



ANNO QUINTO & SEXTO

VICTORIÆ REGINÆ.

C A P. LIV.

An Act to amend the Acts for the Commutation of
Tithes in *England* and *Wales*, and to continue
the Officers appointed under the said Acts for a
Time to be limited. [30th *July* 1842.]

WHEREAS by an Act passed in the Seventh Year of the
Reign of His late Majesty, intituled *An Act for the Commu- 6 & 7 W. 4.*
tation of Tithes in England and Wales, it was among other c. 71.
things enacted, that no Commissioner or Assistant Commissioner,
Secretary, Assistant Secretary, or other Officer or Person appointed
under the said Act should hold his Office for a longer Period than
Five Years next after the Day of the passing of the said Act, and
thenceforth until the End of the then next Session of Parliament;
and that after the Expiration of the said Period of Five Years and
of the then next Session of Parliament so much of the said Act
as authorizes any such Appointment should cease: And whereas
by an Act passed in the last Session of Parliament it was among 5 Vict. c. 7.
other things provided, that so much of the last-recited Act as is
herein-before recited should be repealed, and that no Commissioner
or Assistant Commissioner, Secretary, Assistant Secretary, or other
Officer or Person so to be appointed, should hold his Office for a
longer Period than until the Thirty-first Day of *July* One thousand
eight

Last-recited Act in part repealed.

Continuance of Tithe Commission.

Agreements may be made pending Proceedings toward an Award.

eight hundred and forty-two; and that after the said Thirty-first Day of *July* so much of the last-recited Act as authorizes any such Appointment should cease: And whereas it is expedient that the said Commission be further continued; be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That so much of the last-recited Act as is herein-before recited shall be repealed, except so far as it repeals any Part of the first-recited Act; and that no Commissioner or Assistant Commissioner, Secretary, Assistant Secretary, or other Officer or Person so appointed or to be appointed shall hold his Office for a longer Period than the Thirty-first Day of *July* in the Year One thousand eight hundred and forty-seven, and to the End of the then next Session of Parliament.

II. And whereas by the first-recited Act Power is given to the Land Owners and Tithe Owners of any Parish to make and execute an Agreement for the Commutation of the Tithes of that Parish as therein specified; and Power is also given to the said Commissioners, after the First Day of *October* in the Year One thousand eight hundred and thirty-eight, to make compulsory Awards for the Commutation of Tithes in any Parish in which no such Agreement shall have been made as aforesaid, and confirmed by the said Commissioners: And whereas Doubts have been entertained whether, pending the Proceedings toward a compulsory Award, the Land Owners and Tithe Owners can make and execute a voluntary Agreement which, if confirmed by the said Commissioners, shall be valid, and it is expedient that such Doubts be removed; be it declared and enacted, That a Parochial Agreement for the Payment of a Rent-charge instead of Tithes, as provided by the said Act, may be made in the Manner therein specified, at any Time before the Confirmation of any Award for the Commutation of the Tithes of the same Parish; and such Agreement may contain Provisions for declaring how the Expences of the Parties, or any of them, shall be defrayed, which shall have been incurred in contesting the Award; and every such Agreement, whether made before or after the passing of this Act, if confirmed by the Commissioners, shall be as valid as if made and executed before any Proceedings had been taken toward making a compulsory Award, and shall have the Effect of making null and void all the Proceedings toward such compulsory Award, or incident thereunto, except so far as the same shall be adopted in such Agreement.

Parties may make a supplemental Agreement as to Commencement of Rent-charge.

III. And be it enacted, That in all Cases where no Time is fixed by any Award or Agreement commuting the Tithes of a Parish for the Commencement of the Rent-charge or Rent-charges therein awarded or agreed upon, it shall be lawful, notwithstanding that the Apportionment of the said Rent-charge or Rent-charges may have been confirmed, for the Land Owners and Tithe Owners, having such

an Interest in the Land and Tithes of the Parish as is required for making a Parochial Agreement, to enter into a supplemental Agreement for fixing the Period at which the Rent-charge or Rent-charges to be paid under such Award or Agreement shall commence: Provided always, that such supplemental Agreement shall be of no Force or Effect unless the same shall be confirmed by the said Commissioners under their Hands and Seal; and a Copy of every such supplemental Agreement shall be deposited with the Registrar of the Diocese, and in the Parish, in like Manner as Instruments of Apportionment are deposited under the said first-recited Act.

Such Agreement to be confirmed, and a Copy deposited.

IV. And whereas by the first-recited Act Power is given to the said Commissioners to make Awards in Cases reserved for special Adjudication, having regard to the average Rate which shall be awarded in respect of Lands of the like Description and similarly situated in the neighbouring Parishes: And whereas it sometimes happens that voluntary Agreements for the Commutation of Tithes have been made in the greater Part of such neighbouring Parishes; be it enacted, That, in awarding the Rent-charge in any Case so reserved, the Commissioners shall be empowered to have regard to the average Rate of Commutation in respect of Lands of the like Description and similarly situated, not only in the neighbouring Parishes in which there has been an Award by the Commissioners, but also in those in which there has been a Parochial Agreement for the Commutation of Tithes.

In making special Adjudication an Account may be taken of Parochial Agreements.

V. And whereas it will be beneficial to both Tithe Owners and Land Owners if the Tithe Commissioners are empowered to define the Glebe Lands in those Cases in which the Quantity of Glebe is known, but cannot be identified, and also to exchange the Glebe Lands or Part thereof for other Land; be it enacted, That for the Purpose of defining and settling the Glebe Lands of any Benefice, on the Application of the Spiritual Person to whom the same belongs in right of such Benefice, and with the Consent of the Land Owner or Land Owners having or claiming Title to the Land so defined as Glebe, and being in possession thereof, the Tithe Commissioners shall, during the Continuance of the Commission, as well before as after the Completion of any Commutation, have the same Powers which they have for ascertaining, drawing, and defining the Boundaries of the Lands of any Land Owners on their Application; and also upon the like Application of any Spiritual Person the said Commissioners shall have Power to exchange the Glebe Lands, or any Part thereof, for other Land within the same or any adjoining Parish, or otherwise conveniently situated, with the Consent of the Ordinary and Patron of the Benefice and of the Land Owner or Land Owners having or claiming Title to the Land so to be given in Exchange for the Glebe Lands, and being in actual Possession thereof as aforesaid,

Powers for defining and exchanging Glebe.

such

such Consent to be testified as their Consent under the first-recited Act is testified to any thing for which their Consent is therein required; and in every such Case the Tithe Commissioners shall make an Award in like Manner as Awards are made under the first-recited Act, setting forth the Contents, Description, and Boundary of the Glebe Lands as finally settled by them, and of the Lands awarded to the several Parties to whom any Lands theretofore Part or reputed Part of the Glebe Lands are to be awarded; and every such Award shall have all the Incidents of an Agreement confirmed by the said Commissioners for giving Land instead of Tithes, and in every Case of Exchange shall operate as a Conveyance of the Lands theretofore Part or reputed Part of the Glebe Lands to the several Persons to whom the same shall be awarded, and to their Heirs and Successors, Executors and Administrators, as the Case may be; and such Lands shall thereupon be holden by the same Tenure, and upon the like Uses and Trusts, and subject to the like Incidents, as the Land awarded as Glebe in Exchange for the same was formerly holden; and the Expence of so defining, exchanging, and settling any Glebe Lands shall be borne in such Manner as the Tithe Commissioners shall think just.

Extending
Power of
giving Land
for Tithes.

VI. And whereas the Power of giving Land instead of Tithes has been found beneficial to both Tithe Owners and Land Owners, but such Power has been inoperative in a great degree by reason that the Land Owners by giving Land instead of Vicarial Tithe cannot free their Lands from the Liability to Rectorial Tithe, and the converse; be it enacted, That it shall be lawful for any Tithe Owner, with the Consent of the Patron and Ordinary in the Case of Spiritual Tithes, to be testified as their Consent under the first-recited Act is testified to any thing for which their Consent is therein required, and subject in that Case to the Limitation of Quantity of Land provided by the first-recited Act, and subject to the Approval of the Tithe Commissioners, to agree for the Assignment to any other Owner of Tithes issuing out of the same Lands of so much of his Tithes arising within the same Parish, or of the Rent-charge agreed or awarded to be paid instead of such Tithes, as shall be an Equivalent for the Tithes belonging to such other Tithe Owner issuing out of the same Lands, or for the Rent-charge agreed or awarded to be paid instead thereof, for the Purpose of enabling any Land Owner who shall be desirous of giving Land instead of Tithes to free his Lands, or any Part thereof, from both Rectorial and Vicarial Tithes, and from the Payment of any Rent-charge in respect thereof; and every such Agreement shall be carried into effect by means of an Award or Supplemental Award, to be made by the said Commissioners either before or after the Confirmation of the Apportionment, in like Manner as Awards or Supplemental Awards are made by them pursuant to the Powers vested in them before the passing of this Act,

VII. And

VII. And be it enacted, That where any Agreement shall have been made before the passing of the first-recited Act for giving Land or Money, or both, instead of Tithes or Glebe or commonable or other Rights or Easements, which is not of legal Validity, and such Lands or Money, or both, shall appear to the Commissioners to be a fair Equivalent for the said Tithes or Glebe, or Rights or Easements, they shall be empowered to confirm and render valid such Agreement; and in case the same shall not appear to be a fair Equivalent, the said Commissioners shall nevertheless be empowered to confirm such Agreement, and also to make an Award for such Rent-charge, which with the said Land or Money, or both, will be a fair Equivalent for the said Tithes or Glebe, or Rights or Easements, and, subject to such Confirmation and Award, to extinguish the Right of the Tithe Owners to the Perception of the said Tithes, or his Title to the said Glebe Rights or Easements, or to the Receipt of any Rent-charge instead thereof, other than the Rent-charge awarded over and above the Lands or Money, or both, so confirmed to them.

Confirmation of old Agreements for giving Land for Tithes.

VIII. And be it enacted, That in every Case in which any Spiritual Person shall have died or vacated his Benefice before exercising the Powers vested in him of borrowing Money for the Purpose of defraying so much of the Expences of Commutation as is to be defrayed by him, and of charging the Rent-charge with the Repayment of the Money borrowed, it shall be lawful for the Tithe Commissioners, with the Consent of the Ordinary, to borrow Money for that Purpose, and to charge the Repayment thereof upon the Rent-charge, or so much thereof as they, with the like Consent, shall think just, with Interest thereupon, and for that Purpose to assign the Rent-charge in like Manner as such Spiritual Person, if living or in possession of his Benefice, could himself have done; and the Person in whose Favour such Charge shall have been made, and his Assigns, shall have the like Remedies for enforcing Payment of the Principal and Interest of the Money so borrowed, in case of any Arrear in Payment of the said Charge, as if such Charge had been made by the Person so dying or vacating his Benefice.

Power to charge Expences of Commutation on Benefices extended.

IX. And be it enacted, That in all Cases, whether the Tithes of any Parish have been commuted or not, where any Question as to the Liability of any Lands to the Render of Tithes, or as to the Existence of any Modus or Composition Real, or Prescriptive or Customary Payment, or any Claim of Exemption from or Non-liability to the Payment of Tithes in respect of any Lands, shall have been heard and determined by the said Commissioners, or by any Assistant Commissioner under their Direction, it shall be lawful for the said Commissioners or any Assistant Commissioner, after the Time for Appeal to a Court of Law from the said Determination has elapsed, or in case there has been such Appeal, after the Judgment of the Court on such Appeal, to make an Award, founded on the Decision of the said Commissioners or Assistant Commissioner, or the Judgment

For settling Questions of Arrears and Costs in Suits in Equity.

ment of any Court of Law to which Appeal shall have been made from the Decision of the said Commissioners or Assistant Commissioner, for the Determination of all Questions of Arrears of Tithes claimed in any Suit which may be pending in any Court of Equity for the Purpose of trying, as to the same Lands, such Liability, or the Legality of such Claim, Modus, Composition, or Customary Payment, and of the Liability of any of the Parties to Payment of the Costs of the Proceedings in such Suit, for which Purpose they respectively shall have all the Powers which under the said recited Acts or any of them they have for ascertaining the Value of the Tithes of such Lands ; and such Award shall have the Effect of the Verdict of a Jury, on an Issue directed by the Court of Chancery satisfactory to the Judge or Court directing the same, and shall be received by the Court of Chancery as conclusive Evidence of the Liability or Non-liability of such Lands, and of the Amount of such Arrears, and of the Liability of the several Parties to the Payment of Costs in such Suit ; and any Order of the Court of Chancery made thereon shall be binding on all Parties, and no Appeal to any other Judge or Court shall be brought against such Order.

The Act
2 & 3 W. 4.
c. 100. not
to have any
Operation as
to any Award
of the Com-
missioners in
certain
Cases.

X. And be it enacted, That where any Question is or shall be brought for the Decision of the Tithe Commissioners or any Assistant Commissioner, relative to any of the Matters mentioned in an Act passed in the Third Year of the Reign of His late Majesty, intituled *An Act for shortening the Time required in Claims of Modus decimandi, or Exemption from or Discharge of Tithes*, as to which any such Suit shall have been commenced and shall be pending as would have prevented the Operation of the said recited Act, such recited Act shall not have any Operation as to any Award or Decision respecting such Question to be made by the said Tithe Commissioners or any Assistant Commissioner.

Provision for
fixing the
same Days
of Payment
of all Parts
of the same
Rent-charge.

XI. And be it enacted, That in any Parish where any Rent-charge has been agreed or awarded to be paid instead of Tithes, and Security has been given for Payment of such Rent-charge, and the Lands in such Parish have been discharged from Payment or Render of Tithes or Composition, or Rent in the Nature thereof, instead of Tithes, before the Apportionment of such Rent-charge, it shall be lawful for the Tithe Commissioners, by a Declaration in Writing under the Hands of any Two of them, and their Seal of Office, to fix the same half-yearly Days of Payment of the whole Rent-charge after Apportionment thereof; and in consideration that the Payment of some Sums will be thereby accelerated, and the Payment of other Sums will be thereby deferred and retarded, to make such Alterations and Allowances in the Payments to be made in the First Year after the Apportionment, both by way of Interest for every Sum of which Payment will be thereby deferred, and by way of Discount to be allowed for every Sum of which Payment will be thereby accelerated, as to the Commissioners shall seem just.

XII. And be it enacted, That it shall be lawful for any Owner of Rent-charge, having taken possession of any Land for Nonpayment of the Rent-charge under the Provisions of the first-recited Act, from Time to Time during the Continuance of such Possession to let such Land, or any Part thereof, for any Period not exceeding One Year in possession, at such Rent as can be reasonably obtained for the same; and the Restitution of such Land, on Payment or Satisfaction of the Rent-charge, Costs, and Expences, shall be subject and without prejudice to any such Tenancy.

Power to
Owner of
Rent-charge
to let Land
taken under
Writ of Pos-
session.

XIII. And be it enacted, That it shall be lawful for any Board of Guardians of any Parish or Union, with the Consent of the Poor Law Commissioners, and subject to such Conditions as the said Poor Law Commissioners may prescribe, to pay out of the Rates of any Parish any Portion of the Cost of making or providing any Map or Plan which shall have been confirmed under the Hands and Seal of the Tithe Commissioners, or any other Sum of Money by way of Consideration for the Use of the said Map or Plan, for the Purpose of estimating the net annual Value of Property in respect of which Rates may be assessed for the Relief of the Poor; and after the Tithe Commissioners shall have certified in Writing that such Money has been paid, the Overseers of the Parish, or any Person authorized by them in Writing, or any Officer of the said Board of Guardians, or any Person authorized by them in Writing, shall at all reasonable Times have Access to the Copy of the said Map or Plan deposited with the Incumbent and Church or Chapel Wardens of the Parish, or other Persons approved by the said Tithe Commissioners, and may inspect and make Copies or Extracts from the said Copy, without paying any thing for such Access or Inspection, or for making such Copies or Extracts.

Power in
certain Cases
to use Tithe
Commuta-
tion Maps
for Parochial
Purposes.

XIV. And whereas by the first-recited Act Power is given for altering Apportionments of Rent-charge by the Commissioners of Land Tax, on the Application of the Owner of the Lands charged therewith, and it is expedient that the Power thereby given should be extended, and also that during the Continuance of the Tithe Commission the like Power should be vested in the Tithe Commissioners; be it enacted, That if at any Time after the Confirmation of any Instrument of Apportionment it shall appear that the Lands charged with One entire Rent-charge belong to or have become vested in several Owners, and that any of the Owners of such Lands shall be desirous that the Apportionment thereof should be altered, it shall be lawful for the Commissioners of Land Tax for the County or Place where the said Lands are situated, or any Three of them, to appoint, by Notice under their Hands, a Time and Place for hearing the Parties to such Application, and all other Parties interested therein; and upon satisfactory Proof of such Notice having been served on all Parties interested full Twenty-one Days before the Day of hearing, to proceed to alter the Apportionment in such Manner and in such Proportion amongst

Power to
alter Appor-
tionments.

amongst the said Lands as to them shall seem just, subject nevertheless to the Consent of Two Justices of the Peace, as in the said first-recited Act provided; and further, that upon such Application being made to the said Tithe Commissioners, they shall have the same Power of making such Alteration as by the said first-recited Act and by this Act is vested in the Commissioners of Land Tax, and that without any such Consent of Two Justices of the Peace; provided, that no Alteration of any Apportionment shall be made under the first-recited Act or this Act whereby any Rent-charge shall be subdivided, so that any Subdivision thereof shall be less than Five Shillings.

Copy of Instrument of altered Apportionment to be sent to Tithe Office.

XV. And whereas it is expedient to make further Provision for recording all such Alterations of Apportionment; be it enacted, That the Registrar of every Diocese, as soon as conveniently may be after the passing of this Act, shall cause to be made and sent to the Office of the Tithe Commissioners a Copy, certified under his Hand, of every Instrument of altered Apportionment in his Custody which was made before the passing of this Act, the reasonable Cost of making and sending which Copy shall be defrayed by the Tithe Commissioners as Part of the Expence of putting in execution the Acts for the Commutation of Tithes; and after the passing of this Act Three Counterparts shall be made of every Instrument of altered Apportionment at the Expence of the Land Owner desiring the Alteration; and Two of the said Counterparts shall be sent as provided by the first-recited Act, and the Third shall be sent to or deposited in the Office of the Tithe Commissioners, or, after the Expiration of the Tithe Commission, shall be sent to and kept by the Person having Custody of the Records and Papers of the said Commission, and shall be annexed to the Instrument of Apportionment in the Custody of the said Commissioners, or the Person having the Custody of their Records and Papers.

Remedy for enforcing Payment of Contribution to Rent-charge.

XVI. And be it enacted, That in case any Land charged with One Amount of Rent-charge shall belong to Two or more Land Owners in several Portions, and the Owner of any One of such Portions, or his Tenant, shall have paid the whole of such Rent-charge, or any Portion thereof greater than shall appear to him to be his just Proportion, and Contribution thereto shall have been refused or neglected to be made by any other of the said Land Owners, or his Tenant, after a Demand in Writing made on them, or either of them, for that Purpose, it shall be lawful for any Justice of the Peace acting for the County or other Jurisdiction in which the Land is situated, upon the Complaint of any such Land Owner, or his Tenant or Agent, to summon the Owner so refusing or neglecting to make Contribution, or his Tenant, to appear before any Two or more such Justices of the Peace, who, upon Proof of the Demand and of Service of the Summons, as herein-after provided, whether or not the Party summoned shall appear, shall examine into the Merits of the Complaint,

plaint, and determine the just Proportion of the Rent-charge so paid as aforesaid which ought to be contributed by the Land Owner of such other Portion of the said Land, and by Order under their Hands and Seals shall direct the Payment by him of what shall in their Judgment be due and payable in respect of such Liability to Contribution, with the reasonable Costs and Charges of such Proceedings, to be ascertained by such Justices; and thereupon it shall be lawful for the Complainant to take the like Proceedings for enforcing Payment of the said Amount of Contribution and Costs, and with the like Restriction as to the Arrears recoverable, as are given to the Owner of the Rent-charge by the said first-mentioned Act or this Act for enforcing Payment of the Rent-charge.

XVII. And be it enacted, That Service of the said Demand in Writing, and Summons, or of any Notice to distrain, or Copy of Writ to assess the Arrears of Rent-charge, or Notice of the Execution thereof under the said first-recited Act, or the several Acts to amend the same, or this Act, upon any Person occupying or residing on the Land chargeable with the Rent-charge, or in case no Person shall be found thereon, then affixing the same in some conspicuous Place on the Land, shall be deemed good Service of any such Summons, Notice, Writ, or other Proceeding.

Service of
Summons,
&c.

XVIII. And be it enacted, That it shall be lawful for all Defendants in Replevin, brought on any Distress for Rent-charge payable under the said first-recited Act, or the several Acts to amend the same, or this Act, to avow or make cognizance generally that the Lands and Tenements whereon such Distress was made were chargeable with or liable to the Payment of a certain yearly Amount of Rent-charge under the Provisions of the Statutes for the Commutation of Tithes in *England* and *Wales*, which Rent-charge, or some Part thereof, was in arrear and unpaid for the Space of Twenty-one Days next after some half-yearly Day of Payment thereof, and after Ten Days Notice in Writing, as required by the said Acts, and that a certain Amount of such Rent-charge, according to the Prices of Corn, as directed by the said Acts, was at the Time of the said Distress due to the Person entitled to the Rent-charge.

Provision for
general
Avowry in
Actions of
Replevin for
Rent-charge.

XIX. And be it enacted, That where any Distress shall be made for any Rent-charge payable under the said recited Acts or any of them, or this Act, and justly due, and any Irregularity or unlawful Act shall be afterwards done by the Party distraining, or his Agent, in the Conduct, Sale, or Disposition of the Distress, the Distress itself shall not be therefore deemed to be unlawful, nor the Party making it deemed a Trespasser from the Beginning, but the Party aggrieved by such unlawful Act or Irregularity may recover full Satisfaction for the special Damage in an Action upon the Case; provided nevertheless, that no Plaintiff shall recover in any Action for any

Irregularity
not to vitiate
Proceedings.