ANNO QUINQUAGESIMO TERTIO

GEORGII III. REGIS.

Cap. 146.

An Act for incloſing Lands in the Manor and Pariſh of *Whitney*, in the County of *Hereford*.

[3d *June* 1813.]

WHEREAS there are within the Manor and Pariſh of *Whitney*, in the County of *Hereford*, certain Commons and Waſte Grounds, containing together by Eſtimation Sixty Acres, or thereabouts: And whereas *Tomkyns Dew* Eſquire is Lord of the Manor of *Whitney*, extending over the whole Pariſh of *Whitney* aforeſaid; and is ſeiſed of or entitled to the Soil of the Commons and Waſte lying within the ſame: And whereas the ſaid *Tomkyns Dew* and divers other Perſons are ſeiſed or poſſeſſed of divers Meſſuages, ancient incloſed Grounds and Hereditaments within the ſaid Manor and Pariſh, and in reſpect thereof, or as appendant, appurtenant, or belonging thereto, they or their Leſſees, Farmers or Tenants, are entitled to Right of Common, in, upon, or over the ſaid Commons or Waſte Grounds: And whereas an Act was paſſed in the Forty firſt Year of the Reign of His preſent Majeſty, intituled *An Act for conſolidating in One Act certain 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 it would be of great Benefit and Advantage to the ſeveral Perſons intereſted in the ſaid Commons and Waſte Grounds, if the ſame were divided and incloſed, and ſpecific Parts and Shares thereof aſſigned and allotted unto the ſeveral Perſons intereſted therein, according to their ſeveral and reſpective Eſtates, Rights and

Intereſts; but as ſuch Diviſion, Allotment and Incloſure, cannot be effectually made and 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 *John Cheeſe* of the Pariſh of *Lyonſhall*, in the County of *Hereford*, Gentleman, ſhall be, and he is hereby appointed ſole Commiſſioner for valuing, ſetting out, dividing, allotting and incloſing the Commons and Waſte Grounds within the ſaid Manor and Pariſh of *Whitney*, and for carrying this Act and the ſaid recited Act into Execution, ſubject nevertheleſs to ſuch of the Powers, Authorities, Directions, Clauſes and Proviſions contained in the ſaid recited Act, as are not altered, varied, or otherwiſe provided for in and by this Act.

Commiſſioner appointed.

Power to elect new Commiſſioner.

II. And be it further enacted, That if the ſaid *John Cheeſe*, or any Commiſſioner to be appointed in his Stead, in Manner herein-after mentioned, ſhall, before the compleating of the ſaid Diviſion and Allotment, die or refuſe to act, or become incapable of acting as a Commiſſioner in the Execution of this Act, then and in ſuch Caſe, and ſo often as the ſame ſhall happen, it ſhall be lawful for the ſaid *Tomkyns Dew*, Lord or Lords, Lady or Ladies, of the Manor of *Whitney* aforeſaid, for the Time being, as ſoon after as conveniently may be, to nominate and appoint under their, his, or her Hand or Hands, One other proper Perſon not intereſted in the ſaid Diviſion and Incloſure, to be a Commiſſioner for the Purpoſes of this Act, in the Room and Stead of the ſaid *John Cheeſe*, or of ſuch other Commiſſioner, to be nominated and appointed as aforeſaid, as ſhall before the compleating of the ſaid Diviſion and Allotment, die, or refuſe to act, or become incapable of acting as a Commiſſioner in the Execution of this Act, and ſo from Time to Time, when and as often as the like ſhall happen; and every ſuch Commiſſioner ſo to be appointed ſhall have and be inveſted with ſuch and the ſame Powers and Authorities, and be ſubject to ſuch and the ſame Rules, Regulations, and Directions, in all Reſpects as the Commiſſioner in whoſe Place he ſhall be appointed, had or was inveſted with, or ſubject to, by virtue of this Act, or the ſaid recited Act; and every Appointment of a new Commiſſioner as aforeſaid ſhall be annexed to and inrolled with the Award of the ſaid Commiſſioner, and a Copy of the Inrolment thereof ſhall be admitted as legal Evidence.

Notice of Firſt and other Meetings.

III. And be it further enacted, That the ſaid Commiſſioner ſhall, and he is hereby required to give, or cauſe to be given, public Notice in the Pariſh Church of *Whitney* aforeſaid, upon ſome *Sunday* immediately after Divine Service, or by Writing under his Hand, and to be affixed upon One of the Outer Doors of the ſaid Pariſh Church, of the Time and Place of his firſt Sitting for executing the Powers hereby veſted in him, at leaſt Fourteen Days before ſuch Sitting; and ſhall, in like Manner, give Fourteen Days Notice of every ſubſequent Sitting for the like Purpoſes, (Sittings by Adjournment only excepted); and in caſe the ſaid Commiſſioner ſhall not attend at the Time and Place to which any Sitting ſhall be adjourned, it ſhall be lawful for the Clerk, to be appointed by the ſaid Commiſſioner, to adjourn the ſaid Sitting to be held on any future Day, and all Sittings for the Execution of the Powers of this Act ſhall be held within the ſaid Pariſh of *Whitney*, or within the Diſtance of Eight Miles thereof.

IV. And

IV. And be it further enacted, That all Notices, which, by the said recited Act, or by this Act, are required to be given or published in any public Newspaper, of setting out public Carriage Roads, of appointing a new Commissioner, and of reading and executing the Award of the Commissioner, shall be given and published in the *Hereford Journal*, if then published, or if not, then in some other Newspaper, usually circulated in the said County of *Hereford*. Other Notices how to be given.

V. And be it further enacted, That there shall be paid to the Commissioner for the Time being, as a Recompence for his Pains, Trouble, and Expences, the Sum of Three Pounds and Three Shillings, and no more, for each and every Day he shall attend, or travel, in the Execution of this Act; and that no such Commissioner shall require, or be entitled to receive any Fee, Reward, or Gratuity whatsoever, (except the said Sum of Three Pounds and Three Shillings *per* Day), and the Clerk for the Time being to be appointed, shall be allowed such Sum as the said Commissioner for the Time being, shall think fit for his Trouble and Expences, for each and every Day he shall be employed in the Execution of this Act; and that at all Meetings to be held in pursuance of this Act, the said Commissioner and his Clerk shall pay their own Expences; and that the said Proprietors, their Attornies, and Agents, shall pay their own Expences when they, or any of them, shall attend the said Commissioner for the Time being, at any Meeting to be held in pursuance of this Act. Allowance to Commissioner and Clerk. Proprietors to pay their own Expences.

VI. And be it further enacted, That it shall and may be lawful to and for the said Commissioner, and he is hereby authorized and empowered, when and as to him shall seem meet, to appoint such and so many Persons as he shall think proper or necessary, to be Surveyors and Assistants to such Surveyors, for the Purposes of the said intended Division and Inclosure, and from Time to Time to displace and remove any such Person or Persons so to be appointed, and to appoint any other Person or Persons, in the room, place, and stead of any such Surveyor or Surveyors, Assistant or Assistants, so to be displaced and removed, and to make and allow to such Surveyor and Surveyors, Assistant and Assistants, such Recompence for their respective Labour, Skill, and incidental Expences, as to the said Commissioner shall appear just and reasonable. Commissioner to appoint Surveyors and Assistant Surveyors, and to remove them at pleasure.

VII. Provided always, and be it further enacted, That no Person or Persons so to be appointed Surveyor as aforesaid shall be capable of acting in the Execution of this or the said recited Act, as a Surveyor, until he or they shall have taken and subscribed the Oath or Affirmation following, (that is to say): Surveyor to take an Oath.

'I do swear, (or, *being one of the People called* Quakers, 'I do solemnly declare and affirm,) That I will faithfully, impartially, 'and honestly, according to the best of my Skill and Ability, exe- 'cute and perform the several Duties incumbent on me as a Surveyor, 'by virtue of an Act passed in the Fifty-third Year of the Reign of His 'Majesty King *George* the Third, intituled (*here set forth the Title of this 'Act*), according to Equity and good Conscience, and without Par- 'tiality, Favour or Affection, Prejudice or Malice, to any Person or 'Persons whomsoever. So help me GOD.'

Which

Which Oath or Affirmation it ſhall be lawful for the ſaid Commiſſioner to adminiſter to each and every Surveyor as aforeſaid; and ſuch Oath ſo taken and ſubſcribed, ſhall be inrolled, annexed to, and depoſited with the Award of the ſaid Commiſſioner.

Commiſſioner to examine and determine Differences.

VIII. 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 Allotments, it ſhall be lawful for the ſaid Commiſſioner for the Time being to examine into, hear and determine the ſame: Provided always, that nothing herein contained ſhall authorize the ſaid Commiſſioner for the Time being to determine the Title to any Meſſuages, Lands, Tenements or Hereditaments whatſoever.

Commiſſioner to award Coſts.

IX. And be it further enacted, That in caſe the ſaid Commiſſioner for the Time being ſhall upon the Hearing and Determination of any Claim or Claims, Objection or Objections to be delivered to him in purſuance of this Act or the ſaid recited Act ſee Cauſe to award any Coſts, it ſhall be lawful for him, and he is hereby empowered, upon Application made to him for that Purpoſe, to ſettle, aſſeſs and award ſuch Coſts and Charges as he ſhall think reaſonable to be paid to the Party or Parties in whoſe Favour any Determination of the ſaid Commiſſioner 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 ſuch Commiſſioner for the Time being and he is hereby authorized and required by Warrant under his Hand and Seal, directed to any Perſon 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) on Demand, to the Perſon or Perſons whoſe Goods and Chattels ſhall have been ſo diſtrained and ſold, after deducting the Expences attending ſuch Diſtreſs and Sale.

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

X. Provided always, and be it further enacted, That in caſe any Perſon or Perſons intereſted or claiming to be intereſted in the ſaid intended Diviſion and Allotment ſhall be diſſatisfied with the Determination of the ſaid Commiſſioner for the Time being, touching or concerning any Claim or Claims of any Rights of Common or other Rights or Intereſts in, over, upon, or out of the Lands and Grounds intended to be divided, allotted and incloſed in purſuance of this Act, or any Part thereof, it ſhall be lawful for any Perſon or Perſons ſo diſſatisfied to proceed to a Trial at Law of the Matter ſo determined by the ſaid Commiſſioner for the Time being at the Firſt or Second Aſſizes to be holden for the ſaid County of *Hereford* next after the Determination of the ſaid Commiſſioner for the Time being, and for that Purpoſe the Perſon or Perſons who ſhall be diſſatisfied with ſuch Determination, 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 the ſame Determination of the ſaid Commiſſioner for the Time being ſhall be made; 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

or more Issue or Issues, whereby such Claim or Claims, and the 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 in case the said Court shall think proper; and it shall also be lawful for the said Court, upon sufficient Cause shewn, to put off the Trial of such Issue, as is usual in other Cases; and that after such Verdict or Verdicts shall be obtained, and not set aside by the Court, the said Commissioner for the Time being shall, and he is hereby required to act in Conformity thereto, and allow or disallow the Claim or Claims thereby determined according to the Event of such Trial or Trials: Provided also, that the Determination of the said Commissioner for the Time being, touching such Claim or Claims to such Rights of Common, or other Rights or Interests, over, upon, or out of the said Commons and Waste Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, which shall not be objected to within the Time aforesaid, or being objected to, the Party or Parties objecting not causing such Action at Law to be brought and proceeded in within the Time and Manner aforesaid, shall be binding, final, and conclusive upon all Parties interested.

Determination of Commissioner to be final, if not objected to, or no Action brought.

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

If any of the Parties die, Proceedings not to abate.

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

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

XIII. Provided also, and be it further enacted, That nothing in this Act contained shall extend to enable the said Commissioner for the Time being to determine the Right of any Parties contrary to the Possession of such

Commissioners not to determine

Titles contrary to Poſſeſſion.

ſuch Parties, but in caſe the ſaid Commiſſioner for the Time being ſhall be of Opinion againſt the Right of the Perſon or Perſons ſo in Poſſeſſion, he ſhall forbear to make any Determination thereupon, until the Poſſeſſion ſhall have been given up by or recovered from ſuch Perſon or Perſons by Ejectment or other due Courſe of Law.

Suits not to impede Incloſure.

XIV. And be it further enacted, That if any Suit or Suits ſhall be commenced or proſecuted, touching or concerning the Title to any Meſſuages, Lands, Tenements, or Hereditaments, for or in reſpect of any Right or Intereſt in, over, or upon the Lands and Grounds hereby directed to be divided and allotted, or any Part thereof, ſuch Suit or Suits ſhall not delay, impede, or hinder the ſaid Commiſſioner for the Time being from proceeding in the Powers veſted in him by this Act, but the ſaid Allotments ſhall be proceeded in notwithſtanding ſuch Suit or Suits, and may be had or taken by the Perſon or Perſons, Body or Bodies Politic, Corporate, or Collegiate, who upon the Determination of ſuch Suit or Suits, ſhall become entitled to the ſame.

Cattle, &c. not to graze in Highways for Two Years.

XV. And be it further enacted, That no Perſon or Perſons whomſoever ſhall permit any Sort of Cattle, Sheep, Lambs, or Goats to graze in any Highway, Lane, or Paſſage, which the ſaid Commiſſioner for the Time being ſhall order or direct to be laned off or fenced on both Sides, for the Space of Two Years next after Execution of the Award of ſuch Commiſſioner.

For ſhortening Boundary.

XVI. And be it further enacted, That in order to ſhorten the Boundary Fences, between the Lands and Grounds by this Act directed to be divided and incloſed within the ſaid Pariſh of *Whitney*, and the Lands lying within any Pariſh or Pariſhes adjoining to the ſame, it ſhall be lawful for the ſaid Commiſſioner for the Time being, with the Conſent in Writing of the major Part in Value of the Landholders in any Pariſh or Pariſhes adjoining the ſaid Pariſh of *Whitney*, (ſuch Value to be aſcertained by the Land Tax Aſſeſſment), and alſo of the Lord or Lords, Lady or Ladies of the Manor or Manors, in any ſuch adjoining Pariſh or Pariſhes, or of the Owner or Owners of the Land upon which ſuch Fences ſhall or may be intended to be made, to ſet out, aſcertain, and determine the Boundary Fences to be made between the ſaid Commons and Waſte Grounds lying within the ſaid Pariſh of *Whitney*, and the Lands lying in ſuch adjoining Pariſh or Pariſhes as they ſhall judge proper for the Purpoſes aforeſaid; and that after ſuch reſpective Boundaries ſhall be ſo ſet out, aſcertained, and determined, the ſame ſhall for ever thereafter be deemed and taken to be the Boundaries between the ſaid Pariſh of *Whitney* and the Lands lying within ſuch adjoining Pariſh or Pariſhes, and between the ſaid Manor and ſuch adjoining Manor or Manors, any Law, Uſage, or Cuſtom to the contrary notwithſtanding.

Allotment for Materials.

XVII. And be it further enacted, That the ſaid Commiſſioner for the Time being ſhall and may if he ſhall think neceſſary but not otherwiſe, after ſetting out the Roads and Ways in Manner directed by the ſaid recited Act, allot and award unto the Surveyors of the Highways of the ſaid Pariſh, by this Act directed to be incloſed, ſuch Parcels of Land, Part of the Commons or Waſte Grounds intended to be divided and incloſed under and by virtue of this Act, as the ſaid Commiſſioner for the Time being

being ſhall think moſt proper, not exceeding in the Whole Four Acres, for the Purpoſe of digging for and getting Stone, Gravel, and other Materials for the Repair of the Highways and public and private Roads within the ſaid Pariſh, and the Herbage and Produce of ſuch Allotments ſhall be appropriated in ſuch Manner as the ſaid Commiſſioner for the Time being ſhall by his Award direct and appoint.

Commiſſioner may ſtop up old Roads and Footpaths.

XVIII. And be it further enacted, That it ſhall be lawful for the ſaid Commiſſioner, and he is hereby authorized and empowered to ſtop up and diſcontinue, or divert and turn, and to ſet out and appoint any public or private Roads, Tracks, Ways, or Paths in the Pariſh of *Whitney* aforeſaid, and to make ſuch Order or Orders as to him ſhall ſeem proper for that Purpoſe, ſubject nevertheleſs to the Proviſions and Directions of the ſaid recited Act, with reſpect to the ſtopping up of any old or accuſtomed Road or Roads, and ſubject to an Appeal to the Quarter Seſſions as mentioned in the ſaid recited Act.

None of the preſent Roads to be ſtopped up until new Roads are made.

XIX. Provided always, and be it further enacted, That no public Highway or Road ſhall be ſhut up or diſcontinued until the Roads intended to be and remain public Highways ſhall be ſet out according to the Directions of the ſaid recited Act, and until the ſame ſhall be properly formed and made ſafe and convenient for Horſes, Cattle, and Carriages: Provided alſo, that all private Roads, Ways, and Footpaths, which ſhall be ſet out and appointed by the ſaid Commiſſioner, ſhall be made and for ever maintained and kept in Repair by ſuch Perſons, and in ſuch Manner as the ſaid Commiſſioner ſhall by his Award, or any other Writing under his Hand, order, direct, or appoint.

Allotment to the Lord of the Manor.

XX. And be it further enacted, That the ſaid Commiſſioner for the Time being ſhall, after ſetting out the public Roads and Ways, and the Allotment for getting Stone or other Materials, which are directed to be ſet out by the ſaid recited Act, aſſign, ſet out, and allot unto and for the ſaid *Tomkyns Dew*, or the Lord of the ſaid Manor of *Whitney* for the Time being, ſo much of the ſaid Commons and Waſte Grounds hereby directed to be divided and allotted, as in the Judgment of ſuch Commiſſioner for the Time being, ſhall be equal in Value to One-fifteenth Part of the ſaid Commons and Waſte Grounds ſituated within the ſaid Manor; and ſuch Allotment or Allotments ſhall be a full Recompence and Compenſation for the Right of ſuch Lord in and for the Soil of the ſaid Commons and Waſte Grounds; and that ſuch One-fifteenth Part, when ſo allotted and ſet out as aforeſaid, ſhall be deemed and taken to be Part and Parcel of the Eſtate of the ſaid Lord.

Allotment for Common Right.

XXI. And be it further enacted, That the ſaid Commiſſioner for the Time being ſhall ſet out, allot, and award the Reſidue and Remainder of the ſaid Commons and Waſte Grounds hereby directed to be incloſed, unto and among the ſaid *Tomkyns Dew*, in reſpect of his Meſſuages, Lands, and Tenements, and the ſeveral other Owners and Perſons who, at the Time of ſuch Allotment, ſhall be intereſted in the ſaid Commons and Waſte Grounds, according to their ſeveral and reſpective Claims, Rights, and Intereſts in the ſame.

XXII. And

Small Allotments may be laid together.

XXII. And be it further enacted, That where any Parcels of Land or Lands to be allotted for any Common Rights shall be so small as that the same cannot be conveniently or advantageously fenced off or separated, it shall be lawful for the said Commissioner for the Time being to allot and set apart all such Pieces or Parcels of Land in some one or more convenient Place or Places, to be held and enjoyed by the Owners thereof in Common, and by his Award to order and appoint by whom the same shall from thenceforth be respectively held, occupied, possessed, and enjoyed.

For fencing Allotments.

XXIII. And be it further enacted, That the said Commons and Waste Grounds hereby directed to be divided and allotted, shall be inclosed, hedged, ditched, and fenced by such Person or Persons, within such Time and in such Manner as the said Commissioner for the Time being shall in and by his Award, order, direct, and appoint; and the Hedges, Ditches, Drains and Fences which shall be made pursuant to the said Award, shall at all Times thereafter be maintained and kept in Repair, and cleansed by such Person or Persons as the said Commissioner for the Time being shall by his Award order and direct.

For leaving Gaps.

XXIV. And be it further enacted, That convenient Gaps and Openings shall be left in the Fences and Inclosures to be made in pursuance of this Act, for the Space of Three Calendar Months next after the Execution of the said Award, for the Passage of Cattle, Carts, and Carriages, in and through the same, unless the several Parties interested shall agree that the same shall be sooner fenced in and inclosed.

Commissioner may extinguish Rights of Common.

XXV. And be it further enacted, That it shall be lawful for the said Commissioner for the Time being, and he is hereby authorized, at any Time or Times before the Execution of his Award, by Notice in Writing, under his Hand, to be affixed on the principal Door of the Parish Church of *Whitney* aforesaid, to order or direct all or any Part of the Rights of Common, in, over, or upon the said Commons and Waste Grounds, or any Part thereof, to be extinguished, or the Exercise thereof to be suspended, for and during such Time as shall be expressed in such Writing; and also by any such Writings, to be published as aforesaid, to make such Orders and Regulations for preventing all Persons from committing Waste or Destruction upon any Part of the said Lands and Grounds in the mean Time, and until the Division and Allotments thereof shall be effected, as to the said Commissioner shall seem expedient; and that all such Rights of Common as such Commissioner shall by such Writing, order and direct to be extinguished, or the Exercise thereof to be suspended as aforesaid, shall from the Time expressed in such Writing, affixed on the said Church Door, cease and determine, and be for ever extinguished, or the Exercise thereof be suspended accordingly; and all such Directions, Appointments, Orders, and Regulations of the said Commissioner, shall be binding and conclusive upon all Parties interested; and the said Commissioner shall set and impose such Penalties and Forfeitures on Persons not conforming thereto, not exceeding Five Pounds on any One Person for One Offence, as he shall think necessary, which Penalties and Forfeitures shall be paid to such Person or Persons, and for such Uses and Purposes, as the said Commissioner, by any Writing or Writings under his Hand, or by his Award, shall order or appoint; and if Default shall be made in Payment, then the said Commissioner shall

and may, by any Warrant or Warrants under his Hand and Seal, directed to any Perſon or Perſons whomſoever, cauſe the ſame to be levied by Diſtreſs and Sale of the Goods and Chattels of the Party or Parties liable to pay the ſame, together with reaſonable Coſts, rendering the Overplus (if any) to the Owner or Owners of ſuch Goods and Chattels.

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

XXVI. And be it further enacted, That nothing in this Act contained ſhall extend, or be conſtrued or adjudged to extend, to revoke, make void, alter, or annul, any Will or Settlement, or to prejudice any Perſon having any Right or Claim of Dower, Jointure, Annuity, Rent Charge, Debt, Charge, Incumbrances, or Intereſt whatſoever, in, out of, upon, or affecting any of the Lands, Tenements or Hereditaments, Commons, and Waſte Grounds, hereby intended to be divided, allotted, and incloſed, or which ſhall be exchanged or aſſigned, in Compenſation for any other Eſtate or Right, in purſuance of this or the ſaid recited Act; but as well the Lands allotted, as the Tenements and other Hereditaments which ſhall be exchanged or aſſigned, in Compenſation for any other Eſtate or Right, ſhall immediately after ſuch Allotment, Exchange, or Aſſignment is made, be veſted, remain and enure; and the ſeveral Perſons to whom the ſame ſhall be allotted, aſſigned, or given in Exchange as aforeſaid, ſhall thenceforth ſtand and be ſeized thereof reſpectively, to, for, and upon ſuch and the ſame Uſes, Eſtates, Intereſts, Truſts, and Purpoſes reſpectively, and ſubject and liable to ſuch and the ſame Wills, Settlements, Limitations, and Remainders, Conditions, Charges, and Incumbrances, as the ſeveral Lands, Tenements, and Hereditaments, in reſpect of which ſuch Allotments, Aſſignments, and Exchanges ſhall have been made, ſhould or would have ſtood ſeverally limited, ſettled, veſted, or ſubject or liable to, or been held by, in caſe the ſame had not been allotted or exchanged, and this Act had not been made.

Allotments to follow the Tenures of ancient Eſtates.

XXVII. And be it further enacted, That all ſuch Lands or Grounds, and other Hereditaments, as ſhall be allotted to any of the ſaid Proprietors, under or by virtue of this Act or the ſaid recited Act, ſhall be held by ſuch Proprietor, or other Perſon or Perſons reſpectively, under the ſame Tenure as the Lands or Grounds, or Hereditaments, in reſpect of which ſuch Allotments ſhall be made, were reſpectively held and enjoyed at or immediately before the making of ſuch Allotments.

Fences to be made where Cattle are kept in Incloſures.

XXVIII. And be it further enacted, That no Cattle, Sheep, Lambs, or Goats, ſhall be turned or kept in any Allotment or Allotments to be made by virtue of this Act, during the Space of Two Years after the Execution of the ſaid Award, unleſs the Perſon or Perſons ſo turning or keeping the ſame, ſhall firſt at his, her, or their own Expence, make and maintain a Fence ſufficient to guard the young Quick Fences round ſuch Allotment or Allotments from being cropped, hurt, or damaged, by ſuch Cattle, Sheep, Lambs or Goats, whether ſuch Quick Fences be planted or ſet by the Owner or Owners, Occupier or Occupiers of ſuch Allotment or Allotments as aforeſaid, or by the Owner or Owners, Occupier or Occupiers of the Allotment or Allotments adjoining the ſame.

Lands to be ſold to pay the Expences.

XXIX. And be it further enacted, That the ſaid Commiſſioner for the Time being ſhall, from Time to Time, ſet out and allot ſuch Part or Parts and Parcels of the ſaid Commons and Waſte Grounds, as he ſhall judge

judge ſufficient in Value when ſold, to defray the neceſſary Charges and Expences attending the applying for and obtaining this Act, and carrying the ſame and the ſaid recited Act into Effect, and of ſurveying, meaſuring, planning, valuing, dividing, and allotting the ſaid Commons and Waſte Grounds, and of incloſing or fencing ſuch Part or Parts thereof ſo intended to be ſold, in purſuance of this Act as aforeſaid (if he ſhall deem it neceſſary ſo to do), and of incloſing and fencing ſuch other Part or Parts of the ſaid Common and Waſte Grounds as are herein directed to be paid thereout; and of ſcouring, widening, and repairing all ſuch ancient Bridges, Brooks, Ditches, and Watercourſes, as ſhall be deemed neceſſary; and alſo the Coſts, Charges, and Expences of the firſt forming and making ſuch private and public Roads as are directed to be made by the ſaid recited Act; and of preparing, executing, and enrolling the Award hereby directed to be made, and all other the neceſſary Charges and Expences ariſing and accruing in the Courſe of carrying the Powers herein and in the ſaid recited Act contained into complete Execution; and ſhall expoſe the ſaid Allotment or Allotments to Sale by private Contract or by Auction, of which ſaid Sale or Sales reſpectively Twenty-one Days Notice ſhall be given in the *Hereford Journal*, or ſome One or more public Newſpaper or Newſpapers printed or circulated in the ſaid County of *Hereford*; and that the ſaid Commiſſioner for the Time being ſhall, on Payment of the Purchaſe Money for ſuch Allotment or Allotments ſo to be ſold for the Purpoſes aforeſaid, by Indenture under his Hand and Seal, to be executed in the Preſence of, and atteſted by Two or more credible Witneſſes, convey, aſſure, and confirm by way of Leaſe and Releaſe, the ſame Allotment or Allotments unto and to the Uſe of the Purchaſer or Purchaſers thereof, his, her, or their Heirs and Aſſigns for ever, or unto ſuch Perſon or Perſons, for ſuch Uſe or Uſes, upon ſuch Truſt or Truſts, and for ſuch Limitation or Limitations, as ſuch Purchaſer or Purchaſers thereof ſhall direct or appoint, ſuch Direction or Appointment to be in Writing under his, her, or their Hands and Seals.

For making good Deficiency of Land ſold for paying Expences.

XXX. And be it further enacted, That if the Money ariſing by the Sale of ſuch Allotment or Allotments as aforeſaid ſhall not be ſufficient to defray all the Charges and Expences aforeſaid, then the Deficiency ſhall be made up by the ſeveral Perſons intereſted in the ſaid Lands hereby directed to be divided and incloſed, and ſhall be paid in ſuch Shares and Proportions, and within ſuch Time, and to ſuch Perſon or Perſons as the ſaid Commiſſioner for the Time being ſhall direct, nominate, or appoint; and in caſe any Perſon herein-before made ſubject to the Payment of any Money towards ſuch Charges and Expences as aforeſaid, ſhall neglect or refuſe to pay his or her Share or Proportion thereof within the Time to be appointed as aforeſaid, or at any Time after upon Demand, the ſame ſhall and may be levied and recovered in the Manner directed by the ſaid recited Act.

Allowing Proprietors to pay Expences in Money inſtead of Land.

XXXI. Provided always, and be it further enacted, That in all Caſes where any of the Perſons, Bodies Politic or Corporate, intereſted in any Allotment or Allotments of the ſaid Common or Waſte Ground, ſhall be minded and deſirous of paying their reſpective Shares of the ſaid Expences in Money inſtead of ſuſtaining a Loſs of Land in their reſpective Allotments, and ſhall and do, at the Firſt, Second, or Third Meeting of the ſaid Commiſſioner, give Notice in Writing to the ſaid Commiſſioner of ſuch their Mind or Deſire, that then and in every ſuch Caſe the Share

or

or reſpective Shares of the Party or Parties ſo giving ſuch Notice as aforeſaid, of and in all ſuch Expences ſhall be paid and defrayed in Money by ſuch Party or Parties reſpectively, in ſuch Manner, and at ſuch Time or Times, and to ſuch Perſon or Perſons, as the ſaid Commiſſioner for the Time being ſhall by Writing under his Hand, order, direct, and appoint; and in all Caſes where any ſuch Payment or Payments in Money ſhall be ſo made as aforeſaid, the ſaid Commiſſioner for the Time being ſhall conſider the ſame in ſetting out the Allotment or Allotments of the Party or Parties making ſuch Payment or Payments reſpectively, and in aſcertaining the Share and Proportion of the ſaid Common and Waſte Grounds ſo to be ſet out and allotted to ſuch Party or Parties reſpectively.

Application of Surplus Money.

XXXII. And be it further enacted, That in caſe any Part or Parts of the ſaid Common and Waſte Ground ſhall be ſold for more Money than will be required to defray ſuch Charges and Expences as aforeſaid, then and in ſuch Caſe ſuch Surplus Money ſhall be divided and apportioned between the ſeveral Proprietors of the Lands hereby directed to be divided and incloſed according to their ſeveral and reſpective Intereſts therein; and the Shares of ſuch of them as ſhall be Tenants in Fee Simple, ſhall be paid to them reſpectively; and the Shares of ſuch other Perſons reſpectively ſhall be paid into the Bank of *England* in Manner directed by the ſaid recited Act with reſpect to Money thereby directed to be paid into the Bank for the Purchaſe or Exchange of Lands, Tenements, or Hereditaments, or any Timber or Wood growing thereon, and which Money ought to be laid out in the Purchaſe of other Lands, Tenements, or Hereditaments, to be ſettled to the ſame Uſes.

Commiſſioner empowered to borrow Money to pay Expences till Sale of Lands for that Purpoſe.

XXXIII. And be it further enacted, That in the mean Time, and until ſuch Sale or Sales as aforeſaid ſhall be made and compleated, it ſhall be lawful for the ſaid Commiſſioner for the Time being to borrow and take up at Intereſt of any Perſon or Perſons willing to advance and lend the ſame ſuch Sum or Sums of Money as ſhall from Time to Time be neceſſary for defraying the Charges and Expences of paſſing this Act, and other the Expences aforeſaid, not exceeding Five Pounds *per* Acre, which Money, together with lawful Intereſt from the reſpective Times of advancing the ſame, ſhall be repaid out of the Firſt Monies which ſhall be raiſed in purſuance of this Act.

Power to make Exchanges.

XXXIV. And be it further enacted, That it ſhall be lawful for the ſaid Commiſſioner for the Time being, to ſet out, allot, and award any Lands, Tenements, or Hereditaments whatſoever within the ſaid Pariſh of *Whitney*, in lieu and in Exchange for any other Lands, Tenements, or Hereditaments whatſoever within the ſaid Pariſh, or within any adjoining Pariſh, Hamlet, Townſhip, or Place; provided that all ſuch Exchanges be aſcertained, ſpecified, and declared in the Award of the ſaid Commiſſioner for the Time being, and be made with the Conſent of the Owner or Owners, Proprietor or Proprietors of the Lands, Tenements, or Hereditaments which ſhall be ſo exchanged, whether ſuch Owner or Owners, Proprietor or Proprietors, ſhall be a Body or Bodies Politic, Corporate, or Collegiate, or a Tenant or Tenants in Fee Simple or for Life, or in Fee Tail General or Special, or by the Courteſy of *England*, or for Years determinable on Life or Lives, or with the Conſent of the Guardians,

Truſtees, Feoffees for Charitable or other Uſes, Huſbands, Committees, or Attornies of or acting for any ſuch Owners or Proprietors as aforeſaid, who, at the Time of making any ſuch Exchange or Exchanges, ſhall be reſpectively Infants, Femes Covert, Lunatics, or under any other legal Diſability, or who ſhall be beyond the Seas or otherwiſe diſabled to act for themſelves, himſelf, or herſelf, ſuch Conſent to be teſtified in Writing under the Common Seal of the Body Politic, Corporate, or Collegiate, or under the Hands of the other conſenting Parties reſpectively; and all and every ſuch Exchange or Exchanges ſo to be made, ſhall be good, valid, and effectual in Law, to all Intents and Purpoſes whatſoever: Provided nevertheleſs, that no Exchange ſhall be made of any Lands, Tenements, or Hereditaments held in Right of any Church, Chapel, or other Eccleſiaſtical Benefice, without the Conſent in Writing teſtified as aforeſaid of the Patron thereof, and of the Lord Biſhop of the Dioceſe in which ſuch Lands, Tenements, or Hereditaments to be exchanged ſhall lie and be ſituate.

Expence of Exchanges, Partitions, and Sale of Common Rights.

XXXV. Provided always, and be it further enacted, That all Coſts, Charges, and Expences attending the making and completing any Exchanges, Partitions, and Sale of Common Rights or Allotments, under or by virtue of this Act, or the ſaid recited Act, ſhall be paid and borne by the ſeveral Perſons making ſuch Exchanges, Partitions, or Sales, in ſuch Manner, and in ſuch Proportions, as the ſaid Commiſſioner for the Time being ſhall order or direct.

Power to ſell Right of Common or Allotments previous to the Award.

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

Award to be inrolled and depoſited.

XXXVII. And be it further enacted, That the original Award to be made by the ſaid Commiſſioner for the Time being, purſuant to the Directions of the ſaid recited Act and this Act, for the Purpoſes thereof, ſhall be depoſited with the Clerk of the Peace for the ſaid County of *Hereford* within Six Calendar Months after the Execution of the ſame by the ſaid Commiſſioner for the Time being, or as ſoon after as conveniently may

may be, and a Copy of the ſaid original Award, written upon Parchment, and ſuch Plans and Surveys as may be annexed thereto, ſigned and atteſted by the ſaid Commiſſioner, or any Commiſſioner to be appointed in Manner herein-before mentioned, ſhall be lodged and depoſited in the Pariſh Church of *Whitney* aforeſaid.

Commiſſioner to account yearly.

XXXVIII. And be it further enacted, That Once at leaſt in every Year during the Execution of this Act, ſuch Year to be computed from the Day of paſſing the ſame, the ſaid Commiſſioner for the Time being ſhall and he is hereby required to make a juſt and true Statement or Account of all Sums of Money by him received and expended, or due to him for his 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 him laid before ſome One or more of His Majeſty's Juſtices of the Peace for the ſaid County of *Hereford*, to be by him or them examined and balanced, and ſuch Balance ſhall be by ſuch Juſtice or Juſtices ſtated in the Book of Accounts to be kept in the Office of the Clerk to the ſaid Commiſſioner for the Time being; and no Charge or Item in ſuch Statement or Account ſhall be binding on the Parties concerned, or valid in Law, unleſs the ſame ſhall have been duly allowed by ſuch Juſtice or Juſtices.

Appeal to Quarter Seſſions.

XXXIX. And be it further enacted, That if any Perſon or Perſons, Body or Bodies Politic, Corporate, or Collegiate, ſhall think himſelf, herſelf, or themſelves aggrieved by any Thing done in purſuance of this or the ſaid recited Act, (other than and except ſuch Orders and Determinations of the ſaid Commiſſioner for the Time being, as are by the ſame Act or this Act declared to be final, binding, and concluſive, and except in ſuch Caſes wherein an Iſſue at Law ſhall be tried as herein-before mentioned), then and in ſuch Caſe he, ſhe, or they may appeal to the Juſtices of the Peace at the General Quarter Seſſions of the Peace which ſhall be holden for the ſaid County of *Hereford*, within Four Calendar Months next after the Cauſe of ſuch Complaint ſhall have ariſen, the Perſon or Perſons ſo appealing firſt giving Fourteen Days Notice thereof in Writing to the Party or Parties appealed againſt, and entering into a Recognizance with Two ſufficient Sureties before a Juſtice of the Peace for the ſame County, conditioned to proſecute ſuch Appeal with Effect, and to pay the Coſts which ſhall be awarded by ſuch Juſtices to be paid by ſuch Appellants reſpectively; and the ſaid Juſtices, in their ſaid General Quarter Seſſions, are hereby authorized and required to hear and determine ſuch Appeal, and to give ſuch Coſts to either Party as they ſhall think reaſonable, and to make ſuch Order therein as to them ſhall appear juſt, which Order ſhall be final and concluſive on all Parties, and ſhall not be removed or removable by *Certiorari* or any other Writ into any of His Majeſty's Courts of Record at *Weſtminſter* or elſewhere.

Saving of Rights of the Lord of the Manor.

XL. Provided always, and be it further enacted, That nothing herein contained ſhall prejudice, leſſen, or defeat the Right, Title, or Intereſt of the Lord of the ſaid Manor for the Time being, in or to the Seignories or Royalties incident and belonging to the ſame Manor; but that ſuch Lord ſhall and may at all Times hereafter hold and enjoy the ſame, and all Rents, Courts, Perquiſites, and Profits of Courts, Services, Franchiſes, Privileges, Mines, Minerals, Waifs, Eſtrays, Deodands, Forfeitures, and

all other Royalties, Rights, and Appurtenances, to such Manor incident and belonging, (other than those which are intended to be compensated for, barred, or destroyed by this Act), in as full, ample, extensive, and beneficial a Manner, as he could or might have held and enjoyed the same in case this Act had not been passed.

General Saving.

XLI. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and to all and every other Person and Persons, Body and Bodies Politic, Corporate, and Collegiate, his, her, and their Heirs, Successors, Executors, and Administrators (except the several Persons and Body or Bodies Politic, Corporate, or Collegiate, to whom any Allotment or Allotments shall be made by virtue of and in pursuance of this Act and of the said recited 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 claiming under them, or in Remainder after them), all such Estate, Right, Title, and Interest as he, they, every, or any of them could or ought to have had and enjoyed, of, in, to, or in respect of the Lands hereby directed to be divided and allotted, in case this Act had not been passed.

Act to be printed by the King's Printer, and made Evidence.

XLII. And be it further enacted, That this Act shall be printed by the several Printers to the King's most Excellent Majesty, duly authorized to print the Statutes of the United Kingdom, and a Copy thereof so printed by any of them shall be admitted as Evidence thereof by all Judges, Justices, and others.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN, Printers to the King's most Excellent Majesty. 1813.