days before such Meeting,) to appoint, by Writing under their Hands, some fit Person to be a Commissioner in the Room of the said *William Dawson*, or of the Commissioner appointed in his Place, and so from Time to Time as often as any such Commissioner shall die, neglect or refuse or become incapable to act.

Appointment of Surveyor.

V. And be it enacted, That it shall be lawful for the Commissioner from Time to Time, by Writing under his Hand, to appoint a fit Person to be a Surveyor for the Purposes of this Act, during the Pleasure of the Commissioner, and on every Vacancy in like Manner to appoint some other Surveyor as often as there shall be occasion: Provided always, that no Person shall act as such Surveyor until he shall have made and subscribed a Declaration in the Words or to the Effect set forth in Schedule (A.) to this Act, which Declaration it shall be lawful for any Commissioner for the Time being, or any Justice of the Peace for the said County, to administer and receive; and the said Declaration so made and subscribed shall be annexed to and deposited with the Award of the Commissioner.

Surveyor to make a Declaration.

Penalty on making false Declaration.

VI. And be it enacted, That if any Person shall falsely or corruptly make and subscribe a Declaration under the Authority of this Act, knowing the same to be untrue in any material Particular, he shall be guilty of a Misdemeanor.

Appointment of Clerk.

VII. And be it enacted, That it shall be lawful for the Commissioner to appoint a Clerk to assist him in carrying this Act into execution, and from Time to Time to remove such Clerk and to appoint another in his Stead.

No Party interested to be appointed a Commissioner, &c.

VIII. And be it enacted, That no Person shall be appointed or shall act as a Commissioner or Surveyor in execution of this Act who shall be interested in the Lands to be inclosed, or who shall be the Agent ordinarily intrusted with the Care, Superintendence, or Management of the Estate of any Person so interested.

Allowances to Commissioner and Clerk.

IX. And be it enacted, That the said Commissioner and the said Clerk shall be paid respectively out of the Inclosure Expences Fund, for each Day they shall respectively be engaged in any Business relating to the Execution of this Act, during the first Eighteen Months after the passing of this Act, the Sum of Three Pounds Three Shillings to the Commissioner, and the Sum of Two Pounds Two Shillings to the Clerk, for each Day they shall respectively be engaged as aforesaid; and after the Expiration of the said Eighteen Months

Months the Sum of Two Pounds Two Shillings *per* Day to the Commissioner, and of One Pound Eleven Shillings and Sixpence to the Clerk; and such Payment shall be in full Satisfaction to the Commissioner and Clerk respectively for their Time and Trouble, and for the several Expences incurred by them during their Attendance in the Execution of this Act, except the Expence of the Rooms in which the Meetings of the Commissioner shall be held, and the Expence of Appeals or other legal Proceedings against the Commissioner, and the Expence of Notices and Advertisements, and of preparing, proclaiming, and enrolling the Award, and such other like necessary legal Expences: Provided always, that it shall not be lawful for the Commissioner to retain or pay himself or the said Clerk, any Money on account of the before-mentioned Allowances respectively, beyond One Third of the Allowance to which they shall be respectively entitled, until after the Expiration of Six Calendar Months from the Day of the Date of the Award to be made in pursuance of this Act, or in case the Accounts of the Commissioner shall be appealed against, then not until such Appeal shall have been heard and decided.

Length of Day for estimating Allowances.

X. And be it enacted, That in computing the aforesaid Allowance to the Commissioner and Clerk a Day shall be deemed to consist of Eight Hours during the Period between the Twenty-fifth Day of *March* and the Twenty-ninth Day of *September*, and Six Hours during the Period between the Twenty-ninth Day of *September* and the Twenty-fifth Day of *March*; and where the Time occupied in going to and attending at and returning from any Meeting to be holden, or on other Business to be transacted under the Provisions of this Act, shall be of less Duration than Eight Hours in the First of the Periods aforesaid, or of Six Hours in the Second Period, the same shall be charged as only Half a Day, and the Commissioner and Clerk shall be paid accordingly; and a Book shall be kept by the said Commissioner or his Clerk, in which shall be entered the several Days on which the said Commissioner shall hold the Meetings, and at what Hour the said Commissioner arrived thereat, and at what Hour he left or adjourned the same; and such Book shall be signed by the said Commissioner at the Termination of each Meeting, and shall be open to the Inspection of all Persons interested in the said Inclosure, their Agents or Attornies, during the several Meetings to be held in pursuance of this Act; and all such Persons may then and there take Copies of or Extracts from such Books without paying any thing for the same, and such Book shall be produced as a Voucher on the Examination and Allowance of the Accounts of the said Commissioner as herein-after mentioned.

Surveyor's Allowance.

XI. And be it enacted, That the Person for the Time being employed as a Surveyor for the Purposes of this Act shall be entitled to receive, and the Commissioner is hereby authorized, out of the Inclosure Expences Fund, to allow to such Surveyor for his Time and Trouble any Sum not exceeding One Shilling and Sixpence *per* Acre for surveying, measuring, mapping, and planning the said Commons, Commonable Lands, and Waste Grounds, and any other Lands or Grounds which he shall so survey, measure, map, or plan for the

the Execution of this Act, or any Sum not exceeding Three Pounds and Three Shillings for each and every Day he shall be actually and wholly employed as a Surveyor for the Purposes of this Act.

Old Survey of Waste Lands may be used.

XII. And be it enacted, That it shall be lawful for the Commissioner to adopt and make use of any Survey, Admeasurement, or Plan already made of the Lands to be inclosed, or of any Part thereof respectively, without causing a new Survey, Admeasurement, or Plan to be made thereof.

Meetings and Notices thereof.

XIII. And be it enacted, That the Commissioner shall cause Eight Days Notice to be given by Advertisement, or on the Church Door, of the Time and Place when and where the First and every subsequent Meeting shall be held (Meetings by Adjournment only excepted), and he may from Time to Time adjourn any such Meetings; and if at the Time and Place appointed for any such Meeting the Commissioner shall not attend, it shall be lawful for the Clerk to adjourn such Meeting for not more than Twenty-one Days, to be held at the same Place, giving timely Notice thereof to the Commissioner: Provided always, that all Meetings of the Commissioner for executing this Act shall be held within the said Parish, or within Five Miles thereof.

Notices how to be given.

XIV. And be it enacted, That all Notices by this Act directed to be given by Advertisement shall be given by Advertisement to be inserted in some Newspaper or Newspapers printed or usually circulated in the said County; and all Notices directed to be given on the Church Door shall be by Writing, under the Hands of the Party giving such Notice, to be affixed on the principal outer Door of the Parish Church of *Kilmington* aforesaid, before Divine Service on *Sunday*; and all Notices necessary to be given by the Commissioner (the Mode of giving which is not hereby particularly directed) shall be by one of the Methods aforesaid; and all Notices so given shall be deemed sufficient Notices to all Persons concerning all Matters and Things to which such respective Notices shall relate, any thing in the first-recited Act to the contrary notwithstanding.

What sh all be a Refusal to act.

XV. And be it enacted, That if the Commissioner shall not attend the First or Second Meeting appointed to be held for putting this Act into execution, and qualify himself by making the Declaration in that Behalf prescribed, or if he shall, at any Time after having qualified himself as aforesaid, wilfully absent himself from any Two successive Meetings, the Times of such Meetings being known to him by his having been present at the Appointment of the first thereof, or by a Notice thereof in Writing, under the Hand of the Clerk of the Commissioner, having been given to him or left at his usual Place of Abode (such Commissioner not being prevented by Sickness or by other reasonable Cause), or if any Commissioner, to be hereafter elected or appointed as aforesaid, shall not attend and qualify himself at the First or Second Meeting to be held after his Appointment, or shall, after having qualified himself as aforesaid, wilfully absent himself in manner aforesaid after such Notice, and

without Cause of Excuse as aforesaid, every such Absence or Non-attendance shall be deemed to be a Refusal to act.

Persons summoned by the Commissioner and refusing to give Evidence punishable.

XVI. And be it enacted, That if any Person, having been summoned to testify the Truth upon Oath, touching any Matter relating to the Execution of this Act, and having been paid or tendered a sufficient Sum of Money, to be ascertained by the Commissioner, to defray the Charges of his Attendance, shall not appear before the Commissioner pursuant to such Summons, without assigning some reasonable Excuse for not appearing, or appearing shall refuse to be sworn or to give Evidence touching the Premises, it shall be lawful for the Commissioner, upon Proof of such Summons and Tender made before him upon Oath (which Oath he may administer), by Warrant directed to any Person whomsoever, to cause any Sum of Money not exceeding Ten Pounds to be levied by Distress upon the Person so neglecting or refusing to give Evidence; and the Money so to be levied as aforesaid shall be considered as Part of the Inclosure Expences Fund, and shall be applied accordingly.

For regulating Distresses.

XVII. And be it enacted, That when in this Act any Sum of Money, whether in the Nature of Penalty or otherwise, shall be directed to be levied by Distress, such Sum of Money shall be levied by Distress and Sale of the Goods and Chattels of the Party liable to pay the same; and the surplus Monies arising from such Sale, after satisfying such Sum of Money, and the Costs and Expences attending the Distress and Sale, shall, on Demand, be rendered to the Party whose Goods and Chattels shall have been distrained.

Proceedings to be entered in a Book.

XVIII. And be it enacted, That all the Orders, Proceedings, and Determinations of the Commissioner, at any Meeting to be held in pursuance of this Act, shall be entered in a Book to be provided for that Purpose, and shall be signed by the Commissioner, and being so signed shall be deemed to be Originals; and all such Books shall be deposited with and kept by the Clerk to the Commissioner, and may be read as Evidence in all Cases of Appeals, Suits, Actions, and other Proceedings touching any thing done in relation to this Act.

Proprietors to pay their own Expences at Meetings.

XIX. Provided always, and be it enacted, That the several Persons interested in the said Inclosure, and their respective Agents, shall pay their own Expences whenever they shall attend any of the Meetings to be held in pursuance of this Act.

Debts to be paid and Accounts to be audited.

XX. And be it enacted, That the Commissioner shall not at any Time permit any just Claim or Demand upon him as such Commissioner to remain unpaid for a longer Period than Three Months, and once at least in every Twelve Months during the Execution of this Act, and until the Account of the Commissioner shall be finally allowed (the first of such Periods to be computed from the Day of the passing hereof), he shall make out a true and accurate Account of all Sums of Money by him received and expended in the Execution of

of this Act, and of all Sums due to him for his own Trouble or Expences; and in such Account shall be particularly specified the several Items and Articles for which each particular Sum shall have been paid; and such Account, when so made out, together with the Vouchers relating thereto, shall be by the Commissioner laid before a Meeting of the Persons interested in the said Inclosure, and be by them examined, and shall then be laid before One or more of Her Majesty's Justices of the Peace acting for the said County, not interested in the Premises, to be by him or them examined and balanced.

Accounts to be published.

XXI. And be it enacted, That the Balance of such Account shall be by such Justice or Justices stated in the Book of Account to be kept in the Office of the Person acting as Clerk to the Commissioner, and an Abstract of such Account so examined and balanced shall, within Fourteen Days after the same shall have been so examined and balanced, be inserted in some Newspaper printed or usually circulated within the said County; and no Charge or Item in any such Account shall be binding on the Parties concerned, or be valid in Law, unless the same shall have been duly allowed by such Justice or Justices, nor until such Abstract thereof shall have been published in some such Newspaper as aforesaid, subject nevertheless to the Power of Appeal herein-after contained.

For shortening Boundaries.

XXII. And be it enacted, That for the Purpose of shortening or rendering straight any Boundary Fences between the Lands to be inclosed and the old inclosed Lands in the said Parish, or between such Allotments and inclosed Lands, or any of them, and any adjoining Lands, it shall be lawful for the Commissioner, with the Consent of the Lord of any Manor in which the Lands are situate, and of the Owners of any such adjoining Lands, testified by Writing under their respective Hands, or under the Common Seal of any of them (being a Corporation Aggregate), to set out and determine the Boundaries between the Lands to be inclosed and any adjoining Lands lying in the same or any adjoining Manor, as he shall judge proper for the Purposes aforesaid; and after such Boundaries shall have been so set out and determined as aforesaid the same shall be made, fenced, ditched, or mounded by such Person, in such Manner, and at such Times as the Commissioner shall direct, and shall for ever thereafter be deemed the Boundaries between the allotted and the old inclosed Lands respectively, or (as the Case may be) between the allotted or old inclosed Lands and such adjoining Lands.

Commissioner to set out Drains and enlarge and turn Watercourses

XXIII. And be it enacted, That it shall be lawful for the Commissioner to set out and make such common Ponds, Ditches, Watercourses, Tunnels, Banks, and Bridges of such Extent and Form, and in such Situations, as he shall deem necessary in the Lands to be inclosed, and also to enlarge, cleanse, or alter the Course of and improve any of the present Ditches or Watercourses, Banks or Bridges, as well in and over the same Lands, as also in any ancient Inclosures or other Lands within the said Parish, as the Commissioner shall deem necessary (making such Satisfaction to the Proprietors of such ancient Inclosures or Lands for the Damage done thereby as

the

the Commissioner shall think just); and the Expences of making and enlarging, altering and cleansing, such Ponds, Ditches, Watercourses, Tunnels, Banks, and Bridges, when the same shall be first done in pursuance of this Act (if not otherwise provided for), shall be raised by the Commissioner in the same Manner as the other Expences of carrying this Act into execution; but all such Ponds, Ditches, Watercourses, Tunnels, Banks, and Bridges shall at all Times afterwards be repaired, cleansed, and maintained by such Persons, and in such Manner, as the Commissioner shall by his Award direct: Provided that no Watercourse be diverted or turned without the Consent, in Writing, of the Persons from whose Lands the same may be diverted and of the Persons into whose Lands the same may be turned, or to the Prejudice of any Person interested in such Watercourse, except with his Consent in Writing.

Power to widen Roads.

XXIV. And be it enacted, That it shall be lawful for the Commissioner to widen any of the public Roads or Highways which may pass through or over the Lands to be inclosed, to any Extent he shall think fit, not exceeding Forty Feet, and for that Purpose to take a sufficient Quantity of the Commons and Waste Lands adjoining such Roads.

Power to stop up or divert Roads, &c.

XXV. And be it enacted, That in setting out the several public Carriage Roads, Highways, Bridle Roads, and Footpaths in pursuance of this Act, or of the first-recited Act, the Commissioner may, if he think it necessary or proper, with the Consent and under the Order in Writing of any Two Justices of the Peace for the County of *Devon*, discontinue, stop up, divert, or alter any of the Carriage Roads, Highways, Bridle Roads or Footpaths passing through any of the Lands to be inclosed within the said Parish, and the Soil of such of the Roads and Ways so to be discontinued and stopped up as pass through allottable Lands shall be deemed Part of the Lands to be inclosed: Provided always, that nothing herein contained shall authorize the altering or diverting of any Turnpike Road, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at a public Meeting called for that Purpose, on Ten Days Notice be first obtained.

Proceedings previously to stopping up and diverting Roads, &c.

XXVI. Provided always, and be it enacted, That before any public Carriage Road, Highway, Bridle Road, or Footpath shall be discontinued, diverted, stopped up, or altered by the Commissioner, or any such Order of Two Justices shall be made, the Commissioner shall cause to be affixed at each End of such public Carriage Road, Highway, Bridle Road, or Footpath, a Notice to the Effect that the same is intended to be discontinued, stopped up, diverted, or altered, as the Case may be, by the Commissioner; and the Commissioner shall also cause the same Notice to be given by Advertisement, for Four successive Weeks, and also on the Church Door on the Four *Sundays* of the said Four successive Weeks; and after the said several Notices shall have been so given, and after such Order as herein-before mentioned shall have been made, such public Carriage Road, Highway, Bridle Road, or Footpath shall be and be deemed to be discontinued, stopped up, diverted, or altered, as

the Case may be, subject however to such Appeal as is herein-after mentioned.

Appeal to the Quarter Sessions.

XXVII. Provided also, and be it enacted, That it shall be lawful for any Person who may think that he would be injured or aggrieved if any such Carriage Road, Highway, Bridle Road, or Footpath should be discontinued, stopped up, diverted, or altered, as the Case may be, within Four Months after the making of the said Order, to make his Complaint thereof by Appeal to the Justices of the Peace at the Quarter Sessions for the said County, upon giving to the Commissioner or his Clerk Ten Days Notice in Writing of such Appeal, together with a Statement in Writing of the Grounds thereof; but it shall not be lawful for the Appellant to be heard in support of such Appeal, unless such Notice and Statement shall have been given as aforesaid, nor on any Hearing of Appeal to go into Evidence of any other Grounds of Appeal than those set forth in such Statement as aforesaid.

In case of Appeal, Jury at Sessions to determine whether the Roads, &c. shall be discontinued.

XXVIII. And be it enacted, That in case of such Appeal the Justices at such Quarter Sessions shall, for the Purpose of determining whether such public Carriage Road, Highway, Bridle Road, or Footpath shall be discontinued, stopped up, diverted or altered, or whether the Party appealing would be thereby injured or aggrieved, impannel a Jury of Twelve disinterested Men out of the Persons returned to serve as Jurymen at such Quarter Sessions; and if, after hearing the Evidence produced before them, the said Jury shall return a Verdict that such public Carriage Road, Highway, Bridle Road, or Footpath is unnecessary, or may beneficially to the Public be discontinued, stopped up, diverted, or altered, and that the Party appearing would not be injured or aggrieved thereby, then the said Court shall dismiss such Appeal, and shall award the Costs of resisting the said Appeal to be paid by the Appellant to the Commissioner, and the same shall be recoverable in the same Manner as any Penalties or Forfeitures are recoverable under the said first-recited Act; but if the said Jury shall return a Verdict that such public Carriage Road, Highway, Bridle Road, or Footpath is not unnecessary, or that the same could not beneficially to the Public be so discontinued, stopped up, diverted, or altered, or that the Party appealing would be injured or aggrieved thereby, the said Court shall allow such Appeal, and such public Carriage Road, Highway, Bridle Road, or Footpath shall not be discontinued, stopped up, diverted, or altered, or in case the same shall have been discontinued, stopped up, diverted, or altered, the said Court shall make an Order for restoring the same to its original State, and shall award to the Appellant the Costs of prosecuting such Appeal, and such Costs shall be paid by the Commissioner out of the Inclosure Expences Fund.

Expences of discontinuing or widening Roads.

XXIX. And be it enacted, That the Expences attending the purchasing of the Soil of such Roads, or the stopping up, discontinuing, diverting, and altering of such Roads, and the Money Compensation in respect thereof, shall be paid out of the Inclosure Expences Fund.

Justices may declare any of the Carriage Roads completed.

XXX. And be it enacted, That when and so soon as Two or more of Her Majesty's Justices of the Peace for the said County shall certify any of the public Carriage Roads to be set out in pursuance of this Act to be sufficiently formed and completed, such Roads shall thenceforth be kept in repair by such Persons and in such Manner as the public Roads within the said Parish are or ought by Law to be kept in repair; and every such Certificate shall, at the Quarter Sessions of the Peace to be holden for the said County next after the Date thereof, be filed of Record by the Clerk of the Peace for the said County.

Commissioner to appoint private Roads.

XXXI. And be it enacted, That the Commissioner shall set out such private Roads, Bridleways, and Footpaths through the Lands to be inclosed as he shall think requisite, giving such Notice and subject to such Examination as is required by the said first-recited Act in the Case of public Roads; and any Expences which the Commissioner may think fit to incur prior to the Time of making his Award, relative to the setting out or the Formation or Completion of such private Roads, Bridleways, and Footpaths, or any of them, shall be paid out of the Inclosure Expences Funds; and the said private Roads, Bridleways, and Footpaths shall thereafter be maintained and kept in repair by and at the Expence of the Owners and Proprietors for the Time being of any of the Lands within the said Parish, in such Shares and Proportions, and in such Manner, as the Commissioner shall by his Award direct.

Commissioner empowered to suspend or extinguish Rights of Common.

XXXII. And be it enacted, That it shall be lawful for the Commissioner, at such Time as he shall think proper, and before the Execution of his Award, by Notice on the Church Door, to order all or any Part of the Rights of Sheepwalk, Common or other Rights, in or over the Lands to be inclosed, or any Part thereof, to be extinguished, or the Exercise thereof to be suspended during such Time as shall be expressed in such Notice, and from the Time mentioned in such Notice such Rights shall be extinguished or suspended accordingly.

Cattle depasturing in breach of the Commissioners Order to be distrained.

XXXIII. And be it enacted, That if, during the Suspension or after the Extinguishment of any such Rights of Sheepwalk, Common or other Rights as aforesaid, any Owner or Occupier of Land, or of any Commonable Messuage or Cottage, or the Site of any Commonable Messuage or Cottage, within the said Parish, or any other Person, shall permit his Cattle or Sheep to go or depasture upon any of the Lands over which such Rights shall be suspended or extinguished, it shall be lawful for the Commissioner, or any other Person by his Order (testified in Writing under his Hand), and also for any other of the said Owners or Occupiers, to distrain such Cattle or Sheep being upon such Lands or Grounds contrary to such Order, and to impound the same until the Person so offending shall pay to the Person so distraining such Sum of Money as the Commissioner shall, by Writing under his Hand, to be delivered to or left at the Place of Abode of the Person whose Cattle or Sheep shall be so distrained, have previously ordered, not exceeding Ten Shillings for each Head of Cattle, and Five Shillings for each Sheep so distrained; and in case the same shall not be paid within Seven Days after the Delivery of

such Writing, the Commissioner is hereby authorized, upon Proof of such Offence having been committed, and of Nonpayment of the Penalty hereby imposed, to cause the Cattle or Sheep so distrained or impounded, or such of them as he shall think necessary, or any other Goods or Chattels of the Person so offending, to be sold for raising and paying the Penalty aforesaid, together with the Costs and Charges attending such Distress, rendering the Surplus (if any) to the Owner of such Cattle or Sheep.

Claims to be delivered to the Commissioner.

XXXIV. And be it enacted, That all Persons claiming any Interest in any of the Lands to be inclosed shall deliver their respective Claims, in Writing under their Hands, or the Hands of their Agents, unto the Commissioner, at the Meetings to be held for that Purpose, stating the several Particulars in respect whereof such Claims are made, and distinguishing Freehold, Copyhold, and Leasehold Property from each other, and the Manors in which they are situate; and no such Claim shall be received by the Commissioner after the last Meeting to be held for that Purpose, of which due Notice shall have been given and so expressed therein, except for some special Cause to be allowed by the Commissioner.

Adjudication upon Claims.

XXXV. And be it enacted, That after the said Claims shall be so received, the Commissioner shall cause Notice on the Church Door to be given of a Time (at least Ten Days distant) and a Place for all Parties concerned to appear before him, and show Cause for or against the Allowance or Disallowance of the said Claims; and at such Meeting the Commissioner shall proceed to examine into and determine the same, and shall make such Order therein as to him shall appear just; and in case any Doubts or Difficulties shall arise respecting such Claims, or any Difference shall happen between any of the said Proprietors touching their respective Rights or Claims, or touching the respective Shares which they ought to have in the Allotments, the Commissioner shall, by Examination of Witnesses upon Oath (which Oath the said Commissioner is hereby empowered to administer), and by such other Evidence as to him shall seem proper, hear and determine the same, and shall make such Order therein as to the Commissioner shall appear just, which Order shall be final, unless any Party shall be dissatisfied with the Determination of the Commissioner, and shall proceed to try his Rights by an Issue at Law as herein-after mentioned.

Commissioners not to determine Titles contrary to Possession.

XXXVI. And be it enacted, That this Act shall not authorize the Commissioner to determine the Title to any Lands, or to determine any Right between any Parties contrary to the actual Possession of such Parties (except in respect of Encroachments as herein-after mentioned), but in case the Commissioner shall be of opinion against the Rights of the Party in possession he shall forbear to make any Determination thereon until the Possession shall have been given up by such Party, or recovered from him by due Course of Law.

Parties dissatisfied may try their Rights at Law.

XXXVII. And be it enacted, That if any Person claiming to be interested in the said Inclosure shall be dissatisfied with any Determination of the Commissioner concerning any Claim, or any Right or

or Interest in or to the Lands to be inclosed, or concerning any Objection to such Claim, it shall be lawful for such Person to bring an Action upon a feigned Issue against the Person in whose Favour such Determination shall have been made, within Three Calendar Months next after such Determination shall have been notified in Writing to the Person against whom such Determination shall have been made, or to his known Agent, and thereupon the Person so dissatisfied may proceed to a Trial at Law at the then next Assizes, or at the Assizes immediately following such next Assizes, which may be holden for the said County after such Action shall have been commenced; and the Defendant in such Action shall, upon being served with the usual Process therein, appear and plead thereto, or file Common Bail, and accept One or more Issue or Issues, whereby such Claim, and the Right and Interest thereby insisted on, may be tried and determined (such Issues to be settled by the proper Officer of the Court in which such Action shall be commenced, in case the Parties differ); and the Verdict given upon the Trial of such Action shall be binding and conclusive upon all the Parties thereto, unless the Court shall set aside such Verdict, and order a new Trial to be had; and after such Verdict shall be given, and final Judgment obtained thereon, the Commissioners shall act in conformity thereto, and allow or disallow the Claim thereby determined, according to the event of such Trial, and the Costs attending any such Action shall abide the event of the Trial.

If no Action brought, Determination of Commissioner final.

XXXVIII. Provided always, and be it enacted, That if no such Action shall be commenced, or if the Plaintiff therein shall not proceed to Trial, within the Time herein-before limited for that Purpose, (unless the Court for sufficient Cause put off such Trial,) the Determination of the Commissioners shall be final.

Deaths of Parties not to abate Proceedings in case Parties die before Action brought.

XXXIX. And be it enacted, That if any Person, Plaintiff or Defendant in any Action to be brought as aforesaid, shall die pending the same, such Action shall not abate by reason thereof, but may be proceeded in as if no such Death had happened (the Heir or Devisee, or other Person entitled to the Interest of the deceased Party in the Matter in question, being served with Process in the Action); and if any Person in whose Favour any such Determination as aforesaid shall have been made, and against whom any such Action might have been brought if living, shall die before Action brought, it shall be lawful for the Person who might have brought such Action to bring the same, within the Time so limited as aforesaid, against such Person as if actually living, and to serve the Commissioner or his Clerk with the usual Process for commencing such Action in the same Manner as the deceased Person might have been served therewith if living; and it shall thereupon be incumbent on such Clerk to serve with such Process the Heir or Devisee or personal Representative of the deceased Person, or other the Person who shall claim the Benefit of such Determination as aforesaid; and on such Process being served the Heir or Devisee or personal Representative, or other Person, shall appear and defend such Action in the Name of the Person so dead, and Proceedings shall be had thereon in the same Manner as if such Person had been living, and the

Rights,

Rights, Interests, and Claims of all Parties shall be equally bound by the event of any Action so brought or continued as aforesaid, as if the Death of any of the Persons interested therein had not occurred.

If Parties die before Inclosure, &c. is completed, Allotments to be made to their Representatives.

XL. And be it enacted, That if any Person interested in the said Inclosure shall die before the same shall have been completed, the Powers and Authorities hereby vested in the Commissioner shall not be thereby determined or suspended, but he shall proceed in the Execution of such Powers and Authorities in such Manner as he might have done in case such Person had not died; and the Share of the Person so dying shall be allotted to such Person as by Law shall become entitled to the same, and shall be accepted and fenced by such Party according to the Directions of this Act, and he shall be liable to the Charges and Expences and other Conditions of this Act.

Commissioner to award Costs.

XLI. And be it enacted, That in case the Commissioner, upon the Determination of any Claim or Objection to be delivered to him in pursuance of this Act, shall see Cause to award any Costs, it shall be lawful for him, upon Application, to assess and award such Costs as he shall think reasonable, to be paid by the Person whose Claim or Objection shall have been disallowed, to the Person in whose Favour any Determination shall have been made; and in case any Person liable to pay such Costs shall refuse or neglect to pay the same upon Demand, the Commissioner shall, by Warrant directed to any Person whomsoever, cause the same to be levied by Distress; and if there be no Goods or Chattels whereon to levy such Costs, it shall be lawful for the Person in whose Favour such Costs shall be awarded to recover the same by Action of Debt or on the Case, in which Action it shall be sufficient for the Plaintiff to declare that the Defendant is indebted to him in the Sum specified in the Order of Adjudication made by the Commissioner, and in consequence of such Order, without setting forth any other Proceedings under this Act.

Wills and Settlements not to be affected.

XLII. Provided also, and be it enacted, That nothing in this Act contained shall extend to revoke, make void, or alter any Will or Settlement, or to prejudice any Person having any Right or Claim of Dower, Jointure, Annuity, Portion, Debt, Charge, Rent, or Incumbrance out of or affecting any of the Lands to be inclosed, or any of the Lands which may be exchanged or parted with in pursuance of this Act, but that as well the Lands allotted and exchanged as the Lands which shall be assigned in Partition or in Compensation for any other Estate or Right, by virtue of this Act, shall, immediately after such Allotment, Exchange, or Partition, be and enure, and the several Persons to whom the same shall be so allotted or given in Exchange or Partition as aforesaid shall be seised and possessed thereof respectively, to, for, and upon the same Estates, Uses, Trusts, Intents, and Purposes, and subject to the same Conditions, Charges, and Incumbrances, as the several Lands in respect whereof such Allotments, Exchanges, and Partitions shall have been made would have stood limited for or been subject to in case the same respectively had not been allotted, exchanged, or parted with as aforesaid, or as if this Act had

had not been passed, subject nevertheless to all such Mortgages and Sales as shall be made by virtue of this Act.

Persons may sell their Common Rights, and Persons entitled to have Allotments may mortgage, &c. before Execution of the Award.

XLIII. And be it enacted, That if at any Time before the Execution of the Award of the Commissioner any Person shall sell his Right or Interest in the Lands to be inclosed, or any Part thereof, to any Person, the Commissioner shall, upon any such Sale being made, make an Allotment of Land to the Purchaser, or to his Heirs or Assigns, in respect of the Right or Interest so sold; and every such Purchaser, or his Heirs or Assigns, shall, from the Execution of the said Award, hold and enjoy the Lands so to be allotted to him in the same Manner as the Vendor might or ought to have done in case such Sale had not been made; and it shall be lawful for any Person who shall be entitled to any Allotment under this Act to devise, grant, surrender, mortgage, or otherwise convey and assure the same Allotment, or all or any Part of his Interest therein, at any Time before the Execution of the said Award; and every such Devise, Grant, Surrender, and other Assurance shall be of the same Validity as if the same had been made after the Execution of the said Award; and it shall be lawful for any Person entitled to any Allotment to sell, dispose of, and convey the Estate in right of which he may be entitled to such Allotment separate from and retaining to himself such Allotment, Common Right, and Interest; and the Commissioner is hereby required to award such Allotment accordingly.

Encroachments.

XLIV. And be it enacted, That all Encroachments and Inclosures which shall have been made by any Person from or upon any Part of the Lands to be inclosed within Twenty Years next before the passing of this Act, whether any Amerciament, annual Rent, or any Money Payment or Acknowledgment hath or hath not been paid in respect of the same to or for the Use of the Lord of the Soil, or any other Person, unless the same shall have been authorized by Grant from the Lord of the said Manor, with the Consent of the Homage according to the Custom of the said Manor, shall be deemed Parcel of the Lands to be inclosed, and shall be divided, allotted, and inclosed accordingly: Provided always, that it shall be lawful for the several Persons who shall be in possession of any such Encroachment or Inclosure, or in the Receipt of the Rent thereof at the Time of the passing of this Act, to take down and remove all such Buildings, Fences, and other Erections as shall then be thereon, and to convert the Materials thereof to their own Use.

Allotment of old Inclosures with Consent of Proprietors.

XLV. Provided always, and be it enacted, That it shall be lawful for the Commissioner, with the Consent in Writing and at the Request of any Proprietor of any Houses, Homesteads, Gardens, Orchards, or old inclosed Lands within the said Parish, whether such Owner or Proprietor shall be a Corporation, Tenant 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 Lives, with the Consent of the Lessor of any such Houses, Homesteads, Gardens, Orchards, and old inclosed Lands holden for Years determinable as aforesaid, and not otherwise, or with the Consent of the Guardian, Trustee, Feoffee for charitable or other Uses, Husband, Committee, or Attorney of or acting for any

such Proprietor as aforesaid, who shall be an Infant, Feme Covert, Lunatic, or under any other legal Disability, or who shall be beyond the Seas, or otherwise disabled to act for himself (such Consent to be respectively testified, in case of a Corporation, by Writing under their Common Seal, or by Writing under the Hand of the Agent of such Corporation, and in case of an Individual under his Hand), to order and direct such Houses, Homesteads, Gardens, Orchards, and old inclosed Lands to be considered as allottable and Parcel of the Lands to be inclosed, and such Allowance shall be made to the Proprietors of such Houses, Homesteads, Gardens, Orchards, and old inclosed Lands on account of the Situation or other beneficial Circumstances thereof, as the Commissioner shall adjudge to be just and reasonable, and he shall allot and award unto such Proprietors so much and such Part of the Lands to be inclosed as he shall think reasonable and just.

Pieces of Land by the Side of the Road may be allotted.

XLVI. And be it enacted, That all small Parcels of inclosed Waste or Common Land (the Soil whereof shall belong to the Lords of any Manor in right thereof) lying by the Side of any Turnpike Road or other public Road or Lane within the said Parish, and which in the Judgment of the Commissioner may be conveniently inclosed without incommoding the public Intercourse on such Road or Lane, or rendering such Turnpike Road of less Breadth than Sixty Feet, and such other public Road or Lane of less Breadth than Forty Feet respectively, shall be deemed Part of the Lands to be inclosed.

Allotment to be set out for Repair of Turnpike Roads.

XLVII. And be it enacted, That the Commissioner shall allot to the Commissioners of the *Axminster* Turnpike Road, and their Successors, such Parcels of the Lands to be inclosed, not exceeding One Acre, as he shall think necessary and most convenient for supplying Stone and other Materials for the Repairs of the several Turnpike Roads within the said Parish; and such Allotments shall be inclosed and fenced as the Commissioner shall direct, and shall be vested in the Commissioners of the said Turnpike for the Time being, in Trust for the Purposes aforesaid.

Allotment to be set out for the Recreation of the Inhabitants.

XLVIII. And be it enacted, That the Commissioner shall in the next place allot and award unto the Churchwardens and Overseers for the Time being of the said Parish, in the most appropriate Situation, out of any Part of the Lands to be inclosed, One Piece of Land, not more than Four or less than Two Acres, as a Place of Exercise and Recreation of the neighbouring Population; and such Allotment shall be held by the Churchwardens and Overseers for the Time being for the Purposes aforesaid, and shall be in the first instance fenced at the general Expence, and the Fences of such Allotment shall for ever afterwards be repaired and maintained by the said Parish, in such Proportions and Manner as shall be devised by the Award of the Commissioner.

Expence of the Inclosure to be defrayed by Sale of a sufficient Part of the Lands.

XLIX. And for the Purpose of raising Money for defraying the Expences of the Inclosure, (that is to say,) the Costs and Expences incident to and attending the passing of this Act, and the several Sums of Money and Allowances hereby directed or authorized to be paid and allowed to the Commissioner, Clerk, and Surveyor, for Expences,

Expences, Time, and Trouble, and the Costs and Expences of preparing and enrolling the Award of the Commissioner, and all Costs and Expences that the Commissioner shall be put unto in respect of any Appeal against his Decision, or of any Suit at Law or in Equity that may be instituted by or against him as Commissioner in the Execution of this Act, either before or after the Execution of the Award, and all other Costs and Expences whatsoever of carrying this Act into execution, be it enacted, That the Commissioner shall mark and allot in the said Parish such Parts of the Lands to be inclosed as he shall judge sufficient in Value to defray the Expences aforesaid, and shall from Time to Time, as he shall find expedient, sell and dispose of the same either by public Auction or private Contract, and the Purchase Monies to arise by such Sales shall be paid into the Hands of the Commissioner, and shall be by him applied in discharging the said Expences.

Commissioner to sign Receipts for Purchase Monies, and make Conveyances to Purchasers.

L. And be it enacted, That upon every Sale to be made by the Commissioner under the Provisions of this Act, the Commissioner shall sign and deliver to each Purchaser a Receipt for his Purchase Money, which shall be a sufficient Discharge for the same, and upon Receipt of the whole Purchase Money for any of the Lands which shall be sold as aforesaid, the Commissioner shall convey such Lands, and the Fee Simple and Inheritance thereof in Possession, by Deed under his Hand and Seal, upon and for such Uses, Trusts, and Purposes, as such Purchaser shall direct; and after such Conveyance the Premises conveyed shall become vested as Freehold of Inheritance upon and for such Uses, Trusts, and Purposes as shall be expressed by such Deed; and any such Conveyance may be to the Effect set forth in the Schedule (B.) to this Act.

Application of Purchase Monies.

LI. And be it enacted, That all such Purchase Monies as shall be from Time to Time raised or received by the Commissioner by such respective Sales as aforesaid shall, after Payment of the Charges and Expences attending such respective Sales, be paid and applied by the Commissioner towards the Inclosure Expences Fund, and the respective Purchasers or other Persons paying the same shall not in any Manner be liable to see to the Application or be answerable for any Misapplication thereof.

Allotment of Residue.

LII. And be it enacted, That after the Commissioner shall have set out such Roads and Ways as shall be deemed necessary, and shall have set out such Parts of the said Commons and Waste Lands as he shall deem expedient for Sale as aforesaid, and for the other Purposes herein-before mentioned, the Commissioner shall allot and award all the Remainder of the Lands to be inclosed unto and amongst the several Owners and Proprietors thereof, and Persons who shall be entitled to any Estate, Right, or Interest therein, in such Shares and Proportions as the Commissioner shall adjudge and determine to be proportionate to the Value of their respective Rights and Interests therein.

For determining Ob-

LIII. And be it enacted, That as soon as the Commissioner shall have ascertained the respective Rights and Interests of the several Parties

Parties interested in the Lands to be inclosed, and also the Allotments by him proposed to be made to such Parties respectively, in lieu of such Interests, he shall hold a Meeting, of which Ten Days Notice shall be given by Advertisement or on the Church Door, where such Parties may be informed of the Situation of such intended Allotments and see the same delineated upon a Map or Plan to be produced for their Inspection; and if any of such Parties upon such Inspection shall be dissatisfied with the proposed Allotments, the Commissioner shall at such Meeting, or at some other Meeting to be appointed by him for that Purpose, receive Statements in Writing of Complaints and Objections thereto, and shall forthwith, or as soon after as conveniently may be, determine the same, and such Determination shall be final.

Objections to Allotments.

LIV. And be it enacted, That the several Allotments to be made in pursuance of this Act (except the Allotment to the Surveyor and Churchwarden and Overseers respectively) shall be inclosed, ditched, and fenced at the Expence of the respective Persons to whom the same shall be allotted, in such Manner and within such Times as the Commissioner shall by his Award or any Writing under his Hand direct; and the Fences so to be made shall for ever afterwards be repaired and maintained by such Persons as the Commissioner shall by his Award direct.

Allotments to be fenced.

LV. And be it enacted, That if from Situation, or from any other Circumstance, it shall happen that any of the Proprietors of the Lands to be inclosed, or any Person to whom any Allotments shall be made, shall not have a fair Proportion of the Boundary Hedges, Ditches, Mounds, or Fences assigned to him to make by virtue of this Act, it shall be lawful for the Commissioner to ascertain and appoint what Sum of Money shall be contributed by such Proprietor or Person towards making the Boundary Hedges, Ditches, Mounds, and Fences of the Allotments of such other of the said Proprietors and Persons as shall have too great a Proportion thereof to make; and such Money shall be paid to such Persons and in such Manner as the Commissioner shall by any Writing under his Hand direct, and the same may be recovered by any of the Means which by the said first-recited Act are provided for raising and recovering the Expences of obtaining and executing Acts of Inclosure, in Cases where such Expences are directed to be paid in proportion by the Proprietors of Lands to whom any Allotments shall be made; and every such Order of the Commissioner shall be final.

Equalizing the Share of Fencing.

LVI. And be it enacted, That all such Lands as shall be given in Exchange or on Partition or be allotted by virtue of this Act shall be held by the Person to whom they are given in Exchange or on Partition or allotted under the same Tenures, Rents, Customs, and Services as the Lands in respect of which such Lands are given in Exchange or on Partition or allotted would have been held in case this Act had not been passed; and the Lands given in Exchange or on Partition or allotted in respect of Freeholds shall be deemed Freehold; and the Lands given in Exchange or on Partition or allotted in respect of Copyhold or Customary Lands shall be deemed Copyhold

The Allotments to be of the same Tenure as the Lands in respect of which they were made.

Copyhold or Customary Lands, and shall be held of the Lords of the same Manors under the same Rents and by the same Customs and Services as the Copyhold or Customary Lands in respect of which they may be given in Exchange or on Partition or allotted were or ought to have been held, and shall pass by the like Surrenders as the Copyhold or Customary Lands in respect whereof such Exchanges, Partitions, or Allotments shall be made now do; and the Lands given in Exchange or on Partition or allotted in respect of Leasehold Lands shall in like Manner be deemed Leasehold, and shall be held under the same Rents and Covenants as the Lands in respect of which they may be allotted were held, and the Remainder or Reversion thereof shall be vested in the same Lessors respectively as the Remainder or Reversion of such other Lands were vested before the passing of this Act, except where otherwise particularly directed by this Act, any Law or Usage to the contrary notwithstanding.

Power for Commissioner to make Alterations in Allotments.

LVII. And be it enacted, That it shall be lawful for the Commissioner, at any Time before the Execution of his Award, to make any Alterations which he may think right and expedient in the Allotments or in the Fences which he may have set out and ordered, or in the private Roads over such Allotments, or in any of the Orders or Directions relating thereto, which he may have made in pursuance of this Act; and in case any Person shall be injured by any such Alteration, on account of any Expences he may have incurred, or otherwise, the Commissioner shall ascertain and determine what Recompence shall be made to him for such Injury, and shall either pay the Amount thereof out of the Inclosure Expences Fund, or shall direct by whom and in what Manner such Recompence shall be made, and, in case of Nonpayment thereof, the same shall be recovered in manner by the said first-recited Act directed with respect to the Recovery of Penalties or Forfeitures.

Separate Allotments for Land held by different Titles.

LVIII. And be it enacted, That when any Person to whom any Allotment shall be made, or Lands assigned in Exchange by virtue of this Act, shall hold such Lands, or the Lands in respect of which such Allotment or Exchange is made, under different Titles and for different Estates, and as to Copyholds by separate Quit Rents, the Commissioner shall ascertain and distinguish the Lands held for each of such Estates and under each of such Titles respectively, and shall accordingly in his Award set out distinct and several Allotments for such respective Lands, and also in the said Award, and the Map annexed thereto, set out and distinguish the several Estates holden by several and distinct Quit Rents.

Where Allotments are omitted to be distinguished by the Award, the Defect may be remedied by a separate Instrument.

LIX. And be it enacted, That where the Commissioner shall have omitted to distinguish in his Award the several Tenures under which any of the said Lands shall be holden, or the different Estates or Titles for or under which the same shall be held, or to set out and award several and distinct Allotments, as by this Act directed, it shall be lawful for him, at any Time within Twelve Months after the Execution of his Award, and he is hereby required, upon Request in Writing to him made by any Proprietor of any such Allotment or Lands, or other Person interested therein, or his Agent, to do all

such Acts as may be necessary for supplying such Omission, and for that Purpose to examine Witnesses and proceed as if his Award had not been made, and by any Deed or Instrument under his Hand and Seal to distinguish and set out the Allotments and Lands held by different Tenures, and also the Allotments and Lands held by, for, or under different Estates or Titles respectively, in the same Manner as he is by this Act authorized and required to do in Cases where such Allotments and Lands are directed to be ascertained, distinguished, and set out by his Award; and every such separate Instrument shall have the same Force and Effect as if it were contained in the said Award, and such Instrument shall be inrolled and deposited with the Award of the Commissioner, and shall thenceforth be deemed to be Part thereof to all Intents and Purposes; and all the Expences which shall be reasonably incurred in or about any such subsequent Inquiry or separate Instrument as aforesaid, and the Inrolment thereof, shall be paid by the Party who shall have requested the Commissioner to make and execute the same, or by his Heirs, Executors, or Administrators.

Partitions may be made in certain Cases.

LX. And whereas it may happen that some of the Proprietors of Lands in the said Parish, and Persons entitled to Allotments to be made by virtue of this Act, may be seised or possessed thereof or entitled thereto in undivided Moieties, Joint Tenancy, or as Coparceners or Tenants in Common, and cannot, by reason of Infancy, Settlement, Absence beyond the Seas, or other Disability or Incapacity, make an effectual Division thereof; be it therefore enacted, That it shall be lawful for the Commissioner, upon the Request in Writing of any such Proprietors being seised or possessed or entitled in undivided Moieties, or as Coparceners, Joint Tenants, or Tenants in Common, or of the Husbands, Guardians, Trustees, Committees, or Attornies duly authorized, of such of them as may be under Coverture, Minors, Lunatics, or beyond Seas, or under any other legal Disability or Incapacity, to make Partition and Division of the said Lands or Allotments coming to such of the said Proprietors as shall be so seised or possessed or entitled, and to allot the same to such Owners and Proprietors in Severalty, and immediately after the said Allotments shall be so made and declared the same shall be holden and enjoyed by the Persons to whom the same shall be allotted in Severalty, in the same Manner and subject to the same Uses and Trusts as the undivided Parts or Shares of such Estates would have been in case such Partition and Division had not been made; and every such Partition shall be specified in the Award of the Commissioner, or some other Instrument under his Hand and Seal; and every such Partition shall be good, valid, and effectual to all Intents and Purposes whatsoever.

Expences of Partitions.

LXI. And be it enacted, That all Costs and Expences attending any Partition to be made by virtue of this Act shall be borne and defrayed by the several Proprietors of or Persons interested in the Estate which shall be so parted, in such Manner and Proportions as the Commissioner shall order, and, in case of Nonpayment thereof, shall be recovered in the Manner by the said first-recited Act directed with respect to the Recovery of Penalties and Forfeitures.

LXII. And

Power of Exchange.

LXII. And be it enacted, That it shall be lawful for the Commissioner to allot and award any Lands within the said Parish in Exchange for any other Lands within the said Parish, or any adjoining Parish, Township, or Place, provided that all such Exchanges be specified and declared in the Award of the Commissioner, and be made with the Consent in Writing of the Owner of the Lands so exchanged, whether such Owner shall be a Corporation, or a Tenant 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 Lives (with the Consent of the Lessor thereof, but not otherwise), or with the Consent of the Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees, or Attornies of or acting for any such Owners as aforesaid who at the Time of Meeting such Exchange shall be an Infant, Feme Covert, Lunatic, or under any other legal Disability, or who shall be beyond the Seas, or otherwise disabled to act for himself, 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 every such Exchange 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 held in right of any Church or Chapel or other Ecclesiastical Benefice, without the Consent, testified as aforesaid, of the Patron thereof, and of the Bishop of the Diocese in which such Lands shall be situate; provided also, that all Costs and Expences attending the making and completing of any Exchanges shall be borne by the several Parties making such Exchanges, in such Manner and in such Proportions as the Commissioner shall by his Award direct, and, in case of Non-payment thereof, shall be recovered in the Manner by the said first-recited Act directed with respect to the Recovery of Penalties and Forfeitures.

Power to apply Compensation Money coming to Parties under Disability towards Inclosure Expences and substantial Improvements.

LXIII. And be it enacted, That where any Money is, under the Provisions of the said first-recited Act or of this Act, directed to be paid for the Purchase or Exchange of any Lands, or of any Timber or Wood growing thereon, which shall belong to any Corporation, Tenant for Life or in Tail, or to any Feoffee in Trust, Executor or Administrator, Husband, Guardian, Committee, or other Trustee for or on behalf of any Infant, Idiot, Lunatic, Feme Covert, or other Cestuique Trust, or to any Persons whose Lands are limited in strict or other Settlement, or to any Person under any other Disability or Incapacity whatsoever, and which Money ought to be laid out in the Purchase of other Lands, to be settled to the same Uses, it shall be lawful for the Commissioner, out of such Money, to defray the Proportion (if any) of the Inclosure Expences which shall be charged upon any of the Lands of the respective Parties in Possession of the Lands, or of the Timber or Wood growing thereon, which shall be so purchased or exchanged, or on which such Timber or Wood actually grew; and also to defray the Expence of any permanent Improvement, such as building, subdividing, dividing, draining, or planting, and the like, which shall, in the Judgment of the Commissioner, be proper to be made, and shall be made, under his Direction, upon any Lands to be by virtue of this Act allotted to such Parties.

LXIV. And

Investment of the Surplus when amounting to 200*l.*

LXIV. And be it enacted, That if the Surplus of any such Monies shall amount to or exceed the Sum of Two hundred Pounds, the same shall with all convenient Speed be paid into the Bank of *England*, in the Name and with the Privity of the Accountant General of the Court of Chancery, to be placed to his Account *ex parte* the Commissioner for executing this Act, pursuant to the Method prescribed by an Act passed in the Twelfth Year of the Reign of His late Majesty King *George* the First, intituled *An Act* 12 G. 1. c. 32 *for the better securing the Monies and Effects of the Suitors of the Court of Chancery, and to prevent the counterfeiting of* East India *Bonds, and the Endorsements thereon, as likewise the Endorsements on* South Sea *Bonds*, and pursuant to the General Rules and Orders of of the said Court, and without Fee or Reward, according to an Act passed in the Twelfth Year of the Reign of His late Majesty King *George* the Second, intituled *An Act to empower the High Court of* 12 G. 2. c. 2 *Chancery to lay out upon proper Securities any Monies, not exceeding a Sum therein limited, out of the Common and General Cash in the Bank of* England *belonging to the Suitors of the said Court, for the Ease of the said Suitors, by applying the Interests arising therefrom for answering the Charges of the Office of the Accountant General of the said Court*, and shall, when so paid in, there remain until the same shall, by Order of the said Court, made upon a Petition to be preferred to the said Court in a summary Way by the Parties who would have been entitled to the Rents and Profits of the said Lands, be applied to either of the following Purposes; (that is to say,)

The Redemption or Discharge of the Land Tax, or of any Debt or other Incumbrance affecting the same Lands, or affecting other Lands standing settled therewith, to the same or the like Uses or Trusts:

The Purchase of other Lands to be conveyed or settled upon the like Uses or Trusts, or such of them as shall be then existing undetermined or capable of taking effect.

Payment of Dividends meanwhile.

LXV. And be it enacted, That in the meantime, and until such Application shall be made, the said Money may, by Order of the said Court, to be made upon the like Petition, be invested by the said Accountant General, in his Name, in the Purchase of Three Pounds *per Centum* Consolidated or Three Pounds *per Centum* Reduced Bank Annuities, or of other Government or Real Securities, and the Dividends or Interests of such Annuities or Securities shall from Time to Time be paid, by Order of the said Court, to the Parties who would for the Time being have been entitled to the Rents and Profits of the Lands so to be purchased, conveyed, and settled.

When less than 200*l.* and amounting to 20*l.*

LXVI. And be it enacted, That in case the Surplus of such Monies shall be less than the Sum of Two hundred Pounds, and shall exceed or amount to the Sum of Twenty Pounds, the same shall, at the Option of the Parties for the Time being entitled to the Rents and Profits of the Lands so purchased or exchanged, or their Guardians or Committees in Cases of Infancy, Idiotcy, Lunacy, or other Incapacity, with the Approbation of the Commissioner, to be signified in Writing under his Hand, be paid into the Bank of *England*, in the Name and with the Privity of the said Accountant General of the

the Court of Chancery, and be placed to his Account as aforesaid, in order to be applied in manner herein-before directed; or otherwise the same may be paid, at the like Option and with the like Approbation, to Two Trustees, to be nominated by the Parties who for the Time being would be entitled to the Rents and Profits of the said Lands, such Nomination to be approved of by the Commissioner, and such Nomination and Approbation to be signified in Writing under the Hands (or Common Seal, as the Case may be,) of the nominating and approving Parties; and the Money so paid to such Trustees, and the Dividends and Produce arising therefrom, shall be by them applied in like Manner as is herein-before directed with respect to Money so to be paid into the Bank of *England*, but without obtaining or being required to obtain any Order of the said Court touching the Application thereof.

When under 20*l.*

LXVII. And be it enacted, That in case the Surplus of such Monies shall be less than Twenty Pounds, the same shall be paid to the Parties who would for the Time being have been entitled to the Rents and Profits of the Land so purchased or exchanged, for their own Use and Benefit; or in case of Infancy, Idiotcy, Lunacy, or other Incapacity, then such Money shall be paid to their Guardians, Committees, or Trustees, for the Use and Benefit of the Parties respectively entitled thereto.

Power for Commissioners to borrow Money.

LXVIII. And be it enacted, That if before the said Monies herein-before authorized to be raised by the Commissioner can be raised and received by him he shall find it necessary or expedient to obtain by Loan any Money for or towards the defraying the said Expences, it shall be lawful for him to borrow and take up at Interest such Sums of Money as he shall from Time to Time think necessary for the Purposes aforesaid, which Money so to be borrowed shall be repaid by the Commissioner, with Interest for the same, out of the Monies to be raised and received by him by any of the Means aforesaid.

Persons having limited Interests may raise Money by Mortgage for Expences.

LXIX. And be it enacted, That it shall be lawful for the respective Proprietors of Allotments to be made by virtue of this Act, being Tenants for Life or in Tail, or for any other Estate of Freehold or Inheritance, and also for the Husbands, Guardians, Trustees, Committees, or Attornies of any of the Proprietors, being under Coverture, Infants, Lunatics, Idiots or beyond the Seas, or otherwise incapacitated, and for the Trustees or Feoffees for charitable, parochial, or other Uses, or a competent Number of them, in respect of any Lands held by them in Trust for any charitable, parochial, or other Uses (with the Consent of the Commissioner, testified in Writing under his Hand and Seal,) from Time to Time to charge their Allotments with any Money, not exceeding Five Pounds *per* Acre, towards their respective Proportions of the Inclosure Expences, and for securing the Repayment of such Money, with Interest, to mortgage or demise the said Allotments unto or in Trust for any Person who shall advance such Money for any Term of Years, but so that every such Mortgage or Demise be made with a Condition to cease and be void, or with an express Trust to be surrendered or re-assigned, when the Money thereby to be secured, with all Interest

thereon, shall have been fully paid and satisfied, and so that in every such Mortgage or Demise which shall be made by or on behalf of any Person entitled to any such Allotment for the Term of his natural Life there be contained a Covenant to pay and keep down the Interest of the Money to be secured during his Life, in such Manner that no Person afterwards becoming possessed of such Lands shall be subject or liable to pay any larger Arrear of Interest than for Six Months previous to the Time when the Title of such Person shall accrue or commence, and every such Mortgage or Demise shall be valid in the Law for the Purposes thereby intended; and every such Mortgagee and his Assigns shall have the like Remedies, in case of Nonpayment of the Monies thereby secured, as in the Case of other Mortgages of the like Nature.

Empowering Commissioner, upon Application, to sell Part of Allotments to defray Expences.

LXX. And be it enacted, That it shall be lawful for the Commissioner, on Application made to him in Writing by any of the Proprietors of Allotments to be made by virtue of this Act, or by any of the Husbands, Guardians, Trustees, Committees, or Attornies of or for any of such Proprietors, being under Coverture, Minors, Idiots, Lunatics, or beyond the Seas, or under any other Disability or Incapacity, or by the Persons acting as such Guardians, Trustees, Committees, or Attornies respectively, or by any of the said Proprietors, being Tenants in Tail, or for Life or Lives, or on any other Contingency, or by any Trustees or Feoffees for charitable, parochial, or other Uses, to sell any Part of any such Allotment for raising a Sum of Money to defray the proportionate Part of the Expences which shall be charged upon such Parties, and of the Expences of making and completing such Sale: Provided always, that it shall not be lawful for any Proprietor of an Allotment to raise by any such Sale, or by Mortgage and Sale, any greater Sum of Money, for the Purposes aforesaid, than such Proprietor might have borrowed or charged upon his Allotment for such Purposes by virtue of the said first-recited Act, reckoning Five Pounds for each Acre thereof; provided further, that in all Cases in which the Money so raised by any such Sale shall not be equal to the Money which might be borrowed or charged on such Allotment as aforesaid, it shall be lawful for the Proprietor Part of whose Allotment shall be sold as aforesaid to charge his Allotment with any Sum not exceeding the Difference.

Sales to be made according to the General Inclosure Act.

LXXI. And be it enacted, That such Sales shall be made by the Commissioner in the same Manner and subject to the same Regulations as are prescribed by the said first-recited Act in respect of the Sale of Land towards defraying the Expences of obtaining and carrying into execution any Act for dividing, allotting, and inclosing any Lands or Grounds; and every such Allotment for which the full Purchase Money shall be paid shall be vested in the Commissioner, and be conveyed by Lease and Release, executed by him at the Expence of the Purchaser, unto and to the Use of or in Trust for such Purchaser and his Heirs, or as he shall appoint, and shall be inclosed and held by such Purchaser in Severalty.

Application of Purchase Monies.

LXXII. And be it enacted, That the Receipt of the Commissioner shall be a sufficient Discharge to the Purchasers for the said Purchase

Purchase Money, and such Purchase Money shall be applied by the Commissioner in or towards defraying the Costs and Expences for raising which such Sale shall have been made, and the Surplus (if any) shall be paid to the Parties from whose Allotments such Sale shall have been so made respectively, 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 of such surplus Money shall be applied and disposed of in manner by this Act directed with respect to Money to be paid into the Bank of *England* for the Purchase or Exchange of any Lands, or of any Timber or Wood growing thereon.

Award to be proclaimed, and a Copy thereof with a reduced Plan deposited in the Hands of the Clerk of the Peace.

LXXIII. And be it enacted, That within the Space of Three Years from the passing of this Act the Commissioner shall draw up and execute an Award, and the Execution of the said Award shall be proclaimed by affixing a Proclamation on or near the outer Door of the Church of the said Parish, previously to Divine Service, upon the next or some subsequent *Sunday*, from the Time of which Proclamation only, and not before, such Award shall be considered as complete; and within One Calendar Month after the Commissioner shall have so made and executed the said Award he shall cause the same, together with One of the reduced Plans herein-after directed to be made annexed thereto, to be delivered to the Clerk of the Peace of the said County, who is hereby required to deposit and keep the same among the Records of the said County, so that recourse may be had thereto by any Person interested in the Premises, for the Reception whereof the Sum of Two Pounds and Two Shillings, and no more, shall be paid; and the said Award shall, from the Delivery thereof to the said Clerk of the Peace, be deemed to be enrolled according to the Directions and within the Meaning of the said first recited Act.

Copy of the Award, with a reduced Plan, to be deposited in the Parish Church.

LXXIV. And be it enacted, That a Copy of the said Award, fairly transcribed in a Book on plain or unstamped Paper or Parchment, with the other of the reduced Plans herein-after directed to be made, shall within the Time aforesaid be deposited in the Parish Church of *Kilmington* aforesaid, and there kept in a Box to be provided for that Purpose by the Commissioner; and the said Award, and the said Copy thereof, and any other Copy of the said Award, or of any Part thereof, attested by the Clerk of the Peace for the Time being of the said County, or his Deputy, (for every Sheet of which containing One hundred Words Sixpence, and no more, shall be paid,) shall thereafter be admitted as legal Evidence of the Matters and Things therein contained in all Courts whatsoever.

A reduced Plan to be annexed to the Award, and a Schedule of the old Inclosures.

LXXV. And be it enacted, That the Commissioners shall cause Two reduced Plans of the said Commons and Waste Lands hereby directed to be inclosed to be drawn upon Parchment or Vellum, on which the public and private Roads, Paths, and Drains, with the Boundary Fences of the several Allotments mentioned and described in the said Award, and such other Matters and Things as the Commissioners shall think fit, shall be fairly and distinctly delineated and expressed; and the Commissioners shall sign the said Plans, one of which shall be annexed to the said Award, and the

the other shall be annexed to or shall go and be kept with the Copy of the said Award to be deposited in the Parish Church of *Kilmington* aforesaid; and the Commissioner shall make and annex to the said Award a Schedule, describing and setting forth the Quantities of all the Homesteads, Gardens, Orchards, and ancient Inclosures in the said Parish; which said Plans, or either of them, shall be admitted as legal Evidence of the Matters and Things therein contained in all Courts whatsoever.

Power of Appeal.

LXXVI. And be it enacted, That if any Person shall think himself aggrieved by any thing done in pursuance of this Act, except as to the Allotments, and except as to such other Determinations as are by this Act directed to be final, and except such Cases wherein an Issue at Law shall be tried, as herein-before is mentioned, he may appeal to the General or Quarter Sessions of the Peace which shall be held for the said County within Four Calendar Months next after the Cause of Complaint shall have arisen, on giving to the Commissioner and to the Party concerned Ten Days previous Notice in Writing of such Appeal and of the Matter thereof (except with respect to the Accounts of the Commissioner, which, notwithstanding the same shall have been examined and published as aforesaid, may be appealed against at any Time within One Month after the Enrolment of the Award, on giving to the Commissioners such Notice as last aforesaid), and the Justices (not interested in the Premises) in such Sessions assembled are hereby 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 shall seem reasonable; and in case any such Appeal shall appear to the said Justices to be frivolous, vexatious, or without Foundation, they shall award such Costs to be paid by the Appellant as to them shall appear reasonable, and such Costs shall be levied in manner aforesaid, and the Costs and Damages which shall be so awarded shall be levied by Distress, and the said Justices shall issue their Warrant accordingly.

Order on Appeal to be final.

LXXVII. And be it enacted, That every Order and Determination of the said Justices upon every such Appeal shall be final, and shall not be removed or removeable by Certiorari, or any other Writ or Process whatsoever, into any of Her Majesty's Courts of Record at *Westminster* or elsewhere.

General Saving.

LXXVIII. Saving always to the Queen's most Excellent Majesty, Her Heirs and Successors, and to all other Persons, Bodies Politic, Corporate, or Collegiate, their Heirs, Successors, Executors, and Administrators, all such Estate, Right, Title, and Interest, Claim and Demand, (other than and except such as are expressly barred and compensated for, or intended to be barred and compensated for and extinguished by this Act,) which they or any of them could or might have had in, to, or in respect of the Lands hereby authorized to be divided, allotted, and inclosed in case this Act had not been passed.

Interpretation of Act.

LXXIX. And be it enacted, That in the Construction of this Act the following Words and Expressions shall have the several Meanings hereby

hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction; (that is to say,)

Words importing the Singular Number shall include the Plural Number, and Words importing the Plural Number shall include the Singular Number:

Words importing the Masculine Gender only shall extend to Females as well as Males:

The Word "Month" shall mean Calendar Month:

The Word "Lands" shall include Tenements and Hereditaments:

The Expression "Lands to be inclosed" shall be understood to mean the Lands by this Act authorized to be divided, allotted, and inclosed:

The Expression "the Inclosure Expences Fund" shall be understood to mean the Monies by this Act authorized to be raised for defraying the Expences of obtaining this Act and carrying the same into execution:

The Expression "the Commissioner" shall mean the Commissioner appointed and for the Time being acting by virtue of this Act:

Act as printed by Queen's Printers to be Evidence.

LXXX. And be it enacted, That this Act shall be printed by the several Printers to the Queen'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.

SCHE-

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)

Form of Declaration by Commissioner, Umpire, or Surveyor.

I *A.B.* do solemnly declare, That I will faithfully, impartially, and honestly, according to the best of my Skill and Ability, execute and perform the several Powers and Authorities vested and reposed in me as a Commissioner [*or* Surveyor *or* Umpire, *as the Case may be*,] by virtue of an Act passed in the Year of the Reign of Her Majesty Queen Victoria, intituled [*here set forth the Title of this Act*], according to Equity and good Conscience, and without Favour or Affection, Prejudice or Malice, to any Person whomsoever.

SCHEDULE (B.)

Form of Conveyance by Commissioner.

I, the Commissioner acting in execution of an Act of Parliament passed in the Year of the Reign of Queen Victoria, intituled [*here insert the Title of this Act*], by virtue of the Power and Authority to me given by the said Act, and in consideration of the Sum of paid into my Hands by which Sum is the whole Purchase Money agreed to be paid by him to me for the Purchase of the Lands and Hereditaments herein-after described, being Part and Parcel of the Lands by the said Act authorized to be sold and disposed of by me, and the Receipt of which said Sum I do hereby acknowledge, do, by this Deed under my Hand and Seal, by the Direction of the said testified by his Execution of these Presents, grant and convey unto his Heirs and Assigns, all that [*here describe the Premises*], together with the Appurtenances to the said Premises belonging, and the Fee Simple and Inheritance thereof in possession, to have and to hold the same unto the said his Heirs and Assigns [*here state the Uses, Trusts, or Purposes of the Conveyance, as the Case may require*]. In witness whereof I have hereunto set my Hand and Seal, this Day of .

LONDON: Printed by GEORGE E. EYRE and ANDREW SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1842.