

ANNO QUADRAGESIMO QUINTO

GEORGII III. REGIS.

Cap. 20.

An Act for incloſing Lands in the Townſhip of *Sale*, in the Pariſh of *Aſhton-upon-Merſey*, in the County Palatine of *Cheſter*. [5th *April* 1805.]

WHEREAS there are within the Townſhip of *Sale*, in the Pariſh of *Aſhton-upon-Merſey*, in the County Palatine of *Cheſter*, a certain Common called *Sale Moor*, and other Waſte Lands, containing in the Whole One hundred and fifty-two Acres or thereabouts, after the Rate of Eight Yards to the Rod or Perch (commonly called *Cheſhire* Meaſure): And whereas *William Egerton* Eſquire, and *George John Legh* Eſquire, claim to be Owners of the Soil of the ſaid Common and Waſte Lands: And whereas *Richard Popplewell Johnſon* Clerk, is Patron and Rector of the Rectory, Pariſh, and Pariſh Church of *Aſhton-upon-Merſey* aforeſaid, of which the ſaid Townſhip of *Sale* is Parcel, and as ſuch is entitled to the Tythes yearly ariſing and growing due within the ſaid Townſhip of *Sale*: And whereas the ſaid *William Egerton*, *George John Legh*, the Right Honourable *George Harry* Earl of *Stamford* and *Warrington*, *Charles White*, *Lawrence Wright*, *Joſeph Atkinſon*, *George Aſhton*, *John Moore*, *William Whitelegg*, *Henry Baxter*, *Peter Heward*, and ſeveral other Perſons, are Owners and Proprietors of divers Lands, Tenements;

Tenements, and Hereditaments, within the ſaid Townſhip, and have, for and in reſpect of their ſeveral Eſtates, Right of Common upon and over the ſaid Common and Waſte Lands: And whereas an Act was paſſed in the Forty-firſt Year of the Reign of His preſent Majeſty, intituled, *An Act for conſolidating in One Act certain Proviſions uſually inſerted in Acts of Inclоſure, and for facilitating the Mode of proving the ſeveral Facts uſually required on the paſſing of ſuch Acts*: And whereas the ſaid Common and Waſte Lands in their preſent State afford but little Profit or Advantage to the ſeveral Perſons intereſted therein; and it would be of great Advantage to them if the ſaid Common and Waſte Lands were divided, and ſpecifick Shares thereof allotted to the ſaid ſeveral Perſons according to their reſpective Rights and Intereſts therein, and ſuch Allotments incloſed: But ſuch Diviſion, Allotment, and Incloſure, cannot be effectually eſtabliſhed 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 *Joſiah Potts* of *Oulcoat*, *James Stelfox* of *High Legh*, and *Richard Clarke* of *Aſhley*, in the ſaid County of *Cheſter*, Gentlemen, and their Succeſſors, to be nominated and appointed as herein-after mentioned, ſhall be and they are hereby appointed Commiſſioners for ſetting out, dividing, allotting, and incloſing the ſaid Common and Waſte Lands, and for carrying the ſeveral Powers and Proviſions of this Act into Execution, ſubject to the Rules, Orders and Directions in this Act contained; and alſo ſubject to the Rules, Orders, and Directions contained in the ſaid recited Act, except in ſuch Caſes where the ſame are by this Act varied or altered; and that all Acts, Matters, and Things, hereby and by the ſaid recited Act, directed or authorized to be done by the ſaid Commiſſioners, may be done and executed by any Two of them; and the ſame ſhall be as valid and effectual as if done and executed by all the ſaid Commiſſioners.

Advantage of incloſing

Appointment of Commiſſioners.

Two of whom may act.

II. And be it further enacted, That *Edward Maſon* of *Chorlton*, in the County Palatine of *Lancaſter* Surveyor, ſhall be and he is hereby appointed the Surveyor for the Purpoſes of this Act; and in caſe of his Death, Neglect, Refuſal, or Incapacity to act, and from Time to Time, as often as there ſhall be Occaſion, the ſaid Commiſſioners may, by Writing under their Hands, nominate and appoint ſome other Perſon to be the Surveyor for the Purpoſes of this Act, in the place or ſtead of the ſaid Surveyor who ſhall ſo die, neglect, refuſe, or become incapable of acting as aforeſaid, of which Neglect or Incapacity the ſaid Commiſſioners ſhall be the ſole Judges.

Surveyor appointed.

III. And be it further enacted, That in caſe any One or more of the ſaid Commiſſioners herein-before appointed or to be appointed by virtue of this Act, ſhall die or refuſe to act, or be rendered incapable of acting by Sickneſs or any other Cauſe, before all the Powers and Authorities by this and the ſaid recited Act in them veſted, ſhall be fully executed and performed, then and in every ſuch Caſe the ſurviving, remaining, or continuing Commiſſioner or Commiſſioners ſhall from Time to Time, and he and they is and are hereby required, by Writing under his or their Hand or Hands, within One Calendar Month next after ſuch Death, Refuſal, or Incapacity ſhall happen and be known, or as ſoon after as conveniently may be, to appoint another Commiſſioner, not intereſted in the

For appointing new Commiſſioners.

ſaid

ſaid Incloſure, Diviſion, and Allotment in any reſpect, in the room and place of every ſuch Commiſſioner ſo dying or refuſing to act, or who ſhall become incapable of acting as aforeſaid; and every ſuch Commiſſioner who ſhall be ſo appointed, having firſt taken and ſubſcribed the Oath in the ſaid recited Act directed to be taken and ſubſcribed, ſhall have the like Powers and Authorities for the Purpoſes of this Act, as the Commiſſioner to whoſe Place he ſhall ſucceed or be appointed was inveſted with.

Commiſſioners to give Notice of their Meeting.

IV. And be it further enacted, That the ſaid Commiſſioners ſhall and they are hereby required to cauſe Notice in Writing to be affixed upon the outer Door of the ſaid Pariſh Church of *Aſhton-upon-Merſey*, and alſo to be inſerted in One or more of the Newſpapers publiſhed in the Town of *Mancheſter*, of the Time and Place of their Firſt Meeting to put this Act in Execution, at leaſt Fourteen Days before ſuch Meeting, at which all Perſons having or claiming Right of Common on the ſaid Common and Waſte Lands, ſhall and may be required, by themſelves, their Agents or Tenants, reſpectively, to give and deliver in to the ſaid Commiſſioners preſent at ſuch Meeting, an Account in Writing of ſuch their Claims reſpectively; and the ſaid Commiſſioners ſhall and may appoint ſuch Time and Place for their Second and Third Meetings, and ſo from Time to Time for every ſubſequent Meeting, as they ſhall think proper, cauſing a Notice in Writing of ſuch Second and Third Meetings reſpectively, to be affixed upon the ſaid Door of the ſaid Pariſh Church of *Aſhton-upon-Merſey*, and to be advertiſed in ſuch Newſpaper or Newſpapers as aforeſaid, at leaſt Fourteen Days before ſuch Second and Third Meetings reſpectively; and alſo cauſing a Notice in Writing of every ſubſequent Meeting, to be affixed on the ſaid Door of the ſaid Pariſh Church of *Aſhton-upon Merſey*, One *Sunday* at leaſt next preceding ſuch Meetings reſpectively: Provided always, that every Proprietor and other Perſon intereſted in the ſaid Diviſion and Incloſure, and their Solicitors and Agents, who ſhall attend any Meeting of the ſaid Commiſſioners to be held in purſuance of this Act, ſhall bear and pay his, her, or their own Expences at ſuch Meetings.

Meetings to be held within Eight Miles of Sale.

V. Provided always, and be it further enacted, That no Meeting of the ſaid Commiſſioners ſhall be held at a greater Diſtance from the Boundary of the Townſhip of *Sale* aforeſaid, than Eight Miles.

Other Notices, how to be given.

VI. And be it further enacted, That all other Notices neceſſary to be given by the ſaid Commiſſioners, ſhall be ſo given by Writing, to be affixed upon the outer Door of the ſaid Pariſh Church of *Aſhton-upon-Merſey*, or by Advertiſements to be inſerted in One or more of the Newſpapers publiſhed in the ſaid Town of *Mancheſter*.

Commiſſioners to determine Differences.

VII. And be it further enacted, That if any Diſpute or Difference ſhall ariſe between any of the Parties intereſted or claiming to be intereſted in the ſaid intended Diviſion and Incloſure, touching or concerning the reſpective Shares, Rights, or Intereſts, which they or any of them ſhall claim in the Lands and Grounds hereby intended to be divided, allotted, and incloſed, or touching or concerning the reſpective Shares and Proportions which they or any of them ought to have of or in the ſaid intended Diviſion, Allotment, and Incloſure, or touching or concerning any other Right or Intereſt whatſoever, it ſhall be lawful for the ſaid Commiſſioners

but not to determine upon Titles.

missioners, and they are hereby authorized and required, to examine into, hear, and determine the same: Provided always, that nothing herein contained shall authorize or empower the said Commissioners to determine the Title to the Lands or Grounds hereby intended to be divided, allotted, and inclosed as aforesaid, or any Part thereof.

Power to assess Costs.

VIII. And be it further enacted, That in case the said Commissioners shall, upon the Hearing and Determination of any Claim or Claims, Objection or Objections, to be delivered to them in pursuance of this or the said recited Act, see Cause to award any Costs, it shall be lawful for the said Commissioners, and they are hereby empowered, upon Application made to them for that Purpose, to settle, assess, and award such Costs and Charges as they shall think reasonable, to be paid to the Party or Parties in whose Favour any Determination of the said Commissioners shall be made, by the Person or Persons whose Claim or Claims, Objection or Objections, shall be thereby disallowed or over-ruled; and in case the Person or Persons who shall be 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 Commissioners, and they are hereby authorized and required, by Warrant under their Hands and Seals, 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; which Costs and Charges, should any Dispute arise touching the same, shall be ascertained and finally settled by the said Commissioners.

Allotment for Gravel Pits for repairing Roads.

IX. And be it further enacted, That the said Commissioners shall and they are hereby required, before any other Allotments shall be made in pursuance of this Act, to assign, set out, and appoint so many convenient Parts or Pieces of the said Common or Waste Lands, not exceeding One *Cheshire* Acre in the Whole, as they shall think proper, for the Purpose of getting Stone, Gravel, Sand, and other Materials, for repairing the publick Roads within the said Township of *Sale*; and also One Statute Acre of the said Common or Waste Land, in such Part thereof as adjoins a certain Canal running through the said Common, and formerly Parcel thereof, late the Property of the most Noble *Francis* Duke of *Bridgewater*, deceased, and now of the Trustees named in the last Will and Testament of the said Duke of *Bridgewater*, as the said Commissioners shall think proper; from and out of which said last mentioned Piece of Land it shall and may be lawful for the said Trustees, their Heirs and Assigns, but for no other Person or Persons whomsoever, to dig and take Stone, Gravel, Sand, and other Materials, for the maintaining and repairing the said Canal and the Banks and Towing Paths thereof, and the Bridges across the same, and for which the said Trustees, their Heirs or Assigns, shall not be subject or liable to make any Satisfaction or Compensation to any Person or Persons whomsoever; and that the Herbage of such Parcels or Pieces of Ground so to be set out as aforesaid, shall be deemed the Property of the Freeholders of the said Township of *Sale* for the Time being.

X. And

Allotment for the School House.

X. And be it further enacted, That it ſhall be lawful for the ſaid Commiſſioners and they are hereby directed, in the next place, to ſet out and allot in and upon the ſaid Common adjoining to the new School Houſe there lately erected and built thereon, a Quantity not exceeding One *Cheſhire* Acre and a Half, nor leſs than One *Cheſhire* Acre, including the Site of the preſent School Houſe and the old School Houſe, and the ſmall Plots thereto already allotted, to be enjoyed therewith and to be appurtenant thereto; and that ſuch laſt mentioned Allotment, together with the Site of the ſaid preſent and old School Houſes, and the Plots thereto allotted, ſhall be veſted in, and be for ever held and enjoyed by the Overſeers of the Poor of the ſaid Townſhip of *Sale* for the Time being, in Truſt for the Inhabitants of the ſaid Townſhip of *Sale*, to the Intent that the Rents and Profits thereof may be applied for the Benefit and Support of the ſaid School, according to the ancient Conſtitution thereof; any Law, Statute, or Uſage to the contrary notwithſtanding.

Allotment to the Owners of the Soil of the ſaid Common and Waſte Lands.

XI. And be it further enacted, That the ſaid Commiſſioners ſhall, and they are hereby empowered and required in the next place, to ſet out and allot unto the ſaid *William Egerton* and *George John Legh*, or unto ſuch other Perſon or Perſons as in the Opinion of the ſaid Commiſſioners ſhall be entitled to the Right of Soil of the ſaid Common and Waſte Lands, the Mines, Minerals, Marl, Clay, Soil, Sand, and Gravel, lying and being within or under the ſame, in Satisfaction of ſuch Right, and to their Heirs and Aſſigns, nevertheleſs in ſeparate and diſtinct Parts and Allotments, ſo that each of them may have and enjoy his or her own Part or Allotment in Severalty, ſuch Parts of the ſaid Common and Waſte Lands, as in the Judgement of the ſaid Commiſſioners ſhall in the Whole be equal to One-eighteenth Part or Share of the remaining Common and Waſte Lands; and ſuch Parts and Shares ſhall be accepted and taken by the Party or Parties to whom the ſame ſhall be ſo allotted reſpectively, as a Recompence and full Satisfaction for his, her, and their Right and Intereſt in and to the Soil of the ſaid Common and Waſte Lands.

Allotment of the Reſidue.

XII. And be it further enacted, That after the ſaid Commiſſioners ſhall have ſet out and allotted the ſeveral and reſpective Parcels of the ſaid Common and Waſte Lands for the Purpoſes aforeſaid, they ſhall aſcertain, ſet out, and allot, the Remainder of the ſaid Common and Waſte Lands unto and amongſt all and every the Land Owners and Perſons entitled to Right of Common upon and in the ſaid Common and Waſte Lands, or any Part thereof, rateably and in Proportion to the real Value of the ſeveral Meſſuages, Lands, Tenements, and Hereditaments, in reſpect whereof they are ſeverally and reſpectively entitled to ſuch Right of Common as aforeſaid, to be aſcertained, ſettled, and adjuſted by the ſaid Commiſſioners, in the Manner, and ſubject to the Orders and Directions in and by the ſaid recited Act and this Act ordered and eſtabliſhed; and from and after ſuch Allotments ſhall be made and perfected, it is hereby enacted and declared, that the Mines, Minerals, Marl, Clay, Soil, Sand, and Gravel, lying and being within or under the ſaid Common and Waſte Lands, ſhall go and belong to the Perſon and Perſons in whoſe Allotments the ſame ſhall happen to be.

Mines and Minerals to go with the Allotments.

Allowing Parties to try their Rights by an Iſſue at Law.

XIII. Provided always, and be it further enacted, That in caſe any Perſon or Perſons intereſted or claiming to be intereſted in the ſaid intended

tended Diviſion and Allotments, ſhall be diſſatisfied with any Determination of the ſaid Commiſſioners touching or concerning any Claim or Claims of the Right to the Soil of the ſaid Common and Waſte Lands, or of any Rights of Common, or other Rights or Intereſts in, over, or upon the ſame, or any Part thereof, it ſhall be lawful for the Perſon or Perſons ſo diſſatisfied to proceed to a Trial at Law of the Matters ſo determined by the ſaid Commiſſioners, at the then next or at the following Aſſizes to be holden for the ſaid County Palatine of *Cheſter*; and for that Purpoſe the Perſon or Perſons who ſhall be diſſatisfied with the Determination of the ſaid Commiſſioners, ſhall cauſe an Action to be brought upon a feigned Iſſue againſt the Perſon or Perſons in whoſe Favour ſuch Determination ſhall have been made, within Three Calendar Months next after ſuch Determination of the ſaid Commiſſioners; 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 the ſaid Action or Actions ſhall be commenced, in caſe the Parties ſhall differ about the ſame); and the Verdict or Verdicts which ſhall be given in ſuch Action or Actions ſhall be final, binding, and concluſive, upon 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 Commiſſioners ſhall and they are hereby required to act in conformity thereto, and to allow or diſallow the Claim or Claims thereby determined according to the Event of ſuch Trial or Trials, and the Coſts of ſuch Action or Actions ſhall abide the Event thereof, to be taxed and recovered by the Party or Parties ſucceeding therein, in like Manner as in other civil Actions: Provided always, that the Determination of the ſaid Commiſſioners touching ſuch Claim or Claims of Right to the Soil of the ſaid Common or Waſte Lands, or of any Right of Common or other Rights or Intereſts in, over, or upon the ſame, or any Part thereof, which ſhall not be objected to, or being objected to, the Party or Parties objecting not cauſing ſuch Action at Law to be brought and proceeded in as aforeſaid, ſhall be binding and concluſive upon all Parties.

Actions not to abate by reaſon of the Deaths of Parties.

XIV. And be it further enacted, That ſuch Action or Actions ſhall not abate by reaſon of the Death of any of the Parties therein, but ſhall be proceeded in as if no ſuch Event had happened.

If any Perſon ſhall ſell his Common Right, the Allotment to be made to the Purchaſer.

XV. Provided always, 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 ſaid Award of the ſaid Commiſſioners, ſell, or contract or agree to ſell, his, her, or their Right, Intereſt, or Property, in, over, or upon the ſaid Common and Waſte Lands, or any Part thereof, to any other Perſon or Perſons, then and in every ſuch Caſe it ſhall be lawful for the ſaid Commiſſioners, and they are hereby directed, authorized, and required, to make an Allotment of the Share which would, under or by virtue of this Act, have been allotted to the Perſon

or

or Perſons ſo ſelling or contracting to ſell as aforeſaid, in caſe no ſuch Sale or Contract for Sale had taken place, unto the Vendee or Vendees, or Purchaſer or Purchaſers in ſuch Sale, Contract, or Agreement, or to his, her, or their Heirs and Aſſigns, for and in reſpect of ſuch Right, Intereſt, and Property ſo ſold, or contracted or agreed to be ſold as aforeſaid; and every ſuch Vendee or Vendees, or Purchaſer or Purchaſers, and his, her, and their Heirs and Aſſigns, ſhall and may, from and after the Execution of the ſaid Award, hold and enjoy the Land 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, could or ought to have held and enjoyed the ſame, in caſe ſuch Sale, Contract, or Agreement, had not been made, or ſuch Right, Intereſt, or Property had been veſted in ſuch Vendee or Vendees at the Time of making ſuch Allotment or Allotments as aforeſaid.

Directing Mode of Allotment where the ſame Perſon ſhall have Eſtate in Fee Simple and in Settlement.

XVI. And be it further enacted, That where the Proprietor or Proprietors of any Lands or Hereditaments in reſpect whereof any Allotment ſhall be made under or by virtue of this Act, ſhall hold his, her, or their reſpective Lands or Hereditaments by different Tenures or for different Eſtates, or under different Titles, the ſaid Commiſſioners ſhall, upon the Requeſt of ſuch reſpective Proprietors, in Writing under their Hands, diſtinguiſh the Lands or other Hereditaments held by each of ſuch Tenures for each of ſuch Eſtates, and under each of ſuch Titles reſpectively, and ſhall accordingly, in their ſaid Award, ſet out and diſtinguiſh diſtinct and ſeparate Allotments for ſuch reſpective Lands or other Hereditaments; and where, from the want of neceſſary Information before the ſaid Commiſſioners, or from any other Cauſe, their Award ſhall omit diſcriminating as herein-before is required, ſuch different Titles and different Eſtates, and different Tenures, and after the making of the ſaid Award, Requeſt ſhall be made to the ſaid Commiſſioners, by any Perſon or Perſons intereſted, by Writing under his, her, or their Hand or Hands, to have ſuch Omiſſion ſupplied by a ſeparate Inſtrument, then and in every ſuch Caſe the ſaid Commiſſioners are hereby authorized to do every Thing neceſſary for ſupplying ſuch Omiſſion, and ſo far as that Purpoſe ſhall require to examine Witneſſes, and in every other Reſpect to proceed and act as if their Award had not been made; and when they ſhall have obtained ſuch Information as they ſhall think ſufficient, they are hereby alſo authorized, by any Deed under their Hands and Seals, to aſcertain and diſtinguiſh the Difference of Tenures, Eſtates, and Titles reſpectively, and accordingly to make diſtinct and ſeparate Allotments, in the ſame Manner as is hereby required where ſuch Diſcrimination ſhould be contained in the ſaid Award; and every ſuch ſeparate Inſtrument, after having been duly executed by the ſaid Commiſſioners, ſhall have the ſame Effect as if the ſame was contained in the ſaid Award, and ſhall be delivered to the Perſon or Perſons upon whoſe Requeſt the ſaid Omiſſion ſhall have been ſupplied, or to the Perſon or Perſons to whom the Cuſtody of the Deeds and Writings concerning the Premiſes in queſtion ſhall, in the Judgment of the ſaid Commiſſioners, moſt probably belong, for the Time being; and all Expences which ſhall be reaſonably incurred in or about any ſuch ſupplemental Inſtrument as aforeſaid, ſhall be payable by the Perſon or Perſons who ſhall have ſo requeſted the ſaid Commiſſioners to make or execute the ſame as aforeſaid, or by his, her, or their Heirs, Executors, or Adminiſtrators.

XVII. And

Right of Common to ceaſe.

XVII. And be it further enacted, That the reſpective Parts of the Common and Waſte Lands, ſet out and allotted to and for the ſeveral and reſpective Perſons entitled to the ſame, ſhall be and are hereby veſted in ſuch Perſons reſpectively; and that immediately after finiſhing the ſaid Allotments, and the Execution of the ſaid Award or Inſtrument, or at ſuch other Time as the ſaid Commiſſioners ſhall appoint, all Right of Common in, over, and upon the ſaid Common and Waſte Lands, ſo intended to be incloſed as aforeſaid, ſhall ceaſe, determine, and be for ever extinguiſhed.

Leaſes at Rack Rent to be void.

XVIII. And be it further enacted, That all and every Leaſe and Leaſes at Rack Rent ſubſiſting, of all or any Part or Parts of any Meſſuages, Lands, Tenements, or Hereditaments within the ſaid Townſhip of *Sale*, ſhall ceaſe, determine, and be void, as to the Right of Common on all or any of the ſaid Common and Waſte Lands ſo intended to be incloſed, at ſuch Time as the Right of Common is herein-before declared to ceaſe and determine; the reſpective Owners and Proprietors of the ſaid Meſſuages, Lands, Tenements, or Hereditaments, ſo in Leaſe as aforeſaid, making ſuch Satisfaction to the Leſſee or Leſſees, Tenant or Tenants, as the ſaid Commiſſioners ſhall direct or appoint on Account thereof, or as an Equivalent for the ſame Commoning.

Perſons having Leaſes of Eſtates other than at Rack Rent, to take the Allotments during their Leaſes.

XIX. Provided always, and be it further enacted, That the ſeveral Leſſees and Tenants who have or hold any Leaſehold Eſtate or Eſtates within the ſaid Townſhip (except ſuch only as have no Right of Common upon the ſaid Common and Waſte Lands, or only Right of Common thereupon whilſt the ſame remain open and unincloſed, and alſo except ſuch as hold under any Leaſe or Leaſes at Rack Rent as aforeſaid) ſhall, during the Continuance of their reſpective Leaſes, have, hold, and enjoy the ſeveral Parts and Shares of the ſaid Common and Waſte Lands that ſhall be allotted and ſet out for or in reſpect of the ſeveral Eſtates ſo held in Leaſe by them reſpectively, upon Condition only that ſuch Leſſee or Leſſees, Tenant or Tenants, do and ſhall well and ſufficiently incloſe, ditch, and fence out the Shares of the ſaid Common and Waſte Lands to be allotted to their reſpective Eſtates, within ſuch Time and in ſuch Manner as the ſaid Commiſſioners ſhall limit and direct; and if any of the ſaid Leſſees or Tenants of ſuch Leaſehold Eſtate or Eſtates ſhall refuſe or neglect well and ſufficiently to incloſe, ditch, and fence out the ſeveral Parts and Shares of the ſaid Common and Waſte Lands to be allotted for their ſeveral and reſpective Eſtates, within ſuch Time and in ſuch Manner as the ſaid Commiſſioners ſhall direct as aforeſaid, that then all ſuch Parts and Shares of the ſaid Common and Waſte Lands as ſhall, at the End of ſuch Time to be ſo limited and directed as aforeſaid, be found unincloſed, or not well and ſufficiently fenced and ditched out as aforeſaid, ſhall go, revert, and remain unto, and be held and enjoyed by the reſpective Proprietors or Owners of the Reverſion of ſuch Leaſehold Eſtates, to which the ſame ſhall be ſo reſpectively allotted as aforeſaid, freed and diſcharged from ſuch Leaſehold Intereſt, according to their ſeveral Eſtates therein reſpectively, who are hereby directed, ordered, and authorized to incloſe, ditch, and fence in the ſame, within Six Calendar Months after ſuch Neglect or Refuſal.

Allotments to Leaseholders to go to Reversioners at the Expiration of the Leases.

XX. And be it further enacted, That the Parts and Shares of the said Common and Waste Lands to be allotted as aforesaid to the Leaseholders respectively, for and in respect of their said Leasehold Estates, shall nevertheless, from and after the Determination of their Leases respectively, go, remain, and revert to such Person or Persons as shall be entitled to the Reversion of the Estate or Estates, so leased, in respect whereof the same shall be allotted respectively; and such Person or Persons shall severally have and enjoy the same Estate, Right, Title, Power, and Interest, in such Parts and Shares of the said Common and Waste Lands, as he, she, or they shall have in the Messuages, Lands, or Tenements, to which such Parts and Shares of the said Common and Waste Lands shall be so allotted respectively.

Allotments to Leaseholders entitled to Common Right, whilst Lands unenclosed only, to go to Persons entitled in Reversion.

XXI. And be it further enacted, That the Part and Share, Parts and Shares of the said Common and Waste Lands, which shall, upon such Division as aforesaid, be allotted to, for, or in respect of any Estate or Estates in Lease, where the Lessee or Lessees, Tenant or Tenants thereof, is or are not entitled to Right of Common thereon, or is or are entitled to Right of Common thereon only so long as the same shall lie or be open or unenclosed, shall be allotted unto, and be held, enclosed, and enjoyed by the Proprietors and Owners entitled in Reversion to the Estate or Estates so in Lease, in respect whereof the same Parts or Shares shall be allotted, according to their several Estates and Interests therein respectively; and the Lessees or Tenants of such Leasehold Estates shall have no Right to such Allotments or any Part thereof.

For making Exchanges, &c.

XXII. And be it further enacted, That the said Commissioners shall and they are hereby authorized and empowered to set out, allot, and award, any Messuages, Buildings, Lands, Tenements, Hereditaments, new Allotments, or old Inclosures, within the said Township of *Sale*, in lieu of or in exchange for any other Messuages, Buildings, Lands, Tenements, Hereditaments, new Allotments, or old Inclosures, within the said Township, or within any adjoining Parish, Township, Manor, or Place, so as that all such Exchanges be made with the Consent of the respective Owners, Proprietors, or other Persons seised of the Lands, Hereditaments, and Premises, which shall respectively be so exchanged as aforesaid; or of the Husbands, Guardians, Trustees, Committees, or Attornies acting for or on Behalf of such Owners, Proprietors, or other Persons respectively, who are under Coverture, Minors, Lunatics, or beyond Seas, or under any other Disability or Incapacity of acting for themselves (such Consent to be testified by Writing under their respective Hands) and so that all such Exchanges be ascertained, specified, and set forth in the Award of the said Commissioners; and so that all such Exchanges of any Lands, Tenements, or Hereditaments, belonging to or held in Right of any Church, Chapel, or Ecclesiastical Benefice, shall also be made with the like Consent in Writing, of the Bishop of the Diocese, and of the Patron of such Church, Chapel, or Ecclesiastical Benefice for the Time being; and all such Exchanges so made as aforesaid shall be for ever good, valid, and effectual in the Law to all Intents and Purposes whatsoever.

Power to make Partition, &c

XXIII. And whereas it may happen that some of the Proprietors of Messuages, Cottages, Lands, or Tenements, in the said Township of

Sale, and Perſons entitled to any Allotment or Allotments to be made by virtue of this Act, may be ſeiſed thereof or entitled thereto in joint Tenancy, or as Coparceners or Tenants in Common, and cannot by reaſon of Infancy, Settlement, or Abſence beyond Seas, make an effectual Diviſion thereof; be it therefore further enacted, That it ſhall be lawful for the ſaid Commiſſioners, and they are hereby authorized and empowered (upon the Requeſt in Writing of ſuch joint Tenants or Coparceners, or Tenants in Common, or any or either of them, or of the Huſbands, Guardians, Truſtees, Committees, or Attornies, of ſuch as are under Coverture, Minors, Lunatics, or under any other Incapacity as aforeſaid, or abſent beyond Seas) to make Partition and Diviſion of the Meſſuages, Cottages, Tenements, Lands, and Allotment or Allotments, to ſuch of the ſaid Owners or Proprietors who ſhall be entitled to the ſame as joint Tenants, Coparceners, or Tenants in Common, and to allot the ſame accordingly to ſuch Owners and Proprietors in Severalty; and from and immediately after the ſaid Allotments ſhall be ſo made and declared, the ſame ſhall be holden and enjoyed by the Perſon or Perſons to whom the ſame ſhall be allotted in Severalty in ſuch and the ſame Manner, and ſubject to ſuch and the ſame Uſes, as the undivided Parts or Shares of ſuch Eſtates would have been held in caſe ſuch Partition and Diviſion had not been made.

Expences of Partitions and Exchanges to be paid by the Parties making the ſame.

XXIV. And be it further enacted, That the Coſts, Charges, and Expences attending any Partition or Exchange which ſhall be made by virtue of this or the ſaid recited Act, ſhall be borne and defrayed by the reſpective Parties making ſuch Partition or Exchange, diſtinct and apart from the other Expences attending the Execution of this Act, in ſuch Manner as the ſaid Commiſſioners ſhall order and direct.

Not to revoke any Wills, Settlements, &c.

XXV. And be it further enacted, That nothing in this Act contained ſhall be conſtrued to revoke, make void, alter, or annul any Deed, Will, or Settlement, or prejudice any Perſon having or claiming any Jointure, Dower, Portion, Debt, or Incumbrance, out of, upon, or affecting any of the Lands and Grounds intended to be divided and incloſed, or any Meſſuages, Lands, Tenements, or Hereditaments to be exchanged in purſuance of this Act; but that the reſpective Shares of the ſaid Common and Waſte Lands, ſo to be allotted and aſſigned upon ſuch Incloſure as aforeſaid, to the ſeveral Proprietors reſpectively, ſhall, immediately after ſuch Allotment, be, remain, and enure to the ſame Uſes and Eſtates, and to and for ſuch and the ſame Powers and Authorities for making Leaſes and otherwiſe, and ſubject to the ſame Wills, Limitations, Settlements, Proviſoes, Charges, and Incumbrances, as the ſaid Meſſuages, Lands, Tenements, and Hereditaments, in reſpect whereof ſuch Allotments ſhall be made, were and ſtood ſeverally limited and liable unto at the Time of making ſuch Aſſignments or Allotments.

Land when allotted to be free of Rectorial and Vicarial Tythes for Six Crops.

XXVI. And be it further enacted, That the ſaid Common and Waſte Lands ſhall be and the ſame are hereby declared to be freed, exonerated, and diſcharged of and from all and all Manner of Rectorial, Vicarial, and other Tythes and Dues whatſoever, to ariſe or accrue therefrom, or in reſpect thereof, for or in reſpect of the Six firſt Crops of Corn or Grain which ſhall ariſe or grow thereon, from and after the paſſing of this Act; and that from and after Six Crops of Corn or Grain ſhall have grown

grown thereon, Tythe free, then and from thenceforth all and all Manner of Rectorial, Vicarial, and other Tythes and Dues whatſoever, which ſhall be yearly iſſuing, ariſing, and renewing or happening from, out of or in reſpect of the ſaid Common and Waſte Lands when incloſed under and by virtue of this Act, ſhall and may be taken, received, and enjoyed by the Rector of the Pariſh of *Aſhton-upon-Merſey* aforeſaid, or his Tenants or Leſſees for the Time being, in as full, ample, and beneficial a Manner, as he or they is or are entitled to any Tythes or Dues whatſoever in Kind, in, upon, or over any other Lands within the Townſhip of *Sale* aforeſaid.

Expences of this Act how to be paid.

XXVII. And be it further enacted, That all Charges and Expences of preparing, obtaining, and paſſing this Act, together with lawful Intereſt for the Money advanced for the ſame, and all Coſts and Charges attending the ſame, and the Coſts and Charges of ſurveying, admeaſuring, planning, valuing, dividing, and allotting the Lands and Grounds ſo directed to be divided and incloſed as aforeſaid; and alſo of ſurveying, admeaſuring, and planning the ancient Incloſures, where the ſaid Commiſſioners ſhall direct the ſame to be ſo ſurveyed, admeaſured, and planned; and alſo the Coſts and Charges of preparing and inrolling the Award of the ſaid Commiſſioners, and all neceſſary Charges and Expences of the ſaid Commiſſioners, and of making Drains, forming the Roads, and of putting the ſame in good and ſufficient Repair, and all other neceſſary Expences about and concerning the ſame Premiſes, ſhall be borne and defrayed, in a proportionate Rate, by all the Proprietors or Owners of Allotments to be made or ſet out under or by virtue of this Act, in ſuch Shares and Proportions, and ſhall be paid to ſuch Perſon and Perſons, and at ſuch Time or Times, and in ſuch Manner as the ſaid Commiſſioners ſhall in and by their ſaid Award, or any other Writing under their Hands, order, direct, or appoint; and in caſe any Perſon or Perſons ſhall refuſe or neglect to pay his, her, or their Share or Proportion of ſuch Coſts, Charges, and Expences as aforeſaid, within the Time, and to ſuch Perſon or Perſons as the ſaid Commiſſioners ſhall appoint, then and in ſuch Caſe, the ſaid Commiſſioners ſhall cauſe the ſame to be levied, and recovered in the Manner directed by the ſaid recited Act.

For paying the Money advanced for obtaining this Act, with Intereſt.

XXVIII. And be it further enacted, That if any of the Proprietors, or any other Perſon or Perſons, ſhall advance and lend any Money for the Purpoſe of defraying the Expences of applying for and obtaining this Act, or carrying the ſame into Execution, ſuch Perſon or Perſons ſhall be repaid the ſame, with Intereſt at the Rate of Five Pounds *per Centum per Annum*, out of the firſt Monies to be raiſed by virtue of this Act.

Proceedings to be entered in Books.

XXIX. And be it further enacted, That all Orders and Proceedings of the ſaid Commiſſioners ſhall be entered in a Book or Books to be provided for that Purpoſe, and ſhall be ſigned by them; and ſuch Orders reſpectively ſhall and may be read in Evidence in all Suits or Actions concerning any Thing done in relation to or in Performance of this Act.

Commiſſioners to lay their Accounts before Two Juſtices Once every Year.

XXX. And be it further enacted, That Once at leaſt in each and every Year during the Execution of this Act (the firſt Year to be computed from the Day of the paſſing thereof) the ſaid Commiſſioners ſhall and they

they are hereby required to make a true and juſt Statement or Account of all Sums of Money by them received and expended, or due to them for their 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 by them laid before any Two or more of His Majeſty's Juſtices of the Peace uſually acting within the Hundred of *Bucklow*, in the ſaid County of *Cheſter*, and not intereſted in the Premiſes, to be by them examined and balanced, and ſuch Balance ſhall be by ſuch Juſtices ſtated in the Book of Accounts to be kept in the Office of the Clerk to the ſaid Commiſſioners; and no Charge or Item in ſuch Accounts ſhall be binding on the Parties concerned, or valid in Law, unleſs the ſame ſhall have been duly allowed by ſuch Juſtices.

Not to ſtock the Roads after the paſſing of this Act.

XXXI. And be it further enacted, That it ſhall not be lawful for any Perſon or Perſons whomſoever, to graze or keep any Sort of Cattle whatſoever in or upon any of the Roads or Ways which ſhall be ſet out and made by virtue of this or the ſaid recited Act, and which ſhall be made into Roads or Lanes, and fenced on both Sides, after the paſſing of this Act, under the Penalty of any Sum not exceeding Ten Pounds, for every Beaſt, Horſe, Mule, Aſs, Pig, Sheep, or Lamb, or other Cattle, to be paid to the Perſon or Perſons injured thereby; nor ſhall any Perſon or Perſons for the Space of Seven Years after the paſſing of this Act, graze or keep Sheep or Lambs upon any of the Lands or Grounds to be divided, allotted, and incloſed as aforeſaid, unleſs the Perſon or Perſons deſirous of grazing or keeping ſuch Sheep or Lambs ſhall fold the ſame, or effectually guard the young Quickſet Hedges adjoining to the Lands or Grounds where ſuch Sheep or Lambs ſhall be ſo grazing or kept, that the ſame may not receive any Damage from ſuch Sheep or Lambs; and the Perſon or Perſons reſpectively depaſturing ſuch Sheep or Lambs as aforeſaid, and neglecting or refuſing to fold the ſame, or effectually to guard their Neighbours' Quickſet Hedges as aforeſaid, ſhall be liable to pay all ſuch Damages as ſhall be ſuſtained by any Perſon or Perſons whomſoever by reaſon of ſuch depaſturing, keeping, or grazing of Sheep or Lambs; ſuch Damages to be recovered in ſuch Manner as is preſcribed for the Recovery of Penalties in and by the ſaid recited Act, or by an Action or Actions at Law, at the Option of the Party or Parties ſuſtaining ſuch Damages.

In caſe of the Death of any of the Parties intereſted, Commiſſioners may nevertheleſs proceed.

XXXII. And be it further enacted, That if any of the Parties intereſted in the ſaid intended Diviſion and Incloſure, ſhall die before the ſame ſhall be made and completed, the Powers and Authorities hereby given to the ſaid Commiſſioners ſhall not be determined or ſuſpended; but that the Commiſſioners for the Time being ſhall and may proceed to execute the Powers and Authorities by this Act to them reſpectively given, in ſuch Manner as they might have done in caſe ſuch Perſon or Perſons had not died; and that the Share or Shares of ſuch Perſon or Perſons ſo dying ſhall be allotted to the Perſon or Perſons who is, are, or ſhall be entitled to the ſame, and ſhall be accepted and fenced, held and enjoyed by him, her, or them reſpectively, according to the Terms and Conditions preſcribed by, and the Purport, true Intent, and Meaning of this Act.

XXXIII. And

Award where to be depoſited.

XXXIII. And be it further enacted, That the Award to be made by the ſaid Commiſſioners, when inrolled in Manner directed by the ſaid recited Act, ſhall be depoſited in the Pariſh Church of *Aſhton-upon-Merſey* aforeſaid, or in ſuch other Place as the ſaid Commiſſioners ſhall appoint.

Perſons aggrieved may appeal to the Quarter Seſſions.

XXXIV. 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 Act (other than and except ſuch Orders and Determinations of the ſaid Commiſſioners, as are herein or in the ſaid recited Act directed to be binding and concluſive, and except in ſuch Caſes wherein an Iſſue at Law ſhall be tried as herein-before mentioned), then and in every ſuch Caſe, he, ſhe, or they may appeal to the General Quarter Seſſions of the Peace which ſhall be holden for the ſaid County Palatine of *Cheſter*, within Four Calendar Months next after the Cauſe of Complaint ſhall have ariſen, on giving to the ſaid Commiſſioners, and to the Party or Parties concerned Ten Days Notice in Writing of ſuch Appeal, and of the Matter thereof; and the Juſtices (not intereſted in the Premiſes), in their ſaid General Quarter Seſſions, are hereby required to hear and determine the Matter of every ſuch Appeal, and to make ſuch Order, and award ſuch Coſts and Damages, as to them in their Diſcretion ſhall ſeem reaſonable; and by their Order or Warrant to levy the Coſts and Damages which ſhall be ſo awarded, by Diſtreſs and Sale of the Goods and Chattels of the Party or Parties liable to pay the ſame, rendering the Overplus (if any) to the Owner or Owners of ſuch Goods and Chattels, after deducting the reaſonable Charges of ſuch Warrant, Diſtreſs, and Sale; and the Determination of the ſaid Juſtices ſhall be binding and concluſive to all Parties concerned, and ſhall not be removed by *Certiorari*, or any other Writ or Proceſs whatſoever, into any of His Majeſty's Courts of Record at *Weſtminſter* or elſewhere; but in caſe ſuch Appeal ſhall appear to the ſaid Juſtices to be frivolous, vexatious, or without Foundation, then the ſaid Juſtices ſhall award ſuch Coſts to be paid by the Appellant or Appellants, as to them in their Diſcretion ſhall ſeem reaſonable, and to be levied in Manner aforeſaid.

This Act not to affect Material Rights, except Right of Common, &c.

XXXV. Provided always, and be it further enacted, That this Act, or any Clauſe, Matter, or Thing herein contained, or the Award to be made by the ſaid Commiſſioners, ſhall not in any Manner prejudice, benefit, or affect, or be given in Evidence in ſupport of any Right, Title, or Intereſt which any Perſon or Perſons whomſoever now have or hereafter ſhall have, of, in, or to any Manerial Rights or Privileges whatſoever within the ſaid Townſhip of *Sale* (other than and except the Right of Common, and Right to the Soil upon and in the ſaid Common and Waſte Lands intended to be divided and incloſed by virtue of this Act, and any Mines, Minerals, Marl, Clay, Soil, Sand, Gravel, and other Matters in and under the ſame, which are to belong to the ſeveral Perſons, Bodies Politick or Corporate to whom any Allotment or Allotments ſhall be made by virtue of this Act); any Thing herein, or any Law, Statute, Uſage, or Cuſtom to the contrary notwithſtanding.

This Act not to extend to the late Duke of Bridgewater's Canal,

XXXVI. Provided alſo, and be it further enacted, That nothing in this Act contained ſhall extend, or be conſtrued to extend, to authorize or empower the ſaid Commiſſioners or their Succeſſors, or any of them, to

nor to a Slip of Land lying on the South-east Side of the said Canal.

to set out, divide, allot, or inclose, or in any Manner to intermeddle with the said Canal or the Lands belonging thereto, and now used or occupied therewith, or a certain Slip of Land on the South-east Side of the said Canal and adjoining thereto, and extending from a certain Bridge called *Marsland's Bridge*, to Lands belonging to the said *George John Legh*, and being in Width Two Yards; or the Towing Path, Bridges, Wharf, and Yard, adjoining and belonging to the said Canal, which said Canal, Lands, and Premises were formerly Part and Parcel of the said Common called *Sale Moor*, and (exclusive of the said Slip of Land) contained by Admeasurement Six Acres Two Roods and Nineteen Perches of Statute Measure, or thereabouts, and were late the Property of the Most Noble *Francis* Duke of *Bridgewater*, deceased, and now of the said Trustees named in the last Will and Testament of the said Duke of *Bridgewater*, their Heirs and Assigns; but that the said Canal and Lands thereto belonging, and also the said Slip of Land on the South-east Side of the said Canal, and the said Towing Path, Bridges, Wharf, and Yard; together with all Mines, Minerals, Marl, Clay, Soil, Sand, and Gravel, lying and being within and under the said Canal, Lands, and Premises, shall not be in anywise subject or liable to any of the Clauses, Powers, or Provisions of this Act, and shall be free and discharged of and from all Right of Common in, upon, and over the same.

General Saving.

XXXVII. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and to all and every Person and Persons, Body or Bodies Politick, Corporate, or Collegiate, his, her, and their Heirs, Successors, Executors, and Administrators, (other than and except the several Persons to whom any Allotment or Allotments shall be made in pursuance of this Act, for and in respect of such Rights and Interests as are hereby meant and intended to be barred, destroyed, and extinguished, and all Persons respectively claiming under them, or in Remainder after them), all such Right, Title, and Interest, as they, every, or any of them, could or ought to have had and enjoyed, in, to, or out of the Common and Waste Lands hereby directed to be divided, allotted, and inclosed, at any Time before the passing of this Act, or could or ought to have had and enjoyed in case this Act had not been made.

This Act to be given in Evidence when printed by the King's Printer.

XXXVIII. 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. 1805.