



ANNO QUINQUAGESIMO PRIMO

GEORGI III. REGIS.

Cap. 124.

An Act for Inclosing, Draining, and Embanking Lands
in *Braunton*, in the County of *Devon*.

[25th May 1811.]

WHEREAS there are within the Parish of *Braunton* in the County of *Devon*, several Open and Common Marshes, Commonable Places and Waste Lands, called by the several Names of *Braunton Marsh*, *Vellator*, and *South Burrows*, containing in the whole, by Estimation, One thousand Acres or thereabouts: And whereas the said Marshes, Commonable Places and Waste Lands, are situated within the several Manors of *Braunton Abbots*, *Branton Gorges*, *Braunton Gorges and Arundell*, and *Saunton*, or of some of them: And whereas the Right Honourable *William Viscount Courtenay* is Lord of the said Manor of *Braunton Abbots*; the Right Honourable *John Lord Rolle* is Lord of the said Manor of *Braunton Gorges*; *Joseph Davie Bassett Esquire*, is Lord of the said Manor of *Braunton Gorges and Arundell*; and *John Cleveland Esquire* is Lord of the said Manor of *Saunton*: And whereas divers Persons are entitled to Rights of Common in and upon the said Marshes, Commonable Places and Waste Lands, in right of their respective Estates: And whereas the said Marshes, Commonable Places and Waste Lands are subject to the Overflowings of the Tides, and the Occupation of them is therefore very disadvantageous and unprofitable to the Proprietors thereof: And whereas an Act was passed in the Forty-first Year of the Reign of His present Majesty, intituled, *An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating*

[Loc. & Per.]

tating

tating the Mode of proving the several Facts usually required on the passing of such Acts: And whereas the several Proprietors of, and Persons interested in the said Marshes, Commonable Places and Waste Lands, are desirous that the same may be embanked, inclosed, allotted and divided, and that specific Parts and Shares thereof may be assigned, allotted and awarded to each of them, according and in proportion to their several and respective Rights and Interests of and in the same; but such Embankment, Inclosure, Allotment and Division 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 King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That Charles Newell Cutcliffe of Marwood Hill in the said County of Devon, Esquire; Thomas Harding of Ilfracombe, in the said County, Esquire; and William Spurway of Barnstaple, in the said County, Clerk, and their Successors, to be elected in Manner hereinafter mentioned shall be, and they are hereby appointed Commissioners for embanking, setting out, dividing, allotting and inclosing the said Marshes, Commonable Places and Waste Lands, and for carrying this Act into Execution, subject to the Rules, Orders and Directions in this Act contained, and also subject to the Powers and Provisions of the said recited Act, except where the same are hereby varied or altered; and that all Acts, Matters and Things which shall be done and executed by any Two of the said Commissioners shall be, and the same are hereby declared to be, as good, valid and effectual, to all Intents and Purposes whatsoever, as if done and executed by all the said Commissioners.

Commis-
sioners.

Powers
vested in
Two Com-
missioners.

For choosing
new Com-
missioners in
case of Death
or Refusal
to act.

II. And be it further enacted, That when and as often as any One or more of the said Commissioners by this Act appointed, or to be elected in Manner hereinafter mentioned shall die, neglect or refuse to act, the surviving or acting Commissioner or Commissioners shall, from time to time, within Thirty Days next after such Death, Neglect or Refusal, by Writing under his or their Hand or Hands elect and appoint some other fit and proper Person (not interested in the said intended Division and Inclosure) to be a Commissioner in the Place and Stead of each Commissioner so dying, neglecting or refusing to act as aforesaid; and every such Commissioner to be so appointed, after taking the Oath prescribed in that Behalf in or by the said recited Act, shall have the same Power and Authority for carrying this and the said recited Act into Execution, as the Commissioner in whose Place he shall succeed was vested with; provided that Notice be given in the Parish Church of *Braunton* aforesaid upon some *Sunday* immediately after divine Service, of the Time and Place of Meeting to choose such new Commissioner or Commissioners at least Ten Days before such Meeting.

Allowance
to Commis-
sioners.

III. And be it further enacted, That out of the Monies which shall be raised for defraying the Expences of obtaining, passing and executing this Act, there shall be paid to each of the said Commissioners, as a Recompence for his Pains and Trouble, the Sum of Two Pounds Twelve Shillings and Sixpence, and no more, for each Day he shall be attending in the Execution of this Act, and in travelling to and from such Meetings; and at all their Meetings the said Commissioners shall defray their own Expences.

IV. And

IV. And be it further enacted, That the said Commissioners shall and they are hereby empowered and required to give or cause to be given Publick Notice in the Parish Church of *Braunton* aforesaid, upon some *Sunday* immediately after Divine Service, or by any Writing under their Hands, to be affixed on the principal Outer Door of the said Church, of the Time and Place of their First Meeting for executing the Powers hereby, and by the said recited Act vested in them, Ten Days at least before such Meeting, and the like Notice in the Newspaper called, *Trewman's Exeter Flying Post*, or in some other Newspaper usually circulated in the said County of *Devon*, of every subsequent Meeting of the said Commissioners to be by them held in pursuance of the Directions of this or of the said recited Act, at least Ten Days before each Meeting (Meetings by Adjournment, which it shall and may be lawful for the said Commissioners or any One of them from time to time to make, only excepted): Provided always, that if at any of the Meetings appointed to be holden as aforesaid, it shall happen that no more than One Commissioner shall attend, such Commissioner may adjourn such Meeting to such Time, not exceeding Ten Days from the Time of Adjournment, and to such Place, not exceeding Eight Miles from the Boundary of the said Parish of *Braunton*, as the said Commissioners shall think most convenient, and of which Adjournment the Commissioner making the same shall give Notice to the Absent Commissioners.

Notice of First and every other Meeting.

If at any Meeting only One Commissioner shall attend, he shall be at liberty to adjourn the same.

V. And be it further enacted, That all other Notices necessary or requisite to be made and given by the said Commissioners shall be so made and given by Advertisement in the said Newspaper, or in some other Newspaper usually circulated in the said County of *Devon*.

Other Notices how to be given.

VI. And be it further enacted, That the said Commissioners shall have Power, and they are hereby authorized to appoint One or more Clerk or Clerks to assist them in the Execution of the Powers of this and the said recited Act, and such Clerk or Clerks from time to time to remove, and another or others to appoint as to them shall seem meet; and also to appoint One or more Person or Persons to be a Surveyor or Surveyors, and to be employed by the said Commissioners in the Execution of this Act; but in case of his or their Death or Deaths, Incapacity or declining to act, then, and in either of such Cases, the said Commissioners shall and may appoint any other Person or Persons they may think proper to be their Surveyor or Surveyors.

Commissioners to appoint a Clerk and Surveyor.

VII. And be it further enacted, That the said Commissioners in ascertaining, setting out, determining, and fixing the Boundaries of the said Marshes, Commonable Places and Waste Lands, in Manner directed by the said recited Act, shall inquire into and determine what Inclosures have been taken, and what Encroachments have been made upon the said Marshes, Commonable Places and Waste Lands by this Act intended to be embanked; divided, allotted and inclosed; and all such Inclosures taken out, and Incroachments made upon or from any Part thereof, (except such Part or Parts as have been enjoyed for Twenty Years last past without Interruption,) shall be deemed Part and Parcel of the said Marshes, Commonable Places and Waste Lands hereby directed to be embanked, divided, and inclosed, and shall be embanked, divided and allotted accordingly.

Ancient Inclosures and Encroachments.

VIII. And

Commissioners to settle Disputes.

VIII. And be it further enacted, That if any Dispute or Difference shall arise between any of the Parties interested or claiming to be interested in the said Division and Allotments, touching or concerning the respective Rights and Interests which they or any of them shall have or claim to have in the same, or touching or concerning any other Matter or Thing relating to the said Embankment, Division and Allotments, it shall be lawful for the said Commissioners, and they are hereby authorized and empowered to examine into, hear, and determine the same: Provided always, that nothing herein contained shall authorize the said Commissioners to determine the Title to the said Marshes, Commonable Places and Waste Lands so to be embanked, divided and inclosed, or any Part thereof, or to any other Lands, Tenements or Hereditaments whatsoever.

Power to assess Costs.

IX. And be it further enacted, That in case the said Commissioners shall, upon the hearing and determining of any Claim or Claims, Objection or Objections, to be delivered to them in pursuance of this and the said recited 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, to settle, assess, and award such Costs and Charges, as they shall think reasonable to be paid to the Party in whose Favour any Determination of the said Commissioners shall be made, by the Person or Persons whose Claim or Claims, Objection or Objections, shall be thereby disallowed or over-ruled; and in case the Person or Persons who shall be directed by such Award to pay such Costs and Charges, shall neglect or refuse to pay the same within Ten Days after Demand made thereof, 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 whomsoever, to cause such Costs and Charges to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons so neglecting or refusing to pay the same, rendering the Overplus (if any) upon demand, to the Person or Persons, whose Goods and Chattels shall have been so distrained and sold, after deducting the Costs and Charges attending such Distress and Sale.

Power to try Rights at Law.

X. Provided always, and be it further enacted, That in case any Person or Persons interested or claiming to be interested in the said intended Embankment, Division and Allotments, shall be dissatisfied with any Determination of the said Commissioners, touching or concerning any Claim or Claims of Right of Common, or other Rights or Interests in, over or upon the Lands and Grounds hereby directed to be embanked, divided, allotted and inclosed, or any Part thereof, it shall be lawful for the Person or Persons so dissatisfied to proceed to a Trial at Law of the Matter so determined by the said Commissioners, at the then next or at the following Assizes to be holden for the said County of *Devon*, and for that Purpose the Person or Persons who shall be so dissatisfied with the Determination of the said Commissioners, shall, upon giving Ten Days Notice to the said Commissioners, of his, her or their Intention to bring such Action within Three Calendar Months next after such Determination shall be made, cause an Action to be brought upon a feigned Issue against the Person or Persons in whose Favour such Determination shall have been made, within Four Calendar Months next after the Determination

of

of the said Commissioners shall be so made; 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 appear thereto or file Common Bail, and accept of One or more Issue or Issues, whereby such Claim or Claims, and the Right or Rights thereby insisted on, may be tried and determined, such Issue or Issues to be settled by the proper Officer of the Court in which the said Action or Actions shall be commenced, in case the Parties shall differ about the same; and the Verdict or Verdicts which shall be given in such Action or Actions, shall be final, binding, and conclusive upon all and every Person and Persons whomsoever, unless the Court, wherein such Action or Actions shall be brought, shall set aside such Verdict or Verdicts, and order a new Trial to be had therein; which it shall be lawful for the Court to do, as is usual in such 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 in conformity thereto, and to allow or disallow the Claim or Claims thereby determined according to the Event of such Trial or Trials; Provided always, that the Determination of the said Commissioners touching such Claim or Claims of Right to the Soil of the said Common, Commonable Land and Pasture, or other Rights or Interests, in, over and upon the Lands and Grounds hereby directed to be embanked, divided, allotted and inclosed, or any Part thereof, which shall not be objected to, or being objected to, the Party or Parties objecting not causing such Action at Law to be brought and proceeded in as aforesaid, shall be final and conclusive upon all Parties.

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

Suits not to abate by Death of Parties.

XII. And be it further enacted, That if any Person or Persons by or for whom any Claim or Claims of Right of Common shall be made as by the said recited Act is directed, shall happen to die before the said intended Division shall be made and perfected, and the said Commissioners shall not have made their Award touching the same, then, and in such Case, the Powers and Authorities hereby and by the said recited Act given and vested in the said Commissioners shall not be anyways determined, suspended, or affected by such Death or Deaths, but that the said Commissioners shall and may proceed in and execute the said Powers and Authorities, and every of them, in such and the like manner as they could or might have done if such Person or Persons had not died; and that the Part or Parts, Share or Shares of the Marshes, Commonable Places and Waste Lands, which any Person or Persons so dying would have been entitled unto, shall be allotted and set out to the Person or Persons who shall be entitled to the same, according to the best of the Information or Knowledge of the said Commissioners; and such Person or Persons shall accordingly accept and fence, and have, hold and enjoy the same, according to the several Limitations, Trusts, Provisoos and Interests, anyways limited, declared, appointed or provided of and concerning the Premises, in respect whereof, he, she or they shall be entitled to such Part or Parts, Share or Shares of the said Marshes, Commonable Places, and Waste Lands.

Death not to impede the Execution of the Act.

If Parties die before the Action is brought, same to be carried on in their Names.

XIII. Provided always, and be it further enacted, That if any Person or Persons in whose Favour any such Determination as aforesaid shall have been made, and against whom any such Action or Actions might have been brought if living, shall die before any such Action or Actions shall have been brought, and before the Expiration of the Time hereinbefore limited for bringing such Action or Actions, it shall be lawful for the Person or Persons, Bodies Politick or Corporate, who might have brought such Action or Actions against the Person or Persons so dying, to bring the same within the Time so limited as aforesaid against such Person or Persons as if actually living, and to serve the Clerk to the said Commissioners with Process for commencing such Action or Actions, in the same Manner as the Party or Parties might have been served therewith if living; and it shall thereupon be incumbent on the Heir or Heirs, or other Person or Persons who shall claim the Benefit of such Determination as aforesaid, to appear and defend such Action or Actions in the Name or Names of the Person or Persons so dead, 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 such Parties shall be equally bound and concluded by the Event of such Action or Actions.

Persons in Possession not to be removed without due Course of Law.

XIV. Provided also, and be it further enacted, That nothing in this Act contained shall extend to enable the Commissioners to determine any Right between the Parties contrary to the Possession of any such Parties (except in Cases of Encroachments made within the Period of Twenty Years as herein-before mentioned); but in case the said Commissioners shall be of Opinion against the Right of the Person or Persons so in Possession, they shall forbear any Determination thereupon, until such Possession shall have been given up by such Person or Persons, or recovered from such Person or Persons by Ejectment or other due Course of Law.

Power for Commissioners to borrow Money.

XV. And be it further enacted, That it shall and may be lawful for the said Commissioners to borrow and take up at Interest of any Person or Persons willing to lend and advance the same, such Sum and Sums of Money as shall be necessary for defraying the Charges and Expences of passing this Act, and the Expences of executing the same and the said recited Act, and also such other Sum and Sums of Money as shall from time to time in the Judgment of the said Commissioners be necessary for defraying the Expences of inclosing, allotting and dividing such Marshes, Commonable Places and Waste Lands, respectively: which said Sum and Sums of Money so to be borrowed shall not exceed in the Whole, the Sum of Five Pounds for each and every Acre of the said Marshes, Commonable Places and Waste Lands.

Further Power for borrowing Money.

XVI. And be it further enacted, That it shall and may be lawful to, and for the said Commissioners to borrow and take up at Interest of any Person or Persons willing to lend and advance the same, such further Sum and Sums of Money as shall from time to time, in the Judgment of the said Commissioners, be necessary for defraying the Expences of embanking and draining such Marshes, Commonable Places and Waste Lands respectively; which said last-mentioned Sum and Sums of Money so to be borrowed shall not exceed in the whole the Sum of Eight Pounds for each and

and every Acre of the said Marshes, Commonable Places and Waste Lands.

XVII. And be it further enacted, That the several Sum and Sums of Money that shall be lent and advanced, or borrowed and taken up under this Act as aforesaid, shall, together with lawful Interest for the same, from the Time of borrowing thereof respectively, be a Charge upon the said Marshes, Commonable Places and Waste Lands, until the same shall be raised and discharged in such Manner as herein-after mentioned.

Borrowed Money to be a Charge on the Marshes.

XVIII. And be it further enacted, That the said Commissioners shall from time to time set out and allot such Parts and Parcels of the said Marshes, Commonable Places and Waste Lands as they shall judge sufficient in Value, when sold, to pay off and discharge all such Sum and Sums of Money as by virtue of the Powers herein contained shall have been from time to time borrowed and taken up at Interest, together with all such Interest as may be due thereon, and all Costs and Expences thereby incurred, and likewise all such other Sum and Sums of Money as will be necessary for paying off and discharging all other Charges and Expences which shall or may be incurred by the applying for and obtaining and passing this Act, and carrying the same and the said recited Act into Effect, and the surveying, measuring, planning, valuing, embanking, draining, dividing and allotting the said Marshes, Commonable Places and Waste Lands, and of inclosing and ring-fencing such Part or Parts thereof so intended to be sold in pursuance of this Act as aforesaid, (if they shall deem it necessary so to do,) and of inclosing and fencing such other Part or Parts of the said Marshes, Commonable Places and Waste Lands as hereinafter mentioned, and of making, scouring, widening and repairing all such ancient Bridges, Brooks, Ditches and Water-courses as shall be deemed necessary, and also the Costs, Charges and Expences of first forming and making such publick and private Roads as are directed to be made by the said recited Act, all which they are hereby authorized and required to do, and of preparing and inrolling their Award, and all other the necessary Charges and Expences arising and accruing in the Course of carrying the Powers herein and in the said recited Act contained, into full and complete Execution and Effect, and shall expose the said Allotment or Allotments to Sale by Auction or otherwise, in the Manner, and subject to the Directions and Regulations mentioned and contained in the said recited Act; and the said Commissioners shall, on Payment of the Purchase Money for such Allotment or Allotments so to be sold for the Purposes aforesaid, by Indentures under their Hands and Seals, to be by them executed in the Presence of and attested by Two or more credible Witnesses, convey, assure and confirm, by way of Lease and Release, the same Allotment or Allotments unto and to the Use of the Purchaser or Purchasers thereof, his, her or their Heirs and Assigns for ever, or unto such Person or Persons as such Purchaser or Purchasers shall direct or appoint, such Direction or Appointment to be in Writing under his, her or their Hand and Seal, or Hands and Seals (but such Allotment and Allotments so sold shall be subject to the Rates and Assessments herein-after directed to be made by the Inspector to be appointed in Manner as herein-after is mentioned, and to all the Provisions attending the same, unless the said Commissioners shall otherwise direct or agree) which they are hereby authorized and empowered to do.

Allotments for paying the Expences of this Act.

XIX. And

Overplus
how to be
disposed of.

XIX. And be it further enacted, That in case any Part or Parts of the said Marshes, Commonable Places and Waste Lands shall be sold for more Money than will be required for defraying such Charges and Expences aforesaid, then, and in such Case, such Surplus Money shall be applied in aid of the Rates and Assessments herein directed to be made by the Inspector to be appointed in pursuance hereof; or if the said Commissioners shall so direct, the same, or any Part or Parts thereof may be divided and apportioned between the several Proprietors of the Lands hereby directed to be embanked, drained, divided, allotted and inclosed, according to their several and respective Interests therein, and paid to them, in case they shall be seised in Fee Simple of their several Allotments, or otherwise such Purchase Money shall be paid into the Bank of *England* in Manner directed by the said recited Act, in those Cases wherein any Money is to be paid for the Purchase or Exchange of Lands, Tenements or Hereditaments, or any Timber or Wood growing thereon, and which Money ought to be laid out in the Purchase of other Lands, Tenements or Hereditaments to be settled to the same Uses.

If Money
not sufficient
how the
Expences are
to be paid.

XX. Provided always, and be it further enacted, That if the Monies to be produced by such Sale or Sales as aforesaid shall not be sufficient to pay all the Charges and Expences incident to and attending the applying for and obtaining and passing this Act, and carrying the same and the said recited Act into Effect, and of surveying, measuring, embanking, dividing and allotting the said Marshes, Commonable Places and Waste Lands, and of preparing, making, executing and inrolling the Award of the said Commissioners, and all other Charges and Expences attending the Execution of this and the said recited Act, then such Deficiency shall be borne, defrayed and paid by the respective Persons to whom the said Marshes, Commonable Places and Waste Lands shall be allotted, in proportion to the real Value of their respective Allotments, such Proportions to be settled and ascertained by the said Commissioners, and to be paid to such Person or Persons and at such Time or Times as the said Commissioners shall by Writing, to be affixed on the principal Outer Door of the Parish Church of *Braunton* aforesaid at least Ten Days previous to the Day of Payment, order and direct; and in case any Person or Persons shall refuse or neglect to pay his, her or their Share or Proportion of the said Deficiency as aforesaid, then the same shall be levied and recovered in the Manner directed by the said recited Act.

Exchanges
may be
made.

XXI. 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 whatsoever, within the Parish of *Braunton*, in lieu of and in Exchange for any other Lands, Tenements and Hereditaments whatsoever within the said Parish, or within any adjoining Parish, Hamlet, 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 Owner or Owners, Proprietor or Proprietors of the Lands, Tenements or Hereditaments which shall be so exchanged, whether such Owner or Owners, Proprietor or Proprietors shall be a Body or Bodies Politick, Corporate or Collegiate, or a Tenant or Tenants in Fee Simple or for Life, or in Fee Tail general or special, or by the Courtesy of *England*, or for Years determinable on a Life or Lives, or with the Consent of the
Guardians,

Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees, or Attornies of, or acting for any such Owners or Proprietors as aforesaid, who at the Time of making such Exchange or Exchanges shall be respectively Infants, Females Covert, Lunatics, or under any other legal Disability, or who shall be beyond the Seas, or otherwise disabled to act for themselves, himself, or herself, such Consent to be testified in Writing under the Common Seal of the Body Politick, Corporate or Collegiate, and under the Hands of the other consenting Parties respectively; and all and every such Exchange and Exchanges so to be made shall be good, valid and effectual in the Law to all Intents and Purposes whatsoever; Provided nevertheless, that no Exchange shall be made of any Lands, Tenements or Hereditaments held in right of any Church, Chapel or other Ecclesiastical Benefice, without the Consent testified in Writing 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.

XXII. And be it further enacted, That the Expences attending any Exchange or Partition of the Lands and Grounds by this Act intended to be embanked, divided, allotted and inclosed, which shall be made by virtue of this or the said recited Act, shall be borne and paid by the respective Parties making such Exchanges or Partitions, distinct and apart from the other Expences attending the Execution of this Act, in such Manner as the said Commissioners shall order and direct.

Expences of Exchanges to be borne by the Parties making them.

XXIII. And be it further enacted, That the said Commissioners, after they shall have set out and allotted the several and respective Parcels of the said Marshes, Commonable Places and Waste Lands for the Purposes aforesaid, and for making Roads, shall and they are hereby authorized and required to set out, allot and award so much of the said Marshes, Commonable Places and Waste Lands so intended to be embanked, divided, allotted and inclosed, as they shall think sufficient as and for Publick Stone and Gravel Pits, with a convenient Road or Roads to and from the same, to be used in common by the Proprietors of Lands and Estates within the said Parish of *Braunton*, and their Tenants, as well for their own necessary Uses as for the Repairs of the said Roads within the said Parish, and for Repairs of the Roads to be set out and allotted by the said Commissioners by virtue of this and the said recited Act.

Allotments for Gravel Pits.

XXIV. And be it further enacted, That the said Commissioners shall have full Power and Authority, and they are hereby directed, in the next Place, to divide, set out, allot and award all the Residue and Remainder of the said Marshes, Commonable Places and Waste Lands to be embanked, divided, allotted and inclosed by virtue of this Act, unto, between, and amongst the several Persons who at the Time of making such Division and Allotment shall be entitled to Land, Right of Common or other Property or Interest in the said Marshes, Commonable Places and Waste Lands respectively, in proportion to their respective Rights, Interests and Shares therein; and in making such Allotments the said Commissioners shall have due Regard to the Quantity, Quality and Situation of the Land so to be allotted, and also to the Situation of the Dwelling or Farm-houses and Estates of the several Persons to whom Allotments shall be made, so as to allot to them respectively their Lands as near or contiguous to such Houses and Estates respectively as shall be consistent with the general convenient Partition and Division of the Land to be inclosed by

Allotment of Residue.

virtue of this Act, and to the particular Common in respect of which such Allotment is made, so as that such Allotment shall be made in such particular Common only in which the Claimant has a Right or Interest.

Extinguishing Right of Common.

XXV. And be it further enacted, That the respective Allotments so to be assigned, set out and allotted unto and for the several Persons who shall be entitled to the same by virtue of this Act, shall be in full Bar and Compensation for his, her and their Right of Soil and Common, in, over and upon the said Marshes, Commonable Places and Waste Lands so intended to be divided and inclosed as aforesaid; and that from and immediately after the said Commissioners shall have so set out and allotted any Part or Parcel of the said Marshes, Commonable Places and Waste Lands to any Person or Persons in lieu of his, her or their Right and Interest of, in and to the same, or Right of Common in, over and upon such Part of the said Marshes, Commonable Places and Waste Lands so to be allotted, shall cease and be for ever extinguished; and the same, and every Part and Parcel thereof, shall be had, held and enjoyed by the several Persons to whom the same shall be respectively set out and allotted as aforesaid, as and for their several Property and Estates.

Allotments to be fenced.

XXVI. And be it further enacted, That the Allotments to be made as aforesaid shall be enclosed and fenced in, by and at the Expence of such Person or Persons, in such Manner, and at and before such Time and Times, and for ever afterwards shall be preserved, repaired and maintained in such Manner as the said Commissioners shall also by their said Award, order or direct.

Wills and Settlements not to be affected.

XXVII. Provided always, and be it further enacted, That nothing in this or in the said recited Act contained, shall extend or be construed to extend, to revoke, make void, alter or annul any Will or Settlement, or to prejudice any Person or Persons having any Jointure, Dower, Portion, Incumbrance or other Demand, out of, upon, or anyway affecting any of the Lands and Grounds hereby intended to be divided or inclosed, or which shall or may be exchanged by virtue of this, or the said recited Act; but that the several Lands and Grounds, so to be set out and allotted upon such Division and Inclosure, or which shall be taken in exchange; in pursuance of this or the said recited Act, shall immediately after such Allotment or Allotments, Exchange or Exchanges shall be made, remain and enure, to and for such Uses, Intents and Purposes, as the several Farms, Lands and Tenements, in lieu whereof such Allotment or Allotments, Exchange or Exchanges, to be made as aforesaid, now are, or would have been in case this Act had not been made.

Leases at Rack Rent.

XXVIII. And be it further enacted, That from and immediately after the Allotments hereinbefore directed to be made shall be marked and staked out, and the said Commissioners shall have directed the same to be entered upon by the Persons for whom the same shall be intended, or at such other Time or Times as the said Commissioners shall appoint, every Lease and other Agreement at Rack Rent subsisting, of all or any Part or Parts of the said Land or Right of Common in or upon the said Marshes, Commonable Places and Waste Lands, shall cease and be void; the Person or Persons who hath or have made any such Lease or Agreement, making such Satisfaction to his, her or their respective Lessee or Lessees, Tenant or Tenants as the said Commissioners shall ascertain as reasonable, and

and by the said Award, or any Writing under their Hands direct to be paid to such Lessee or Lessees, Tenant or Tenants on account thereof, or as an Equivalent for the same (except in such Cases where the Parties themselves shall have otherwise fixed or agreed concerning such Satisfaction); and that it shall be lawful for the said Commissioners, and they are hereby authorized, by Writing under their Hands, to ascertain and determine what Rent or Share, or Proportion of Rent shall be paid by the several Tenants of the Lands to be embanked, divided, allotted and inclosed by virtue of this Act, and of the Right of Common in and upon the same for their respective Holdings, to the respective Owners of the Premises, from the passing of this Act until the said Allotments shall be marked, staked out and entered upon as aforesaid, which Determination shall be binding and conclusive upon all such Tenants and Owners respectively; any Thing herein, or in such Lease or other Agreement contained, to the contrary notwithstanding.

XXIX. And be it further enacted, That all and every Person and Persons to whom, or for whose Use or Benefit any Allotment or Allotments shall be made by virtue of this Act in respect of any Lease or Leases for a Life or Lives, or for any Term or Terms of Years determinable on a Life or Lives, shall and they are hereby required, before such Person or Persons shall plough, break up for, or convert to Tillage such Allotment or Allotments, or any Part thereof, to bring into, bestow and expend upon every Acre thereof, and so in proportion for a less Quantity of Ground than an Acre, Forty Bushels of good Lime, or Two hundred Horse-loads or Seams of good rotten Stall Dung, and manage and manure the same, according to the Rules of good Husbandry; and after every such dressing, shall till, have and take Two Crops of Corn or Grain following; and those in annual Succession, and no more, without again dressing and manuring the same as aforesaid; and if any such Person or Persons shall plough, break up for, or convert to Tillage, any such Allotment or Allotments, or any Part or Parts thereof, without dressing and manuring the same as aforesaid, every Person and Persons so offending, and being thereof convicted before any One Justice of the Peace for the said County, on Confession, or on Proof of the Offence upon the Oaths of Two credible Witnesses, shall forfeit and pay any Sum not exceeding Twenty Pounds, for every Acre of Land so broken up and tilling, without such Dressing as aforesaid; and no Person or Persons shall be incompetent to give Evidence in the Matter aforesaid, by reason of his, her or their being a Proprietor or Occupier, Proprietors or Occupiers within, or an Inhabitant or Inhabitants of, such Parish, or otherwise interested in the said Marshes, Commonable Places and Waste Lands, or in the Allotment or Allotments to be made by virtue of this Act.

Regulating
the Course of
Husbandry.

XXX. And be it further enacted, That it shall not be lawful for any of the Proprietors, or any of their Tenants, to turn any Horses, Beasts, Sheep, Asses, Pigs or other Cattle, in any Ways, Lanes or Roads, on either Side whereof any New Fence or Fences shall be made, for the Space of Seven Years, commencing from the Day of the passing of this Act.

No Person to
turn Cattle
into any
Lanes or
Roads ad-
joining the
New Inclo-
sures.

XXXI. And be it further enacted, That no Person or Persons who shall occupy any of the Allotments to be made as herein directed, shall graze and keep Sheep and Lambs, in and upon such their Allotments, except

Regulating
the feeding
of Sheep.

except such Occupier do make, and during such Time sufficiently maintain, fence, or otherwise effectually guard the Young Quickset Hedges, on every Side of the Allotment or Allotments where such Sheep or Lambs shall be kept, from receiving any Damage therefrom.

Money advanced to be repaid with legal Interest.

XXXII. And be it further enacted, That if any of the Proprietors or Persons interested in the Marshes, Commonable Places and Waste Lands hereby directed to be embanked, divided, allotted and inclosed, or any Person or Persons, on his, her or their Behalf, shall advance and pay any Money in discharge of the Fees or other Expences of obtaining and executing this Act, the Money so paid and advanced shall be repaid and satisfied by the Direction of the said Commissioners, out of the Monies to be raised under this Act, together with lawful Interest for the same.

Commissioners' Accounts to be laid before Two Justices of the Peace.

XXXIII. And be it further enacted, That once at least in each and every Year during the Execution of this Act, (such Year to be computed from the Day of the passing thereof,) the said Commissioners shall and are hereby required to make a true and just Statement or Account of all Sums of Money, by them received and expended, or due to them for their own Trouble or Expences in the Execution of this Act; and such Statement or Account, when so made, together with the Vouchers relating thereto, shall be by them laid before any Two or more of His Majesty's Justices of the Peace for the said County of *Devon*, to be by them examined and balanced, and such Balance shall be by such Justices stated in the Book of Accounts to be kept in the Office of the Clerk to the said Commissioners; and no Charge or Item of such Account shall be binding on the Parties concerned, or valid in Law, unless the same shall have been duly allowed by such Justices.

Proprietors, &c. to pay their own Expences.

XXXIV. Provided always and be it further enacted, That the said Proprietors, their Attornies or Agents, shall pay their own Expences when they or any of them shall attend the said Commissioners at any of their Meetings to be held in pursuance of this Act.

Commissioners to make Banks, &c.

XXXV. And be it further enacted, That it shall and may be lawful for the said Commissioners to make, erect, support, alter, raise, cut, set up, and build, or cause to be made, erected, supported, altered, raised, cut, set up, and built, in, upon, through, or over any Part of the said Marshes, Commonable Places and Waste Lands, all such Cuts, Drains, Banks, Bridges, Dams, Headings, Outlets, Mill or Mills, Engines, Sluices and other Works, as they shall think necessary for the better embanking, inclosing, draining and preserving the same; and the said Works so to be done, or made and completed by the said Commissioners under and by virtue of this Act, shall be vested in and be the Property of the said Commissioners until the executing their Award, and until an Inspector, to be appointed as herein-after mentioned, shall have taken upon himself the Execution of his Office, and from thenceforth shall be vested in and be the Property of the Inspector for the time being, upon Trust nevertheless for the several Persons for the time being entitled to the said Marshes, Commonable Places and Waste Lands, so as aforesaid intended to be embanked, inclosed, allotted, and divided; and that the said Commissioners and Inspector, whilst such Works shall be so vested in them, shall have full Power and Authority over all and singular the Works

so to be made, and over all and singular the Banks, Bridges, Cuts, Drains, Headings, Outlets, Mill or Mills, Engines, Sluices, and other Works to be made or set up, maintained and kept in repair by the said Commissioners and Inspector respectively, and the same shall from time to time be cleansed, widened, deepened, altered, repaired, removed, supported, rebuilt and enlarged by them, in such Manner as they shall think necessary and expedient.

XXXVI. And be it further enacted, That no Action that shall be brought by or against the said Commissioners or Inspector shall cease or determine in consequence of any Commissioner or Inspector dying, becoming incapacitated or refusing to act, but the same Action shall be proceeded in as if such Circumstance had not happened.

If any Action is brought by or against any Commissioner, and he should die, Suit not to abate.

XXXVII. And be it further enacted, That the Owners of the said Marshes, Commonable Places and Waste Lands, shall within One Month from and after the said Commissioners shall have made and executed the Award directed to be made by the said recited Act, or sooner, if the said Commissioners shall so direct; assemble together at the Parish Church of *Braunton* aforesaid, or at some other Place, where Publick Meetings within the said Parish are commonly held, on some Day to be fixed on by the said Commissioners, at the Hour of Eleven in the Forenoon, (Notice of the Time and Place, and also of the Object of such Meeting having been given by the said Commissioners, Ten Days at least prior to the Time therein mentioned, in the Parish Church or Church-yard of *Braunton* aforesaid, on some *Sunday* next after Divine Service shall have been performed,) and shall also assemble on the Twenty-fifth Day of *March* then next following, and in every succeeding Year, unless such Day shall happen to be on a *Sunday*, and in that Case on the following Day, without any such Notice, at the Hour and Place at which such first-mentioned Meeting shall be appointed to be held, or at any other Hour or Place to be specified in a special Notice for that Purpose; and the major Part of the said Owners so assembled, shall at every such Meeting nominate and make out a List of at least Ten Persons, being Owners or Occupiers of the said Marshes, Commonable Places and Waste Lands, or any Part or Parts thereof, to serve the Office of Inspector, and shall deliver the same to the Constable or Tything-man of the said Parish, with an Order under the Hands of such major Part of the said Owners, and such Constable or Tything-man is hereby required to transmit, within Three Days after such Meeting, a Duplicate of such List to One of His Majesty's Justices of the Peace of the County of *Devon*, residing within the Hundreds of *Braunton*, *Fremington*, *Sherwill*, and *Southmolton*, or some or One of them, who is hereby authorized and required thereupon to issue his Summons directed to the Constable, Tything-man, or other proper Officer or Officers of the said Parish of *Braunton*, directing such Constable, Tything-man, or other proper Officer to summon the said Ten Persons so to be nominated to appear before him, or other of His Majesty's Justices of the Peace, at such Place as the said Justice shall appoint, situate within Eight Miles of the Boundary of the said Parish of *Braunton*, and at such Time as he shall fix on, being not less than Four, nor more than Thirty Days from the Time of issuing such Summons, and such Justice, (or if Two or more shall be present,) then Two or more of such Justices shall from the said Lists, according to his or their Discretion, by Warrant under his or their Hand

Inspector how to be appointed.

1814
1815
1816

and Seal, or Hands and Seals respectively, appoint One or more of such Persons so nominated as aforesaid, to serve the said Office of Inspector, which Appointment shall by such Constable or Tything-man as aforesaid be notified to every Person so appointed by the said Justice or Justices, by delivering to him a true Copy thereof, or leaving such Copy at his Dwelling-house or usual Place of Abode; and every Person so appointed, and accepting the said Office, shall be and continue to be Inspector, and be seised and possessed of the said Banks, Mounds, Fences, Sluices, Drains, Watercourses, and other Works hereby directed to be made, until One or more other Inspector or Inspectors shall be appointed to succeed him in Manner herein-after mentioned, and shall take upon himself and duly execute the said Office, and shall take the Oath following: that is to say,

‘ I *A. B.* do solemnly swear, [*or*, being One of the People called ‘ *Quakers*, do solemnly affirm] that I will, according to the best of my Ability, execute the Office of an Inspector, to which I am appointed by virtue of an Act passed in the Fifty-first Year of the Reign of His Majesty King George the Third, intituled, ‘ An Act, [*here set forth the Title of this Act*].’

And if any of the said Persons so to be nominated as aforesaid under and by virtue of the Powers herein contained, after having been duly summoned, shall refuse or neglect to appear, without some reasonable Excuse, at the Time and Place fixed on for that Purpose, or if any Person appointed to the said Office of Inspector, shall not within Six Days after being served with a Copy of the said Appointment, shew to One of the Justices signing such Appointment, sufficient Cause why he should not serve such Office, the Person or Persons so offending, shall forfeit and pay any Sum of Money, not exceeding Ten Pounds, and in such Case it shall and may be lawful, to and for the said Justice or Justices to nominate and appoint any One or more of the other Person or Persons named in the said Lists to be Inspector or Inspectors, in the Room or Stead of the Person or Persons so making default.

Appoint-
ment of New
Inspector.

XXXVIII. Provided always, and be it further enacted, That if Two Parts out of Three of the Persons so to be assembled for the Nomination of Inspector as aforesaid, shall agree in the Choice of any particular Person or Persons of Skill and Experience to serve in the said Office of Inspector, whether such Person or Persons be an Owner or Owners, Occupier or Occupiers in the said Marshes, Commonable Places and Waste Lands, or any Part thereof, or not, and in settling of a certain Salary for his or their Trouble therein, and shall return the Name of such Person or Persons, to One of His Majesty's Justices of the Peace as aforesaid, in Manner aforesaid, then, and in every such Case, the said Justice or Justices shall appoint such Person or Persons to be Inspector, whose Name or Names shall be so returned, and shall allow him the Salary mentioned in such Agreement; and in case any Inspector to be appointed under the Authority of this Act shall die, or become incapable of executing the said Office before another shall have been appointed to succeed him as in this Act mentioned, it shall and may be lawful for any One or more of such Justices, on Application to him or them made by any Three or more of the Owners of the said Marshes, Commonable Places and Waste Lands, or any Part thereof, to nominate and appoint One or more of the surviving Persons

Persons who were mentioned in the last List which shall have been made out and returned previous to such Death or Incapacity, as he or they shall think proper to execute the said Office, until the next yearly Meeting for appointing an Inspector as aforesaid; and if such deceased Inspector was allowed a Salary for executing the said Office, such Justice or Justices shall and may allow a like Salary to his Successor, in proportion to the Time he shall serve in the said Office, and if any more than One Person shall be appointed Inspector, all, any, or every Person or Persons so appointed shall be comprehended under the Word Inspector in every Part of this Act.

XXXIX. And be it further enacted, That for raising Money for defraying the Expences of keeping the said Banks, Cuts, Drains, Bridges, Dams, Headings, Outlets, Mill or Mills, Engines, Sluices and other Works, and also for paying the Salary or Salaries agreed to be paid to an Inspector, and discharging all other Expences which may be incurred in the carrying the Provisions herein contained into Execution, the said Inspector for the time being shall, and he is hereby authorized and required once in every Year, or oftener if he shall think it necessary, to rate and assess each and every Occupier of the said Marshes, Commonable Places and Waste Lands; in any Sum not exceeding Sixpence in the Pound upon or in respect of such Parts of the said Marshes, Commonable Places or Waste Lands as shall be in his or her Occupation, and shall receive and enforce the Payment of the Monies to be rated or assessed from time to time by the Ways and Means hereinafter expressed; and, the better to enable the said Inspector to ascertain and make such Rates or Assessments, the Churchwardens or Overseers of the Poor of the said Parish shall and they are hereby required, at all reasonable Times, to permit such Inspector or his Clerk or Agent to peruse and inspect the Rates and Assessments made for the Relief of the Poor of the said Parish for the current or preceding Year, and to take a Copy or Copies thereof; and every such Churchwarden or Overseer refusing to comply therewith shall forfeit and pay any Sum not exceeding Five Pounds for every Time he shall so refuse; and every such Rate or Assessment so to be made by the said Inspector shall be published, either by its being read in the Parish Church of *Braunton* aforesaid, on some *Sunday* immediately after Divine Service, or by the same, or a true Copy thereof, being affixed against one of the outer Doors of the said Parish Church on some *Sunday*, or by a Notice of such Rate or Assessment having been made being affixed against such outer Door on some *Sunday*, and such Rate or Assessment left in the Vestry Room of the said Parish Church on the same *Sunday* for publick Inspection; and no such Rate or Assessment shall be valid or effectual until it shall have been so published.

Expences of keeping up the Embankments.

XL. And be it further enacted, That no Rate or Assessment to be made as aforesaid by virtue of this Act shall be impeached or affected by reason of any Mistake or Variance in the Christian and Surname, or either of them, of any Person liable to any of the Duties, Rates or Assessments payable by this Act, nor by reason of any Mistake in the Description of any Lands or other Premises to be charged according to the Directions of this Act; but that all such Rates and Assessments shall be valid and effectual to all Intents and Purposes, notwithstanding any such Mistake or Variance, and the Duties shall be collected of the Person or Persons who, in case no such Mistake or Variance had arisen or been made, would have been liable to pay the same.

Assessments not to be evaded from a false Description.

XLI. And

Inspector to
keep Books
and Ac-
counts.

XLI. And be it further enacted, That the Inspector for the time being shall, and is hereby required carefully and diligently to collect or cause to be collected the several Rates, Assessments and Sums of Money directed and allowed to be received and taken within the Year for which he shall be appointed, and shall also inspect, examine, repair, continue, alter and renew the said Banks, Cuts, Drains, Bridges, Dams, Headings, Outlets, Mill or Mills, Engines, Sluices and other Works, and by and out of the Monies that shall come to his Hands as aforesaid, discharge the Expences and Charges attending the same, and all other necessary Charges and Expences that shall attend the Execution of this Act, and retain such Salary as shall have been agreed to be paid to himself; and shall keep One or more Book or Books, in which he shall fairly enter a just, true and fair Account of all such Money as come to his Hands by virtue and for the Purposes of this Act, and to whom and on what Occasion he shall have paid or applied the same or any Part thereof; and shall also enter in such Book or Books a List or Lists of all such Sum or Sums of Money as shall then remain due and owing from any Person or Persons in respect of the Rates, Assessments and Sums of Money to be collected, received or taken by the said Inspector by virtue of this Act, and shall produce such Books and Assessments under which each such Inspector shall have collected any Monies, at the Meeting of the Owners of the said Marshes, Commonable Places and Waste Lands, to be holden on the Day appointed for making a List of Ten Persons for serving the Office of Inspector as hereinbefore is mentioned, to the Intent that the said Accounts, Rates, Assessments and Lists may be inspected by the said Owners, or such of them as shall be present at such Meeting; and every such Inspector shall, after the said Books, Accounts, Rates and Assessments shall have been produced at such Meeting, lay the same before the Justice or Justices assembled at the Time and Place fixed on for naming and appointing a new Inspector as aforesaid; and then and there verify such Account and every Part thereof upon Oath, if required, and such Justice or Justices may allow such Account if he or they find it just; and in case any Articles contained in such Accounts shall be objected to by any One or more of the said Owners, and shall not be explained and proved to the Satisfaction of the said Justice or Justices, he or they may disallow the same; and whenever the said Accounts shall be so settled and allowed, or disallowed as aforesaid, all such Books, Accounts, Rates and Assessments shall be transmitted to such Person or Persons as the said Owners or Occupiers shall at their yearly Meeting appoint; and the Inspector shall forthwith deliver a Duplicate of such Books, Accounts, Rates and Assessments, together with all Sums of Money and other Things that shall remain in his Hands to the succeeding Inspector, or retain the same in their or his Hands, in case he shall be continued in Office until the Time for his again rendering an Account, when he shall again render a true and just Account thereof; and it shall and may be lawful for the succeeding Inspector, and he is hereby authorized and required to recover, collect and receive all such Sum and Sums of Money as shall be due and owing as aforesaid, by all such Ways and Means, as fully and effectually to all Intents and Purposes as the preceding Inspector could, might or ought to have recovered, collected or received the same; and in case any Inspector shall neglect to provide such Book or Books, or to enter such respective Accounts and Lists therein, or to deliver the said Book or Books, and such Duplicate thereof, and such Rates, Assessments and other Things as aforesaid, he shall for every such Offence forfeit

feit any Sum not exceeding Ten Pounds; and in case he shall make Default in paying or accounting for the Money so remaining in his Hands, within the Time, and according to the Directions aforesaid, he shall forfeit Double the Value of the Money which shall be adjudged by the said Justices to be in his Hands; and in case any such Inspector shall die before such respective Accounts and Lists shall be made out, or such Monies, Books, Accounts, Estimates, Rates and other Things shall be so delivered and paid, the Executors or Administrators of such Inspector shall make out, pay and deliver the same in like Manner; and under the like Penalty as such Inspector is hereby made subject and liable to.

XLII. Provided always, and be it further enacted, That if any Person or Persons shall think himself or themselves aggrieved by any Rate or Assessment which shall be made in pursuance of this Act, every such Person or Persons may appeal to the Quarter Sessions of the Peace to be holden in and for the County of *Devon*, next after the Rate or Assessment complained of shall have been published as herein-before directed, he or they first giving at least Ten Days Notice in Writing of his or their Intention to bring such Appeal, and of the Matter thereof, to the said Inspector, and within Three Days after such Notice entering into a Recognizance before some Justice of the Peace for the said County, with Two sufficient Sureties conditioned to try such Appeal, and abide the Order of and pay such Costs as shall be awarded by the Justices at such Sessions; and such Justices, upon due Proof of such Notice being given as aforesaid, and the entering into such Recognizance, shall hear and finally determine the Cause and Matter of such Appeal in a summary Way, and award such Costs, recoverable as in Cases of Distress herein-mentioned, to the Party appealing or appealed against, as they shall think proper, and their Determination thereon shall be final, binding and conclusive to all Parties, and to all Intents and Purposes: Provided always, that upon all Appeals from any of the Rates or Assessments to be made or imposed by the Authority of this Act, the said Justices of the Peace in their said Session (where they shall see just Cause of Relief) shall and are hereby empowered to amend the said Rates or Assessments in such Manner only as shall be necessary for giving Relief to the Person or Persons so appealing, without altering such Rates or Assessments with respect to any other Person or Persons mentioned in the same: Provided always, that in Cases where the Rate or Assessment complained of shall not have been published Twenty Days at least before the next Sessions, the Party thinking himself or herself aggrieved may appeal to the Quarter Sessions following instead of the next Sessions.

Appeal to the Quarter Sessions for being over-rated.

XLIII. And be it further enacted, That all and every the Tenants and Occupiers at Rack Rent of the said Lands and Grounds which shall be assessed or rated by virtue of this Act, shall pay, and they are hereby authorized and required to pay all and every such Sum and Sums of Money as shall be assessed or rated on their respective Lands and Grounds in their several Occupations, and to deduct and retain out of his, her or their Rent all such Sum and Sums of Money as he, she or they shall so respectively pay as aforesaid; and the several and respective Landlords or Owners of such Lands or Grounds are hereby required to allow such Deductions and Payments upon the Receipt of the Residue of their Rents; and that every such Tenant or Occupier paying such Rate or Tax shall

Tenants at Rack Rent to pay the Rates assessed.

be acquitted and discharged of so much Money as the said Rate or Tax so paid by him, her or them shall amount to, as fully and effectually as if the same had been actually paid to his, her or their Landlord or Landlords.

Power of
Distress for
the Rates.

XLIV. And be it further enacted, That in case any Owner or Owners, or Tenant or Tenants, or Occupier or Occupiers of the said Marshes, Commonable Places and Waste Lands, or any Part or Parts thereof, shall make Default in Payment of the Whole or any Part of the Sum or Sums of Money assessed, rated, taxed or charged upon him, her or them, for or in respect of the same, and shall continue in such Default by the Space of Twenty Days next after the Time appointed by such Rate or Assessment for Payment thereof, it shall and may be lawful for the Inspector or other Person or Persons authorized to collect such Taxes respectively, by Warrant under the Hand and Seal of any Justice of the Peace for the said County, which Warrant such Justice is hereby empowered and enabled to grant on the Oath of such Inspector, or such other Person or Persons, that such Sum or Sums of Money is or are due and owing as aforesaid, to enter into and upon all or any Part of the Lands or Grounds so rated, taxed or charged as aforesaid, and into and upon all or any Messuages or Tenements wheresoever situated, in the Occupation of the Person in Default, and to distrain all or any of such Goods, Chattels or Cattle as shall be there found, and to impound the Goods, Chattels or Cattle so distrained on any Part of the Messuages or Lands whereon the same should be found, or otherwise to take, lead, drive, carry away and keep the same for the Space of Five Days, leaving Notice in Writing of the Cause of such Distress or Distresses at the Messuage or Tenement, Messuages or Tenements, or in some conspicuous Part of the Lands or Grounds upon which such Distress shall be taken, or otherwise at the usual Place or Places of Abode of the Owner or Owners of such Goods, Chattels or Cattle; and if the Owner or Owners of such Goods, Chattels or Cattle so distrained shall not pay the Sum or Sums of Money so rated, taxed, charged and distrained for as aforesaid, together with the Costs and Charges of such Warrant, and of taking such Distress, and of keeping and maintaining the same, or replevy the Goods, Chattels and Cattle so distrained, according to the Laws now in force for Non-payment of Rent within the said Five Days, that then the said Goods, Chattels and Cattle so distrained shall be appraised by Two or more indifferent Persons, to be sworn by the Constable or Headborough of the Parish or Place where such Distress shall be made, (who is hereby authorized and required to administer an Oath for that Purpose) according to the best of their Judgment, and that after such Appraisement as aforesaid, the said Goods, Chattels or Cattle shall be sold by the said Inspector or other Person or Persons as aforesaid, for Payment of the Sum or Sums of Money so rated, taxed, charged and distrained for, and of the said Costs and Charges of appraising and selling such Distress; and that the Overplus arising from such Sale, (if any,) after Payment of the said Sum or Sums of Money shall be returned, on Demand, to the Owner or Owners of such Goods, Chattels or Cattle.

Distress may
be followed.

XLV. And be it further enacted, That in all Cases where no sufficient Distress can be found upon such Lands whereon to levy the Rates or Assessments which shall be in Arrear in respect thereof by virtue of this Act, it shall and may be lawful for the Inspector to be appointed by virtue
of

of this Act, or other Person as aforesaid, to levy all and every the said Rates or Assessments in Arrear, together with all the Charges and Expences of levying the same, upon any Goods or Chattels of the Person or Persons so occupying any Lands chargeable with any such Rates or Assessments, and all Arrears as aforesaid, whensoever and wheresoever such Goods and Chattels shall be found; and in case no sufficient Distress can be made upon any Goods and Chattels of any such Person or Persons so occupying any of the said Lands, chargeable with any such Rates or Assessments which shall then be in arrear, then upon the Goods or Chattels of any Person or Persons owning any such Lands or Grounds, whensoever and wheresoever the same shall be found, together with all Charges of levying the same, such Warrant being first backed or countersigned by some Justice of the Peace of the County, City or Place, in which such Goods and Chattels shall be found, in case such Goods and Chattels shall be found out of the Jurisdiction in which such Warrant shall have been granted.

XLVI. And whereas it may sometimes happen that some Parts of the said Marshes, Commonable Places and Waste Lands may be untenanted or unoccupied for a considerable Time, and that no Distress can be taken thereon for levying the Rates or Assessments due in respect of the same, therefore, be it further enacted, That where any of the said Rates or Taxes shall be in arrear and unpaid by the Space of One Calendar Month, and no sufficient Distress can be found upon the Lands and Grounds charged therewith, then, and in every such Case, the said Inspector, with the Consent of any Two of the said Justices of the Peace, shall have full Power and Authority to let so much of the said Lands and Grounds, upon which any Rate or Assessment shall be in arrear, as shall be judged sufficient to raise the same for such Term or Terms of Years, not exceeding Fourteen Years, at such Rent and Rents, and upon such Terms and Conditions, as to the said Inspector shall seem meet, and to apply the Rent or Rents arising therefrom in Payment and Discharge of all such Rates and Assessments, and also the Costs, Charges and Expences of advertising and letting the said Lands or Grounds as aforesaid.

Lands may be let for Recovery of Rates.

XLVII. Provided always, and be it further enacted, That in all Cases where any Lands or Grounds shall, by virtue of the Provisions hereinbefore contained, be let for the Recovery of the said Rates or Assessments due thereon, such Lands and Grounds shall, after the Expiration of the Term for which the same shall be so let, and the Payment of the said Rates or Assessments, and all Expences incurred by the said Inspector, or otherwise, under this Act, relating to the letting of the said Lands, (and which the said Inspector is hereby authorized and required to raise out of any such Rent or Rents, Fine or Fines, Premium or Premiums arising and received from or in respect of such Lands and Grounds,) revert to the the original Owner or Owners, Proprietor and Proprietors thereof, and be as fully and effectually vested in him, her or them, to all Intents and Purposes whatsoever, as if such Lands or Grounds had never been let.

Lands let for the Payment of Rates to revert to the Owners when Amount of Rates shall have been recovered.

XLVIII. And be it further enacted, That the said Inspector shall cause Notice to be given to the Owner or Proprietor, Owners or Proprietors of the Lands so to be let, of his or her Intention to let the same, by leaving such Notice in Writing at his, her or their usual or last Place or Places

Notice to be given to Owners of Land let for Recovery of Rates.

of Abode, if such Place or Places of Abode be known to the Inspector; and if not, then by affixing a Copy of such Notice against the Church Door of the said Parish of *Braunton* on some *Sunday*; at least Ten Days before such letting.

Distress not
unlawful for
want of
Form.

XLIX. And be it further enacted, That where any Distress shall be made for any Rate, Assessment, Sum or Sums of Money to be levied by virtue of this Act, or for any Penalty incurred on Non-payment thereof as aforesaid, the Distress itself shall not be deemed unlawful, nor the Party or Parties making the same be deemed a Trespasser or Trespassers on account of any Defect or Want of Form in the Rate or Assessment to be made, or in the Information, Summons, Conviction, Warrant of Distress, or other Proceeding relating thereto: nor shall the Party or Parties distraining be deemed a Trespasser or Trespassers *ab initio*, on account of any Irregularity which shall be afterwards done by the Party or Parties distraining; but the Person or Persons aggrieved by any such Irregularity shall and may recover Satisfaction for the Special Damages in an Action upon the Case.

Value of
Property by
Numbers to
be ascertain-
ed by the
Poor Rates.

L. And be it further enacted, That in all Cases in which any Number of the Owners of the said Marshes, Commonable Places and Waste Lands are to decide, such Number shall be in respect of the Value of the said Marshes, Commonable Places and Waste Lands, of which they are respectively such Owners, without regard to the Quality or Nature of the Interest of the Persons voting; such Value before a Rate or Assessment shall be made by the said Inspector, to be ascertained and settled by the said Commissioners in case any Question or Dispute shall arise concerning the same, and for ever afterwards shall be ascertained by the Rates or Assessments to be made by the Inspector for the time being.

Penalty on
Persons in-
juring the
Banks.

LI. And be it further enacted, That if any Person or Persons shall wilfully and maliciously, burn, cut, throw down, break down, or otherwise injure or destroy, any Bank, Dam, Flood-gate, Tunnel or Sluice, or any other Work to be erected, supported, maintained or used by virtue of this Act, or of the said recited Act, for embanking or draining the said Marshes, Commonable Places and Waste Lands, every Person so offending, and being thereof convicted, shall be subject and liable to the like Pains and Penalties as in the Cases of Felony; and the Court by or before whom such Person shall be tried and convicted shall hereby have Power and Authority to cause such Person to be punished in like Manner as Felons are directed to be punished by the Laws and Statutes of this Realm; or, in mitigation of such Punishment, such Court may, if they think fit, award such Sentence as the Law directs in Cases of Petty Larceny.

Penalties on
Hogs being
suffered to
be on or
near the
Banks.

LII. And be it further enacted, That if any Hogs or Swine shall at any Time after the passing of this Act be found running at large upon or near the Banks hereby authorized to be made, or any of them, the Owner or Owners of such Hogs and Swine, shall forfeit and pay for every such Hog or Swine so found on or near any of the said Banks, any Sum not exceeding Ten Shillings *per* Head for every Time such Hog or Swine shall be so found thereon, or near the same.

LIII. And

LIII. And be it further enacted, That all Fines, Penalties and Forfeitures inflicted by this Act (the levying and recovering whereof is or are not herein particularly directed) shall in case of Non-payment thereof, on Conviction of the Offenders respectively, on his, her or their Confession, or on the Evidence of any One or more credible Witness or Witnesses, before any Justice or Justices of the Peace for the County or Place wherein the Offence shall be committed, or the Offender shall be or reside, be levied by Distress and Sale of the Goods and Chattels of the Offender or Offenders, by Warrant under the Hand and Seal of such Justice or Justices; and every such Justice or Justices is and are hereby authorized and required to examine Witnesses upon Oath, and hear and determine the same; and all such Fines, Forfeitures and Penalties, (the Application whereof is not herein particularly directed,) shall, until the Execution of the Award of the said Commissioners, be paid into the Hands of the Clerk or Treasurer to the said Commissioners, and after the Execution of such Award into the Hands of the Inspector for the time being, and shall be applied and disposed of for the Purposes of this Act; and the Overplus of the Money raised by such Distress and Sale, after deducting the Fines, Penalties and Forfeitures, and the Expences of such Distress and Sale, shall be rendered on demand to the Owner of the Goods and Chattels so distrained; and for Want of sufficient Distress, and in case the Fine, Penalty or Forfeiture, shall not be forthwith paid, it shall be lawful for the said Justice, by Warrant under his Hand and Seal, to commit any such Offender to the Common Gaol or House of Correction for the said County, there to remain without Bail or Mainprize, for any Time not exceeding Three Calendar Months, unless such Fine, Penalty or Forfeiture, and all reasonable Charges attending the Recovery thereof, shall be sooner paid and satisfied.

Fines, Penalties and Forfeitures to be levied by Distress.

LIV. And, for the more easy and speedy Conviction of Offenders against this Act, be it further enacted, That every Justice of the Peace before whom any Person shall be convicted of any Offence against this Act, shall and may Cause the Conviction to be drawn up according to the following Form; *videlicet*,

Form of Conviction.

“BE it remembered, That on the _____ Day of _____
 “ in the Year of our Lord _____ is convicted
 “ before _____ of His Majesty’s Justices of the Peace for the
 “ County of _____ [specifying the Offence, and Time,
 “ and Place, when and where committed, as the Case may be] contrary to
 “ the Act of Parliament passed in the Fifty-first Year of the Reign of
 “ King George the Third, intituled, “ An Act [here set forth the Title of
 “ this Act]. Given under my Hand and Seal [or, our Hands and Seals]
 “ the Day and Year first above-mentioned.”

LV. And be it further enacted, That if any Action, Suit or Information shall be commenced or prosecuted against any Person or Persons for any Thing to be done in pursuance of this Act, every such Action or Suit shall be commenced within Six Calendar Months next after the Fact committed, and shall be laid or brought in the County of *Devon*, and not elsewhere; and the Defendant or Defendants in such Action or Suit shall and may plead the General Issue, and in Replevin may justify and avow by virtue of this Act, and may give this Act and the Special Matter in Evidence, without specially pleading the same, otherwise than as afore-

Limitation Actions.

said, at any Trial to be had thereupon, and that the Fact alleged in such Action or Suit to have been done was done in pursuance of and by Authority of this Act; and if the same shall appear to have been so done, or if any Action or Suit shall be brought after the Time before limited for bringing the same, or shall be brought in any other County or Place than as aforesaid, then the Jury shall find for the Defendant or Defendants, Avowant or Avowants; or if the Plaintiff or Plaintiffs shall become nonsuited, or forbear Prosecution, or discontinue his, her or their Suit or Suits, or if any Verdict shall pass against him, her or them upon a Demurrer or otherwise, then, and in any of the said Cases, the Defendant or Defendants, Avowant or Avowants in such Action or Actions shall recover Double Costs, for which he, she or they shall have like Remedy as where Costs by Law are awarded.

Justices though interested may act as Justices.

LVI. And be it further enacted, That in all Cases any Justice of the Peace may act as such in the Execution of the Powers herein contained, notwithstanding he may be an Owner or Occupier, or otherwise interested in the said Marshes, Commonable Places and Waste Lands, or any Part or Parts thereof.

Plaintiffs not to recover without Notice being given of Intention to bring Actions.

LVII. And be it further enacted, That no Plaintiff or Plaintiffs shall recover in any Action to be commenced against any Person or Persons for any Thing done in pursuance of this Act, unless Notice in Writing shall have been given to the Defendant or Defendants, Thirty Days before such Action shall be commenced, of such intended Action, signed by the Attorney for the Plaintiff or Plaintiffs, specifying the Cause of such Action; nor shall the Plaintiff or Plaintiffs recover in any such Action if Tender of sufficient Amends hath been made to him, her or them, or to his, her or their Attorney, by or on the Behalf of the Defendant or Defendants, before such Action brought; and in case such Tender shall have been made, it shall and may be lawful for the Defendant or Defendants in any such Action by Leave of the Court, after such Action shall have been brought, at any Time before Issue joined, to pay into Court such Sum of Money as he, she or they shall think fit; whereupon such Proceedings, Order and Judgment shall be made and given in and by such Court, as in other Actions where the Defendant is allowed to pay Money into Court.

Recited Act 41 G. 3. to be in force.

LVIII. And be it further enacted, That the said recited Act of the Forty-first Year of His present Majesty, and all the Clauses, Provisions, Powers and Authorities therein contained, shall be, and the same are hereby declared to be, in full Force and Effect, in respect to the several Matters and Things in this Act contained, so far as the same are applicable, as fully and effectually, to all Intents and Purposes whatsoever, as if the same were herein re-enacted.

Award

LIX. And be it further enacted, That the Award to be made by the said Commissioners, when inrolled in Manner directed by the said recited Act, shall be deposited in the Parish Church of *Braunton* aforesaid.

Appeal to Quarter Sessions.

LX. And be it further directed, That if any Person or Persons shall think himself, herself or themselves aggrieved by any Thing done in pursuance of this, or the said recited Act, (other than and except such

Orders and Determinations of the said Commissioners as are by the said recited Act or this Act, directed to be final, binding and conclusive, and except in such Cases, where an Issue at Law shall be tried as hereinbefore mentioned, and except in Cases of Rates or Assessments, against which an Appeal is herein before given) then in every such Case, he, she or they may appeal to the General Quarter Sessions of the Peace, which shall be holden for the said County of *Devon*, within Six Calendar Months next after the Cause of Complaint shall have arisen, on giving to the said Commissioners, and to the Party and Parties concerned Twenty Days Notice in Writing of such Appeal, and of the Matter thereof; and the Justices (not interested in the Premises) in their said General Quarter Sessions are hereby required to hear and determine the Matter of every such Appeal, and to make such Order, and award such Costs therein, as to them in their Discretion shall seem reasonable, and by their Order or Warrant to levy the Costs which shall be so awarded by Distress and Sale of the Goods and Chattels of the Party or Parties liable to pay the same, rendering the Overplus (if any) upon demand to the Owner or Owners of such Goods and Chattels, after deducting the reasonable Charges of such Warrant, Distress and Sale; and the Determination of the said Justices shall be final and conclusive to all Parties concerned, and shall not be removed or removable by *Certiorari*, or any other Writ or Process whatsoever, into any of His Majesty's Courts of Record at *Westminster* or elsewhere; but in case such Appeal shall appear to the said Justices to be frivolous, vexatious, or without Foundation, then the said Justices shall award such Costs to be paid by the Appellant or Appellants as to them in their Discretion shall seem reasonable, and to be levied in Manner aforesaid.

LXI. Saving always to the King's most Excellent Majesty, his Heirs and Successors, to the Lord of the Hundred of *Braunton* for the time being, to the several Lords of the said Manors for the time being, and their Heirs respectively, and to all and every other Person or Persons, Body or Bodies Corporate or Collegiate, his, her and their Heirs, Successors, Executors and Administrators, (except the several Persons, to whom any Allotment or Allotments shall be made in pursuance of this Act, for and in respect of such Rights and Interests as are hereby meant and intended to be barred, destroyed and extinguished, and all Persons respectively claiming under them, or in Remainder after them,) all such Manorial and other Rights, Estates, Titles and Interests, as they, every or any of them could or ought to have had and enjoyed, in, to or out of the Lands and Grounds hereby directed to be divided, allotted and inclosed, before the passing of this Act, or in case this Act had not been made or passed, any Thing herein or in the said recited Act contained to the contrary notwithstanding.

General
Saving.

LXII. And be it further enacted, That this Act shall be deemed and taken to be a Publick Act, and shall be judicially taken Notice of as such by all Judges, Justices and others, without being specially pleaded.

Publick Act.

