



Tithe Act 1840

1840 CHAPTER 15

An Act further to explain and amend the Acts for the Commutation of Tithes in *England* and *Wales*.
[4th June 1840]

WHEREAS by an Act passed in the Seventh Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for the Commutation of Tithes in England and Wales*, it is enacted, that from the First Day of *January* next following the Confirmation of any Apportionment in any Parish under the said Act the Lands of such Parish shall be absolutely discharged from Tithes, except as in the said Act is provided in certain Cases, and instead thereof there shall be payable to the Person entitled to such Tithes, and in that Behalf mentioned in the said Apportionment, a Sum of Money in the Nature of a Rent-charge issuing out of the Lands charged therewith ; and by an Act passed in the First Year of the Reign of Her present Majesty, intituled *An Act to amend an Act for the Commutation of Tithes in England and Wales*, Provision is made for the Lands in a Parish being discharged from Tithes (except as in the said first-recited Act is excepted) by Agreement between the Parties to any Parochial Agreement or Supplemental Agreement, from certain Days preceding or following the Confirmation of the Apportionment, instead of the said First Day of *January* next following such Confirmation, but so that the first Payment of the Rent-charge be made and recoverable at the Expiration of Six Calendar Months from the Time from which such Lands are discharged from the Payment of Tithes; and by an Act passed in the last Session of Parliament the Commissioners appointed under the said first-recited Act are enabled by their Award, and the Land Owners and Tithe Owners by Supplemental Agreement, in like Manner to fix the Period at which any Rent-charge shall commence : And whereas, after an Agreement for or Award of Rent-charge has been made and confirmed by the said Commissioners, much Delay is often occasioned in settling and adjusting the Apportionment before the same can be confirmed by the Commissioners ; and, to avoid the Loss of the Proportion of Tithes or Composition for the Period intervening between the Expiration of any former Agreement or Composition and the Commencement of such Rent-charge, the Tithe Owner is compelled to have recourse to taking Tithes in Kind, or to a Suit in Equity; and in other Cases, by reason of the Lands so remaining subject to Tithes, or Composition for Tithes, during such Period, such Tithes continue to be taken in Kind, or may be so taken on the Determination of any Composition existing at the Date of such Agreement or Award, notwithstanding that the Parties have agreed for, or the Commissioners awarded, the Sum which under the Provisions of the said Acts ought to be taken as the permanent Rent-charge payable instead of such Tithes; and great Hardship is thereby occasioned, contrary to the Spirit

Status: This is the original version (as it was originally enacted).

and Intent of the said Acts : And whereas it is expedient to make. Provision for Remedy thereof, and otherwise to explain and amend the said recited Acts, in manner herein-after mentioned:

Be it therefore 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,

Power to declare Lands discharged from Tithes in certain Cases after Confirmation of the Award or Agreement for gross Rent-charge.

That in every Case where an annual Sum by way of Rent-charge shall have been fixed in any Parish, instead of the Tithes of such Parish, either by Agreement or Award, it shall be lawful for the said Commissioners, by a Declaration in Writing under their Hands and Seal of Office, or the Hands of any Two of them, at any Period after the Confirmation of any such Agreement or Award respectively, and before the Confirmation of the Apportionment to be made in respect of the Rent-charge so fixed, upon the Application in Writing of any Land Owner or Occupier, and upon such Security being given to the said Commissioners as they shall in their Discretion think sufficient for the due Payment to the Parties entitled thereto of such Rent-charge from the Day to be fixed in such Declaration, to declare that the Lands in such Parish shall be discharged from the Liability to Payment or Render of Tithes, or Composition or Rent in the Nature thereof instead of Tithes, and that instead thereof the annual Payment or Rent-charge so fixed by any such Award or Agreement respectively shall be paid to the Person entitled to the same by half-yearly Payments, commencing and calculating from such Day of Discharge named in such Declaration as aforesaid:

As to the Time of commencing such Rent-charge.

Provided always, that the Day to be fixed in such Declaration of the said Commissioners as aforesaid shall, in every Case in which any Agreement for a Composition or Rent in the Nature thereof instead of Tithes shall be in force at the Time of making such Application to them as aforesaid, be the Day on which such Composition or Rent shall determine, and in every other Case shall be either the First Day of *January*, the First Day of *April*, the First Day of *July*, or the First Day of *October*, either before or after the Day on which the Agreement or Award fixing the Amount of such Rent-charge shall bear Date, as to the said Commissioners shall appear most just and equitable:

Intermediate Payments, &c. to be deducted.

Provided also, that when such Period of Discharge shall have been fixed to take effect from any of such Days preceding the Date of such Agreement or Award, the said Commissioners shall cause due Inquiry to be made, and shall allow and deduct from the first Payment to be made under such Security the Value of any Tithes which shall have been rendered in Kind, and the Amount of any Payment in respect of Tithes, or Composition or Rent as aforesaid, which shall have been made between such Day and the Date of such first Payment of Rent-charge.

II Leases of Tithes granted before 25th March not to be affected by this Act.

Provided also, and be it enacted, That nothing in this Act shall extend or be construed to extend to annul or make void any Lease or Leases of Tithes granted before the Twenty-fifth Day of *March* and which shall end or determine on or before the First Day of *January* next; and that in any Parish or Place where such Lease or Leases shall have been granted as aforesaid, no Tithe Payer shall be at liberty to make the

Application hereby authorized to be made, until after the Expiration of such Lease or Leases respectively, except in respect of Lands the Tithes whereof are not included in such Lease.

III Notice of Declaration to be published.

And be it enacted, That the said Commissioners shall, within Ten Days after the Receipt of such Application, cause Notice thereof to be given to the Tithe Owner to whom such Rent-charge will be payable, and shall cause Notice of such Declaration to be twice published in some Newspaper having Circulation in the County where such Parish is situated within Twenty-one Days from the Date of such Declaration, and from and after the Expiration of such Twenty-one Days all the Provisions of the said recited Acts applicable to the Rent-charge payable after the Confirmation of the Apportionment shall be applicable to the Rent-charge payable by virtue of the Provisions herein-before contained from the Period fixed by any such Declaration.

IV Provision for Land Owner paying estimated Proportion of Rent-charge in aid of Security.

And be it enacted, That if any Owner of Lands so discharged from such Liability shall be desirous of paying, in exoneration of such Security, the Proportion of Rent-charge to which the whole of such Lands, whether in his own Occupation or in the Occupation of any Tenant, shall be liable, it shall be lawful for such Owner to apply in Writing to the Valuer or Valuers appointed to apportion such Rent-charge, at any Time after they shall have subscribed the Declaration required in that Behalf in the said first-recited Act, and before the Confirmation of the Apportionment, and to demand of such Valuer or Valuers a Statement of the probable Amount of such Proportion, and such Valuer or Valuers shall and he or they is or are hereby required to furnish the same accordingly, and shall distinguish therein the probable Amount to which the whole of the Lands in the Occupation of any Tenant under such Owner would be liable ; and on Receipt thereof such Owner may cause a Copy of such Statement, or an Extract of such Parts thereof as shall relate to the Lands in the Occupation of any Tenant, who, but for such Declaration of Discharge, would be liable to the Render or Payment of Tithe in respect of such Lands, to be served on such Tenant by leaving the same at his usual Place of Abode, with an Undertaking subscribed thereto by such Owner to pay the Amount set forth in such Statement in aid or exoneration of such Security ; and in every such Case such Tenant shall thenceforward be liable to pay to such Owner, by way of additional Rent, such estimated Proportion at the half-yearly Days of Payment fixed in the Award or Agreement for Payment of Rent-charge; and such Owner shall be entitled to demand and recover the same as Rent by all the usual Remedies for Recovery of Rent in arrear, until the half-yearly Payment falling due next after the Confirmation of the Apportionment: Provided always, that it shall be lawful for any such Land Owner or Tenant, at any Time within Six Months after the Date of such Confirmation, to apply to the said Commissioners to take an Account of the Amount paid by any such Tenant, and certify the Amount of the Difference, if any, between the Amount so paid and the Amount of Rent-charge calculated as finally apportioned on such Lands for the same Period as such estimated Amount has been paid, and if the Rent-charge finally apportioned shall be greater than the Amount so paid it shall be lawful for such Owner to demand and recover the Difference accordingly; but if such Tenant shall have paid more than the Amount of such Rent-charge, then it shall be lawful for such Tenant, or (in case of his Death) for his Executors or Administrators, to deduct the Excess so verified as aforesaid from the next Payment of Rent accruing

Status: This is the original version (as it was originally enacted).

after the Date of such Certificate : Provided also, that in the event of the Expiration or other sooner Determination of the Period of Tenancy before the Confirmation of the Appointment such Excess shall be deemed a Debt due to the Tenant, his Executors or Administrators, and shall be recoverable in an Action of Debt to be brought against such Land Owner as aforesaid, or his personal Representatives.

V Certificate of Commissioners to be Evidence of Right of Recovery or Retainer.

And be it enacted, That in every such Case the Production of such Certificate as aforesaid, or of an Office Copy thereof sealed or stamped with the Seal of the said Commissioners, shall be sufficient Evidence of the Right to recover or retain the Amount of Excess in Payment which shall appear by such Certificate to have been made by the Land Owner or his Tenant respectively.

VI Provision for occupying Tenant paying (in the Place of his Landlord) estimated Proportion of Rent-charge in aid of Security.

And whereas it may happen that a Tenant, being an Occupier of Lands, who shall, by virtue of the Provisions of the said first-recited Act, be entitled to deduct the Amount of any Rent-charge from the Rent payable by him to his Landlord, may be desirous of paying, in exoneration of such Security as aforesaid, the Proportion of Rent-charge to which the Lands in his Occupation shall be liable; be it enacted, That, upon the Application in Writing of any such Tenant, the Valuer or Valuers shall, in like Manner as aforesaid, furnish to such Tenant a Statement of the probable Amount of such Proportion of Rent-charge as aforesaid, and on Receipt thereof the Tenant may cause a Copy of such Statement to be served on his Landlord by leaving the same at his usual Place of Abode, accompanied by a written Notice of his Intention to undertake the Payment of such Proportion of Rent-charge as aforesaid; and in case the Land Owner shall not, within Twenty-one Days after the Service of such Copy and Notice, undertake, by some Writing subscribed by him, or his Agent lawfully authorized, and served in like Manner as aforesaid upon the Tenant, to pay the Amount set forth in such Statement, it shall be lawful for the Tenant to undertake the Payment thereof, and from Time to Time to deduct the Amount paid by him from his Rent until the Period at which the half-yearly Payment of Rent-charge to be made next after the Confirmation of the Apportionment shall have become due : Provided always, that in every such Case the Provisions herein-after contained for taking Accounts between the Person who shall have given such Security as aforesaid and the Owners of Lands subject to the Rent-charge shall be applicable to the Case of every such Land Owner from whose Rental such Deductions shall have been made as aforesaid.

VII Provision for Recovery of such Rent-charge from Persons giving Security for same.

And be it enacted, That in every such Case, if the Person liable under such Security shall not make due Payment to the Person entitled to the same according to the Tenor of such Security, it shall be lawful for the said Commissioners, from Time to Time, as and when any half-yearly Payment of such Rent-charge shall accrue, and the same or any Part thereof shall remain unpaid for the Space of Twenty-one Days from any Day fixed for Payment thereof, and notwithstanding Execution shall have been previously issued in respect of any former Arrears, to sue for and recover any such half-yearly Payment, or so much thereof as shall from Time to Time remain unpaid in respect thereof, against the Person liable under such Security, by taking out a Summons, returnable before

a Judge of any of the Superior Courts of Common Law, to compute what is due in respect of such Rent-charge ; and it shall be lawful for any Judge of such Courts, on hearing the Parties, or such of them as shall appear, and on Production of such Security, and Proof by Affidavit of the Amount so due as aforesaid, and of the Service of such Summons on such Person or on any Occupier of any of the Lands of such Person in any such Parish, by Delivery of the same personally, or by leaving the same at his Place of Abode, to order that it be referred to the Masters of the Court to compute what is due in respect of such Security, and to tax the Costs of such Application, and all such Orders shall have the Effect of Judgments in the Superior Courts of Common Law in like Manner as Rules of such Courts, and Execution may issue accordingly, and such Security shall be available against such Person liable under the same up to and including the half-yearly Payment accruing due next before the Confirmation of such Apportionment, and shall be in full Force notwithstanding any Change in the Party entitled to such Rent-charge.

VIII Remedy for the Land-Owner against whom Execution has issued. Provision for taking Accounts between the Person giving Security and the Land Owners liable to contribute thereto. Period for which Security to be available against such Owners.

And be it enacted, That in every such Case the said Commissioners shall make due Inquiry as to any Payment of Rent-charge made by any such Person in respect of such Security previous to the Confirmation of the Apportionment of such Rent-charge, and shall endorse on such Apportionment a Certificate of such Payment, and that the Parties entitled to such Rent-charge have been duly paid the Amount thereof according to the Tenor of such Security ; and such Person shall thereupon, after the Confirmation of such Apportionment, be entitled to recover the Amount specified in such Certificate as having been paid by him, against the Lands of the said Parish subject to such Rent-charge, in the Proportions fixed for Payment of Rent-charge by such Apportionment, by Distress and Entry on such Lands respectively, and shall have the like Remedies or Modes of Recovery as are given to Owners of Rent-charge for Recovery thereof in the said recited Acts or any of them : Provided always, that if the Owner or Occupier of any such Lands shall have contributed to the Payment of such Rent-charge, or of any Part thereof, or -of the Arrears thereof, under such Security, or in exoneration thereof, it shall be lawful for him to take out a Summons, returnable before any Judge as aforesaid, to stay any Proceedings taken by the Person liable under such Security as aforesaid, for the Purpose of taking an Account of what he shall have so contributed or paid in respect of such Rent-charge or Arrears ; and it shall be lawful for any Judge as aforesaid to refer it to the Masters of the Court to take such Account and make all just Allowances between the Parties ; and if, on taking such Account, such Owner or Occupier shall be found to have paid his due Proportion, or any Amount exceeding the same, according to the proportionate Amount of Rent-charge fixed on such Lands, then it shall be lawful for any Judge as aforesaid to stay Proceedings, and order Payment, by the Person liable under such Security, of the Amount, if any, so overpaid by such Owner or Occupier, as the Case may require, and every such Order shall have the Effect of a Judgment as aforesaid ; but if on taking such Account the whole or any Balance shall be found due from such Owner or Occupier, then it shall be lawful for such Judge to allow the same against such Owner or Occupier, whose Lands shall thereupon be liable to the Repayment thereof to the Person liable under such Security, and who shall be entitled to the said Remedies in respect thereof accordingly; and the Cost of every such Proceeding shall be in the Discretion of the Judge hearing the same, and shall be added to the Amount found due on such Order, if he shall see fit so to direct: Provided also, that no such Security shall be available by the Person liable

under the same against any such Lands for more than Two Years Payment or Arrear of such Rent-charge, unless the said Commissioners shall, previous to the Expiration of Two Years from the Date of such Security, have enlarged the Operation thereof for any Period not exceeding Twelve Months, by Endorsement thereon, under their Hands or the Hands of any Two of them, and which they are hereby authorized to do if they shall so think fit.

IX If Security insufficient, Arrears may be recovered as if accruing after Apportionment.

And be it enacted, That if such Security shall be insufficient to meet the full Amount of Payments which shall accrue due in respect thereof, or the Person liable under the same shall fail to make good the Amount due thereon by the Space of Twenty-one Days next after the Date of the Confirmation of the Apportionment of such Rent-charge, it shall be lawful for the Person entitled to the Benefit thereof to recover the same against the Lands of the said Parish subject to such Rent-charge, in the Proportions fixed in such Apportionment, by the said Remedies or Modes of Recovery given by the said recited Acts, or either of them, in respect of Rent-charge fixed under any confirmed Apportionment, in like Manner as if the Amount so due and in arrear had accrued subsequent to the Confirmation.

X Security to be free of Stamp Duty.

And be it enacted, That every Security taken by the said Commissioners, by virtue of the Provisions of this Act, and every Assignment thereof, shall be free of Stamp Duty.

XI Extension of Power to fix Sum to be paid after Determination of Composition.

And whereas by the lastly-recited Act the said Commissioners are empowered, by any Awards or by a Supplemental Award, after a Parochial Agreement, in certain Cases, and under certain Provisions, to fix the Sum to be paid in consideration of the Time, if any, which may intervene between the Termination of any previous Agreement or Composition for Tithes and the Time at which any such Rent-charge shall commence ; and it is expedient to extend such Power in manner herein-after mentioned ; be it enacted, That it shall be lawful for the said Commissioners, at any Time before the Confirmation of the Apportionment of any Rent-charge, to exercise the said Powers so given to them for fixing the Sum to be paid for such intervening Time as aforesaid, by a Supplemental Award after an Award.

XII Particulars to be specified as to Payment of such Sum.

And be it enacted, That when any such Sum shall be fixed to be paid in consideration of such intervening Time as aforesaid, either by Parochial Agreement or Supplemental Agreement, or by Award or Supplemental Award, the Parties by and to whom such Sum is to be paid, and the Lands in respect of which the same shall be payable, as also the proportionate Amount to be paid by each Party, shall be specified and set forth in the Instrument fixing such Sum, or in the Instrument of Apportionment to be made in pursuance thereof; and in default thereof such Sum shall be payable by and to the Parties and in the Proportions fixed in such Apportionment in respect of the Rent-charge therein provided for.

XIII Extension of Power to fix Period for Commencement of Rent-charge.

And whereas by the said lastly-recited Act the said Commissioners are enabled by their Award, and the Tithe Owners and Land Owners by a Parochial Agreement after, an Award, are enabled to fix the Period at which the Rent-charge shall commence, and it is expedient to extend such Power in manner herein-after mentioned ; be it enacted, That it shall be lawful for the Commissioners, by Supplemental Award, to exercise the Powers so given to them for fixing the Period at which any Rent-charge shall commence, as well after an Award as after a Parochial Agreement, where the same shall not have been previously fixed by any such Award or Agreement, or by any Supplemental Award or Agreement, under the said recited Acts, or either of them, or this Act: Provided always, that where the said Commissioners shall not have fixed that the Period at which any Rent-charge shall commence shall be the First Day of *January* next following the Confirmation of the Apportionment, such Period shall be fixed by them on the First Day of *January* preceding such Confirmation, or on the First Day of *April*, the First Day of *July*, or the First Day of *October* preceding or following such Confirmation, whichever of such Days may happen nearest to the Termination of any previous Agreement or Composition, or of any customary Year of Tithing in the Parish or District to which such Rent-charge shall relate : Provided also, that when any Period of Commencement shall have been so fixed by the said Commissioners in any Award or Supplemental Award, or any Day preceding the Date thereof, the Commissioners shall cause due Inquiry to be made as to the Value of any Tithes rendered in Kind, and the Amount of any Payment in respect of Tithe which shall have been made, subsequent to such Period of Commencement, and prior to the first Day fixed for Payment of such Rent-charge, and shall take into account and allow such Value or Amount to be deducted from such Payment accordingly.

XIV Extension of Powers to substitute fixed Rent-charge instead of contingent Rent-charge.

And whereas by the said lastly-recited Act Powers are given to Land Owners and Tithe Owners, and also to the said Commissioners, to substitute a fixed Rent-charge in certain Cases instead of a contingent Rent-charge, where Lands are partially exempted from the Payment of Tithes or Rent-charge by reason of having been Parcel of the Possessions of a privileged Order, and it is desirable to extend such Powers in manner herein-after mentioned; be it enacted, That such Power shall extend to all Cases where, by reason of Lands being partially exempted from the Payment, of Tithes, by Custom or otherwise, or by being subject to a shifting or leaping Modus, or other customary Payment, or rendered due only on certain Contingencies, a contingent Rent-charge has been already fixed, or would, according to the Provisions of the said firstly-recited Act, be fixed in respect of such Lands; and it shall be lawful for the said Commissioners, with such Consent of both Land Owners and Tithe Owners as in the said lastly-recited Act is required in that respect, at any Time before the Confirmation of the Apportionment of any Rent-charge, by any Award, or by a Supplemental Award, where an Award or Parochial Agreement has been made before the passing of this Act, or for the Land Owners or Tithe Owners, by a Parochial Agreement or Supplemental Agreement where a Parochial Agreement or Award has already been made in respect of such Lands, to exercise such Powers, in such Manner and subject to the same Conditions as are given by the said lastly-recited Act in Cases of Lands formerly Part of the Possessions of a privileged Order: Provided always, and it is hereby declared, that nothing herein contained extends to Cases of Change of Cultivation only, nor to Cases of Prescription relating to Woodland.

XV Extension of Powers in respect of Lammas and Common Lands.

And whereas by the said lastly-recited Act certain Provisions are made and Powers given in respect of the Tithes of Lammas and Common Lands, which Powers are to be exercised by the Land Owners and Tithe Owners by Parochial Agreement, or by a Supplemental Agreement after a Parochial Agreement, and by the Commissioners by compulsory Award, or by a Supplemental Award after an Award ; be it enacted, That such Provisions may be carried into effect and such Powers exercised at any Time before the Confirmation of the Apportionment of any Rent-charge, by the Land Owners and Tithe Owners by a Supplemental Agreement after an Award, or by the Commissioners by Supplemental Award after a Parochial Agreement.

XVI Commissioners to give Notice to proceed by Supplemental Award.

And be it enacted, That in every Case where it shall be the Intention of the Commissioners to proceed in any Parish under this Act by Supplemental Award after a Parochial Agreement, either to fix the Period of the Commencement of such Rent-charge or to carry into effect the Provisions and Powers of the said lastly-recited Act in respect of the Tithes of Lammas and Common Lands, they shall cause the like-Notice of their Intention to be given in such Parish as is required by the said first-recited Act in the Case of an Award; and if at any Time after giving such Notice, and before the Expiration thereof, any Proceedings shall be had under the said recited Acts, or either of them, or this Act, by the Land Owners and Tithe Owners in such Parish, towards making and executing any Parochial Agreement or Supplemental Agreement in respect of the Matters specified in such Notice, the Commissioners shall refrain from acting on the same until the Result of such Proceeding shall appear.

XVII Extension of Powers of Conveyance of Lands to Trustees and Feoffees for Parochial Purposes.

And be it declared and enacted, That so much of the said lastly-recited Act as relates to the vesting of an Estate of Inheritance as to any Lands in any Ecclesiastical Tithe Owner and his Successors, notwithstanding the same be made by any Corporation Sole or Aggregate, or any Trustees or Feoffees for charitable Purposes, otherwise restrained from or incapable of making any such valid Conveyance or Assurance, extends to Churchwardens and Overseers, or to Trustees or Feoffees of Parish Property, or of Property held by or vested in such Trustees or Feoffees for parochial or other Uses or Purposes in the Nature of a parochial or public Trust.

XVIII Power for Parties to Parochial Agreement, and for Commissioners, to declare the Amount of extraordinary Charge to be payable in respect of Hop Grounds, &c. No extraordinary Charge payable on Hop Grounds, &c. for the First Year of their being cultivated as such, &c.

And be it enacted, That in any Case where the Parties to a Parochial Agreement, or the Commissioners in the Case of an Award, shall have proceeded, according to the Provisions of the said recited Acts, to ascertain and fix a Rent-charge in any Parish wherein any of the Lands shall at the Time of making such Agreement or Award be cultivated as Hop Grounds or Market Gardens, and in case of proceeding by Award when Notice shall have been given that the Tithes of any of the Lands so cultivated should be separately valued, it shall be lawful for the said Parties to declare in such Agreement, or for the said Commissioners to declare in such Award, the Amount of extraordinary Charge per Acre to be in future payable in respect of Hop Grounds

and Market Gardens respectively in such Parish or any District therein; and the Rent-charge mentioned in every such Agreement or Award respectively shall, subject to the Addition of such acreable extraordinary Charge, consist of the Amount agreed for or awarded in respect of the Tithes in such Parish, other than the Tithes of the Lands cultivated therein as Hop Grounds and Market Gardens respectively, and the ordinary Charge in respect of the Lands so cultivated as Hop Grounds and Market Gardens respectively added thereto: Provided always, that no such extraordinary Charge shall be payable in respect of any such Hop Grounds and Market Gardens during the First Year, and only Half such extraordinary Charge during the Second Year, in which they shall be newly cultivated as such, whether such new Cultivation shall have commenced before or after the making of such Parochial Agreement or Award as aforesaid.

XIX Extraordinary Rent-charge need not be distinguished on separate Lands in Apportionment.

And be it enacted, That it shall not be necessary to distinguish in any Apportionment the Amount of extraordinary Rent-charge to be charged upon the Lands of each individual Land Owner which shall be cultivated as Hop Grounds, Market Gardens, Orchards, Fruit Plantations, or mixed Plantations of Hops and Fruit, provided that the acreable Amount of extraordinary Charge for all the Lands so cultivated respectively in any District which shall have been assigned, or in any Parish wherein any extraordinary Rent-charge shall have been declared, previous to the Confirmation of the Instrument of Apportionment, shall be inserted therein.

XX Half-yearly Payments of Rent-charge to be regulated by Averages declared under 6 & 7 W.4 c.71 s.67.

And be it declared and enacted, That every half-yearly Payment of Rent-charge under the said recited Acts, or either of them, or this Act, shall from Time to Time be regulated by the Averages published under the Provisions of the said first-recited Act in the Month of *January* next preceding every such half-yearly Day of Payment.

XXI Instrument of Apportionment to distinguish the Amount of Rent-charge payable in respect of each Close. Act not to extend to Cases in which Valuers are already appointed.

And be it enacted, That, unless a Majority in Value of the Owners of Lands included in any Apportionment shall, by Writing under their Hands, request the Commissioners to omit the same, the Instrument of Apportionment shall distinguish the Amount or Portion of Rent-charge payable in respect of the several Closes of the said Lands, and such Closes shall be laid down in the Map or Plan annexed to such Apportionment: Provided always, that nothing in this Provision contained shall apply to any Instrument of Apportionment the Valuers for effecting which shall have been appointed previous to the passing of this Act; and no such last-mentioned Instrument of Apportionment shall be deemed invalid if made in conformity with the Instructions given to the Valuers for making the same, although the Amount of Rent-charge payable in respect of the several Closes of Land shall not have been distinguished therein, nor such Closes laid down in the Map or Plan annexed thereto.

XXII For Recovery of Expences in certain Cases.

And be it enacted, That every Occupier whose Lands or Goods shall be liable to Distress in respect of any Expences chargeable under the said recited Acts or either of them, or this Act, against any Landlord or Lessor of the Lands in his Occupation, shall be entitled to recover the Amount of any such Expences which he shall pay, with Interest on such Payment from Time to Time at Four *per Centum per Annum*, and may deduct the same from any Rent or Renewal Fines payable to such Landlord or Lessor; and where the Estate of such Landlord or Lessor in the Lands in respect whereof such Payment shall have been made shall be less than an immediate Estate of Fee Simple or Fee Tail, or subject by Settlement to any Uses or Trusts, he shall be entitled to charge such Amount and Interest upon such Estate in like Manner and subject to the same Restrictions and Provisions as are contained in the said recited Acts or any of them in relation to Owners of particular Estates, or of Estates settled to the same Uses and Trusts as the Lands in respect of which such Expences have been incurred respectively.

XXIII Power to charge Expences of Commutation, in certain Cases, on Renewal Fines, &c.

And be it enacted, That every Person, as defined in the said first-recited Act, who is empowered under the said recited Acts or any of them, or this Act, to charge upon his Lands or Rent-charge any Expences of Commutation payable by him, may exercise such Powers, in the Case of Expences incurred, as well in respect of the Commutation of Tithes payable to him as the Owner thereof as of Tithes to which any Lands whereof he is Owner are liable; and the Word "Lands" shall, in the Construction of the said Acts and of this Act, be construed to extend to and include any Income or Sum receivable by or accruing to such Person from redeemed Land Tax, or from Fines or other Sums of Money payable on the Renewal of any Term or Estate in Lands, Tithes, or Rent-charge holden of or by him to the same Uses and upon the same Trusts as the Lands, Tithes, or Rent-charge in respect of which such Expences of Commutation are incurred.

XXIV Provision for Discovery of Books and Documents relating to Commutation.

And be it enacted, That notwithstanding any thing in either of the said Acts contained, in all Cases where under the said recited Acts or any of them the said Commissioners or any Assistant Commissioner may examine Persons upon Oath, and cause to be produced before them or him all Books and other Documents, as therein mentioned, relating to the Commutation of Tithes, the said Commissioners or Assistant Commissioner may, by Summons under their or his Hand, require the Attendance of and examine any Party interested in the Lands or Tithes of any Parish, or any other Person, and require the Production also of all Deeds and Documents in the Custody or Power of either Party, and allow such Portions only of them to be read as in their or his Judgment shall be thought proper; and also that in all Cases where under the said Acts Parties in a feigned Issue are required to produce to each other, and their respective Attornies or Counsel, at such Time and Place as any Judge may order before Trial, and also to the Court and Jury upon the Trial of such Issue, all Deeds, Books, and other Documents, as in the said Act mentioned, relating to the Matters in Issue in their respective Custody or Power, the Parties shall be obliged to produce only such Documents, and such Portions of them only shall be inspected or read, as the Judge shall think proper, who may order the Parties to discover the Documents in their Possession, upon Oath, if he shall think fit; and it shall be lawful for the Judge, and also for the Commissioners or Assistant Commissioner, in the Cases aforesaid respectively, to direct Copies or Extracts to be taken or furnished of the same

Documents, at the Expence of the Person requiring the same, at the Rate of Sixpence for every Common Law Folio: Provided always, that in no Case shall any Person be compellable to produce any Part of the Deeds or Documents in his Possession which relate to the Title to the Property therein referred to, but only such Parts thereof as relate to the Matter immediately in Issue ; and such Person may, if he see fit, withhold any such Deeds or Documents, or any Portion thereof, on making an Oath that the Deeds or Documents or Parts thereof so withheld do not relate to the Matter so in Issue as aforesaid.

XXV Gardens or Lawns of small Extent may be exempted from Rent-charge.

And whereas in many Cases Tithe Owners have, during the Seven Years of Average prescribed by the said first-recited Act, forborne to take the Tithes of Lands used and occupied as Gardens, Lawns, or the like, or Compositions in lieu thereof, on account of such Lands being of small Extent, and the Tithes thereof being of inconsiderable Value : Be it enacted, That where in such Cases the Tithes of a Parish or District have been commuted, whether by a Parochial Agreement or by a compulsory Award, and it shall be shown-to the Satisfaction of the said Commissioners that the Rent-charge or Rent-charges specified in the said Agreement or Award has or have been based upon the Average Value of the Tithes of the said Parish or District during the said Seven Years of Average, exclusive of any Tithes in respect of such Gardens, Lawns, or such like small Holdings, according to the Provisions of the said first-recited Act, and that no Part of the said Rent-charge or Rent-charges has been agreed to be given or awarded in respect of the Tithes of such Gardens, Lawns, or other such like small Holdings, it shall be lawful for the said Commissioners, if they think fit, to order and direct that no Part of the said Rent-charge or Rent-charges shall be apportioned upon such Gardens, Lawns, or other such like small Holdings.

XXVI The Commissioners to cause a new Apportionment to be made in Cases in which the Apportionment shall have included Tenements from which no Tithe has been taken during Seven Years previous to Christmas 1835.

And whereas it hath happened that in Cases where, during the Seven Years of Average prescribed by the said first-recited Act, Tithes shall not have been demanded of certain Tenements, by reason of their small Extent or of the small Amount of such Tithes, such Tenements have notwithstanding been included in the Apportionment of the Rent-charge for the Parish, whereby the Occupiers of such Tenements have become liable to have their Goods distrained upon, and the Tithe Owner has been subjected to much increased Difficulty and Expence in the Collection of the Rent-charge, contrary to the true Intent and Meaning of the said first-recited Act; and it is therefore expedient, under certain Restrictions, to give Relief in such Cases; be it enacted, That in any such Case in which the Apportionment shall have included any Number of small Tenements, exceeding in the whole One hundred, from which Tenements no Tithe or Composition for Tithe shall have been demanded or taken (notwithstanding their Liability thereto) during the Period of Seven Years next preceding *Christmas* in the Year One thousand eight hundred and thirty-five, it shall be lawful for the Commissioners, and they are hereby authorized, if they shall see fit, upon the Application in Writing of any Ten or more of the Owners or Occupiers of such small Tenements, or of the Tithe Owner, and after satisfactory Proof shall have been given that no Part of the Rent-charge has been agreed to be given or awarded in respect of the Tithes of such small Tenements, to cause a new Apportionment to be made of the said Rent-charge, and to order and direct that no Part thereof shall be apportioned upon such small

Status: This is the original version (as it was originally enacted).

Tenements ; and the Provisions in the said first-recited. Act Contained for, hearing and determining Objections to Apportionments, and for rendering the same, or any Map or Plan therein referred to, final and conclusive, shall be and are hereby respectively made applicable to every such new Apportionment ; and, subject to such Provisions, such new Apportionment shall commence and take effect from the half-yearly Day of Payment of the said Rent-charge which shall happen next before the Confirmation of the same Apportionment: Provided always, that no Payment of such Rent-charge, or Right to Arrears thereof, which shall have become due or accrued on or before the said half-yearly Day of Payment, nor any Remedy in case of Nonpayment, shall in anywise be affected by any such new Apportionment.

XXVII Provision for the Costs of new Apportionment.

And be it enacted, That the Costs- of and attending every such new Apportionment shall be paid and borne by the Parties making such Application, in such Proportions as the Commissioners shall direct, and shall be recoverable in like Manner as the Costs of any Apportionment under the said first-recited Act; and as to any Part of such Costs as may be borne by the Tithe Owner, such Tithe Owner, being an Ecclesiastical beneficed Person, may charge or assign the Rent-charge as a Security for the Repayment of such Costs in like Manner as for the Costs of the Commutation under the said Act.

XXVIII Commissioners may adjudicate Parochial Boundaries on Requisition of Land Owners of any Parish. Proviso.

And whereas by the said lastly-recited Act Powers are given to the said Commissioners or any Assistant Commissioner, upon the Application in Writing of not less than Two Thirds in Number and Value of the Land Owners in any Parishes or Townships, to set out and define the Boundaries of such Parishes or Townships in manner in the said Act provided; and it is expedient to extend such Power in manner herein-after mentioned ; be it enacted, That it shall be lawful for the said Commissioners, or Assistant Commissioner, but at the sole Discretion of the said Commissioners, and only in such Manner as they shall see fit and proper, to exercise all and every the Powers so given by the said lastly-recited Act relating to Boundaries of Parishes or Townships, on the Application in Writing of Two Thirds in Number and Value of the Land Owners of any One Parish, Place, or Township whose Boundary shall be in question, notwithstanding the Land Owners in the Parish, Place, or Township adjoining such Boundary shall not join in such Requisition: Provided always, that in every such Case the said Commissioners or Assistant Commissioner shall, Twenty-one Days at least before proceeding to make Inquiry and adjudicate on such Question of Boundary, cause a Notice to be sent by the Post, or otherwise given, addressed to the Churchwardens and Overseers, and also to the Surveyors of the Highways of every Parish, Place, or Township adjoining such Boundary, of the Intention of the said Commissioners or Assistant Commissioner to proceed on the Question of such Boundary, and shall specify in such Notice a Time and Place of Meeting so to proceed therein, and shall annex to each Copy of such Notice a Copy of the Application of the Land Owners requiring the Commissioners to make such Inquiry and Adjudication, and shall also cause a Copy of such Notice to be inserted, once at least in Two successive Weeks previous to the Day of such Meeting, in some Newspaper having Circulation in the County where such Parish, Place, or Township is situated; and no Assistant Commissioner shall proceed in any such Inquiry without exhibiting at such Meeting the Papers containing the Advertisement of such Notice, and also a Certificate, under the Hands of the said Commissioners, or any One or

Two of them, of One Copy of such Notice having been respectively sent to such Churchwardens and Overseers, and a Copy to such Surveyors as aforesaid ; and the Assistant Commissioner shall thereupon proceed in all respects, and his Proceedings shall be as valid and binding, as if the said Inquiry had been instituted on the Application in Writing of Two Thirds in Number and Value, as well of the Land Owners of the Parish, Place, or Township to which such Notice shall have been so sent, as of the Parish, Place, or Township causing such Inquiry to be instituted: Provided nevertheless, that upon the Application in Writing, addressed to the said Commissioners during the Interval of such Twenty-one Days, of not less than Two Thirds in Number and Value of the Land Owners in any Parish, Place, or Township adjoining such Boundary, and not being Parties to any such Application as aforesaid, objecting to the said Commissioners or Assistant Commissioner proceeding under the same in the Matter of such Boundary, all Proceedings which shall have been instituted upon the Application of such single Parish, Place, or Township under this Act shall forthwith be stayed.

XXIX This Act to be taken as Part of the recited Acts, and of 1 & 2 Vict. c.64.

And be it enacted, That this Act shall be taken to be a Part of the said recited Acts, and also of an Act passed in the Second Year of the Reign of Her present Majesty, intituled *An Act to facilitate the Merger of Tithes* ; and in the Construction of this Act, unless there be something in the Subject or Context repugnant to such Construction, the several Words used in this Act shall have and bear the same Interpretation as is given to such Words respectively in the said Acts or either of them; and whenever a Word importing the Singular Number or Masculine Gender only is used, the same shall be understood to include and shall be applied to several Persons or Parties as well as One Person or Party, and Females as well as Males, and several Matters or Things as One Matter or Thing respectively, and the converse.

XXX Act may be amended this Session.

And be it enacted,- That this Act may be amended or repealed by any Act to be passed in this present Session of Parliament.