



ANNO QUADRAGESIMO NONO

GEORGI III. REGIS.

Cap. 104.

An Act for inclosing Lands in the Manor of *Whiston*,
and Parish of *Kingsley*, in the County of *Stafford*.
[20th May 1809.]

WHEREAS there are within the Manor of *Whiston*, in the Parish of *Kingsley*, in the County of *Stafford*, certain Commons and Waste Lands, containing in the Whole by Estimation One thousand four hundred Acres or thereabouts: And whereas *Peter Whitehall Davies* Esquire, and *Thomas Smith*, Gentleman, are Lords of the said Manor of *Whiston*, and as such are entitled to the Soil of the said Commons and Waste Lands: And whereas the Most Noble *William Duke of Devonshire* is the Patron of the Rectory of the Parish Church of *Kingsley* aforesaid; and the Reverend *John Wood*, Clerk, is Rector thereof, and as such is entitled to the Tythes arising from the several Lands, Tenements, and Hereditaments, within the said Manor of *Whiston*: And whereas the said *Peter Whitehall Davies* and *Thomas Smith*, *William Morris*, *William Nickisson*, *George Locker*, *John Locker*, and divers other Persons, are the Proprietors of Messuages, Lands, Tenements, and Hereditaments, within the said Manor, in respect whereof they are entitled to Rights of Common in and upon 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*
[Loc. & Per.] Act,

Act, certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts: And whereas it would be of great Benefit and Advantage to the several Persons interested in the said Commons and Waste Lands, if the same were divided and inclosed, and specific Parts and Shares thereof assigned and allotted unto the said several Persons interested, according and in proportion to their several and respective Properties, Rights, and Interests therein; but such Division, Allotment, and Inclosure, cannot be effectually made and established without the Aid and Authority of Parliament; may it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

Commissioner That *Thomas Rowley, of Overton in the said County of Stafford, Gentleman, shall be, and he is hereby appointed the Commissioner for setting out, dividing, and allotting the said Commons and Waste Lands, and for putting this Act into Execution; subject to such of the Powers, Authorities, Directions, Rules, Orders, Clauses, and Provisions contained in the said recited Act, as are not varied or altered, or repugnant to or otherwise provided for by this Act.*

Election of a new Commissioner.

II. And be it further enacted, That the said *Thomas Rowley* shall and he is hereby required, immediately after he shall have taken and subscribed the Oath directed to be taken by the said recited Act, by Writing under his Hand and Seal, to nominate and appoint a fit and proper Person (not interested in the said intended Division and Inclosure) as his Successor; and in case the said *Thomas Rowley* shall die, refuse, or neglect to act as a Commissioner in the Execution of this Act, for the Space of Three Calendar Months after being thereunto required, by Notice in Writing signed by any Five or more Persons interested in the said Commons and Waste Lands, and left at his usual Place of Abode, then and in such Case the Person so nominated and appointed by the said *Thomas Rowley* (having first taken and subscribed the Oath by the said recited Act directed to be taken and subscribed) shall be the Commissioner for carrying this Act into Execution, and shall have the like Powers and Authorities in all Respects as the said *Thomas Rowley*, and shall be subject to the like Rules, Orders, Regulations and Restrictions; and shall, by Writing under his Hand and Seal, nominate and appoint a Successor in Manner aforesaid, to be the Commissioner for carrying this Act into Execution, and so *toties quoties* whenever any Person so nominated and appointed as a Successor shall become a Commissioner.

For appointing a new Commissioner, in case the Person nominated as a Successor shall refuse to act.

III. Provided always, and be it further enacted, That if the said *Thomas Rowley*, or any other Person appointed a Commissioner by virtue of this Act, shall not nominate and appoint a Successor as aforesaid, or if by any other Means there shall be a Vacancy in the Commission for the Space of Three Calendar Months, then and in every such Case it shall be lawful for the major Part in Value of the Owners and Proprietors, or Persons interested in the said Commons and Waste Lands, or his, her, or their Agent or Agents, Attorney or Attornies duly authorized, who shall attend a Meeting to be holden for that Purpose, from Time to Time to elect and appoint another Person (not interested in the said intended Division and Inclosure) to be a Commissioner in the Room or Place of such Commissioner

so

to dying, refusing or neglecting to act as aforesaid; but Notice in Writing of the Time and Place of Meeting for every such Election shall be affixed on the principal outer Door of the Parish Church of *Kingsley*, and inserted in some Newspaper printed or circulated in the said County of *Stafford*, at least Fourteen Days before every such Meeting; and such new Commissioner having taken and subscribed the Oath directed by the said recited Act, before One of His Majesty's Justices of the Peace for the County of *Stafford*. (who is hereby authorized and required to administer the same) shall have the like Powers and Authorities in all Respects for putting this Act in Execution as the Commissioner in whose Place he shall succeed is by this Act invested with.

IV. And be it further enacted, That the said Commissioner shall, and he is hereby required to cause a Notice or Notices in Writing under his Hand, to be affixed upon the most public Door of the Parish Church of *Kingsley*, and also to be inserted once in the *Stafford* Newspaper, or in some other Newspaper usually circulated within the said County of *Stafford*, of the Time and Place of his First, Second, and Third Attendance to put this Act in Execution, at least Ten Days before each respective Attendance, and all subsequent Attendances of the said Commissioner shall be appointed and be adjourned from Time to Time in such Manner as the said Commissioner shall direct and think necessary: Provided that all the Sittings of the said Commissioner shall be held in the Parish of *Kingsley* aforesaid, or within the Distance of Eight Miles from the Boundary of the said Parish.

Commissioner to give Notice of Attendances.

V. Provided always, and be it enacted, That all other Notices necessary or requisite to be made and given by the said Commissioner, shall be made and given by Advertisement in the said *Stafford* Newspaper; or in case the same shall not then be published, in some other Newspaper printed or circulated in the said County of *Stafford*.

Other Notices how to be given.

VI. And be it further enacted, That the said Commissioner shall and he is hereby authorized and empowered to appoint a Clerk to assist him in the Execution of this Act.

Clerk to Commissioners.

VII. And be it further enacted, That all Surveys, Admeasurements, and Plans requisite and necessary to be made and taken for the Purpose of carrying this Act into Execution, shall be made and taken by such Person or Persons as the said Commissioner shall from Time to Time nominate and appoint: Provided always, that until the said Commissioner shall see some Reason to the contrary, or it shall appear to him proper and necessary to employ more than one such Surveyor, the said Surveys, Admeasurements, and Plans shall be made by *Matthew Weston*, of *Rudyard Hall*, in the Parish of *Leek*, in the said County of *Stafford*, Land Surveyor.

Survey and Plan to be made.

VIII. Provided always, and be it enacted, That the several Persons claiming to be entitled to Allotments in and upon the said Commons and Waste Lands hereby directed to be inclosed, shall respectively produce to the said Commissioner, when required by him, Surveys and Admeasurements of the Estates and ancient inclosed Lands, in respect whereof they shall claim such Allotments; and so far as the same Surveys and Admeasurements shall appear to the said Commissioner to be satisfactory, they shall be received by the said Commissioner as and for true and perfect Sur-

Surveys already made may be used.

veys and Admeasurements of the Estates and ancient inclosed Lands therein respectively comprized; and that such Surveys and Admeasurements, or Copies thereof, shall be kept by the said Commissioner for the Purposes of this Act.

Commissioners empowered to take fresh Surveys, where those produced are incorrect.

IX. Provided also, and be it further enacted, That in all Cases where Surveys or Admeasurements shall be produced, which in the Judgment of the said Commissioner shall appear to be incorrect or improper; or in case any Person or Persons claiming any Allotment or Allotments in and upon the said Commons and Waste Lands hereby directed to be inclosed, shall refuse or neglect to produce to the said Commissioner, within One Month after Notice to him, her, or them for that Purpose given, sufficient and satisfactory Surveys and Admeasurements of his, her, or their respective Estates and ancient inclosed Lands, in respect whereof he, she, or they shall claim to be entitled to any Allotment or Allotments in and upon the said Commons and Waste Lands as aforesaid, that then and in either of such Cases, it shall and may be lawful to and for the said Commissioner, and he is hereby required to make and take or cause to be made and taken, Surveys and Admeasurements of all such Estates and ancient inclosed Lands, whereof no satisfactory Surveys or Admeasurements shall be produced to him as aforesaid; and the Costs and Expences of all such Surveys shall be paid and borne by the respective Owners of such Estates and ancient inclosed Lands, within Fourteen Days after Demand; and in Default thereof, it shall and may be lawful to and for the said Commissioner, and he is hereby authorized and required, by Warrant under his Hand directed to any Person or Persons whomsoever, to cause such Costs and Expences 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 of such Distress and Sale.

Encroachments made above Twenty Years.

X. And be it further enacted, That all Encroachments which shall have been made upon or from the said Commons and Waste Lands for Twenty Years or upwards, without legal Entry or Interruption before the First Day of *January* One thousand eight hundred and eight, with the Cottages and Buildings thereon, and for which any Rents or Acknowledgements have been paid to the said *Peter Whitehall Davies* and *Thomas Smith*, or to any former Lord or Lords of the said Manor within that Period, shall be deemed to belong to, and are hereby declared to be vested in the said *Peter Whitehall Davies* and *Thomas Smith*, and their Heirs; and that such other Encroachments which shall have been made upon or from the said Commons and Waste Lands for Twenty Years and upwards, without legal Entry or Interruption before the said First Day of *January* One thousand eight hundred and eight, and for which no Rents or Acknowledgements have been paid to the said *Peter Whitehall Davies* and *Thomas Smith*, or to any former Lords or Lord of the said Manor within that Period, shall, with the Cottages and Buildings thereon, be deemed to belong to, and are hereby declared to be the sole Property of the Person or Persons in his, her, or their own Right, occupying or receiving Rent for the same.

XI. And

XI. And be it further enacted, That all Encroachments which shall have been made upon or from the said Commons and Waste Lands within Twenty Years next before the said First Day of *January* One thousand eight hundred and eight, shall be deemed Part thereof; but all such last-mentioned Encroachments, with the Buildings thereon, 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, or be entitled to the Rents or 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 inclosed, or to the Value of the Waste Lands adjoining; but in case any such last-mentioned Encroachments shall, in the Judgement of the said Commissioner, 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; or in case it shall so happen that the Person or Persons who at the Time of making the said Allotments under this Act shall in his, her, or their own Right, be in Possession or Receipt of, or entitled to the Rents and Profits of any such last-mentioned Encroachments, and shall not be entitled to any Allotment from the said Commons and Waste Lands, under or by virtue of this or the said recited Act, then and in either of the said Cases the said Commissioner is hereby authorized to sell and allot such Encroachments, or Parts, of Encroachments, to such Person or Persons who, if he, she, or they was or were entitled to a sufficient Allotment from the said Commons and Waste Lands, would be entitled to have the same allotted as aforesaid, at such Sum or Sums of Money as the said Commissioner shall adjudge to be the Value thereof, to be estimated as aforesaid; and the said Commissioner shall receive and apply the same for the Purposes of this Act; and if any such last-mentioned Persons shall refuse or neglect to pay such Sum or Sums of Money as the said Commissioner shall so adjudge at the Time so fixed by him for that Purpose, then such Encroachments which shall not be so paid for as aforesaid, shall be allotted as Common and Waste Land: Provided always, that in the Valuation of such Encroachments and Inclosures the Buildings or Erections thereon shall not be included; but in case any such last-mentioned Encroachments shall in the Judgement of the said Commissioner be thought proper or more convenient to be laid to the Lands of any Person entitled to an Allotment or Allotments from the said Commons and Waste Lands, then and in such Case the said Commissioner is hereby required to allot such last-mentioned Encroachments, or such Parts thereof as he shall think proper, unto such other Person or Persons so entitled, in part or in full of his, her, or their Allotment or Allotments, as the Case may be, and shall be at Liberty to order and direct such Allowance or Compensation to be made by the Person to whom the same shall be so allotted, to the Person or Persons from whom such Encroachments shall be taken, as to the said Commissioner shall seem reasonable, if any.

Encroachments made under Twenty Years.

XII. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required to set out and allot such Part and Parcel of the said Commons and Waste Lands, hereby intended to be divided and inclosed, as he shall think proper, for the Purpose of public

Land to get Materials for repairing Roads.

[*Loc. & Per.*]

23 B

Watering

Watering Places for Cattle, or digging for and getting of Stone, Sand, Gravel, and other Materials for the making and repairing of the Highways and other Roads within the said Manor of *Whiston*, and for the Use of the Proprietors of Estates within the same Manor, and their Tenants for the Time being for and in respect of the Estates within the same.

Allotments
to the Lords
of the Manor.

XIII. And be it further enacted, That the said Commissioner shall and he is hereby required in the next Place to set out and allot so much of the said Commons and Waste Lands, as shall in the Judgement of the said Commissioner be equal in Value to One full Sixteenth Part thereof, and shall apportion, allot, and award the same in Severalty between them the said *Peter Whitehall Davies* and *Thomas Smith*, according to their respective Shares and Interests therein as Lords of the said Manor of *Whiston*, in lieu of, and full Recompence and Satisfaction for their respective Rights and Interests in and to the Soil of the said Commons and Waste Lands; which said Allotment shall comprize such Part of the said Commons or Waste Lands lying near to the Duke of *Devonshire's* Works at *Whiston* aforesaid, containing Stone, Clay and Sand, and including the Rocks or Quarries called *Manystones* and *Garstone*, as have been sold or contracted to be sold to the said Duke by the Lords of the said Manor.

XIV. And be it further enacted, That a certain Piece or Parcel of Land heretofore inclosed from the said Commons or Waste Lands, by and with the Approbation and Consent of the Lords of the said Manor, and conveyed by the said Lords or one of them for a valuable Consideration to the Company of Proprietors of the Navigation from the *Trent* to the *Mersey* or their Trustee, containing by Mensuration Seven Acres, now in the Occupation of the said Company or *Samuel Boden* their Agent, shall be considered in the said Division and Inclosure as Part of the Share or Proportion of the said Lords or one of them of and in the said Commons or Waste Lands, and shall and is hereby declared to be vested in the said Company: Provided also, that this Act, or any Clause, Matter, or Thing herein contained, shall not extend to or in any Manner affect certain other Parts of the said Commons or Waste Lands, containing by Admeasurement Three Acres or thereabouts, heretofore taken and used by the said Company of Proprietors of the Navigation from the *Trent* to the *Mersey*, but the said Company shall continue to hold and enjoy the same in like Manner as if this Act had not been made.

Allotment of
the Residue
to the Pro-
priators.

XV. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required in the next Place to divide, set out, and allot all the Residue and Remainder of the said Commons and Waste Lands, hereby intended to be divided and inclosed, unto, between, and amongst all and every the several Owners and Proprietors of Messuages, Lands, Tenements, and Hereditaments, who are entitled to Rights of Common in and upon the said Commons and Waste Lands, in proportion to their several and respective Estates, Rights, and Interests therein.

Fencing Al-
lotments.

XVI. And be it further enacted, That immediately after the said Commissioner shall have so set out and allotted the Residue and Remainder of the said Commons and Waste Lands as aforesaid, it shall and may be

be lawful for all and every Person and Persons to whom the same shall be so allotted as aforesaid, to inclose their respective Allotments with Walls, Ditches or Hedges, or in such other Manner as the said Commissioner shall direct; and that if any such Person or Persons shall neglect or refuse, within Three Calendar Months next after Notice for that Purpose given to, or left for him, her or them, at his, her or their last or usual Place of Abode, or with the Tenant in Possession of the Tenement to which such Allotment is made; to inclose and fence such his, her or their Allotment or Allotments, in such Manner as the said Commissioner shall have so directed, that then it shall be lawful for the said Commissioner, and he is hereby required to inclose or fence in such Allotments or Allotment, and to borrow or take up at Interest, by way of Mortgage thereof, such Sum or Sums of Money, as shall be sufficient to pay the Expence of such Inclosure, and all other Expences attending the same, which Sum and Sums of Money shall be and remain a Charge upon such Allotment or Allotments until the same shall be duly paid and satisfied, with the lawful Interest thereof.

XVII. And be it further enacted, That if any Question or Dispute shall arise between any Person or Persons interested in the said Commons and Waste Lands, touching the Extent, Identity, or Possession of any Plot, Parcel, or Portion thereof, or touching or concerning the respective Rights and Interests which they or any of them shall have or claim to have in, upon or over the same Commons and Waste Lands, or touching or concerning any other Matter or Thing relating to the said Division, Allotment and Inclosure, then it shall be lawful for the said Commissioner to examine into, hear, and determine the same: Provided always, that nothing herein contained shall authorize the said Commissioner to determine the Title to any Messuages, Cottages, Lands or Hereditaments whatsoever.

Commissioner
to settle Dis-
putes.

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

Commissioner
not to deter-
mine Rights
contrary to
Possession.

XIX. 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 or the said recited Act, see Cause to award any Costs, it shall be lawful for the said Commissioner, and he is hereby empowered, upon Application made to him for that Purpose, to settle, assess, and award such Costs and Charges as he shall think reasonable, to be paid to the Party or Parties in whose Favour any Determination of the said Commissioner shall be made, by the Person or Persons whose Claim or Claims, Objection or Objections, shall be thereby disallowed or 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 and in every such Case it shall be lawful for the said Commissioner, and he is hereby authorized and required, by Warrant under his Hand directed to any Person whomsoever, to cause such Costs and Charges to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons so neglecting or refusing to pay the same, rendering the Overplus, if any,

Power to a-
ssess Costs.

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.

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

XX. And be it further enacted, That in case any Person or Persons interested or claiming to be interested in the said Division or Allotment, shall be dissatisfied with the Determination of the said Commissioner touching or concerning their respective Rights or Interests in, over, or upon the said Commons and Waste Lands, 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 Assizes to be holden for the said County of *Stafford*, and for that Purpose the Person or Persons who shall be dissatisfied with the Determination of the said Commissioner, shall cause an Action to be brought or commenced on a feigned Issue against the Person or Persons in whose Favour such Determination shall have been made, within Three Calendar Months next after such Determination of the said Commissioner shall have been made known to such Person or Persons, and shall proceed to Trial therein as aforesaid; and the Defendant or Defendants in such Action or Actions shall, and he, she, or they is, and are hereby required to name an Attorney or Attornies, who shall appear thereto or file Common Bail, and accept one or more Issue or Issues whereby such Claim or Claims, and the Right or Rights thereby insisted on, may be tried and determined, such Issue or Issues to be settled by the proper Officer of the Court in which the said Action or Actions shall be commenced, in case the Parties shall differ about the same; and if at the Trial of any such Issue or Issues, it shall appear that the Party claiming is entitled to any qualified or less Right or Rights or Interests than was or were claimed by such Party, then it shall and may be lawful for the Jury by whom such Issue or Issues shall be tried, to find and declare the same by their Verdict, which shall be indorsed on the *Postea* in addition to the Verdict given on the Issue or Issues joined, but nevertheless the Costs of such Action or Actions shall abide and be determined by the Verdict given upon the Issue or Issues joined, as if no such Special Finding had been made; and the Verdict or Verdicts which shall be given in such Action or Actions upon the Issue or Issues therein joined, in case there shall be no such Special Finding and Indorsement, or such Special Finding and Indorsement, if any shall be made, shall be binding and conclusive upon and to all and every Person and Persons whatsoever, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, or Finding and Indorsement, and order a new Trial or Trials to be had thereupon, which it shall be lawful for the Court to do, and also upon sufficient Cause shewn to put off the Trial of such Issue or Issues, as is usual in other Cases; and after such Verdict or Verdicts, or Special Finding or Indorsement, 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, Right or Rights, or Interest or Interests thereby determined, according to such Verdict or Verdicts, or Finding and Indorsement as aforesaid: Provided always, that the Determination of the said Commissioner touching such Rights or Interests in, over, or upon the said Commons and Waste Lands, hereby directed to be divided, allotted, and inclosed, or any Part thereof, which shall not be objected to,

Determin-
ation of Com-
missioner to
be final, &c.

or

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 to all Parties.

XXI. 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, and the Executors and Administrators of the deceased shall be liable to the Costs thereof, as if such Action had been tried and Judgement given therein in the Lifetime of their Testator or Intestate, but so nevertheless as not to affect any Payment made before such Judgement shall be signed, or to make any Executor or Administrator liable to be charged with a Devastavit by reason thereof.

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

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

Allowing Actions to be brought after Death of Parties.

XXIII. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to revoke, make void, alter or annul any Will, Settlement, or other Deed, or to prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Portion, Estates, Debts, Rents, or Incumbrances, out of, upon, or affecting any of the Lands and Hereditaments to be divided, allotted, and inclosed, or which shall be exchanged by virtue of this Act or the said recited Act, or any Part or Parts thereof respectively; but that the respective Persons to whom any Lands or Hereditaments shall be divided, allotted, or given in exchange by virtue of this Act or the said recited Act, shall be seised thereof to such and the same Uses, and for such and the same Estates, and under and subject to such and the same Settlements, Limitations, Remainders, Jointures, Rents, Charges and Incumbrances, and under such and the same Restrictions, Covenants and Agreements, as the several Messuages, Lands, Tenements or Hereditaments whereof such Persons respectively were seised or possessed at or immediately before the Execution of the Award to be made by the said Commissioner, or for which or in lieu or in respect whereof such Division, Allotment, or

Not to prejudice any Will, Settlement, etc.

Exchange shall be made as aforesaid, would have been subject to, charged with, or affected by, in case this Act had not been made.

For vacating
Leases at
Rack Rent.

XXIV. And be it further enacted, That the said Commissioner may and he is hereby directed and authorized (on Application made to him for that Purpose) to declare void every Lease or Leases, Agreement or Agreements at Rack Rent now subsisting, or which may affect any of the Lands to be inclosed, exchanged, or divided within the said Manor by virtue of this Act or the said recited Act, and the same shall accordingly cease at such Time or Times as the said Commissioner shall by Writing under his Hand order and appoint; and the said Commissioner is hereby empowered to adjudge and determine such Recompence and Satisfaction to be made to the Lessee or Lessees, Tenant or Tenants respectively, for avoiding such Lease or Leases, Agreement or Agreements, as the said Commissioner shall deem adequate to the Benefit and Interest which the said Lessee or Lessees, Tenant or Tenants, could or might have enjoyed under the said Lease or Leases, Agreement or Agreements, had not this Act been made or passed, and also by whom and at what Time such Recompence and Satisfaction shall be made; and in case such Recompence and Satisfaction shall not be made accordingly, then it shall be lawful to and for such Lessee or Lessees, Tenant or Tenants, to sue for and recover the same in any of His Majesty's Courts of Record at *Westminster*, by Action of Debt or on the Case: Provided always, that if there be any such Lease of Lands, Part of which shall lie in the said Manor or Parish and Part in any adjoining Manor or Parish, all and every such Lease or Leases upon Rack Rent may be vacated; but where any Lands shall have been taken in exchange, which Lands shall be under such Lease or Agreement, and wholly situate in any adjoining Manor or Parish, such last-mentioned Lease shall not be vacated.

In case any
Person shall
sell his Com-
mon Right,
the Allotment
to be made
to the Pur-
chaser.

XXV. Provided always, and be it further enacted, That if any Person or Persons being seised in Fee Simple or in Fee, according to the Custom of the said Manor, hath or have sold, or contracted or agreed to sell, or shall at any Time before the Execution of the Award of the said Commissioner, sell, contract, or agree to sell his, her, or their Right, Interest or Property in, over, or upon the said Commons and Waste Lands or any Part thereof, to any other Person or Persons, then and in every such Case it shall be lawful for the said Commissioner, and he is hereby directed, authorized, and required to make an Allotment of Land to the Purchaser or Purchasers in such Sale, Contract or Agreement, or to his, her, or their Heirs or Assigns for or in respect of such Right, Interest or Property so sold, contracted, or agreed to be sold as aforesaid; and every such Purchaser or Purchasers, his, her, or their Heirs or Assigns shall and may, from and after the Execution of the said Award, hold and enjoy the Land so to be allotted to him, her, or them as aforesaid, in the same Manner, to all Intents and Purposes as the Vendor or Vendors in every such Sale, Contract, or Agreement, might, could, or ought to have held and enjoyed the same, in case such Sale, Contract or Agreement had not been made, or such Right, Interest, or Property, had been vested in such Vendee at the Time of making such Allotments as aforesaid.

XXVI. And

XXVI. And be it further enacted, That all the Costs, Charges, and Expences incident to and attending the obtaining of this Act, and of surveying, admeasuring, planning, valuing, dividing, and allotting the Lands and Grounds to be divided and allotted by virtue of this or the said recited Act, and of preparing and inrolling the Award of the said Commissioner, and all the Charges and Expences of the said Commissioner, his Assistants and Servants, and all other necessary Expences of the several Persons to be employed by the said Commissioner in and about the Premises, either before or after the Execution of the said Award, and all Expences of forming, completing and repairing the public Carriage Roads and Highways to be set out and appointed by the said Commissioner, and all other Expences of carrying this Act into Execution (save and except the Expences of Exchanges and Partitions herein-after mentioned), shall be borne and defrayed by the several Persons to whom any Allotment or Allotments shall be made by virtue of this Act, which said Costs, Charges, and Expences, together with the Proportions thereof to be paid by the several Persons hereby made liable to the Payment thereof, shall be adjusted and settled by the said Commissioner; and the said Commissioner is hereby authorized and empowered, from Time to Time, to make and form Estimates of all such Costs, Charges, and Expences, and to raise the Amount of such Estimates by Rate or Rates, at any Time after the Allotments shall have been staked out and confirmed, from Time to Time as he shall deem necessary and proper, in manner directed in and by the said recited Act.

For defraying the Charges and Expences of obtaining and executing this Act.

XXVII. And be it further enacted, That it shall be lawful for the said Commissioner and he is hereby authorized, at any Time or Times before the Execution of the said Award, by Notice in Writing under his Hand, to be affixed upon the principal outer Door of the Parish Church of *Kingstley*, aforesaid, to order and direct all or any Part of the Rights of Common in, over, or upon the said Commons and Waste Grounds or any Part thereof, to be extinguished or the Exercise thereof to be suspended, for and during such Time as shall be expressed in such Writing; and that all such Rights of Common as the said Commissioner shall by such Writing order and direct to be extinguished or the Exercise thereof suspended as aforesaid, shall, from the Time of affixing such Writing on the said Church Door, cease, determine, and be extinguished, or the Exercise thereof be suspended accordingly; any Law, Usage, or Custom to the contrary thereof notwithstanding.

For extinguishing or suspending Rights of Common.

XXVIII. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required, in all Cases where in his Judgment it shall appear to be requisite or proper, or for the more convenient Occupation of the Lands and Tenements within the said Manor, to direct and turn any old or accustomed Road, or Way or Path passing or leading through or over any Part of the old Inclosures within the said Manor, or to stop up or discontinue such Roads, Ways, and Passages, as to the said Commissioner shall seem meet and proper: Provided always, that no such Road, Way or Path shall be diverted, turned, stopped up or discontinued without such Concurrence and Order, and in manner and subject to such Appeal as is mentioned in and by the said recited Act.

Commissioner to divert Roads.

XXIX. And be it further enacted, That it shall be lawful for the Trustees or Trustee, Feoffees or Feoffee, and also for any Person or Persons, Power to exchange Lands.

sons, Body or Bodies Politic, Corporate or Collegiate, who are or shall be Proprietors or Owners of Messuages, Buildings, Lands, Grounds, or other Hereditaments lying within the said Manor of *Whiston*, or in any other Manor or Parish adjoining thereto, and also to and for the Husbands, Guardians, Committees, and Trustees of any of the said Owners and Proprietors being under Coverture, Minors, Idiots, Lunatics, or beyond the Seas, or otherwise incapable of acting for themselves, whether such Owners or Proprietors be Tenants for Life or Lives, or for Years determinable on any Life or Lives, or for any Estate of Inheritance, from Time to Time to exchange all or any of his, her, or their Messuages, Buildings, Old Inclosures, Lands, Tenements, Allotments, Rights, Interests, Heriots, Chief Rents or other Hereditaments within the said Manor of *Whiston*, for any other Hereditaments within the same Manor, or within the Parish of *Kingsley* aforesaid, or any adjoining Manor or Parish; so that all and every such Exchange or Exchanges be made by and with the Consent and Approbation of the said Commissioner, and shall be ascertained, specified, and declared in his said Award; and all and every such Exchange and Exchanges shall be good and valid in the Law to all Intents and Purposes whatsoever: Provided always, that no Exchange shall be made by virtue of this Act of any Lands, Tenements or Hereditaments holden in Right of any Church or Chapel, without the Consent of the Patron thereof, and of the Lord Bishop of the Diocese for the Time being respectively.

Expences of Exchanges and Partitions shall be borne by the Persons making them.

XXX. Provided always, and be it further enacted, That the Costs, Charges, and Expences attending the making of any Exchange or Exchanges, Partition or Partitions, Sale or Sales, to be made by virtue of this or the said recited Act, shall be borne, paid, and defrayed by the several Persons making such Exchanges, Partitions, or Purchases, in such Shares and Proportions as the said Commissioner shall in and by his said Award order and direct: Provided always, 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 Meeting to be holden in pursuance of this Act.

For allowing Interest on Money advanced.

XXXI. And be it further enacted, That in case any Person or Persons shall advance any Sum or Sums of Money for the Purpose of defraying the Expences of obtaining and passing this Act and of carrying the same into Execution, every such Person shall be repaid the same, together with lawful Interest from the Time of advancing thereof, out of the first Monies that shall be raised for defraying such Expences under and by virtue of this Act, which Sum or Sums of Money so to be advanced as aforesaid, and the Interest thereof, shall be a Charge upon the said Commons and Waste Lands hereby intended to be divided and inclosed, until the same shall be raised and repaid.

Mines reserved to the Lords of the Manors.

XXXII. Provided always, and be it further enacted, That nothing in this Act shall be construed to defeat, lessen or prejudice the Right, Title, or Interest of the said *Peter Whitehall Davies* and *Thomas Smith*, as Lords of the said Manor of *Whiston*, or any future Lord or Lords of the said Manor, to the Mines, Beds, Veins, and Seams of Coal, Canal, Slack and Ironstone, or other Mines and Minerals in and under the said Commons and Waste Lands hereby intended to be inclosed (save and except

Stone, Gravel, Clay, and Sand), or to any Seignories, or Royalties incident or belonging to the said Manor, the same being hereby reserved to them the said *Peter Whitehall Davies* and *Thomas Smith*, and the future Lord or Lords of the said Manor, with full and free Liberty, Power and Authority for them, from Time to Time and at all Times hereafter, to have, hold, win, work and enjoy all Mines, Beds, Veins and Seams of Coal, Canal, Slack and Ironstone, and other Mines and Minerals of what Nature or Kind soever (save and except as aforesaid) within and under the said Commons and Waste Lands hereby intended to be inclosed, together with all convenient and necessary Roads, Ways and Passages, and Liberty of laying, making and repairing all necessary Roads or Ways in, over and along the same or any of them, or any Part thereof, and of searching for, winning and working the said Mines and Minerals, and stacking, leading and carrying away the Coal, Canal, Slack, Ironstone or other Produce thereof, and sinking, digging and making Pits, Shafts, Pit Rooms, Heap Rooms, Stand Yards, Air Pits, Drifts, Levels, Ways and Watercourses, and of erecting and using Fire Engines or other Engines, Hovels, Weighing Machines, Weighing Houses, Stables, and all other necessary and convenient Buildings, and of altering, changing, pulling down and carrying away the same or any of the Materials thereof, and to have and use any Stone got in the sinking Pits, or Shafts, or working or getting the said Minerals so reserved as aforesaid, at their own free Will and Pleasure, and to do, employ, use and exercise all such other Machines, Acts and Things, either now in use or hereafter to be invented, as may be necessary and convenient for the full and complete Enjoyment thereof, in as full, ample, and beneficial a Manner, to all Intents and Purposes, as they could or might have done had this Act not been made, they the said *Peter Whitehall Davies* and *Thomas Smith*, or any future Lord or Lords of the said Manor, from Time to Time paying, making, and allowing to the several Owners or Occupiers of such Allotments respectively, a reasonable and adequate Recompence and Satisfaction for all such Damages as shall from Time to Time be thereby done to such Allotments, or to any Erections or Buildings that may at the Time of working or getting the said Mines and Minerals, or exercising the Privileges aforesaid be erected or built thereupon.

XXXIII. And be it further enacted, That once at least in each and every Year during the Execution of this Act (the first Year to be computed from the Day of the passing thereof), the said 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 and about the Execution of this Act; and such Statement or Account when so made, together with the Vouchers relating thereto, shall be by him laid before any One or more of His Majesty's Justices of the Peace acting in and for the said County of *Stafford*, and not interested in the Premises, to be by them examined and balanced, and such Balance shall be by such Justice or Justices stated in the Book of Accounts to be kept in the Office of the Clerk to the said Commissioner; and no Charge or Item in such Account shall be binding on the Parties concerned or valid in the Law, unless the same shall have been duly allowed by such Justice or Justices.

Commissioner
to lay his
Accounts be-
fore Two
Justices once
every Year.

Award to be deposited.

XXXIV. And be it further enacted, That the Award to be made by the said Commissioner, when inrolled in manner directed by the said recited Act, shall be deposited and kept within the Parish Church of *Kingsley* aforesaid, to the end that Recourse may be had thereto by any Person or Persons interested in the said Inclosure.

Appeal to the Quarter Sessions.

XXXV. And be it further enacted, That if any Person or Persons shall think him, her, or themselves aggrieved by any Thing done in pursuance of this Act or the said recited Act, then and in such Case (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) he, she, or they may appeal to any General Quarter Sessions of the Peace which shall be held for the said County of *Stafford*, within Six Calendar Months next after the Cause of Complaint shall have arisen, giving Ten Days Notice of such Appeal to the said Commissioner; and the Justices at 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 Surplus (if any) to the Owner or Owners of such Goods and Chattels, after deducting the reasonable Charges of such Distress and Sale; and which Determination of the said Justices shall be final and conclusive on all Parties concerned, and shall not be removed or removable by *Certiorari*, or any other Writ or Process whatsoever, into any of His Majesty's Courts of Record at *Westminster*.

General Saving.

XXXVI. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and to all and every Person and 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 compensated for, barred, and destroyed by this Act) of, in, to, or in respect of the Commons and Waste Lands and Hereditaments to be divided, allotted, and inclosed, or exchanged by virtue of this or the said recited Act, as he, she, or they might or could have enjoyed in case this Act had not been made.

Act to be printed by the King's Printer.

XXXVII. 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. 1809.