



ANNO QUADRAGESIMO NONO

GEORGI II. REGIS.

Cap. 103.

An Act for inclosing Waste Lands in the Township of *Liscard*, in the Parish of *Wallasey*, in the County Palatine of *Chester*. [20th May 1809.]

WHEREAS there are within the Township of *Liscard*, in the Parish of *Wallasey*, in the County Palatine of *Chester*, divers Commons and Waste Lands, containing about Four hundred and sixteen Acres of Land (Statute Measure) lying open and uncultivated : And whereas *John Penkett* Esquire, is or claims to be Lord of the Manor of *Liscard*, in the said County : And whereas the Reverend *George Briggs* is Rector of the Rectory and Parish Church of *Wallasey*, in the said County Palatine of *Chester* : And whereas the Reverend Sir *Henry Poole* Baronet, *James Mainwaring* Esquire, the said *John Penkett*, *John Tobin* Esquire, *John Dean*, *Thomas Molyneux*, *Gerard Stanley*, and several other Persons, are Owners or Proprietors of divers Messuages, Tenements, Lands and Hereditaments within the said Township, and as such are entitled to Right of Common on the said Commons and Waste Lands : And whereas an Act was passed in the Forty-first Year of the Reign of His present Majesty, intituled, *An Act for consolidating in one Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts* : And whereas the said Commons and Waste Lands in their

[Loc. & Per.]

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present

Commissioner.

present State are of little Value ; but if the same were divided and allotted into specific Shares unto and amongst the Proprietors thereof and Persons interested therein, and such Allotments inclosed, they would be considerably improved ; but such Division, Allotment, and Inclosure, cannot be made and rendered effectual without the Aid and Authority of Parliament : May it therefore please Your Majesty that it may 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 the said Commons and Waste Lands shall be set out, allotted, and divided as soon as conveniently may be after the passing of this Act ; and that *James Boydell* of *Rossett* in the County of *Denbigh*, Gentleman, and his Successor, to be appointed in the Manner herein-after mentioned, shall be and he is hereby appointed the Commissioner for setting out, allotting and dividing the said several Commons and Waste Lands, and for carrying this and the said recited Act into Execution, subject to the Regulations of the said recited Act, except in such Cases where the same are hereby varied or altered.

For appointing new Commissioner.

II. And be it further enacted, That if the said *James Boydell* shall die or refuse to act, or be rendered incapable of acting by Sickness or any other Cause, it shall be lawful for a Majority in Value, such Value to be ascertained by the Land Tax Assessment for the said Township of the Land Owners within the said Township, by Writing under their Hands, to appoint another Commissioner (not interested in the said Commons and Waste Lands) in the Room or Place of the said *James Boydell*, within Three Weeks next after such Death, Refusal, or Incapacity shall be made known ; and every such new Commissioner so to be appointed, having taken and subscribed the Oath appointed to be taken by the said recited Act, shall have such and the like Powers and Authorities by virtue of this Act as if he had been named and appointed a Commissioner in and by this Act.

Notice of Meetings to be given.

III. And be it further enacted, That the said Commissioner shall and he is hereby required to cause Notice to be inserted in one of the *Liverpool* Weekly Newspapers of the Time and Place of his first Sitting to put this Act in Execution, at least Ten Days before the Day of such Sitting, which said Sitting shall be held at some convenient Place within the said Township, or within Eight Miles of the Boundary of the said Parish, and the said Commissioner shall and may afterwards proceed in the Execution of this Act, and from Time to Time adjourn to such Time and Place as he shall think proper.

Other Notices.

IV. Provided always, and be it further enacted, That all other Notices requisite or necessary to be made and given by the said Commissioner, for the Purpose of carrying this and the said recited Act in Execution, shall be made and given by Advertisement in one of the said *Liverpool* Newspapers, and that Fourteen Days shall be deemed sufficient Notice of such Sitzings, respectively.

Commissioner to settle Disputes.

V. 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
Lands.

Lands and Grounds to be allotted and divided in pursuance of this Act or any Part thereof; touching or concerning the several Rights and Interests which they or any of them shall have or claim to have in, over, upon or out, of the said Lands and Grounds or any Part thereof, or touching or concerning any Matter or Thing relating to the said Allotment, Division and Inclosure, it shall be lawful for the said Commissioner and he is hereby authorized to examine into, hear, and determine the same: Provided always, that nothing in this Act contained shall authorize the said Commissioner to determine the Title to any Messuages, Lands, Tenements or Hereditaments whatsoever.

VI. And be it further enacted, That in case the said Commissioner shall upon the Hearing and Determination of any Claim or Claims, Objection or Objections, to be delivered to him in pursuance of this 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 have been made by the Person or Persons whose Claim or Claims, Objection or Objections, shall be thereby disallowed or overruled; 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 it shall and may be lawful for the said Commissioner, and he is hereby required and authorized, by Warrant under his Hand and Seal 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.

VII. Provided always, and be it further enacted, That in case any Person or Persons interested or claiming to be interested in the said intended Allotments, shall be dissatisfied with any Determination of the said Commissioner, touching or concerning any Claim or Claims or other Rights or Interests in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, it shall be lawful for the Person or Persons so dissatisfied to proceed to a Trial at Law of the Matter so determined by the said Commissioner, at the then next or at the following Great Sessions or Assizes to be holden for the said County Palatine of *Chester*, and for that Purpose the Person or Persons who shall be dissatisfied with the Determination of the said Commissioner shall, upon giving Notice to the said Commissioner of his, her, or their Intention to bring such Action, within Three Calendar Months after such Determination shall be made, 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 Six Calendar Months next after the Determination of the said Commissioner shall be so made; and the Defendant or Defendants in such respective Action or Actions shall, and he, she, and they is and are hereby required to name an Attorney or Attornies, who shall appear thereto or file Common Bail, and accept one or more Issue

or

or Issues, whereby such Claim or Claims and the Right or Rights thereby insisted on may be tried and determined; such Issue or Issues to be settled by the proper Officer of the Court in which the said respective Action or Actions shall be commenced, in case the Parties shall differ about the same; and the Verdict or Verdicts which shall be given in such Action or Actions shall be final, binding, and conclusive, upon all and every Person and Persons whomsoever, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts and order a new Trial to be had therein, which it shall be lawful for the Court to do as is usual in other Cases; and after such Verdict or Verdicts shall be obtained and not set aside by the Court, the said Commissioner shall and he is 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 Commissioner, touching such Claim or Claims of Right to the Soil of the said Commons and Waste Lands, or other Rights or Interests in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, which shall not be objected to, or being objected to, the Party or Parties objecting not causing such Action at Law to be brought and proceeded in as aforesaid, shall be final and conclusive upon all Parties.

VIII. 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.

IX. 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 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 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, or in his, her, or their own Name or Names, 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.

X. Provided also, and be it further enacted, That nothing in this Act contained shall extend to enable the said Commissioner to determine any Right between any Parties contrary to the Possession of any of such Parties (except in Cases of Encroachments as herein-after mentioned); but in case the said Commissioner shall be of Opinion against the Right of

of the Person or Persons so in Possession, he shall forbear to make any Determination thereupon; until the Possession shall be given up by or recovered from such Person or Persons by Ejectment or other due Course of Law.

XI. And be it further enacted, That it shall be lawful for the said Commissioner to enquire into and determine what Inclosure or Inclosures, Encroachment or Encroachments hath or have been made upon or from the said Commons or Waste Lands by any Person or Persons whomsoever, and that all such Inclosures and Encroachments as shall have been made upon or taken from the said Commons and Waste Lands, within Twenty Years previous to the passing of this Act, shall be deemed Part of the said Commons and Waste Lands, which said Encroachments the said Commissioner is hereby directed to allot to the Persons respectively who now hold the same, as Part of their respective Shares of the said Commons and Waste Lands; but in the Valuation of such Encroachments respectively, the said Commissioner shall not take into his Consideration any Improvements which may have been made thereon, nor estimate the same at any higher Rate or Value than the same respectively would have been estimated at had they remained Part of the said Commons and had not been inclosed; and all Inclosures or Encroachments from the said Commons or Waste Lands, which have been held for Twenty Years or upwards, shall remain and be the Property and as Part of the ancient Estate of the Person or Persons to whom the same respectively now belong, in respect of any such Land so inclosed for Twenty Years or upwards.

Encroachments.

XII. And be it further enacted, That the said Commissioner (after setting out the Roads and Ways in, over, and upon the said Commons and Waste Lands, in the Manner prescribed by the said recited Act) shall and he is hereby authorized, directed, and required to set out and allot such Part or Parts of the said Commons and Waste Lands, as will in his Judgement by Sale thereof, in the Manner and subject to the Regulations and Directions contained in the said recited Act, raise a Sum of Money sufficient to pay the Charges and Expences incident to and attending the obtaining and passing of this Act, and of carrying the same and the said recited Act in all respects into execution; and in case any Surplus shall remain, after all such Costs and Charges shall have been fully paid and satisfied, such Surplus shall be divided and apportioned between the several Proprietors of the Lands and Grounds hereby directed to be allotted, divided, and inclosed, according to their several and respective Interests therein, in case they shall be Tenants thereof in Fee Simple, or otherwise the same shall be applied and disposed of in Manner directed by the said recited Act, whenever Money is to be paid for the Purchase or Exchange of any Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, and which Money ought to be laid out in the Purchase or Exchange of other Lands, Tenements, or Hereditaments to be settled to the same Uses.

Allotment for Sale to defray Expences.

XIII. And be it further enacted, That the said Commissioner shall and he is hereby directed and required to allot, set out, and divide the Residue

Allotments of Residue.

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due and Remainder of the said several Commons and Waste Grounds, unto and amongst the several Persons who, at the Time of making such Allotments and Division, shall be entitled to Right of Common on the said several Commons and Waste Grounds, in proportion and according to their respective Rights, Property, and Interest therein.

For making
Exchanges.

XIV. And be it further enacted, That it shall be lawful for the said Commissioner to set out, all, and award any Lands, Tenements, or Hereditaments whatsoever, within the said Township of *Liscard* and Parish of *Wallasey* or either of them, in lieu of and in Exchange for any other Lands, Tenements, and Hereditaments whatsoever within the said Township and Parish or either of them, or within any adjoining Parish, Hamlet, Manor, Township, or Place, provided all such Exchanges be ascertained, specified and declared in the Award of the said Commissioner, 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 Politic, Corporate, or Collegiate, and under the Hands of the other 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 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 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.

Expences of
Exchanges
or Partitions
by whom to
be paid.

XV. And be it further enacted, That the Costs, Charges, and Expences attending the making and completing of any Exchanges or Partitions to be made under and by virtue of the said recited Act, or this Act, shall be borne, paid, and defrayed by the several Persons proposing or consenting to the making of such Exchanges or Partitions, in such Manner and in such Shares and Proportions as the said Commissioners shall by their Award order and direct.

Proprietors
to pay their
own Expences
at Meetings.

XVI. And be it further enacted, That the said Proprietors, their Attornies and Agents shall pay their own Expences when they or any of them shall attend the said Commissioner at any of his Sittings to be holden in pursuance of this Act.

Wills and
Settlements
not to be re-

XVII. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed, adjudged, deemed or taken
to

to revoke, make void, alter or impeach any Settlement, Deed, or Will whatsoever, or to prejudice any Person or Persons having any Right, Title, Interest, Claim, Charge, or Incumbrance whatsoever, in, out of, upon, or affecting any Parts of the Land or Ground to be allotted, divided and inclosed as aforesaid, or any Part or Parcel thereof, but that the respective Shares of the said Commons or Waste Lands so to be allotted or exchanged, shall immediately after such Allotments or Exchanges be remain and enure, and be held and enjoyed, and the several Persons to whom the same shall be allotted or given in Exchange shall from thenceforth stand and be seised and possessed thereof respectively, for such Estates, upon such and the same Uses, for such Trusts, and with such and the same Powers, and subject to such and the same Wills, Limitations, Conditions, Settlements, Trusts, Provisions, Remainders, Reversions, Debts, Charges, and Incumbrances, as the several Messuages, Lands, Tenements, or Hereditaments in respect whereof such Allotments or Exchanges shall be made, were held and stood severally limited, or subject or liable unto at the Time of making such Allotments or Exchanges.

voked or altered by this Act.

XVIII. And be it further enacted, That the Lands and Grounds which shall be allotted to any of the said Proprietors by virtue of this Act shall be held by the same Tenures by which the Lands and Grounds in respect whereof such Allotments shall be made, are now held.

Allotments to be of the same Tenure as Lands allotted were.

XIX. And be it further enacted, That it shall be lawful for all and every Person or Persons to whom any Allotment or Allotments shall be made by virtue of this Act, from Time to Time during the Term of Seven Years from the signing the said Award, to set down Posts and Rails or other Fences on the Outside of the Ditches, bounding any Highway or uninclosed Lands adjoining to his or their Allotment or Allotments, for the Preservation of the Quicksets, not exceeding Five Feet from the Line of Inclosure, and at any Time before the End of the said Term to remove and carry away such Posts, Rails, and Fences.

Allotments to be fenced.

XX. And be it further enacted, That it shall be lawful for any Person or Persons interested in the Commons and Waste Lands to be inclosed by virtue of this Act, at any Time before the Execution of the Award hereinafter directed to be made by the said Commissioner, to sell and dispose of all such Estate, Right, and Interest, as he, she or they now hath or have, or shall or may hereafter have in or to any Right of Common in and upon the said Commons and Waste Lands, or in or to any Allotment or Allotments to be made in respect thereof by virtue of this Act, separate from such Estate in Right whereof he, she, or they, is, are, or shall be so entitled; and that in case of any such Sale it shall be lawful for the said Commissioner, and he is hereby authorized and required to allot the same to the Purchaser or Purchasers thereof respectively, who shall and may immediately after the Execution of such Award as aforesaid, have, hold, use and enjoy such Allotments so to be allotted and laid out, in lieu of the Right of Common or other Interest, so by him, her, or them purchased as aforesaid, and shall and may have, use, and exercise any Act of Ownership in, upon, over and to the same, and be seised and possessed thereof, in as full, large, ample, and beneficial a Manner to all Intents and Purposes whatsoever,

Power to sell Rights before the Execution of the Award.

soever, as the former Proprietor or Vender thereof could or might have done in case such Sale or Sales had not been made, but subject nevertheless to the several Rules, Orders, Conditions, and Restrictions mentioned and contained in this and the said recited Act.

Rights of
Common to
be extin-
guished.

XXI. And be it further enacted, That the several Allotments, Partitions, Divisions, Exchanges, and Determinations to be made, declared or approved by the said Commissioner, in and by his Award or Instrument to be made in pursuance of the said recited Act, shall be and are hereby declared to be final, binding and conclusive unto and upon the several Parties interested in the said Commons or Waste Lands, and all other Persons; Bodies Politic and Corporate whomsoever; and from and immediately after the Execution of the said Award or Instrument, and the Publication thereof as aforesaid, all Right of Common, in, over, or upon the said several Commons and Waste Lands shall cease and be for ever extinguished.

Commission-
ers Allowance.

XXII. And be it further enacted, That out of the Money which shall be raised for defraying the Expences of obtaining and executing this Act, there shall be paid to the said Commissioner, as a Recompence for his Pains and Trouble, the Sum of Two Pounds Twelve Shillings and Sixpence for each Day he shall respectively act or travel for the Purpose of acting; and that at all Meetings to be held in pursuance of this Act, the said Commissioner shall defray his own Expences.

Commissioner
to account.

XXIII. And be it further enacted, That once at least in every Year during the Execution of this Act (such Day to be computed from the Day of passing thereof), the said Commissioner shall and he is hereby required to make a true and just Statement or Account of all Sums of Money by him received and expended, or due to him for his own Trouble and Expences in the Execution of this Act; such Statement or Account when so made, together with the Vouchers relating thereto, shall be by him laid before any Two Justices of the Peace for the County of *Chester*, to be by them examined and balanced, and such Balance shall be by such Justices stated in the Books of Accounts to be kept in the Office of the Clerk to the said Commissioner; and no Charges or Items in such Accounts shall be binding on the Parties concerned, or valid in Law, unless the same shall have been duly allowed by such Justices.

Persons advan-
cing Money to
be repaid with
Interest.

XXIV. And be it further enacted, That if any Person shall advance any Sum or Sums of Money for the Purpose of defraying the Expences of obtaining and passing this Act, or of carrying the same into Execution, every such Person shall be repaid the same, with Interest, at the Rate of Five Pounds *per Centum per Annum*, out of the first Monies that shall be raised for defraying such Expences by virtue of this Act.

Directing
where the
Award shall
be deposited.

XXV. And be it further enacted, That the Award to be made by the said Commissioner, after being enrolled in the Manner directed by the said recited Act, shall be deposited in the said Parish Church of *Wallasey*.

XXVI. And whereas the said Commons adjoin chiefly on the Coast or Shore of the River *Mersey*, and there is not nor ever can be much passing over the Public Roads to be made in, over, upon or across the said Commons; be it further enacted, That the said Commissioner shall have and hereby hath full Power given to him, to set out all and every or any the Public Highways and Roads, in, over or across the said Commons, of less Width than Forty Feet, so as none of such Public Roads shall be set out less than Thirty Feet Wide:

Roads may be made of less Width than Forty Feet, but not less than Thirty.

XXVII. And whereas the giving Six Weeks Notice for some of the Purposes by the said recited Act to be given, hath been found by Experience to occasion not only great Delay but considerable Expence; be it further enacted, That for the Purposes of this Act Three Weeks Notice of any Thing to be done in pursuance of this Act, or the said recited Act, shall be deemed sufficient Notice; any Thing in the said recited Act contained to the contrary notwithstanding:

Altering the Time for giving Notices in certain Cases:

XXVIII. And be it further enacted, That if any Person or Persons, Bodies Politic or Corporate, shall think himself, herself, or themselves aggrieved by any Thing done in pursuance of this or the said recited Act (except as to such Claims, Matters, and Things as are herein-before directed or authorized to be tried, settled, or determined by the Verdict of a Jury, or where any of the Clauses or Provisions of the said recited Act or of this Act shall express that the same shall be final and conclusive), then and in every such Case, he, she or they may appeal to the General Quarter Sessions of the Peace to be held at *Chester*, in and for the said County Palatine of *Chester*, within Four Calendar Months next after the Cause of Complaint shall have arisen; and the Justices at the said Quarter Sessions are hereby required to hear and determine the Matter of every such Appeal, and to make such Order and award such Costs as to them in their Discretion shall seem reasonable, and by their Order and Warrant to levy the Costs and Damages which shall be awarded by the said Justices, 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, deducting the reasonable Charges of every such Distress and Sale; which Determination of the said Justices shall be final and conclusive to all Parties concerned, and shall not be removed by *Certiorari* or any other Writ or Process whatsoever into any of His Majesty's Courts of Record at *Westminster*, or elsewhere; but in case such Appeal shall appear to the said Justices to be frivolous, vexatious or without Foundation, then the said Justices shall award such Costs to be paid by the Appellant or Appellants, as to them in their Discretion shall seem reasonable.

Allowing an Appeal.

XXIX. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and all and every Person and Persons, Bodies Politic and Corporate, his, her and their Successors, Executors, and Administrators (other than and except the several Persons, Bodies Politic and Corporate, to and amongst whom the said Commons or Waste Lands shall be allotted and divided in pursuance of this Act), all such Right Title and Interest (other than and except such as are hereby intended to be barred and destroyed); as they, every, or any of them had and enjoyed, of, in, to or out of the said several Commons or Waste Lands at the Time

General Saving of Rights.

of passing this Act, or would or might have had or enjoyed in case this Act had not been made.

Act may be
given in
Evidence
when printed.

XXX. And be it further enacted, That this Act shall be printed by the Printer to the King's most Excellent Majesty, and a Copy thereof so printed shall be admitted as Evidence thereof by all Judges, Justices, and others.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN,
Printers to the King's most Excellent Majesty. 1809.