



ANNO QUINQUAGESIMO PRIMO

GEORGI III. REGIS.

Cap. 93.

An Act for inclosing Lands in the Parishes of *Westbury-upon-Trym*, *Henbury* and *Compton Greenfield*, in the County of *Gloucester*. [14th May 1811.]

WHEREAS there are within the several Parishes of *Westbury-upon-Trym*, *Henbury* and *Compton Greenfield*, in the County of *Gloucester*, several Commons, Commonable Lands, Common Meads, Salt Warths, Marsh Lands, Moors and Waste Grounds, called or known by the several Names of *Shirehampton Warth* otherwise *Shirehampton Moor*, *Hungroad Warth* otherwise *The Moor*, *The Common*, the *Nook* and *Pen Pole* otherwise *Penfold*, in the Hamlet of *Shirehampton*, in the said Parish of *Westbury-upon-Trym*; *Lawrence Weston Common*, *King's Weston Hill* otherwise *The Hill*, and *Greenhill*, in the Hamlets of *Lawrence Weston* and *King's Weston*, *Redwick Common*, and the Warths and Lands in the Tythings of *Redwick* and *Northwick* and *Hallend Common*, *Berwick Common*, *West Warth*, *East* or *Cbyrneys Warth* and *Upper Warth*, in the Tything of *Stowick*, *Aust Common* and *Salt Warths*, in the Hamlet or Tything of *Aust* otherwise *Aust Wick*, all in the said Parish of *Henbury*; and *Compton Common*, *Dyer's Common*, *Vimpany Common* and *Spirt's Green*, in the said Parishes of *Compton Greenfield* and *Henbury*, or by whatsoever other Name or Names the said Commons, Commonable Lands, Common Meads, Salt Warths, Marsh Lands, Moors and Waste Lands
[Loc. & Per.] 21 H are

are known, containing together One thousand Acres, or thereabouts : And whereas the Right Honourable *Edward Lord de Clifford* is or claims to be Lord of the Manors or reputed Manors of *Shirehampton, Lawrence Weston* and *King's Weston* : And whereas *Sir Hugh Smyth* Baronet, the Right Honourable *Henry Lord Middleton* and *Edward Francis Colston* Esquire, are or claim to be the Lords of the Hundred of *Henbury*, and of the Manors of *Henbury, Westbury, Stoke Bishop, Redwick, Northwick* and *Stowick*; and also claim to be Lords of the said Manors or reputed Manors of *Shirehampton* and *Lawrence Weston* : And whereas *William Miller* Esquire, is or claims to be Lord of the Manor or reputed Manor of *Aust* otherwise *Aust Wick* : And whereas *Sir Henry Cann Lippincott* Baronet, is or claims to be Lord of the said Manor or reputed Manor of *Compton Greenfield*; and as such they the said several Persons respectively claim to be entitled to the Soil of the said respective Waste Lands within their said several Manors or Lordships respectively : And whereas the said Lord *de Clifford*, *Sir Hugh Smyth*, *William Miller*, *Sir Henry Cann Lippincott*, and several other Persons are and claim to be entitled to and to exercise Rights of Common, and stinted or particular Rights called Beast Leazes and Sheep Leazes, and also several other Rights and Interests into, and over and upon the said Commons, Common Meads, Warths, Marsh Lands, Moors and Waste Lands, some or one of them, or some Part or Parts thereof respectively, for or in respect of their old inclosed or ancient Tenements situate and lying within the said several Parishes, Hamlets and Places aforesaid or some or one of them : 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 the said Commons, Common Meads, Warths, Marsh Lands, Moors and Waste Lands are in their present State incapable of any considerable Improvement, and it would be very advantageous to the several Persons interested therein if the same were divided, and specific Parts thereof assigned, allotted and awarded to each of the Proprietors thereof and Persons interested therein, according and in proportion to their several Rights and Interests; but such Division and Allotment cannot be effected without the Aid and Authority of Parliament; May it therefore please Your Majesty, That it may be enacted, and be it enacted, by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That *Edward Sampson*, of *Henbury* aforesaid, Esquire; and *John Brown*, of *Bristolington*, in the County of *Somerset*, Gentleman, and their Successors, to be elected in Manner hereinafter mentioned, shall be and they are hereby appointed Commissioners for setting out, dividing, allotting and inclosing the several Commons, Common Meads, Salt Warths, Marsh Lands, Moors and Waste Grounds aforesaid, within the said Parishes of *Westbury-upon-Trym, Henbury* and *Compton Greenfield*, and for executing all and every the Powers vested in them by this Act, subject to the Rules, Orders, Regulations and Directions hereinafter mentioned and prescribed, and also subject to the Rules, Orders, Regulations and Directions contained in the said recited Act, except in such Cases where the same are hereby varied or altered.

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c. 109.

Commission-
ers.

Power to
elect a new
Commission-
er.

II. And be it further enacted, That if either of the said Commissioners or any Commissioner to be chosen in Manner hereinafter mentioned, shall die,

die, refuse, neglect or become incapable to act as a Commissioner in the Execution of this Act, for the Space of One Calendar Month, when Occasion shall require his Attendance on the Business of the said Inclosure, then and in such Case, and as often as any such Event shall happen, it shall and may be lawful for the surviving or acting Commissioner by Writing under his Hand to appoint one other Commissioner, not interested in the said intended Division and Inclosure, instead of the Commissioner so dying, refusing or neglecting to act, or becoming incapable of acting as aforesaid; and every Commissioner so to be appointed shall have the like Power and Authority for carrying the said recited Act and this Act into Execution, as if he had been named and appointed a Commissioner in and by this Act; and every Instrument of such Appointment shall be annexed to and deposited with the Award of the said Commissioners to be made by virtue or in pursuance of the said recited Act or this Act.

III. And be it further enacted, That the said Commissioners, and every new Commissioner to be appointed under or by virtue of this Act, shall be allowed the Sum of Three Pounds and Three Shillings for his Trouble, Charges and Expences, including all Travelling Charges and Expences, for each and every Day he shall necessarily attend in the Execution of the Powers of this Act and the said recited Act; and the said Commissioners shall have Power, and they are hereby authorized to appoint a Clerk to assist them in the Execution of the Powers of this and the said recited Act, and such Clerk from Time to Time to remove, and another to appoint, as to them shall seem meet; and the said Clerk shall in like Manner be allowed the Sum of One Pound Eleven Shillings and Sixpence for his Trouble, Charges and Expences, including all Travelling Charges and Expences for each and every Day he shall necessarily attend the said Commissioners in the Execution of this Act and the said recited Act.

Allowance to
Commission-
ers.

IV. And be it further enacted, That after the said Commissioners shall have taken and subscribed such Oath or Affirmation as they are required to take, and before they proceed to any other Business touching the Execution of this Act, they shall and they are hereby authorized and required to appoint some other Person (not interested in the said Division and Inclosure) to be an Umpire between them; and in case such Person or any other Person to be appointed as Umpire as hereinafter mentioned, shall die, or refuse to act or shall become incapable of acting as such, the said Commissioners shall and they are hereby required forthwith to appoint another Person (not interested in the said Division and Inclosure) to be an Umpire in his Stead; and that whenever the said Commissioners shall differ or disagree in Opinion touching any Matter or Thing to be by them done or performed in pursuance of this or the said recited Act, then and in every such Case the Matter in Question shall be determined by the Umpire so to be appointed as aforesaid, whose Determination therein shall be deemed and acted upon as the Determination of the said Commissioners.

Umpire to be
appointed.

V. Provided always, and be it further enacted, That no Person shall be capable of acting as Umpire in the Execution of the Powers given by this or the said recited Act, until he shall have taken and subscribed the Oath or Affirmation following; that is to say:

Umpire to be
sworn.

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, or 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.

X. Provided always, and be it further enacted, That in case any Person or Persons interested or claiming to be interested in the said Division and Inclosure, shall be dissatisfied with any Determination of the said Commissioners or Umpire, touching or concerning any Claim or Claims to the Right of Soil of the said Commons and Waste Lands, or of any Rights of Common, or other Interests or Rights in, over or upon the Lands and Grounds hereby directed to be divided, allotted and inclosed, or any Part thereof, it shall and may be lawful for the Person or Persons so dissatisfied, to proceed to a Trial at Law of the Matter so determined by the said Commissioners or Umpire, at the then next or at the following Assizes to be holden for the said County; and for that Purpose the Person or Persons who shall be dissatisfied with the Determination of the said Commissioners or Umpire, shall cause an Action to be brought in some or one of His Majesty's Courts of Law at *Westminster*, on a feigned Issue, against the Person or Persons in whose Favour such Determination shall have been made, within Twenty-one Days after such Determination of the said Commissioners or Umpire; 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 and file Common Bail, and accept one or more Issue or Issues, whereby such Claim or Claims, and the Right or Rights thereby insisted upon 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 or 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 or Trials 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: Provided always, that the Determination of the said Commissioners or Umpire, touching such Claim or Claims to the Right of Soil of the said Commons and Waste Lands, or of any Right of Common, or other Rights and Interests, in, over and upon the Lands and Grounds hereby directed to be divided, allotted and inclosed or any Part thereof, which shall not be objected to,

[*Loc. & Per.*]

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or

Allowing
Parties to try
their Rights
at Law.

or being objected to, the Parry or Parties objecting not causing such Action at Law to be brought and proceeded in as aforesaid, shall be final and conclusive upon all Parties.

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

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

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

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 hereinbefore 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 to the said Commissioners 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 be thereupon incumbent on the Heir or Heirs, or other Person or Persons who shall claim the Benefit of such Determination as aforesaid, on having Notice of such Process, 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 Person or Persons had been actually living, and the Rights of all Parties shall be equally bound and concluded by the Event of such Action or Actions.

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

XIII. Provided also, and be it further enacted, That nothing in this Act contained shall extend to enable the said Commissioners to determine any Right between the Parties, contrary to the Possession of any of such Parties (except in Cases of Encroachments made within the Period of Twenty Years next before the First Day of *January* One thousand eight hundred and eleven); but in case the said Commissioners shall be of Opinion against the Right of the Person or Persons so in Possession, they 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.

For ascertaining Boundaries.

XIV. And be it further enacted, That the said Commissioners shall with all convenient Speed after the passing of this Act, cause Notice of their Intention to perambulate the Boundaries of the several Waste Lands, Commons and Commonable Places in the said Parishes of *Westbury-upon-Trym*, *Henbury*, and *Compton Greenfield*, and intended to be divided and inclosed, to be inserted in the *Gloucester Herald*, or in some other Newspaper printed and circulated within the said County of *Gloucester*, Fourteen Days at least before the Time of such Perambulation; and after the Expiration of the Time to be specified in such Notice, they the said Commissioners are hereby authorized and required to perambulate, enquire into, set out, ascertain, fix and determine the Boundaries of the several Waste Lands, Commons and Commonable Places in the said Parishes, and a Description of the said Boundaries shall, within One Month afterwards be inserted in the said *Gloucester Herald*, or in some other Newspaper

paper printed and circulated within the said County of *Gloucester*: Provided always, That if any Person or Persons, Body or Bodies Politic or Collegiate, interested in the Determination of the said Commissioners respecting the said Boundaries, shall be dissatisfied with the Determination of the said Commissioners respecting the said Boundaries, such Person or Persons, Body or Bodies Politic or Collegiate, or any of them, may, appeal to the Justices of the Peace acting in and for the County of *Gloucester*, at any General Quarter Sessions of the Peace to be held within Six Months next after the aforesaid Publication of the said Boundaries, on giving to the said Commissioners Fourteen Days' Notice in Writing of such Appeal and of the Matter thereof; and the Decision of the said Justices therein shall be final and conclusive.

Appeal to
Sessions
against Boundaries.

XV. And be it further enacted, That if the said Commissioners shall deem it expedient or proper to shorten the Boundary Fences between the Lands and Grounds by this Act directed to be divided, allotted and inclosed in any of the said Parishes of *Westbury-upon-Trym*, *Henbury* and *Compton Greenfield*, and any Parish or Parishes adjoining thereto, or to make the same regular, it shall be lawful for the said Commissioners, with the Consent in Writing under the Hand or Hands of the Lord or Lords of the Manor or Manors in which the Land is situate, or of the Owner or Owners of the Land upon which any Fence or Fences shall or may be intended to be made, to set out the Boundary between the Lands and Grounds by this Act directed to be divided, allotted and inclosed in any of the said Parishes of *Westbury-upon-Trym*, *Henbury* and *Compton Greenfield*, and any adjoining Parish or Parishes, in such Manner as they shall judge proper for the Purpose aforesaid; and after such Boundaries shall be so set out as aforesaid, the same shall be fenced by such Person or Persons in such Manner and at such Times as the said Commissioners shall direct, and shall for ever thereafter be deemed and taken to be the Boundaries between the Parishes of *Westbury-upon-Trym*, *Henbury* and *Compton Greenfield* aforesaid, and such adjoining Parish or Parishes, any Law, Usage or Custom to the contrary notwithstanding.

For shortening the Boundary Fences against adjoining Parishes.

XVI. And be it further enacted, That it shall be lawful for the said Commissioners, with the Concurrence and Order of Two Justices of the Peace for the County of *Gloucester* (in Manner and subject to Appeal as in the said recited Act is mentioned) to stop up and discontinue any of the public Roads, or private Roads, or Ways, within the said Parishes or either of them, which shall be deemed unnecessary, and to widen, turn or alter any of such Roads or Ways as shall be deemed proper to be widened, turned, or altered; and all such public Roads as shall be stopped up or discontinued, shall be deemed Part of the Lands hereby intended to be divided, allotted and inclosed, and shall be allotted to such of the said Proprietors of the adjoining Lands as the said Commissioners shall think fit.

For stopping up and altering Roads.

XVII. And be it further enacted, That the said Commissioners shall and may scour out, deepen, widen, amend and repair all such ancient Ditches, Drains, Banks, Sluices, Staunches, Tunnels and Bridges in the said Parishes of *Westbury-upon-Trym*, *Henbury* and *Compton Greenfield*; and also shall and may make or cause to be made such new Ditches, Drains, Banks, Sluices, Staunches, Tunnels and Bridges and other Requisites, as well in, through, over and across the said Commons, Moors

Commissioners to make Drains.

Moors and Waste Lands hereby directed to be divided and inclosed, as also in, over and through any ancient Inclosures or other Lands or Grounds within either of the said Parishes as shall be necessary and proper, making reasonable Satisfaction to all and every Person and Persons who may sustain any Damage thereby, of such Dimensions and in such Directions respectively as the said Commissioners shall think proper; and the said Commissioners shall and may and they are hereby directed and required, in and by any Writing or Writings under their Hands, or in and by their said Award, to order and determine by whom and at whose Expence, at what Time or Times, and in what Manner the said Ditches, Drains, Banks, Sluices, Staunches, Tunnels, Bridges and other Requisites shall be made, scoured out, deepened, widened, amended and repaired, and by whom the same shall afterwards be respectively cleansed, scoured out, repaired and maintained.

Encroachments made within Twenty Years, to be the Property of the Persons who received Rent for same.

XVIII. And be it further enacted, That all Inclosures and Incroachments, which shall have been at any Time or Times before the passing of this Act, made upon or from the said Commons and Waste Lands intended to be inclosed, by and with the Consent and Approbation, or under the Licence and Authority of, or are now held by Lease under, the Lord or Lords of the said respective Manors respectively, and all other Inclosures or Encroachments which shall have been made upon or from the said Commons and Waste Lands in any of the Hamlets or Parishes hereinbefore mentioned, for Twenty Years from the First Day of *January* One thousand eight hundred and eleven or upwards, shall, with the Cottages and Buildings thereon, be deemed to belong to, and to be the Property of the Person or Persons in his, her or their own Right, occupying or receiving Rent for the same; but he or they shall in no case be entitled to any Allotment or Allotments in respect thereof under this Act.

Other Encroachments.

XIX. And be it further enacted, That all Encroachments upon or from the said Commons and Waste Lands by any Person or Persons entitled to any Allotment by virtue of this Act, or by his or their Ancestor or Ancestors, or Testator or Testators (except such Encroachments as have been made with the Consent of the Lord or Lords of the Manors aforesaid), and which have been made within Twenty Years next before the First Day of *January* One thousand eight hundred and eleven, shall be deemed Part of such Commons and Waste Lands; but all such last-mentioned Encroachments, with the Buildings thereon, subject to any Right of Way leading through the same, shall be allotted to the Person or Persons who at the Time of making the Allotments under this Act, shall in his, her or their own Right, be in Possession or Receipt of the Rents and Profits of such Encroachments for his, her or their Share or Proportion of the said Commons and Waste Lands by virtue of this Act, or so far as the same will extend in Value, according to its original State when uninclosed, or the Value of the Waste Lands adjoining; but in case any such last-mentioned Encroachments shall, in the Judgment of the said Commissioners, be of greater Value than the Share or Proportion of the said Commons or Waste Lands which the Person or Persons so entitled ought to have by virtue of this Act, then and in such Case the said Commissioners are hereby authorized to sell and allot such Encroachments or Parts of Encroachments, to such Person or Persons at such Sum or Sums of Money as the said Commissioners shall adjudge to have been the Value thereof,

thereof to be estimated as aforesaid ; but if such Person or Persons shall decline to purchase the same at such Price as the Commissioners shall fix, then every such last-mentioned Encroachment shall also be sold by the said Commissioners at its actual improved Value, and the said Commissioners shall receive and apply such Purchase Monies for the Purposes of this Act, in aid of the other Monies hereinafter directed to be raised for such Purposes ; and if the Monies so to be received shall be more than sufficient for those Purposes, the Surplus thereof shall be paid and applied in the Manner hereinafter directed ; and if any such last-mentioned Person or Persons shall refuse or neglect to pay such Sum or Sums of Money as the said Commissioners shall so adjudge, order or direct, and at the Time fixed by them for that Purpose, then such Encroachments as shall not be so paid for as aforesaid, shall be deemed and they are hereby declared to be Parts of the said Commons and Waste Lands, and shall be surveyed, measured and allotted as Part thereof.

XX. And be it further enacted, That all Encroachments which at any Time within Twenty Years next before the First Day of *January* One thousand eight hundred and eleven, have been made by any Person or Persons not being interested in or entitled to any Allotment or Part of the said Commonable Lands or Waste Grounds hereby directed to be divided and inclosed, shall be deemed Part thereof, and shall be divided and allotted accordingly ; and in case any Dispute or Difference shall arise touching any such Encroachments, or the Extent thereof, such Dispute shall be investigated and determined by the said Commissioners.

Respecting
Encroach-
ments by
Strangers.

XXI. And be it further enacted, That after the public and private Roads shall have been set out, and the Lands to be sold for defraying the Expences of obtaining and executing this Act shall have been marked out by the said Commissioners, they shall in the next place set out, allot and award unto and for the respective Lords of the Manors, One-twentieth Part of so much and such Parts of the said Commons and Waste Lands hereby directed to be divided and inclosed, as lie or are situated within their respective Manors, in lieu of and in full Compensation for their Right to the Soil of and in the Commons and Waste Lands within their respective Manors.

Allotments
for Right of
Soil.

XXII. And be it further enacted, That so much of the said Hill called *Penpole*, otherwise *Penfold Hill*, in the Tything of *Skirehampton* aforesaid, as in hereinafter particularly described, (that is to say) a Plot or Parcel of the said *Penpole* otherwise *Penfold Hill*, situate and being on the Southward Side of the Road leading from the Lodge in *King's Weston Park* into *Penpole* otherwise *Penfold Hill*, and ranging in a Line from the Corner of the Wall in the said Park, to the Point or Corner of the Wall of a Close of Ground formerly *Seagers*, and belonging to the said Lord *De Clifford*, containing by Admeasurement Thirty-six Perches ; one other Plot or Parcel of the said *Penpole* otherwise *Penfold Hill*, situate and being on the Northward Side of the said Road, leading from the said Lodge into *Penpole* otherwise *Penfold Hill*, and ranging in a Line from a Point Twenty Feet from the End of a Wall near the Park Lodge, in a curved Line to the middle Angle of *Penpole* Tower ; the said Curve to be indented Fifteen Yards from the straight Line between the Points at or on the Remains of an old Fence

Allotment
to Lord De
Clifford.

[*Loc. & Per.*]

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there,

there, containing by Admeasurement Two Acres, Two Roods and Four Perches; and likewise one other Plot or Parcel of the said *Penpole* otherwise *Penfold Hill*, situate on the North Side of the said Hill, bounded on the Eastward Part thereof by the Wall and Plantations of the said Lord *De Clifford*, and on the North Side partly by an old Inclosure of *Richard Cartwright* Esquire, and partly by the Road leading to *Shirehampton* from the said old Inclosure, and ascending the said Hill in a right Line from the Southern Side of the said Road or Lane, Forty-six Yards in a Direction from the Eastern Part of the Gateway into *Sarah Adams'* Field, towards the Top of the said Hill, and from thence in an Eastern Direction to the said Wall and Plantations on the Eastern Side, being Twenty Yards from the Northern Wing or Wall of *Penpole* Tower, to be measured at right Angles with the intended Southern Fence of the said last-mentioned Plot or Parcel of Ground, containing by Admeasurement Three Acres and Two Roods; shall be by the said Commissioners allotted to the said Lord *De Clifford*, his Heirs and Assigns, for his and their Share or Proportion of the said Commons and Waste Lands by virtue of this Act, or so far as the same will extend in Value, according to its original State when uninclosed, or according to the Value of the Waste Lands adjoining; and that the said Commissioners shall set out and allot the Strip, or Piece or Parcel of the said Hill called *Penpole* otherwise *Penfold Hill*, situate and lying between the Road or Way on the North Side of the said Hill, and the old Inclosures there of *Richard Cartwright* and *Sarah Adams*, unto them the said *Richard Cartwright* and *Sarah Adams*, their Heirs and Assigns respectively, according to the Frontages against their said Lands, for their respective Shares or Proportions of the said Commons and Waste Lands by virtue of this Act, or so far as the same will extend in Value according to its original State when uninclosed, or according to the Value of the Waste Lands adjoining; but in case any or either of such Allotments or Allotment shall be of greater Value than the Shares or Proportions, Share or Proportion of the said Commons or Waste Lands which the said Lord *De Clifford*, *Richard Cartwright*, or *Sarah Adams*, ought to have by virtue of this Act, then and in such Case the said Commissioners are hereby authorized to sell and allot such Allotments or Allotment so exceeding in Value as aforesaid to the said Lord *De Clifford*, *Richard Cartwright*, or *Sarah Adams*, at such Sum or Sums of Money as the said Commissioners shall adjudge to have been the Value thereof, to be estimated as aforesaid; but if the said Lord *De Clifford*, *Richard Cartwright* or *Sarah Adams* shall decline to purchase the same at such Price as the Commissioners shall fix, then such last-mentioned Allotments or Allotment shall be sold by the said Commissioners, at their or its actual improved Value; and the said Commissioners shall receive and apply such Purchase Monies for the Purposes of this Act, in aid of the other Monies hereinafter directed to be raised for such Purposes; and if the Monies so to be received shall be more than sufficient for such Purposes, the Surplus thereof shall be paid and applied in Manner hereinafter directed; and if the said Lord *De Clifford*, *Richard Cartwright* or *Sarah Adams* shall refuse or neglect to pay such Sum or Sums of Money as the said Commissioners shall so adjudge, order or direct, and at the Time fixed for that Purpose, then such Allotments or Allotment as shall not be paid for as aforesaid, shall be deemed and is hereby declared to be Part of the said Commons and Waste Lands, and shall be surveyed, measured and allotted as a Part thereof; and that the remaining Part of the said Hill
called

called *Penpole* otherwise *Penfold Hill*, shall be and remain open and uninclosed, for the Use and Benefit of the Persons entitled to Rights of Common thereon, as though this Act had not been made: Provided that it shall not be lawful for the Lord or Lords of the said Manor of *Shirebampton*, or of the said Hundred of *Henbury*, or for any Person or Persons by their or any or either of their Authority, or with their or any or either of their Consent at any Time hereafter, to dig or quarry any Gravel or Stone upon or from any Part of the said Hill so to be left open and uninclosed as aforesaid, or break the Soil thereof for any Purpose whatsoever, except for the Purpose of planting Timber or other Trees thereon.

XXIII. And be it further enacted, That the said Commissioners shall in the next place divide, set out and allot the Residue of the said Commons, Commonable Lands, Common Meads, Salt Warths, Marsh Lands and Waste Grounds, by this Act directed to be divided and inclosed unto, for and amongst the several Persons and Parties who at the Time of making such Division shall be severally and respectively entitled thereto, in proportion and according to their several Rights and Interests therein. General Allotments.

XXIV. And be it further enacted, That all and singular the Lands and other Premises which shall be allotted under or by virtue of this and the said recited Act, shall immediately after such Allotments are made, be held under and subject to the same Tenures, Customs, Heriots, Rents and Services as the Lands and other Property in respect of which they were so respectively allotted were held and enjoyed; any Law, Usage or Custom to the contrary notwithstanding: Provided always, that nothing in this Act contained shall extend or be construed to extend to revoke, make void, alter or annul any Will or Settlement, or to prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Portion, Debts, Rents or Incumbrances out of, upon or affecting the Lands or Grounds to be divided, allotted inclosed or exchanged in pursuance of this or of the said recited Act, or any Part or Parts thereof respectively; but that the respective Persons to whom any Lands or Hereditaments shall be allotted or given in Exchange by virtue of this or the said recited Act, shall be seised thereof to such and the same Uses, and for such and the same Estates, and subject to such and the same Wills, Jointures, Rents, Charges and Incumbrances and no other, as the Lands, Grounds and Hereditaments whereof such Person was seised or possessed at or immediately before the Execution of the Award of the said Commissioners, or for which or in respect whereof such Allotments or Exchanges shall be made, would have been subject to, charged with or affected by in case this Act had not been made. Allotments to enure to the same Tenures.
Wills and Settlements not to be affected.

XXV. And be it further enacted, That from and immediately after such Allotments and Compensation shall be made for such Rights of Common and other Rights in or upon the said Commons, Commonable Lands and other Lands by this Act directed to be divided and inclosed, all and singular such Rights of Common and other Rights shall cease and be for ever utterly extinguished and abolished; and it shall and may be lawful for the said Commissioners, from Time to Time and at any Time After such Allotments, Rights to be extinguished;
or Commissioners may,

previously
thereto, sus-
pend the
Rights of
Common.

or Times before the Execution of the said Award, by Notice in Writing under their Hands to be affixed upon one of the principal outer Doors of each of the Churches in the Parishes of *Westbury-upon-Trym*, *Henbury* and *Compton Greenfield*, and of the Chapel of *Aust* aforesaid, to order and direct all or any Part of the Rights of Common in, over or upon the said Commons and Waste Lands to cease and become extinguished, or be suspended from, or for and during such Time as shall be expressed in such Writing; and that all such Rights of Common as the said Commissioners shall by such Writing order and direct to cease or be suspended as aforesaid, shall from the Time of affixing such Notice in Writing on such Church and Chapel Doors, cease and be extinguished or be suspended accordingly; any Law, Usage or Custom to the contrary notwithstanding.

Proprietors
may sell their
Allotments
before the
Execution of
the Award.

XXVI. And be it further enacted, That it shall be lawful for any Person or Persons who shall be entitled to any Allotment to be made by virtue of this Act, to sell, mortgage, demise and dispose of all his, her or their Estate, Right, Title, and Interest therein, at any Time before the Execution of the Award; and on a proper Conveyance, Surrender or Disposition being executed or passed, every such Sale and Disposition shall be good, valid and effectual in the Law; and also that it shall and may be lawful for any Person or Persons interested in the said Division and Inclosure, at any Time not less than Three Calendar Months before the Execution of the Award, to sell and dispose of all such Estate, Right, Title, Interest and Property, which he or they shall have in or to the said Commons or Waste Lands, or in or to any Allotment or Allotments to be made in respect thereof by virtue of this Act, separate from the Estate in Right of which he, she or they shall be so entitled; and it shall be lawful for the said Commissioners, and they are hereby authorized and required to allot the same to the Purchaser or Purchasers thereof respectively.

For making
Exchanges.

XXVII. And be it further enacted, That it shall be lawful for the said Commissioners to set out, allot and award any Lands, Tenements or Hereditaments whatsoever, within any of the said Parishes of *Westbury-upon-Trym*, *Henbury* and *Compton Greenfield*, in lieu of and in exchange for any other Lands, Tenements and Hereditaments whatsoever, within the same Parishes, or within any adjoining Parish, Hamlet, Manor, Township or Place, provided that all such Exchanges be ascertained, specified and declared in the Award of the said Commissioners, and be made with the Consent of the Owner or Owners of the Lands, Tenements or Hereditaments which shall be so exchanged, whether such Owner or Owners shall be a Body or Bodies Politic, Corporate or Collegiate, or a Tenant or Tenants in Fee Simple, or in Fee Tail, General or Special, or for Life, or by the Courtesy of *England*, or for Years determinable on any Life or Lives, or with the Consent of the Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees or Attornies of or acting for any such Owners as aforesaid, who at the Time of making such Exchange or Exchanges shall be respectively Infants, Females 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 Politick, Corporate or Collegiate, and under the Hands of the other consenting

consenting Parties respectively; and all and every Exchange and Exchanges so to be made, shall be good, valid and effectual in the Law to all Intents and Purposes whatsoever: Provided always, that no Exchange shall be made of any Lands, Tenements or Hereditaments held in Right of any Church, Chapel or other Ecclesiastical Benefice, without the Consent testified as aforesaid of the Patron thereof, and of the Lord Bishop of the Diocese in which such Lands, Tenements or Hereditaments so to be exchanged shall lie and be situate.

XXVIII. And be it further enacted, That all the Costs, Charges and Expences attending the making and completing of any Exchanges and Partitions which shall be made under and by virtue of the said recited Act or of this Act, shall be paid and borne by the several Persons making such Exchanges and Partitions, in such Manner, and in such Shares and Proportions as the said Commissioners shall, by their said Award or any other Writing or Writings under their Hands, order and direct, and shall be recovered in the same Manner as any Penalty may be recovered by virtue of the said recited Act or of this Act.

XXIX. And be it further enacted, That where any Lease or Leases, or Agreement for a Lease or Leases, for the letting or holding of any of the Messuages, Lands or Hereditaments, in respect of which any Allotment or Allotments shall be made by virtue of this Act, at Rack-rent, for any Term or Number of Years not exceeding Twenty-one Years, shall, either in express Terms or virtually, include or comprize any Rights of Common or other Rights or Interests for or in lieu of which the same Allotment or Allotments shall be made, then, and in every such Case, the respective Owners and Proprietors of the same Messuages, Lands and Hereditaments shall allow and abate to such Lessee or Lessees, Tenant or Tenants such Proportion of his, her or their Rent or Rents as the said Commissioners shall award to be a reasonable Compensation or Satisfaction to him, her or them for the Deprivation of such Rights of Common or other Rights or Interests as aforesaid; and that where any such Lease or Agreement shall be for any longer Term than Twenty-one Years, or shall have been granted in consideration of Buildings or other Improvements being made on the Lands thereby demised, or where any Fine, Premium, or other valuable Consideration shall have been given for the granting of the same, then, and in every such Case, as last aforesaid, the Lessee, or Lessees shall hold and enjoy during the Remainder of the Term in such Lease or Leases or Agreements, any Allotment or Allotments to be made in respect of the Premises therein comprized, paying to his, her or their Lessor or Lessors respectively, such additional Rent or Rents as the said Commissioners shall, under all Circumstances, deem reasonable.

XXX. And be it further enacted, That the said Commissioners shall from Time to Time set out and allot such Parts and Parcels of the said Commons and Waste Lands, as they shall judge sufficient in Value, when sold, to defray the necessary Charges and Expences of applying for and obtaining and passing this Act and carrying the same and the said recited Act into Execution, and of surveying, measuring, mapping, planning, valuing, dividing and allotting the said Commons and Waste

[Loc. & Per.]

21 L

Grounds,

Expences of Exchanges and Partitions, how to be paid.

Compensation to be made to Tenants deprived of Common Rights.

Lands to be sold to pay Expences.

Grounds, and of inclosing and fencing such Part or Parts thereof so intended to be sold in pursuance of this Act as aforesaid (if they shall deem it necessary so to do); and also the Costs, Charges and Expences of first forming and making such public and private Roads as are directed to be made by the said recited Act, and of preparing and inrolling the Award of the said Commissioners, 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 full and complete Execution and Effect; and shall expose the said Allotment or Allotments to public Sale, by Auction or otherwise, in Manner and subject to the Directions and Regulations mentioned in the said recited Act; and that the said Commissioners hereinbefore appointed, or their Successors, to be appointed as aforesaid, shall, on Payment of the Purchase Money for such Allotment or Allotments, so to be sold for the Purposes aforesaid, by Indentures under their Hands and Seals, to be by them 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 shall direct or appoint; such Direction or Appointment to be in Writing under his, her or their Hands and Seals respectively.

Application
of Surplus
Money.

XXXI. And be it further enacted, That in case any Part or Parts of the said Commons and Waste Grounds shall be sold for more Money than will be requisite 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 be paid to them in case they shall be seized in Fee Simple of their several Allotments; or otherwise such Surplus Money 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 of any Timber or Wood growing thereon, and which Money ought to be laid out in the Purchase of other Lands, Tenements or Hereditaments to be settled to the same Uses.

In case Lots
sold shall not
be sufficient,
Persons inter-
ested to pay
in proportion
to their Al-
lotments, to
make good
Deficiency.

XXXII. Provided always, and be it further enacted, That if the Monies to be produced by such Sale or Sales as aforesaid shall not be sufficient to pay all the Charges and Expences aforesaid, then the Deficiency shall be borne, defrayed and paid by the respective Persons to whom the said Lands and Grounds hereby directed to be divided and inclosed shall be allotted in proportion to the real Value of their respective Allotments; such Proportion to be settled and ascertained by the said Commissioners, and to be paid to such Person or Persons, and at such Time or Times as the said Commissioners shall, by Writing to be affixed on the principal outer Door of the Parish Churches of *Westbury-upon-Trym*, *Henbury*, *Compton Greenfield* and the Chapel Door of *Aust* aforesaid, at least Ten Days previous to the Day of Payment, order and direct; and in case any Person or Persons shall refuse or neglect to pay his

his, her or their Share or Proportion of the said Deficiency as aforesaid, then the same shall be levied and recovered in the Manner directed by the said recited Act.

XXXIII. And be it further enacted, That it shall be lawful for the said Commissioners, on Application being made to them in Writing by any of the Husbands, Guardians, Trustees, Committees or Attornies of or for any of the said Proprietors or Persons interested in the Premises, being under Coverture, Minors, Idiots, Lunatics or beyond the Seas, or under any other Disability or Incapacity, or by the Persons acting as such Guardians, Trustees, Committees or Attornies respectively, or by any of the said Proprietors of the Lands and Grounds hereby directed to be divided, allotted and inclosed, or any Part thereof, who are or shall be Tenant or Tenants in Tail, or for any Life or Lives, or on any other Contingency, to sell any Part of the Allotment or Allotments to be made from or out of any of the said Lands and Grounds by virtue of this Act, to such incapacitated Proprietor or Proprietors, or other Person or Persons, by whom or in whose Behalf any such Application shall be made as aforesaid, for the Purpose of raising a Sum of Money sufficient to defray the Costs, Charges and Expences of fencing and inclosing his, her or their Allotment or Allotments, and of making and completing such Sale; and such Sale shall be made by the said Commissioners, in such and the same Manner, and subject to such and the like Rules and Regulations as are mentioned and prescribed in and by the said recited Act in respect to the Sale of any Lands authorized to be sold for paying the Expences of obtaining and carrying into Execution any Act for dividing, allotting and inclosing any Lands and Grounds; and each and every Allotment for which the full Purchase Money shall be paid, shall be conveyed by the said Commissioners at the Expence of such Purchaser or Purchasers, unto and to the Use of or in Trust for such Purchaser or Purchasers, and his, her or their Heirs respectively, or as he, she or they shall appoint, and shall be inclosed and held by such Purchaser or Purchasers respectively in Severalty, and the Receipt of the said Commissioners shall be a good and sufficient Discharge to such Purchaser or Purchasers for the said Purchase Money, which shall be applied by the said Commissioners in or towards defraying such last-mentioned Costs, Charges and Expences; and if any Surplus shall remain in the Hands of the said Commissioners such Surplus Money shall be applied and disposed of in Manner directed by the said recited Act, with respect to Money which is thereby directed to be paid into the Bank of *England* for the Purchase or Exchange of any Lands, Tenements or Hereditaments to be settled to the same Uses, or of any Timber or Wood growing thereon, and which ought to be laid out in the Purchase of other Lands, Tenements and Hereditaments as therein mentioned: Provided always, that it shall not be lawful by virtue of this Act, to raise by such Sale any further or greater Sum of Money for the Purpose of defraying the Costs, Charges and Expences of fencing, inclosing and subdividing such Allotment or Allotments as aforesaid, than the Person or Persons, Part of whose Allotment or Allotments shall be sold as aforesaid, would have been empowered or authorized to borrow or charge upon his, her or their Estate or Estates under

Power for
certain Per-
sons to sell
Lands, to
make subdivi-
sion Fences.

or

or by virtue of the said recited Act, for the Purpose of defraying the Costs, Charges and Expences of obtaining and executing this Act, in case the Expences of obtaining and executing this Act had been directed to be paid in proportion by the Proprietors of Lands or Grounds to whom Allotments shall be made, instead of being raised by Sale of Land as by this Act is directed: Provided always, that in all Cases where any Part of the Allotments of any of the said Proprietors or Persons shall be so sold for the Purposes last-mentioned, it shall not be lawful for the Proprietor or other Person, Part of whose Allotment shall be sold as aforesaid, to charge his or her Lands, Tenements or Hereditaments, by virtue of the said recited Act or this Act, with any Money towards Payment of any Costs, Charges and Expences of obtaining and executing this Act.

Money advanced,
to be repaid
with Interest.

XXXIV. And be it further enacted, That the Money which shall be advanced by any Person or Persons for the Purpose of defraying the Expences of applying for, and obtaining this Act, and of carrying the same into Execution, shall be repaid with lawful Interest, to the Person or Persons advancing the same, out of the first Monies to be raised for defraying the Expences of obtaining and executing this Act.

Commissioners to lay
Accounts before
Justices.

XXXV. 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 Time of passing this Act), the said Commissioners acting in the Execution of this Act, shall and they are hereby required to make a just and true Statement or Account of all Sums of Money by them respectively received and expended, or due to them respectively for their Trouble or Expences in the Execution of this Act; and such Statement or Account, when so made, together with the Vouchers relating thereto, shall be by such Commissioners laid before one of His Majesty's Justices of the Peace in and for the said County of *Gloucester*, to be by him examined and balanced; and such Balance shall be by such Justice stated in the Books of Account, to be kept in the Office of the Clerk of 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 Justice.

Award to be
made.

XXXVI. And be it further enacted, That as soon as conveniently may be, after the Division and Allotment of the said Commons or Waste Lands shall have been made and completed pursuant to the Directions of this Act, the said Commissioners shall draw up and form, or cause to be drawn up and formed, an Award or Instrument in Writing, with one or more proper Plan or Plans annexed thereto, in the Manner prescribed by the said recited Act; which said Award or Instrument, shall be fairly ingrossed or written on Parchment, and signed by the Commissioners making the same; and shall, within Six Calendar Months after the same shall be so signed, be deposited with the Clerk of the Peace for the County of *Gloucester*, who is hereby required to keep and deposit the same amongst the Records of the said County (for depositing of which the Sum of Three Pounds Three Shillings and no more shall be demanded or paid), to the End that Recourse may be had thereto by all
Persons

Persons interested in the said Division and Inclosure, for the Inspection of which Award One Shilling shall be paid and no more; and a true Copy thereof, or of any Part thereof, when and so often as the same shall be required, shall be delivered to any Person or Persons, signed by the Clerk of the Peace or his Deputy for the Time being, purporting the same to be a true Copy, for which no more than Twopence per Sheet, reckoning Seventy-two Words to each Sheet, shall be paid; which said Copy, as also the original Award or Instrument, and the Copies hereinafter directed to be written on Parchment, and signed by the Commissioners making the same, shall at all Times hereafter be admitted as legal Evidence in all Courts whatsoever; and the said Commissioners are hereby directed and required to deliver a Copy of their Award fairly written on Parchment, with a proper Plan or Plans annexed thereto, and signed by them, unto the Churchwardens of the Parish of *Henbury* aforesaid, to be by them deposited in the Chest of the Parish Church of *Henbury* aforesaid, to the End that Recourse may be had to such Award by the several and respective Proprietors or Parties interested therein.

XXXVII. 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 or of the said recited Act, then, and in such Cases, (except in such Cases where the Orders and Determinations of the said Commissioners are by the said recited Act or this Act directed to be binding, final and conclusive, and also where an Issue at Law shall be tried as hereinbefore mentioned), he, she or they may appeal to the General Quarter Sessions of the Peace which shall be held for the County of *Gloucester*, within Six Calendar Months next after the Cause of Complaint shall have arisen, giving Fourteen Days Notice of such Appeal to the said Commissioners; and the Justices of the said General Quarter Sessions are hereby required to hear and determine the Matter of every such Appeal, and make such Orders therein, and award such Costs as to them in their Discretion shall seem reasonable, and by their Order or Warrant to levy the Costs 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 Distress and Sale; which Determination of the said Justices shall be final and conclusive to all Parties concerned, and shall not be removed or removeable by *Certiorari*, or any other Writ or Process whatsoever, into any of His Majesty's Courts of Record at *Westminster*.

Appeal to the
Quarter Ses-
sions.

XXXVIII. Saving always, to the King's most Excellent Majesty, his Heirs and Successors, and to all and every other Person or Persons, Bodies Politic and Corporate, his, her and their Heirs, Successors, Executors and Administrators, all such Estate, Right, Title and Interest (other than such as are meant and intended to be barred and destroyed by this Act, of, in, to or in respect of the said Lands to be divided, allotted and inclosed or exchanged, by virtue of this Act, as he, they or every of them, might or could have had and enjoyed in case this Act had not been made.

General
Saving of
Rights.

1886

51^o GEORGII III. *Cap. 93.*

Act may be
given in Evi-
dence.

XXXIX. 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 by all Judges, Justices and others.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN,
Printers to the King's most Excellent Majesty. 1811.