



ANNO SECUNDO & TERTIO

VICTORIÆ REGINÆ.

Cap. 46.

An Act for inclosing Lands within the Parishes of
Rathkeale and *Croagh* in the County of *Limerick*.
 [17th August 1839.]

WHEREAS there are within the Manor of *Mount Southwell* otherwise *Knockbillingsby*, in the Parishes of *Rathkeale*, and *Croagh* in the County of *Limerick*, divers Commons and Waste Lands, containing together by Estimation Five hundred and seventy-eight Acres, or thereabouts, whereof One hundred and fifty or thereabouts are now under Water, in *English Statute Measure*: And whereas the said Manor of *Mount Southwell* otherwise *Knockbillingsby*, and also the said Commons and Waste Lands, have heretofore been reputed to be solely within the Parish of *Rathkeale* in the County of *Limerick*; but the Surveyor appointed under and by virtue of an Act passed in the Sixth Year of the Reign of His late Majesty King George the Fourth, intituled *An Act to repeal an Act of the last Session of Parliament relative to the forming Tables of Manors, Parishes, and Townlands in Ireland, and to make Provision for ascertaining the Boundaries of the same*, has lately marked out the Boundaries between the said Parish of *Rathkeale* and the Parish of *Croagh* in the said County of *Limerick*, through the Centre of the said Commons and Waste Lands, so that the same are now locally situated in the several Parishes of *Rathkeale* and *Croagh* aforesaid: And whereas *John Pigott Esquire* is or claims to be Lord of the said Manor of *Mount Southwell*

[Private.]

41 G.3.c. 109.

Application
of General
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Declaration.

well otherwise *Knockbillingsby*, and as such is entitled to the Soil of the said Commons and Waste Lands: And whereas the Right Honourable *Thomas Viscount Southwell*, the Right Honourable *William Vesci Lord Fitzgerald*, *John Southwell Browne Esquire*, *Eyre Lloyd Esquire*, and the said *John Pigott*, and others, are or claim to be Owners and Proprietors or otherwise interested in the said Commons and Waste Lands, and are or claim to be entitled to certain Rights of Common and other Commonable Rights and Interests in, over, and upon the same: And whereas an Act was passed in the Forty-first Year of the Reign of His late Majesty King *George the Third*, intituled *An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts*: And whereas the said Commons and Waste Lands are capable of considerable Improvement, and it would be of Advantage to the Persons entitled to and interested in the said Commons and Waste Lands if the same were divided and allotted unto and amongst them according to their respective Rights and Interests therein, and held in Severalty, and inclosed; but the same cannot be effected without the Aid and Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said recited Act passed in the Forty-first Year of the Reign of King *George the Third*, and all the Powers, Provisions, Penalties, Forfeitures, Payments, Exemptions, Remedies, Matters, and Things therein contained, shall, so far as the same are not varied, altered, or repealed, or otherwise provided for, be as valid and effectual for carrying into execution this Act as if the same had been repeated and re-enacted in the Body of this Act.

II. And be it further enacted, That *Theobald Butler Willington* of *Templemore* in the County of *Tipperary*, Gentleman, *James Butler* the younger, of *Park* in the same County, Gentleman, and *William James Strickland* of *Blackrock* in the County of *Dublin*, Gentleman, and their Successors, to be appointed in manner herein-after mentioned, shall be and they are hereby appointed Commissioners for dividing, allotting, and inclosing the said Commons and Waste Lands, and for carrying this Act and the said recited Act into execution.

III. Provided always, and be it further enacted, That no Person shall be capable of acting as a Commissioner in the Execution of this Act until he shall have made and subscribed the following Declaration; (that is to say,)

‘ I *A.B.* do solemnly and sincerely declare, That I will faithfully,
 ‘ impartially, and honestly, according to the best of my Skill and
 ‘ Ability, execute and perform the several Trusts, Powers, and Autho-
 ‘ rities vested and reposed in me as a Commissioner by virtue of an
 ‘ Act passed in the Second Year of the Reign of Queen *Victoria*,
 ‘ intituled [*here insert the Title of this Act*], according to Equity and
 ‘ good Conscience, and without Favour or Affection, Prejudice or
 ‘ Partiality, to any Person or Persons whomsoever.’

And

And such Declaration shall be in lieu of and as a Substitute for the Oath or Affirmation required by the said recited Act to be taken and subscribed by Persons acting as Commissioners in the Execution of any Act for dividing, allotting, or inclosing any Lands or Grounds; and such Declaration, when duly made and subscribed, shall be to all Intents and Purposes as valid and effectual as the Oath or Affirmation in lieu whereof it shall have been so made and subscribed.

IV. And be it further enacted, That if any of the Commissioners herein named, or to be appointed by virtue of this Act, shall, before the Execution of all the Powers and Authorities hereby vested in him or them, die, neglect or refuse to act, or become incapable of acting in the Execution of this Act and the said recited Act, then and in every such Case it shall and may be lawful for the surviving or remaining Commissioners or Commissioner, and they and he are and is hereby authorized and required, at any Time, and from Time to Time, within Thirty Days next after such Death, Neglect, Refusal, or Incapacity shall be known to him or them, by Writing under their or his Hands or Hand, to appoint another fit and proper Person to be a Commissioner in the Place of such Commissioner so dying, neglecting or refusing to act, or becoming incapable of acting; and in case such surviving or remaining Commissioners or Commissioner shall neglect or refuse to appoint some fit and proper Person to be a Commissioner in the Place of such Commissioner so dying, neglecting or refusing to act, or becoming incapable of acting within the Time aforesaid, then and in every such Case, and from Time to Time, it shall be lawful for the Lord of the Manor for the Time being, within Fourteen Days next after the Expiration of the said Thirty Days, to appoint some fit and proper Person (not interested in the Lands and Grounds hereby intended to be divided, allotted, and inclosed) to be a Commissioner in the Place of such Commissioner so dying, neglecting or refusing to act, or becoming incapable of acting; and every Person so to be appointed a Commissioner as aforesaid shall, after making and subscribing the Declaration hereinbefore mentioned, have the like Powers and Authorities for carrying this Act and the said recited Act into execution in all respects as if he had been named and appointed a Commissioner in and by this Act, and that every Act, Matter, and Thing authorized and directed to be done and executed by the Commissioners herein named, or hereafter to be elected as aforesaid, may be done and executed by any Two of them, and any such Act, Matter, and Thing shall be as valid and effectual to all Intents and Purposes as if the same had been done and executed by all the said Commissioners herein named.

For appoint-
ing new
Commission-
ers.

V. And be it further enacted, That if any Commissioner shall neglect to attend at one of the first Two Meetings appointed to be held for carrying this Act into execution, and to qualify himself by making the Declaration in that Behalf prescribed (Notice being given to him of such intended Meetings under the Hands of the other Commissioners), or if any Commissioner shall, at any Time after having qualified himself as aforesaid, he having first known of such Meetings by his Presence at the Appointment thereof, or having Notice thereof in Writing given to him or left at his Place of Abode

What shall
be a Refusal
to act.

under

under the Hand of the Clerks of the said Commissioners, and such Commissioner not being prevented by Sickness or other reasonable Cause, or if any Commissioner to be nominated and appointed as aforesaid shall not attend and qualify himself at one of the first Two Meetings after his becoming a Commissioner, or shall, after qualifying himself aforesaid, wilfully absent himself, from any Two successive Meetings, (having first known thereof, or after such Notice and without such Cause as last aforesaid,) every such Absence or Non-attendance shall be deemed and taken to be a Refusal to act.

Commissioners to appoint a Clerk.

VI. And be it further enacted, That it shall be lawful for the said Commissioners from Time to Time to nominate and appoint some fit and proper Person to be their Clerk to assist them in carrying this Act and the said recited Act into execution, and from Time to Time to remove such Clerk and appoint another in his Stead, as to the said Commissioners shall seem meet.

Allowance to Commissioners and their Clerk.

VII. And be it further enacted, That out of the Monies which shall be raised for defraying the Expences of obtaining and passing this Act, and executing the same and the said recited Act, the said Commissioners, and the Clerk to be appointed by the said Commissioners as herein-before directed, shall respectively be paid, for each and every Day they shall travel or be employed in any Business relating to the Execution of this Act or the said recited Act, during the first Two Years next after the passing of this Act, the Sum of Three Pounds each, and no more, and after the Expiration of the said Two Years, until the Powers granted by this Act shall be fully executed and performed, the Sum of Two Pounds, and no more, for each and every Day they shall be respectively employed as aforesaid, in full Satisfaction for their Time and Trouble, and for their several travelling and Tavern Expences which they shall be put unto during their several Journies and Attendances in the Execution of this Act or the said recited Act, other than and except the Expences for the Use of the Room in which the Meetings shall be holden for carrying this Act and the said recited Act into execution, and the Costs and Expences of drawing, copying, engrossing, and enrolling the Award of the said Commissioners, and of preparing and copying the Notice and Advertisements, and the Proceedings of the said Commissioners; or any Matter or Thing relating thereto.

Appointment of Surveyor.

VIII. And be it further enacted, That the said Commissioners shall, if they shall find it necessary or expedient, by any Writing under their Hands, to appoint some fit and proper Person or Persons (not interested in the said Division, Allotment, and Inclosure, and not being the Agent or Attorney of any Person so interested) to be their Surveyor or Surveyors for the Purposes of this Act and the said recited Act; and in case of the Death, Refusal, Neglect, or Incapacity of the Person or Persons so appointed to act as such Surveyor or Surveyors whilst the Powers of this Act and the said recited Act are being carried into execution, then the Commissioners the Time being shall and they are hereby respectively authorized to appoint One or more other fit and proper Person or Persons, not interested in the Premises, to be Surveyor or Surveyors in his or

their Place or Stead, and so from Time to Time to make a new Appointment as often as the said Office shall be vacant by reason of the Death, Refusal, Neglect, or Incapacity to act of any Surveyor; and it shall be lawful for the said Commissioners to allow such Surveyor or Surveyors, for his or their Time and Trouble, any Sum not exceeding One Shilling *per* Acre for surveying, measuring, mapping, and planning the said Commons and Waste Lands, or any Sum not exceeding One Pound for each Day he shall be actually or wholly employed, either in surveying, measuring, mapping, or planning, or otherwise in the Business of the said dividing, allotting, and inclosing under this Act and the said recited Act, which said Sum of One Shilling *per* Acre, or One Pound *per* Day, shall be in full Satisfaction for his and their Time and Trouble, and for all travelling and other Expences of every Description to be incurred by such Surveyor or Surveyors in or about the Execution of this Act and the said recited Act: Provided nevertheless, that it shall be lawful for the said Commissioners to adopt and use any Survey, Admeasurement, and Plan already made of the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or of the old Inclosures within the said Manor of *Mount Southwell* otherwise *Knockbillingsby*, without causing a new Survey or Admeasurement to be made thereof as authorized or allowed by the said recited Act, and out of the Money to be raised by virtue of this Act to make such Satisfaction to the Person or Persons producing such Map, Survey, Admeasurement, or Plan as the said Commissioners shall think reasonable.

IX. Provided always, and be it further enacted, That no Person shall be capable of acting as Surveyor for the Purposes of this Act until he shall have taken and subscribed a Declaration in the Words or to the Effect following; (that is to say,)

Surveyor to make a Declaration.

‘ I *A.B.* do solemnly and sincerely declare, That I will faithfully, impartially, and honestly, to the best of my Skill and Ability, execute and perform the several Trusts, Powers, and Authorities vested and reposed in me as Surveyor by virtue of an Act passed in the Second Year of the Reign of Queen *Victoria*, intituled [*here set forth the Title of the Act*], according to Equity and good Conscience, and without Favour or Affection, Prejudice or Partiality, to any Person or Persons whomsoever.”

Which Declaration it shall be lawful for the Commissioners or any one of them to administer, and he and they is and are hereby required to administer the same; and such Declaration, so made, shall be written on Parchment, and subscribed by the Person making the same, and shall be annexed to and deposited with the Award of the said Commissioners, and an Office Copy thereof shall be admitted as legal Evidence.

X. And be it further enacted, That any Person making and subscribing a Declaration under the Authority of this Act, and who shall wilfully and corruptly make and subscribe such Declaration, shall be subject to the like Pains and Penalties to which Persons guilty of a Misdemeanor are or may be subject or liable.

Making a false Declaration, a Misdemeanor.

General
Notices.

XI. And be it further enacted, That all Notices necessary to be given by the said Commissioners in Cases not hereby or by the said recited Act otherwise provided for or directed shall be given and published by Advertisement to be inserted in some Newspaper published and circulated in the said County of *Limerick*, and by affixing the same upon one of the principal Doors of each of the Parish Churches and Chapels of *Rathkeale* and *Croagh* aforesaid.

Notice of
Meetings.

XII. And be it further enacted, That the said Commissioners shall and they are hereby required to cause Notice to be given of the Time and Place of the First and every subsequent Meeting for the Execution of this Act Six Days at least before any such Meetings (Meetings by Adjournment only excepted), and the said Commissioners may from Time to Time adjourn any such Meetings to such Time and Place as they shall think proper, and that all Meetings of the said Commissioners shall be held within the said Parishes of *Rathkeale* or *Croagh*: Provided that if at any Meeting appointed to be holden by the said Commissioners it shall happen that no more than One Commissioner shall attend, such Commissioner may adjourn such Meeting to any Time and Place within the said Parishes which he shall think most convenient, and if no Commissioner shall attend it shall be lawful for the Clerk of the said Commissioners to adjourn such Meeting in like Manner.

One Com-
missioner or
Clerk may
adjourn.

For regula-
ting the Du-
ration of the
Sittings of
the Commis-
sioners.

XIII. And for regulating the Duration of all Meetings to be held for the Purposes of this Act, be it further enacted, That a Day shall be deemed to consist of Eight Hours in all Meetings to be held between the Twenty-fifth Day of *March* and the Twenty-ninth Day of *September*, and of Six Hours between the Twenty-ninth Day of *September* and the Twenty-fifth Day of *March*, and that the Time occupied in going to, attending at, and returning from any Meetings to be holden or other Business to be transacted for the Purposes of this Act, of less Duration than Eight Hours or Six Hours, as the Case may be, shall be charged as only Half a Day, and the said Commissioners and their Clerk shall be paid accordingly; and a Book shall be kept by the said Commissioners or their Clerk, in which shall be entered the several Days on which the said Commissioners shall hold their Meetings, in which Book shall also be entered at what Hour the said Commissioners and their Clerk were respectively present at such Meetings, and at what Hour they respectively left the same; and such Book shall be signed by such Commissioners and their Clerk at the Termination of each Meeting, and shall be open to the Inspection of any Person or Persons interested in the said Inclosure, or his, her, or their Agents or Attornies, during all the Meetings to be held in pursuance of this Act, and all such Persons shall be at liberty to take Copies of or Extracts from such Book, without paying any thing for the same.

Proprietors
to pay their
own Ex-
pences at
Meetings.

XIV. Provided always, and be it further enacted, That all Proprietors and Persons interested in the said Inclosure, their Attornies and Agents, shall pay their own Expences whenever they shall attend at any of the Meetings to be held in pursuance of this Act.

XV. And

XV. And be it further enacted, That it shall not be lawful for the said Commissioners to retain or pay to themselves or their Clerk, out of any Monies to be received by them or over which they have any Control in the Execution of this Act, any Sum or Sums of Money on account of the Allowance by this Act directed to be made to the said Commissioners and their Clerk respectively beyond Two Thirds of such Allowance as they shall be entitled to as aforesaid, until after the Expiration of Six Calendar Months from the Date of the Award of the said Commissioners, or in case the Accounts of the said Commissioners shall be appealed against, then not until such Appeal shall have been heard and decided: Provided that in case of the Decease of the said Commissioners or any of them, or their Clerk, previous to the Execution of the said Award, the Commissioners for the Time being shall, after the Expiration of the said Period allowed for Appeal against the Accounts of the said Commissioners herein-after directed to be made and stated, pay to the Executors or Administrators of such deceased Commissioner or Commissioners, or Clerk, such Sum of Money as shall appear by the said Accounts to be due to them respectively.

Commissioners and Clerk not to be paid more than Two Thirds of Allowance until Six Months after the Execution of the Award.

XVI. And be it further enacted, That if any Dispute or Difference shall arise between any of the Parties who now are or before the Execution of the Award of the said Commissioners may be interested or claim to be interested in the said intended Division and Allotments, touching or concerning the respective Rights, Interests, Shares, and Proportions which they or any of them shall claim to have of and in the Commons and Waste Lands hereby directed to be divided and allotted, or touching or concerning any other Matter or Thing relating to the said Division and Allotments, it shall and may be lawful for the said Commissioners, and they are hereby authorized and required, as well by Examination of Witnesses upon Oath (which Oath any or either of the Commissioners are or is hereby empowered to administer), as upon any other proper Evidence, to inquire into, hear, and determine the same: Provided always, that nothing in this Act contained shall authorize the said Commissioners to determine the Title to any Lands, Tenements, or Hereditaments whatsoever, nor to determine any Right, contrary to the Possession of such Parties, except in Cases of Encroachment as herein-after mentioned, but in case the said Commissioners shall be of opinion against the Rights of the Party so in Possession they shall forbear to make any Determination thereupon until the Possession shall have been given up by such Party, or recovered from such Party by Ejectment or other due Course of Law.

Commissioners to settle Disputes and Differences by Examination of Witnesses on Oath, but not to determine Titles.

XVII. And be it further enacted, That in case the said Commissioners shall, upon the Hearing and Determination of any Claim or Claims, Objection or Objections to be delivered to them in pursuance of the said recited Act or of this Act, see Cause to award any Costs, it shall be lawful for the said Commissioners, and they are hereby empowered, upon Application made to them for that Purpose, by Order under their Hands, to settle, assess, award, and adjudicate such Costs and Charges as they shall think reasonable to be paid to the Party or Parties in whose Favour any Determination of the said Commissioners

Power to award Costs.

missioners shall be made, by the Party or Parties whose Claim or Claims, Objection or Objections, shall be thereby disallowed or overruled; and in case the Person or Persons, Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, who shall be liable to pay such Costs or Charges, shall neglect or refuse to pay the same, on Demand, then and in such Case it shall be lawful for the said Commissioners and they are hereby authorized and required, by Warrant under their Hands and Seals, directed to any Person or Persons whatsoever, to cause such Costs and Charges to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons, or Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, neglecting or refusing to pay the same, rendering the Overplus, if any, on Demand, to the Person or Persons, Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, whose Goods and Chattels shall have been so distrained and sold, after deducting the Costs and Charges attending such Distress and Sale; and if there shall not be any Goods or Chattels whereon to levy the same, or in case the Party ordered to pay such Costs be a Body Politic, Corporate, Collegiate, or Ecclesiastic, then and in either of the said Cases it shall be lawful for the Party or Parties in whose Favour such Costs shall be awarded to recover the same by Action or Actions of Debt or on the Case, in which Action or Actions it shall be sufficient for the Plaintiff to declare that the Defendant is indebted to him in the Sum specified in the Order of Adjudication made by the said Commissioners, and in consequence of such Order, and without setting forth any other Proceedings under this Act.

Persons dissatisfied with Determination of Commissioners may bring Actions at Law in any of the Superior Courts at Dublin.

XVIII. Provided always, and be it enacted, That in case any Person or Persons, Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, interested or claiming to be interested in the said intended Division and Allotments, shall be dissatisfied with any Determination of the said Commissioners for the Time being touching or concerning any Claim or Claims, Objection or Objections, Rights or Interests, in, over, or upon the Commons and Waste Lands hereby directed to be divided, allotted, and inclosed, or any Part or Parts thereof, or touching and concerning any Matter or Thing whatsoever relating to the Division, Allotment, or Inclosure by this Act directed, it shall be lawful for such Person or Persons, or Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, so dissatisfied with any such Determination, to cause an Action to be brought in one of Her Majesty's Courts of Record at *Dublin*, upon a feigned Issue, against the Person or Persons, Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, in whose Favour such Determination shall have been made, within Three Calendar Months next after such Determination of the said Commissioners shall have been notified in Writing to the Party or Parties against whom such Determination shall have been made, or to his or their known Agent or Attorney, and the Party or Parties so dissatisfied as aforesaid shall proceed to a Trial at Law of the Matter so determined by the said Commissioners at the next or second Assizes to be held for the said County of *Limerick* after such Action or Actions shall have been so commenced; and the Defendant or Defendants in such Action or Actions, shall and he, she, and they is and are hereby required to name an Attorney or Attornies, who shall

shall appear thereto, or file Common Bail, and accept One or more Issue or Issues, whereby such Claim or Claims, Objection or Objections, 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 such Action or Actions shall be commenced, in case the Parties shall differ about the same; and the Verdict or Verdicts which shall be given in such Action or Actions shall be final, binding, and conclusive upon all and every Person and Persons whomsoever, Body and Bodies Politic, Corporate, Collegiate, and Ecclesiastic respectively, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, and order a new Trial to be had thereon, which it shall be lawful for the Court to do as is usual in other Cases; and after such Verdict or Verdicts shall be obtained, and not set aside by the Court, the said Commissioners shall and they are hereby required to act conformably thereto, and to allow or disallow the Claim or Claims, Right or Rights, Interest or Interests, thereby determined, according to the Event of such Trial or Trials; and the Costs and Charges of such Action or Actions shall be paid in such Manner and by such Person or Persons as the Judge or Judges before whom such Issue or Issues shall be tried shall order or direct: Provided always, that if no such Notice shall be given, or if any such Notice shall be given and such Action at Law shall not be commenced within the Time herein-before limited, or if any such Action shall be commenced and the Plaintiff or Plaintiffs shall not proceed to Trial within the Time and in the Manner herein-before mentioned, then the Determination of the said Commissioners shall be final, binding, and conclusive, to all Intents and Purposes whatsoever: Provided always, that if the Defendant or Defendants in any such Action shall not appear and plead thereto according to the Rules of Practice of the Court in which such Action shall be brought, the same Proceedings shall be had and taken in such Action for obtaining final Judgment therein as are used in other Actions of a like Nature in the said Court, and that when final Judgment shall have been obtained in any such Action the same shall be as effectual and conclusive as if a Verdict had been obtained in such Action, and not afterwards set aside.

XIX. Provided always, and be it further enacted, That the Determination of the said Commissioners touching any Claim, Right, or Interest in, over, or upon the Lands hereby directed to be divided, allotted, and inclosed, or any other Matter or Thing relative to the said Division, Allotment, or Inclosure, which shall not be overruled by the Event of any such Trial as aforesaid, shall be final, binding, and conclusive upon all Parties.

Determina-
tion of Com-
missioners
not overruled
to be final.

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

Proceedings
not to abate
by Deaths of
Parties.

XXI. Provided always, and be it further enacted, That if any Person or Persons in whose Favour any such Determination as
[Private.] aforesaid

In case of
Deaths of
Parties before

Action brought, the same to be carried on and defended in their Names.

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, Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, 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 he, she, or they was or were actually living, and to serve the Clerk to the said Commissioners with Process for commencing such Action or Actions, in the same Manner as the Party or Parties so dying might have been served therewith if living, and such Process shall be served on the Heir or Heirs or other Person or Persons who shall claim the Benefit of such Determination as aforesaid, it shall thereupon be incumbent on such Heir or Heirs or other Person or Persons to appear and defend such Action or Actions in the Name or Names of the Person or Persons so dead, and Proceedings shall be had therein in the same Manner as if such Person or Persons had been actually living, and the Rights of all Parties shall be equally bound and concluded by the Event of every such Action.

Suits not to delay the Execution of the Act.

XXII. And be it further enacted, That if any Suit or Suits shall be commenced or prosecuted touching or concerning the Right, Title, or Interest of any Person or Persons, Party or Parties, in or to any Lands, Tenements, or Hereditaments whatsoever, for or in respect of which any Right of Common, or any other Rights or Interests, in, over, or upon the said Land hereby directed to be divided, allotted, and inclosed, or any Part thereof, shall be claimed, such Suit or Suits shall not impede, delay, or hinder the said Commissioners from proceeding in the Execution of the Powers vested in them by this Act or the said recited Act, but the said Division, Allotment, and Inclosure shall be proceeded in notwithstanding such Suit or Suits; and the said Commissioners shall award the Allotment or Allotments respecting the Hereditaments to which such Suit or Suits shall relate to the Person or Persons, Party or Parties, who shall be in the actual Possession or Enjoyment of such Hereditaments, and the same Allotment or Allotments shall follow the Event of any such Suit or Suits, and may be had and taken by the Person or Persons or Party or Parties who upon the Determination of such Suit or Suits shall become entitled to the same.

Deaths of Parties not to suspend Execution of the Act.

XXIII. And be it further enacted, That if any of the Parties interested in the said Division, Allotment, and Inclosure shall die before the same shall be completed, the Powers and Authorities hereby given to the said Commissioners shall not be thereby determined or suspended, but the said Commissioners shall and may proceed to execute the Powers given to them by this Act and the said recited Act in such Manner as they might have done in case such Party or Parties had not died; and the Share or Shares of the Person or Persons so dying shall be allotted and awarded to the Person or Persons who, by Descent, Will, or otherwise, shall become entitled to the same, and shall be accepted by him, her, or them

according to the Directions of this and the said recited Act, and he, she, or they shall be liable to the Charges and Expences and the several Provisions of this Act and the said recited Act.

XXIV. And be it further enacted, That it shall be lawful for the said Commissioners, at any Time when they shall think it convenient or proper, by Notice for that Purpose under their Hands, to be affixed on one of the outer Doors of each of the Parish Churches and Chapels of *Rathkeale* and *Croagh* aforesaid on some *Sunday* before Divine Service, to order the Rights of Common in, upon, and over the Commons and Waste Lands hereby directed to be divided, allotted, and inclosed, or any Part thereof, to be extinguished or suspended, either in the whole or in part, and from and after the Time to be mentioned in and fixed by such Notice all such Rights of Common as shall be thereby directed to be extinguished or suspended shall cease and be extinguished or shall be suspended accordingly; any Law Usage, or Custom to the contrary notwithstanding.

Extinguishment of Rights of Common.

XXV. And be it further enacted, That if any Person or Persons, after any Right of Common or Feeding shall have been extinguished under or by virtue of this Act, shall stock or depasture with Sheep, Cattle, or other Stock any Part of the said Grounds on which such Right of Common or Feeding shall have been so directed to be extinguished as aforesaid, it shall be lawful for the Lord of the Manor for the Time being, or his known Agent or Bailiff, or any other Person or Persons by the said Commissioners to be appointed, from Time to Time to distrain all such Cattle, Sheep, or other Stock then being or depasturing upon any Part of the said Lands or Grounds after the said Right of Common or Feeding shall have been extinguished, and to impound the same, in like Manner as allowed by Law in the Case of Cattle Damage feasant.

Power to distrain Cattle doing Damage after the Right of Common extinguished.

XXVI. And be it further enacted, That it shall be lawful for the said Commissioners to set out, appoint, and make such Common Ponds, Drains, Ditches, Streams, Watercourses, Tunnels, Banks, and Bridges, in, through, over, and upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, and also to enlarge, widen, scour, turn, and cleanse, or alter the Course of and improve, any of the present Drains, Ditches, Streams, or Watercourses, Banks, and Bridges, as well in, through, and over the same Lands and Grounds, as also in, through, and over any ancient Inclosures or other Lands and Grounds within the said Parishes of *Rathkeale* and *Croagh* and the next adjoining Parishes thereto, as the said Commissioners shall deem necessary, making such Satisfaction to the Proprietors of such ancient Inclosures or Lands or Grounds for the Damage done thereby as the said Commissioners shall think fair and equitable; and the Costs and Expences of making, enlarging, widening, altering, turning, scouring, and cleansing of such Ponds, Drains, Ditches, Streams, Watercourses, Tunnels, Banks, and Bridges, when the same shall be first made and done in pursuance of this Act, if not otherwise discharged or provided for, shall be raised and levied by the said Commissioners in the same Manner and by the same Means as the other Costs and Expences of carrying this Act into execution, but all such Ponds, Drains, Ditches, Streams, Watercourses, Tunnels, Banks, and

Commissioners to set out Drains, and to enlarge and turn Watercourses.

and Bridges shall at all Times afterwards be repaired, cleansed, and maintained by such Person and in such Manner as the said Commissioners shall in and by their Award order and direct; provided that no Stream or Watercourse be diverted or turned without the Consent in Writing of the Person from whose Lands the same may be diverted, and of the Person into whose Lands the same may be turned, to the Prejudice or Injury of any Person interested in such Stream or Watercourse, without his Consent in Writing, and that no Lands in the next adjoining Parishes to the said Parishes of *Rathkeale* and *Croagh* shall be taken or cut through for the Purpose of such Drainage without the Consent in Writing of the Owners of such Lands respectively.

Certain Encroachments to be deemed Part of the Waste.

XXVII. And be it further enacted, That it shall be lawful for the said Commissioners and they are hereby authorized and required to inquire into and ascertain what Lands have been inclosed and taken from and what Encroachments have been made in or upon the said Commons, Waste Lands, and Grounds by this Act directed to be divided, allotted, and inclosed, and all such Inclosures and Encroachments which shall have been taken and made within Five Years now last past, except only such Encroachments as may have been made upon the Commons, Waste Lands, and Grounds with the Consent of the Lord of the Manor of *Rathkeale* aforesaid, shall be deemed Parts of the Lands and Grounds intended to be hereby divided, allotted, and inclosed, and shall be divided and allotted accordingly: Provided nevertheless, that all such Inclosures and Encroachments shall be allotted to the Person or Persons who shall at the Time of making the Allotments be in Possession of such Inclosures and Encroachments, or in Receipt of the Rents and Profits thereof, as the Whole or Part of the Share or Proportion of the Commons, Waste Lands, and Grounds to which such Person or Persons will be entitled by virtue of this Act, without considering the Value of any Erection or other Improvements made thereon; and if any such Person or Persons shall not be entitled to any Allotment equal to the Value of such Encroachment, but shall be willing to purchase the same, then the said Commissioners shall ascertain the Price thereof, or of such Part thereof as shall exceed the Value of the Allotment or Allotments the Possessor or Possessors whereof would be entitled to by virtue of this Act in respect of any other Property as aforesaid, on ascertaining of which Price the said Commissioners shall not value the Buildings or other Improvements thereon, but shall value the Land only, and that at so much *per Acre* as the same shall in their Estimation be worth, having reference to the Common or Waste next adjoining; and upon such Person or Persons paying such Price *per Acre*, and so in proportion for any less Quantity than an Acre, to the said Commissioners, at such Time or Times as they shall appoint for that Purpose, and taking the Receipt or Receipts for the same, every such Inclosure or Encroachment, or such Part thereof as shall be so purchased, shall be allotted to such Person or Persons, and shall be holden and enjoyed by him, her, or them accordingly; and the said Commissioners shall and they are hereby required to apply such Purchase Money in such and the like Manner as Monies to be raised by Sale of Lands for defraying

defraying the Expences of obtaining and passing this Act, and of carrying the same into execution, as are herein directed to be applied; and in case any Dispute or Difference shall arise touching any such Encroachments, or the Extent thereof, such Dispute or Difference shall be settled and determined by the said Commissioners, subject to such Appeal as is herein-after provided.

XXVIII. And be it enacted, That if after the said Commissioners shall have adjudged any Parcel of Land to be an Encroachment upon any Part of the Common or Waste Lands to be divided, allotted, and inclosed by virtue of this Act, the Possessor or Possessors, Occupier or Occupiers thereof shall refuse or decline to yield up the Possession thereof, being thereunto duly required by Notice or Notices in Writing signed by the said Commissioners or any of them, and affixed at the principal Entrance or Door of the Parish Church and the Chapel within the Parish whereon such Encroachment or Encroachments lie, Six Weeks at least before the Time to be expressed in the said Notice for yielding up such Possession to them, that then and in every such Case it shall be lawful for the Owner and Proprietor, or other Person to whom the said Encroachment or Encroachments shall be allotted by the said Commissioners, to bring One or more Ejectment or Ejectments, in his, her, or their own Name or Names, as Lessor or Lessors, in such Ejectment or Ejectments, for the Recovery of the Possession of the Lands so adjudged and withheld; and if upon the Trial of such Ejectment or Ejectments it shall appear that the Adjudication of the said Commissioners was duly made pursuant to the Powers given to them by this Act, then and in every such Case the Plaintiffs in such Ejectment or Ejectments shall be entitled to recover Judgment and have Execution, and the Lands so to be recovered shall be deemed and taken to be Part of the Lands to be divided, allotted, and inclosed by virtue of this Act, and shall be divided, allotted, and inclosed accordingly.

Persons to whom Allotments are to be made may bring Ejectments for Recovery of Encroachments.

XXIX. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to extend so far as to derogate from, lessen, or prejudice the Powers and Authorities of the Grand Jury of the County of *Limerick* as to the Line of Direction, Breadth, or other Matter or Thing touching or concerning any of the Roads or Highways in, over, or upon the said Commons and Waste Lands, or to prevent the said Grand Jury from Time to Time from varying the Roads and Highways, or any of them, so to be laid out by the said Commissioners, as they shall think expedient, and that none of the present Roads shall be shut up or discontinued until the new Roads which may be substituted by the said Commissioners in their Stead by virtue of this Act shall be safe and convenient for Horses, Cattle, and Carriages.

This Act not to affect the Powers of the Grand Jury of the County respecting Roads.

XXX. And be it further enacted, That the said Commissioners shall, in the first place, set out, allot, and award unto the Lord of the Manor of *Mount Southwell* otherwise *Knockbillingsby*, for the Time being, such Parcel or Parcels of the Commons and Waste Lands by this Act authorized to be divided, allotted, and inclosed,

Allotment to the Lord of the Manor.

[Private.]

as shall, in the Judgment of the said Commissioners, be equal in Value (Quality and Situation considered) to One twentieth Part of such Commons and Waste Lands within the said Manor, in lieu of and as a full Compensation and Satisfaction for the Rights and Interests of the Lord of the said Manor in and to the Soil of the said Commons and Waste Lands, over and above and exclusive of any other Allotment which may be made to such Lord of the Manor of *Mount Southwell* otherwise *Knockbillingsby* aforesaid in lieu of or in Satisfaction for any other Rights or Interests in such Commons and Waste Lands.

Commissioners empowered to sell Land for defraying the Expences of the Act.

XXXI. And be it further enacted, That for the Purpose of raising Money for the Payment of all the Costs, Charges, and Expences incident to and attending the obtaining of this Act, and of surveying, admeasuring, planning, valuing, dividing, draining, and allotting the Lands hereby directed to be divided, allotted, and inclosed, and of preparing and enrolling the Award or Awards of the said Commissioners, and of the Copies thereof, and all Charges and Expences of the said Commissioners, their Clerks and Assistants, and all other necessary Expences of the several Persons to be employed by the said Commissioners in and about the Premises, either before or after the Execution of the said Award, and the Costs and Charges that the said Commissioners shall be put unto in respect of any Appeal against their Decision, and of any Suit at Law or in Equity that may be instituted by or against such Commissioners, either before or after the Execution of their Award, and all other Costs, Charges, and Expences necessarily incurred in carrying this Act into execution, it shall be lawful for the said Commissioners and they are hereby empowered, after setting out the several Roads and the several Allotments herein-before mentioned, to mark and set out in Lots, from Time to Time as they may think necessary, such other Parts of the said Commons or Waste Lands by this Act authorized to be divided, allotted, and inclosed, as will by the Sale thereof, in the Judgment of the said Commissioners, raise sufficient Money for the several Purposes aforesaid; and it shall be lawful for the said Commissioners, after they shall have so marked and set out such Part and Parts of the said Commons and Waste Lands for Sale for the Purposes aforesaid, absolutely to sell and dispose of such Part and Parcels of the said Commons and Waste Lands to any Persons whomsoever, by public Auction, in manner by the said recited Act mentioned; and all such Lands to be so sold by virtue of this Act shall, on the Payment of the full Purchase Money for the same into the Hands of the said Commissioners, or of any other Person to be by them appointed to receive the same, be conveyed as Freehold of Inheritance in Fee Simple unto or in Trust for the Purchaser or Purchasers thereof respectively, or otherwise, as he or they shall direct; and a Conveyance or Conveyances of the same, by Lease and Release or Feoffment, shall be made and executed by the said Commissioners, and shall be valid and effectual in the Law to vest the same in such Purchaser or Purchasers, and his, her, or their respective Heirs, Appointees, and Assigns, absolutely, for ever, subject and liable to such Orders, Directions, and Restrictions as shall be prescribed and appointed by the said Commissioners in

and by their Award to be made by virtue of this Act, but without such respective Purchasers being bound to see to the Application of their respective Purchase Monies, or being liable or accountable for the Misapplication or Nonapplication of the same; and the said Commissioners shall, after Payment of the Costs, Charges, and Expences attending such Sale and Sales, or in anywise relating thereto, apply the Residue of the Monies arising therefrom for the Purposes above mentioned,

XXXII. And be it further enacted, That in case any Surplus shall remain of the Money raised by the Sale of the Land as aforesaid, after all such Costs, Charges, and Expences as aforesaid shall have been fully paid and satisfied, such surplus Money shall be divided and apportioned between the several Proprietors of and Persons interested in the Commons and Waste Lands hereby authorized to be divided, allotted, and inclosed, in proportion to their respective Rights and Interests therein, or, as the Case may require, shall be paid into the Bank of *Ireland*, to be laid out and disposed of in manner by this Act directed.

Application of surplus Money arising from Sale of Land.

XXXIII. And be it further enacted, That it shall be lawful for the said Commissioners and they are hereby required to set out, allot, and award unto the Churchwardens and Overseers or other Parochial Officers for the Time being of the Parishes of *Rathkeale* and *Croagh* aforesaid, out of the Commons and Waste Lands to be allotted by virtue of this Act, a Piece of Land or Ground not exceeding Three Acres nor less than Two Acres, in each of the said Parishes, as a Place of Exercise and Recreation for the Inhabitants of the said Parishes, and such Allotments shall be held by such Churchwardens and Overseers or other Parochial Officers for the Purposes aforesaid.

Allotment to be set out for the Recreation of the Inhabitants.

XXXIV. And be it further enacted, That the said Commissioners shall divide, set out, and allot all the Residue of the said Commons and Waste Lands by this Act directed to be divided, allotted, and inclosed unto and amongst the several Owners and Proprietors, or their Lessees, of the Farms and Lands within the Parishes of *Rathkeale* and *Croagh* aforesaid, having Right of Common in and upon the said Commons and Waste Lands, according to their several and respective Rights and Interests, and in such Shares and Proportions as, in the Judgment of the said Commissioners, shall be a just and reasonable Compensation and Satisfaction to him, her, or them respectively for his, her, or their respective Rights and Interests in, to, over, and upon the said Commons and Waste Lands by this Act directed to be divided, allotted, and inclosed, but which Compensation and Satisfaction shall be estimated by and in proportion to the real yearly Value of the said Farms and Lands respectively.

Allotment of the Residue.

XXXV. And be it enacted, That if any Person or Persons shall have sold or conveyed, or shall at any Time before the Execution of the said Award convey or sell, his, her, or their Right, Interest, and Property in, over, and upon the Commons and Waste Lands hereby directed

In case of Sale before the Award, Commissioners to allot to the Purchaser.

directed to be divided, allotted, and inclosed, or any Part thereof, or in any Lands or Tenements in respect of which he, she, or they shall have or be entitled to any Commonable Rights in the said Lands and Grounds to be divided, allotted, and inclosed, to any other Person or Persons, then and in every such Case it shall be lawful for the said Commissioners and they are hereby authorized and required, on such Sale being made, to make an Allotment of Land unto the Vendee or Purchaser in every such Sale, or to his or her Heirs or Assigns, for or in respect of every such Right, Interest, and Property so sold as aforesaid; and every such Vendee or Purchaser, or his or her Heirs or Assigns, shall and may, from and after the Execution of the said Award, hold and enjoy the Lands so to be allotted to him, her, or them as aforesaid, in the same Manner to all Intents and Purposes as the Vendor or Grant or in every such Sale might, could, or ought to have held and enjoyed the same in case such Sale had not been made, or such Rights, Interest, or Property had been vested in such Vendor at the Time of making such Allotments as aforesaid; and it shall be lawful for any Person or Persons who shall be entitled to any Allotment or Allotments under or by virtue of this Act to give, grant, bargain, sell, surrender, demise, mortgage, limit, appoint, convey, and assure the same Allotment or Allotments, or all or any Part of his, her, or their Estate or Interest therein or Right thereto, at any Time before the Execution of the said Award; and every such Gift, Grant, Bargain, Sale, Surrender, Demise, Mortgage, Limitation, Conveyance, and Assurance shall be of the same Force and Validity as if the same had been made after the Execution of the said Award; and it shall be lawful for any Person or Persons entitled to any Allotment as aforesaid to sell and dispose of and convey the Estate in right of which he, she, or they may be entitled to any such Allotment, separate and apart from, and retaining to himself, herself, and themselves, such Allotment, Common Right, and Interest, and the said Commissioners are hereby required to award such Allotment or Allotments accordingly.

Distinct Allotments to be made for Lands holden by distinct Titles.

XXXVI. And be it further enacted, That in case any of the Persons interested in the Commons or Waste Lands and Grounds by this Act authorized to be divided, allotted, and inclosed, shall hold their respective Lands or Hereditaments for or in respect of which any Part or Parts of the said Commons or Waste Lands and Grounds shall be set out or allotted as aforesaid for different Estates, or subject to different Trusts, Charges, or Incumbrances, the said Commissioners shall, if requested so to do in Writing by such Person or Persons respectively, ascertain and distinguish the Lands or other Hereditaments so held, and shall set out and distinguish the different Allotments or other Hereditaments to be accepted and taken in respect of each of such Lands or other Hereditaments so circumstanced; and the said Commissioners shall and they are hereby authorized and required to set forth and declare, in and by their said Award, in right of what Lands and Hereditaments in particular such Allotments shall have been respectively made, and therein also separately describe and ascertain the Situation and Boundaries of any such Allotments; and when, from Want of Information or from any other Cause, the said Commissioners shall have omitted in their Award to distinguish and ascertain

certain

certain the Allotment in respect of Lands or other Hereditaments so circumstanced, and within Twelve Calendar Months after the making of such Award Request shall be made to the Commissioners by any Person or Persons interested, by Writing under his, her, or their Hand or Hands, to have such Omission supplied by a separate Instrument, and such Person or Persons shall have paid or secured to be paid a Sum sufficient to recover the reasonable Expences incurred thereby, then and in every such Case the said Commissioners shall and they are hereby authorized and required to do every thing necessary for supplying such Omission, and, so far as that Purpose shall require, to examine Witnesses, and in every other respect to proceed and act as if their Award had not been made, and, having obtained what they shall think sufficient Information, they are hereby also authorized and required, by any Deed under their Hands and Seals, to make distinct and separate Allotments under or in respect of the Lands and Hereditaments so circumstanced, in the same Manner as they might have done in their Award; and every such separate Instrument shall be enrolled in the same Place and Evidence thereof given in the same Manner as by the said recited Act or this Act, or either of them, are or is directed concerning the Award of the said Commissioners; and every such separate Instrument shall, from and immediately after the due Execution thereof by the said Commissioners, have the same Effect, to all Intents and Purposes, as if the Contents or Substance thereof had been inserted and contained in the same Award; and the same, after such Enrolment as aforesaid, be delivered to the Person or Persons upon whose Request any such Omission shall have been so supplied, or to the Person or Persons to whom the Custody of the Deeds and Writings concerning the Title to the Premises in question shall, in the Opinion of the said Commissioners, most properly belong.

XXXVII. And be it further enacted, That the several and respective Persons to whom such several Allotments shall be made and set out as aforesaid shall, at their own Expence, respectively fence and inclose the same in such Manner and within such Time as the said Commissioners shall in and by their said Award, or by any Writing under their Hands, direct and appoint.

Fencing the Allotments.

XXXVIII. And be it further enacted, That from and after the Time that any Highways, Roads, Lanes, and Passages, and Allotments of Lands, or any of them respectively, shall be set out by the said Commissioners, no Horses, Cows, Oxen, Sheep, Lambs, Mules, Asses, Pigs, or other Sort of Cattle, shall at any Time hereafter be permitted to graze or to go unrestrained in any of the said Highways, Roads, Lanes, or Passages, nor shall any such Cattle be depastured in any of the Allotments to be made in pursuance of this Act for the Space of Seven Years next after the Execution of the said Award, unless the Occupier of the Allotment into which such Horses, Cows, Oxen, Sheep, Lambs, Mules, Asses, Pigs, or other Cattle shall be turned shall have erected against the Boundary Fence of such Allotment (whether the said Fence shall belong to the said Allotment or not) a good and sufficient Fence to prevent any Injury being done to the Quicksets planted in the said Boundary Fence; and it shall be lawful for the Proprietor or Proprietors of any of the said Lands

For preserving young Fences.

[Private.]

and Grounds, or any other Person or Persons by the said Commissioners to be appointed, from Time to Time to distrain all such Horses, Cows, Oxen, Sheep, Lambs, Mules, Asses, Pigs, or other Cattle then being or depasturing unrestrained in any of the said Highways, Roads, Lanes, or Passages, or in any of the Allotments, in manner aforesaid, and to impound the same in like Manner as allowed by Law in the Case of Cattle Damage feasant.

For enforcing
the keeping
up of Fences.

XXXIX. And be it further enacted, That it shall be lawful for the said Commissioners, in and by their Award, or by any Writing under their Hands, to make and give such Regulations and Directions as they shall think necessary for enforcing and making and maintaining and supporting such last-mentioned Fences, and for preventing any Neglect or Non-compliance with such Regulations and Directions by the Person or Persons who shall be liable to the making or to the Maintenance and Support thereof, and for such Purpose to impose any Penalty or Forfeiture for such Neglect, as they shall think proper, not exceeding Five Pounds for every Rod of such Fence or Fences; and every such Penalty or Forfeiture shall be recoverable and recovered on the Application of any Person or Persons aggrieved by any such Neglect to any Justice of the Peace for the County of *Limerick*, by Distress and Sale of the Goods and Chattels of the Person or Persons liable to pay the same, by Warrant under the Hand and Seal of any Justice of the Peace for the County of *Limerick*, and which Warrant of Distress any such Justice is hereby authorized and empowered to grant, rendering the Overplus (if any), after Payment of such Penalty or Forfeiture, and the reasonable Costs and Charges of such Warrant, Distress, and Sale, to the Owner or Owners of such Goods and Chattels; and one Moiety of such Penalty shall be paid to the Informer, and the other Moiety to the Guardians of the Poor of the Union in which the said Parishes of *Rathkeale* and *Croagh* shall be respectively situated, to be applied in aid of the Poor Rates therein.

Proprietors
may, by Con-
sent, fence
Allotments
before the
Award.

XL. And be it further enacted, That it shall and may be lawful to and for the said several Persons interested in the said Commons and Waste Lands and Ground intended to be hereby divided, allotted, and inclosed, or any of them, at any Time or Times after the said Allotments shall be staked and set out by the said Commissioners, and before the Execution of the said Award, to inclose and fence the same, by and with the Consent of the said Commissioners, and in such Manner as the said Commissioners shall direct, any thing contained in this Act to the contrary notwithstanding; and that such of the said Persons interested as aforesaid whose Allotments shall abut against the Side or Ditch of any other Allotments or of any Lands already inclosed shall be at liberty and are hereby empowered, from the Time of staking out the several Allotments hereby directed to be made, to set up and place, and from Time to Time maintain, and all Times thereafter to continue, Rails across the Ditches and Posts upon the Banks of such other Allotments or Lands already inclosed.

Deeds, Wills,
&c. not to be
affected.

XLI. Provided also, and be it further enacted, That nothing in this Act contained, or to be contained in the Award of the said Commissioners,

missioners, shall extend to revoke, annul, make void, alter, vary, or in anywise affect any Grant, Assurance, Limitation of Use or Uses, Declaration of Trust, or any Deed or Will whatsoever, or to prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Portion, Rent-charge, Annuity, Debt, Rent, Incumbrance, or other Claim or Demand, out of, upon, or affecting any of the Lands or Grounds hereby directed to be divided, allotted, and inclosed, or any Lands, Grounds, or Hereditaments in respect of which any of the said Lands and Grounds so to be inclosed shall be divided, allotted, and inclosed, or any of the Messuages, Lands, or Hereditaments which shall be exchanged or parted with in pursuance of this Act, but that the Lands allotted, exchanged, or assigned in partition, or in compensation for any other Estates or Right, by virtue of this Act or the said recited Act, or either of them, shall, immediately after such Allotment, Exchange, Partition, or Assignment, remain and enure, and the several Persons to whom the same shall be allotted, assigned, or given in exchange or on partition as aforesaid shall thenceforth stand and be seised and possessed thereof respectively to, for, and upon such and the same Uses, Estates, Intents, Trusts, and Purposes respectively, and subject and liable to such and the same Wills, Settlements, Limitations, Remainders, Conditions, Charges, and Incumbrances, in all respects, as the several Lands, Tenements, and Hereditaments in respect whereof such Allotments, Exchanges, Partitions, and Assignments shall have been made should or would have stood severally limited, settled, vested, or subject or liable to, or been held by, in case the same had not been allotted, exchanged, parted with, or assigned as aforesaid, and this Act had not been passed, except where any other of the Provisions of this Act are to the contrary, and subject nevertheless to all such Mortgages and Sales as shall be made by Authority hereof or of the said recited Act.

XLII. And be it further enacted, That if any of the Proprietors or Persons interested in the Lands or Grounds hereby directed to be divided, allotted, and inclosed, or any other Person or Persons whomsoever, shall advance and pay any Sum of Money for defraying the Expences of soliciting, obtaining, or executing this Act, the Money so paid and advanced shall be repaid and satisfied to him, her, or them by the said Commissioners, together with lawful Interest for the same, out of the first Monies which shall come to their Hands under the Authority of this Act.

Money advanced for Purposes of Act to be repaid with Interest.

XLIII. And be it further enacted, That whenever any Sum of Money is, under the Provisions of the said recited Act or this Act, to be paid for the Purchase or Exchange of any Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, which shall belong to any Corporation, Tenant for Life or in Tail, or to any Feoffee or Executor, Administrator, Husband, Guardian, Committee, or other Trustee, for or on behalf of any Infant, Lunatic, Idiot, Feme Covert, or other Cestuique Trust, or to any Person whose Lands, Tenements, or Hereditaments are limited in strict or other Settlement, or to any Person under any Disability or Incapacity whatsoever, and which Money ought, in pursuance of this Act, to be laid out in the Purchase of other Lands, to be settled to the same Uses,

Application of Monies paid for Purchase or Exchange amounting to 200*l*.

Uses, it shall be lawful for the said Commissioners out of such Sums to defray such Proportion of the Expence of passing this Act, and of carrying the same into execution, as shall, if any, be charged upon any of the Lands of the Person or Corporation, Tenant for Life or in Tail, Feoffee, Executor, Administrator, Husband, Guardian, Committee, or Trustee, in Possession of the Lands so purchased or exchanged, or on which such Timber or Wood actually grew, and also the Expence of any permanent Improvement, such as building, subdividing, draining, or planting, or the like, which shall in the Judgment of the said Commissioners be proper to be made, and shall be made, under their Direction, upon any Lands to be by virtue of this Act allotted to such Person, Corporation, Tenant for Life or in Tail, Feoffee, Executor, Administrator, Husband, Guardian, Committee, or Trustee respectively; and in case the Surplus of such Money shall amount to or exceed the Sum of Two hundred Pounds, the same shall with all convenient Speed be paid into the Bank of *Ireland* in the Name and with the Privity of the Accountant General of the High Court of Chancery of *Ireland*, to be placed to his Account there *ex parte* the said Commissioners for executing this Act, and without Fee or Reward; to the Intent that such Money shall be applied, under the Direction and with the Approbation of the said Court, to be signified by an Order made upon a Petition to be preferred in a summary Way by the Person or Persons who would have been entitled to the Rents and Profits of the said Lands, Tenements, or Hereditaments, or Timber respectively, or in or towards the Discharge of any Debt or Debts or other Incumbrances affecting the Lands, Tenements, or Hereditaments so purchased or exchanged, or on which such Timber grew, or affecting other Lands, Tenements, or Hereditaments standing settled therewith, or held by the same Persons, to the same or the like Uses, Intents, and Purposes; or when such Money shall not be so applied, then the same shall be laid out and invested, under the like Direction and Approbation of the said Court, in the Purchase of other Lands, Tenements, or Hereditaments, which shall be conveyed and settled to, for, and upon the like Uses, Trusts, Intents, and Purposes, and in the same Manner, as the Lands, Tenements, and Hereditaments which shall be so purchased, taken, or used as aforesaid stood settled or limited, or such of them as at the Time of making such Conveyance and Settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such Purchase shall be made the said Money shall, by Order of the said Court of Chancery upon Application thereto, be invested by the said Accountant General in his Name in Government Securities; and in the meantime, and until the said Government Securities shall be ordered by the said Court of Chancery to be sold for the Purposes aforesaid, the Dividends and annual Produce of such Government Securities shall from Time to Time be paid, by Order of the said Court, to the Person or Persons, Body or Bodies, who would for the Time being have been entitled to the Rents and Profits of such Lands or Hereditaments so to be purchased, conveyed, and settled.

When less than 200*l.* and amounting to 20*l.*

XLIV. Provided always, and be it further enacted, That in case the Surplus of such Money shall be less than the Sum of Two hundred Pounds, and shall be equal to or exceed the Sum of Twenty Pounds,

Pounds, then and in all such Cases the same shall, at the Option of the Person or Corporation for the Time being entitled to the Rents and Profits of the Lands, Tenements, or Hereditaments so purchased or exchanged, and of his, her, or their Guardian or Guardians, Committee or Committees, in case of Infancy, Idiocy, Lunacy, or Incapacity, with the Approbation of the said Commissioners, to be signified in Writing under their respective Hands, be paid into the Bank of *Ireland* in the Name and with the Privity of the said Accountant General of the said High Court of Chancery, and be placed to his Account as aforesaid, in order to be applied in the Manner herein-before directed; or otherwise the same shall be paid, at the like Option and with the like Approbation, to Two Trustees, to be nominated by the Person or Corporation who for the Time being would be entitled to the Rents and Profits of the said Lands, such Nomination to be approved of by the said Commissioners, and such Nomination and Approbation to be signified in Writing under the Hands or Common Seal (as the Case may be) of the nominating and approving Parties; and the Money so paid to such Trustees, and the Dividends arising therefrom, shall be by them applied in like Manner as is herein-before directed with respect to the Money to be paid into the Bank in the Name of the Accountant General of the said High Court of Chancery, without obtaining or being required to obtain any Order of the said Court touching the Application thereof.

XLV. Provided also, and be it further enacted, That in case the Surplus of such Money shall not exceed the Sum of Twenty Pounds, then and in all such Cases the same shall be paid to the Person or Corporation who would for the Time being have been entitled to the Rents and Profits of the Lands so purchased or exchanged, or his or their own Use and Benefit; or in case of Infancy, Idiocy, Lunacy, or other Incapacity, then such Money shall be paid to his or their Guardian or Guardians, Committee or Committees, Trustee or Trustees, to and for the Use and Benefit of such Person or Persons respectively entitled thereto.

When less than 20*l*.

XLVI. And be it further enacted, That it shall be lawful for the said Commissioners to set out, allot, and award any Lands, Tenements, or Hereditaments within the said Parishes of *Rathkeale* and *Croagh*, in lieu of and in exchange for any other Lands, Tenements, or Hereditaments within the said Parishes, or within any adjoining Parish, Township, or Place, provided that all such Exchanges be ascertained, specified, and declared in the Award of the said Commissioners, and be made with the Consent of the Owners or Proprietors of the Lands, Tenements, or Hereditaments which shall be so exchanged, whether such Owners or Proprietors shall be a Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, or a Tenant or Tenants in Fee Simple or for Life, or in Fee Tail, General or Special, or by the Courtesy of *Ireland*, or for Years absolute or determinable in a Life or Lives, with the Consent of the Lessor or Lessors thereof, but not otherwise, or with the Consent of the Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees, or Attornies of or acting for any such Proprietors or Owners as aforesaid who at the Time of making such Exchanges

Power to make Exchanges.

[*Private.*]

shall be respectively Infants, Females Covert, Lunatics, or under any other legal Disability, or who shall be beyond the Seas, or otherwise disabled to act for themselves, himself, or herself, such Consent to be testified in Writing under the Common Seal of the Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, and under the Hands of the other consenting Parties respectively; and all and every Exchange and Exchanges so to be made shall be good and effectual, and valid in the Law, to all Intents and Purposes whatsoever: Provided always, that no Exchange shall be made of any Lands, Tenements, or Hereditaments held in right of any Church or Chapel or other Ecclesiastical Benefice, without the Consent (testified as aforesaid) of the Patron thereof, and of the Lord Bishop of the Diocese in which such Lands, Tenements, or Hereditaments so to be exchanged shall be situate: Provided always, that all Costs, Charges, and Expences attending the making of any Exchanges shall be paid, borne, and defrayed by the several Persons making such Exchanges, in such Shares and Proportions, and at such Times, and to such Person as the said Commissioners shall by any Writing under their Hands order and direct, and in case of Nonpayment thereof shall be recovered in manner by the said recited Act directed with respect to the Recovery of Penalties and Forfeitures.

Commissioners to appoint a Time for receiving Applications for Situations and Allotments.

XLVII. And be it further enacted, That the said Commissioners shall and they are hereby required to give Ten Days Notice of a Meeting for receiving Applications from the Owners and Proprietors of the Commons and Waste Lands and Grounds hereby directed to be divided, allotted, and inclosed, touching the Situation in which they would respectively choose to have their Allotments set out and allotted.

For determining Objections to Allotments.

XLVIII. And be it further enacted, That when and so soon as the said Commissioners shall have ascertained the respective Rights and Interests of the Proprietor or Proprietors and Persons interested in the Lands to be divided, allotted, and inclosed by virtue of this Act, and also the respective Shares and Proportions by them proposed to be allotted to such Proprietor or Proprietors respectively in lieu thereof, and to the Lord of the said Manor for the Time being for his Right of Soil and other Manorial Rights, the said Commissioners shall give Notice, in manner herein-before directed for giving Notices, for some convenient Time and Place when and where all Persons interested therein may be informed of such Allotments, and see the same set out and delineated upon a Map or Plan to be produced for their Inspection; and as some Persons may, upon such Inspection, be dissatisfied with their proposed Allotments, the said Commissioners shall give Notice of One Meeting at least to be held by them for receiving Statements in Writing of the Complaints and Objections of any Proprietor or Proprietors, or other Person or Persons interested therein, against any such Allotment or Allotments, and shall forthwith, or as soon after as conveniently may be, determine the same; and such Determination of the said Commissioners with respect to such Allotments shall be final, binding, and conclusive upon all Parties interested in such Allotments.

XLIX. And

XLIX. And be it further enacted, That it shall and may be lawful for the said Commissioners, at any Time before the executing of their final Award, to make any such Alterations in the Allotments, Drains, and Fences, or in the private Roads, or in any of the Orders and Directions relating thereto, which they may have made in pursuance of this Act or the said recited Act, as they shall think right and expedient; and in case any Person or Persons shall be injured by such Alterations, on account of any Expence he, she, or they may have incurred, or otherwise, the said Commissioners shall ascertain and determine what Recompence shall be made to him, her, or them for such Injury, and shall either pay the Amount thereof out of the Monies to come to their Hands in the Execution of this Act, or shall order and direct by whom and in what Manner such Recompence shall be made, the same to be levied and recovered, in case of Nonpayment, in the same Manner as the Costs and Charges of obtaining and executing this Act may be levied and recovered by virtue of this Act or the said recited Act, in case the same are raised by a Rate upon Proprietors.

Alterations may be made in the Allotments or private Roads before Execution of the Award.

L. And be it further enacted, That as soon as conveniently may be after the said Division and Allotment shall be completed the said Commissioners shall form, draw up, and execute an Award, which, together with a proper Map or Plan thereto annexed, shall, within Twenty-one Days after the Execution thereof, be delivered to the Clerk of the Peace for the County of *Limerick*, who is hereby required to deposit and keep the same among the Records of the said County, for the Reception whereof the Fee of Two Pounds and Two Shillings, and no more, shall be paid, and for the Inspection and Perusal whereof the Sum of One Shilling, and no more, shall be paid; and the said Award shall, from and after the Delivery thereof to the said Clerk of the Peace, be deemed and taken to be enrolled within the Intent and Meaning of the said first-recited Act; and a Copy of the said Award and of the said Map or Plan, signed by the said Commissioners, shall, within the Time aforesaid, be deposited with the Clerk to the Board of Guardians for the Union in which the Parish of *Rathkeale* is situated, and by him be kept in a proper Box to be provided for that Purpose, and for the Inspection and Perusal thereof the Sum of One Shilling, and no more, shall be paid; and the said Award, and the said Copy thereof, and any other Copy of the said Award or of any Part or Parts thereof, attested by the Clerk of the Peace for the Time being of the said County, or his Deputy, (for every Sheet of which containing One hundred Words Sixpence, and no more, shall be paid,) shall from Time to Time, and at all Times thereafter, be admitted and allowed as legal Evidence of the Matters and Things herein contained in all Courts of Law whatsoever.

Award to be made and deposited.

LI. Provided also, and be it further enacted, That if at the Time of the Execution of the said Award there shall remain due from any Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, any Sum or Sums of Money which shall have been adjudged, ordered, or directed to be paid by virtue of this Act, it shall be lawful for the said Commissioners and they are hereby authorized and required to levy

Monies may be recovered after Execution of the Award.

levy and raise the same in like Manner as they might or could have done before the Execution of their Award.

Accounts to
be audited.

LII. And be it further enacted, That once at least in every Three Calendar Months during the Execution of this Act (to be computed from the Time of passing thereof), the said Commissioners shall and they are hereby required to make a true and just Statement and Account of all the Sums of Money by them received and expended or applied in the Execution of this Act, and in such Statement or Account shall be particularly stated and specified the several Items and Articles for which each particular Sum has been paid and disbursed; and such Statement or Account, when so made, together with the Vouchers relating thereto, shall be by them laid before one of Her Majesty's Justices of the Peace for the County of *Limerick*, not interested in the said Inclosure, to be by him examined and balanced; and such Balance shall be stated in the Book of Accounts to be kept in the Office of the Person acting as Clerk to the said Commissioners; and an Abstract of such Accounts shall, within Fourteen Days after the same shall have been balanced, be published in some Newspaper circulated in the County of *Limerick*; and no Charge or Item in such Account shall be binding on the Parties concerned, or valid in Law, unless the same shall have been allowed by such Justice, and until such Account or the Abstract thereof shall have been so published as aforesaid, subject nevertheless to the Power of Appeal herein-after contained.

Appeal to
Quarter
Sessions.

LIII. And be it further enacted, That if any Person or Persons, Body or Bodies Politic, Corporate, Collegiate, or Ecclesiastic, shall think himself, herself, or themselves aggrieved by any thing done or omitted to be done in pursuance of this Act, (other than and except such Orders and Determinations of the said Commissioners as are herein ordered to be final and conclusive, and except in such Case where an Issue at Law shall be tried as herein mentioned,) then and in every such Case he, she, or they may appeal to the Justices, not interested in the Premises, at the General Quarter Sessions of the Peace which shall be holden for the said County of *Limerick* within Four Calendar Months next after Cause of Complaint shall have arisen; and giving to the said Commissioners or their Clerk Fourteen Days Notice in Writing of such Appeal, and of the Matters thereof, except with respect to the Accounts of the said Commissioners, which, notwithstanding the same shall have been examined and balanced and published as aforesaid, may be appealed against at any Time within Three Calendar Months from the Date of the said Award, on giving the said Commissioners or their Clerk such Notice as aforesaid; and the said Justices (not interested in the Premises) at their General Quarter Sessions are thereby required to hear and determine the Matter of every such Appeal, to make such Order therein, and award such Costs and Damages, as to them in their Discretion shall seem reasonable, and by their Order and Warrant to levy the Costs and Damages which shall be so awarded by Distress and Sale of the Goods and Chattels of the Party or Parties liable to pay the same, rendering the Overplus (if any), on Demand, to the

Owner

Owner or Owners and such Goods and Chattels, after deducting the reasonable Charges of such Warrant, Distress, and Sale; and the Determination of such Justices, shall be final and conclusive to all Parties concerned, and shall not be removed by Certiorari, or any other Writ or Process whatsoever, into any of Her Majesty's Courts of Record at *Dublin* or elsewhere; but in case such Appeal shall appear to the said Justice to be frivolous, vexatious, or without Foundation, then the said Justices shall award such Costs to be paid by the Appellant or Appellants as to the said Justices in their Discretion shall seem reasonable, and be levied in manner aforesaid.

LIV. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to prejudice, abridge, lessen, determine, or defeat the Right, Title, or Interest of the Lord of the said Manor of *Mount Southwell* otherwise *Knockbillingsby*, or of any other Person being or claiming to be Lords for the Time being of the said Manor, in or to the Rights and Services belonging or incident to the said Manor, but that such Lord for the Time being, and all and every Person claiming Interest for him as Lord of the said Manor, shall and may from Time to Time, and at all Times for ever hereafter, have, hold, and enjoy all Rents, Heriots, Forfeitures, Services, Fines, Court, Perquisites and Profits of Courts, Mines, Minerals, Quarries, Deodands, Waifs, Estrays, and other Rights, Royalties, and Jurisdictions and Privileges to the said Manor incident, appendant, appurtenant, or belonging, (save and except such Right to the Soil of the said Commons and Waste Lands and Grounds, and such Commonable Rights and Interests for which Satisfaction is intended to be made by virtue of this Act,) in as full, ample, and beneficial a Manner as the same have heretofore been held, exercised, and enjoyed, or might or could be if this Act had not been made and passed.

Rights of the Lords of the Manor not to be prejudiced.

LV. Saving always to the Queen's most Excellent Majesty, Her Heirs and Successors, and to all and every other Person and Persons, Bodies Politic, Corporate, or Collegiate, his, her, and their respective Heirs, Successors, Executors, and Administrators, all such Estate, Right, Title, and Interest (except such as are hereby intended to be barred, destroyed, or extinguished) as he, she, or they, or any of them, could or ought to have had and enjoyed in, to, or out of or in respect of the said Commons and Waste Lands so directed to be divided, allotted, and inclosed, in case this Act had not been made and passed.

General Saving.

LVI. And be it further enacted, That where in this Act any Word is used importing the Singular Number or the Masculine Gender only such Word shall be understood to include several Matters as well as one Matter, several Persons as well as one Person, and Females as well as Males; and where the Word "Corporation" shall be used the same shall be understood to mean any Body Politic, Corporate, or Collegiate, Civil or Ecclesiastical, Aggregate or Sole; unless in any of the Cases aforesaid it shall be otherwise specially provided, or there be something in the Subject or Context repugnant to such Construction.

Rules for the Interpretation of Words in this Act.

[*Private.*]

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LVII. And

8174
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1262

2° & 3° VICTORIÆ, *Cap.* 64.

The Act as
printed by
the Queen's
Printers to
be Evidence.

LVII. And be it further enacted, That this Act shall be printed by the several Printers to the Queen's most Excellent Majesty duly authorized to print the Statutes of the United Kingdom; and a Copy thereof so printed by any of them shall be admitted as Evidence thereof by all Judges, Justices, and others.

LONDON: Printed by GEORGE E. EYRE and ANDREW SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1839.