



ANNO SEXTO

GEORGIIV. REGIS.

Cap. clxxxviii.

An Act to amend an Act of the Fifty-third Year of His late Majesty, for embanking, inclosing, and draining Lands in the Parish of *Wainfleet Saint Mary* in the County of *Lincoln*.

[27th June 1825.]

WHEREAS by an Act made in the Fifty-third Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for embanking, inclosing, and draining Lands in the Parish of Wainfleet Saint Mary in the County of Lincoln*, 53G.3.c.201. after reciting that there were within the Parish of *Wainfleet Saint Mary*, in the County of *Lincoln*, certain open and unembanked Salt Marshes, and that the said Marshes were frequently overflowed with the Tides, whereby the Pasturage thereof was greatly injured, and the Cattle feeding thereon were liable to be drowned, and that it would be of great Advantage to all the Proprietors and Parties interested therein if the said Marshes were embanked and inclosed, and Provision made for the future Support of the Banks thereof; and further reciting, amongst other Things, that there were within

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the said Parish of *Wainfleet Saint Mary* certain Commonable Lands and Waste Grounds, containing together Five thousand eight hundred Acres, which might be much improved by Drainage, and that the Mayor and Commonalty and Citizens of the City of *London*, Masters, Guardians, and Governors of the House and Hospital called *Bethlehem*, were the Impropriators of *Wainfleet Saint Mary*, and were entitled to all Tithes arising and payable within the said Parish, and that the said Mayor and Commonalty and Citizens, *William Powlëtt Powlett* Esquire, the Honourable *Peter Robert Drummond Burrell*, and others, were the Owners and Proprietors of or interested in the said open and unembanked Salt Marshes, Commonable Lands, Waste Grounds, and ancient Inclosures; it was among other Things enacted, that *Anthony Bower* of the Close of *Lincoln* in the County of *Lincoln*, Gentleman, and *John Burcham* of *Coningsby* in the said County, Gentleman, and their Successors, to be elected in the Manner therein-after mentioned, should be appointed Commissioners for embanking, allotting, inclosing, and draining all the said Marshes, commonable and other Lands and Grounds in the said reciting Act mentioned, and for carrying the said reciting Act into Execution as therein mentioned; and it was thereby further enacted, that *Joshua Crowther* of *Tickhill* in the County of *York*, Gentleman, and his Successors, to be appointed as therein-after mentioned, should be appointed to act as an Umpire touching any Difference of Opinion which should arise between the said Commissioners in the Execution of the said reciting Act, or the Act therein recited, and that all such Differences of Opinion should be stated in Writing, and referred by the said Commissioners to the said *Joshua Crowther* or his Successors, within Twenty-one Days next after any such Difference should have arisen, who should determine the same, and deliver to the said Commissioners, or one of them, such his Determination in Writing, the Name of the said Umpire being thereto signed, within Two Calendar Months from the Time any such Difference should be referred to him, and the Judgment and Determination of the said *Joshua Crowther*, or his Successors therein, in all Cases so referred to him, should be deemed and taken to be the Judgment and Determination of the said Commissioners, and they the said Commissioners should and they are thereby required to conform thereto; and it was thereby further enacted, that if the said *Anthony Bower*, or any other Commissioner to be appointed in his stead as therein-after mentioned, should, before the Execution of all the Powers and Authorities thereby vested in him, die, refuse, or become incapable to act in the Premises, then and in every such Case it should be lawful for the said Masters, Guardians, and Governors of the said House and Hospital called *Bethlehem*, by Writing under their Common Seal being thereto affixed, within Twenty-one Days next after such Refusal, Death, or Incapacity to act should be made known to them, by Notice in Writing from the surviving or remaining Commissioner, (which Notice such Commissioner was thereby required to give), to appoint one other Commissioner (not interested in the Premises) in the Stead of the said *Anthony Bower*, or any other

Commissioner to be appointed in his Stead, who might die, refuse, or become incapable to act as aforesaid; and if the said *John Burcham*, or any other Commissioner to be appointed in his Stead as therein-after mentioned, should die, refuse, or become incapable to act in the Premises, then and in every such Case it should be lawful for the Honourable *Peter Robert Drummond Burrell*, or his Heirs, by Writing under his or their Hands, within Twenty-one Days next after such last-mentioned Death, Resignation, or Incapacity to act should be made known to him or them in manner aforesaid by the surviving or remaining Commissioner, to appoint one other Commissioner not interested in the Premises in the Stead of the said *John Burcham*, or such other Commissioner to be appointed in his Stead so dying or refusing, or becoming incapable to act as aforesaid; and in case the said Masters, Guardians, and Governors, or the said *Peter Robert Drummond Burrell*, as the Case might happen, should at any Time make Default in appointing any such future Commissioner as therein-before mentioned, within Twenty-one Days next after any such Death, Refusal, or Incapacity to act should be made known as aforesaid, then the surviving or remaining Commissioner should, and he was thereby required from Time to Time, by Writing under his Hand, within Ten Days after the Expiration of said Twenty-one Days allowed to the respective Parties for naming such future Commissioner as aforesaid, to appoint one other Commissioner not interested in the Premises, in the Room of any such Commissioner so dying, refusing, or becoming incapable to act as aforesaid; and if the said *Joshua Crowther*, or any Umpire to be appointed in his Stead as therein-after mentioned, should die, refuse, or become incapable to act in the Premises, then and in every such Case, one other Person as Umpire, not interested in the Premises, should be appointed in the Stead of the said *Joshua Crowther*, or such other Umpire so dying, refusing, or becoming incapable of acting as aforesaid, by *William Powlett Powlett* Esquire, or his Heirs, within Twenty-one Days next after such last-mentioned Death, Refusal, or Incapacity to act as aforesaid should be known to him or them, and every Commissioner or Umpire so to be appointed should have the like Powers and Authorities as if he had been named a Commissioner or Umpire in that Act: And whereas the Right Honourable *Henry William Powlett* Lord *Bayning* is Proprietor of or interested in the said open and unembanked Marshes, Commonable Lands, Waste Grounds, and ancient Inclosures, late belonging to the said *William Powlett Powlett* Esquire: And whereas the said *Anthony Bower* hath departed this Life, and *Samuel Bower* of *Boston* in the said County of *Lincoln*, Gentleman, hath been duly appointed a Commissioner by the said Master, Guardians, and Governors of the said Hospital called *Bethlehem*, in pursuance of the Power in the said recited Act contained for that Purpose: And whereas the Objects of the said in part recited Act would be more readily and effectually attained if the said Act were altered and amended in the Manner herein-after mentioned: 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

the

Repealing
certain Parts
of the recited
Act.

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Enactments in the said recited Act contained and herein-before mentioned, as to the Appointment of the said *Joshua Crowther* and his Successors as Umpire, and the Enactments in the said recited Act contained as to the Recovery of Penalties and the Limitation of Actions, shall be and the same are hereby repealed.

Appoint-
ment of an-
other Com-
missioner.

II. And be it further enacted, That *James Bradley* of Boston, Gentleman, and his Successors, to be elected as herein-after mentioned, shall be a Commissioner to act with the said other Commissioners *Samuel Bower* and *John Burcham*, and their Successors respectively, for embanking, allotting, inclosing, and draining all the said Marshes, commonable and other Lands and Grounds, in the said recited Act mentioned, and for carrying the Provisions of the said recited Act and of this Act into Execution, and that the said *James Bradley* shall have the same Powers, Allowances, Privileges, and Authorities in all Respects, and to all Intents and Purposes, as if he had been named a Commissioner in the said recited Act.

For choosing
another Com-
missioner in
case of his
Death, &c.

III. And be it further enacted, That if the said *James Bradley*, or any other Commissioner to be appointed in his Stead as herein-after mentioned, shall, before the Execution of all the Powers and Authorities by the said recited Act and this Act vested in him, die, refuse, neglect, or become incapable to act in the Execution of the said recited Act and this Act, it shall be lawful for the Right Honourable *Charles Henry William Powlett Townshend* Lord *Bayning*, or his Heirs, by Writing under his or their Hands, to appoint one other Commissioner, not interested in the Premises, in the Stead of the said *James Bradley*, or any other Commissioner to be appointed in his Stead, who may die, refuse, or become incapable to act, so as every such Appointment be made within Twenty-one Days after Death, Refusal, or Incapacity to act shall be made known to him or them, by Notice in Writing from the surviving or continuing Commissioners, or One of them, which Notice such Commissioners respectively are hereby required to give; and in case the said *Henry William Powlett* Lord *Bayning*, or his Heirs, shall at any Time make default in appointing such future Commissioner as herein-before mentioned, within Twenty-one Days next after any such Death, Refusal, or Incapacity to act shall be made known as aforesaid, then the surviving or continuing Commissioners shall, and they are hereby required from Time to Time, by Writing under their Hands, within Ten Days next after the Expiration of the said Twenty-one Days allowed for naming such future Commissioner as aforesaid, to appoint one other Commissioner, not interested in the Premises, in the Stead of any such Commissioner so dying, refusing, or becoming incapable to act; and every Commissioner so be appointed shall have the like Powers, Allowances, Privileges, and Authorities, in all Respects, and to all Intents and Purposes, as if he had been named a Commissioner in the said recited Act.

IV. And

IV. And be it further enacted, That all the Powers and Authorities by the said recited Act and this Act given to, and all the Provisions, Acts, Matters, and Things by the said recited Act or this Act directed or authorized to be executed or done by the Commissioners, shall and may be exercised, executed, and done by any Two of the said Commissioners present at any Meeting of the said Commissioners held for the Purpose of the said recited Act or this Act.

Powers may be executed by Commissioners.

V. And be it further enacted, That all Powers, Provisions, Clauses, Regulations, and Directions, Pains and Penalties, contained in and imposed by the said recited Act of the Fifty-third Year of His late Majesty, shall be of full Force and Effect, for the Purposes of this Act, as far as the same are or shall be applicable in all Cases not hereby expressly provided for, and shall be observed, applied, enforced, and put in execution for effectuating the Purposes of this Act, so far as the same are not hereby repealed, and shall not be altered or superseded by, and shall be consistent with the express Provisions of this Act, as fully and effectually, to all Intents and Purposes, as if the same had been herein repeated and specially enacted with reference to the Purposes of this Act.

Extending Powers of former Act to this Act.

VI. And whereas it is by the said recited Act further enacted, that it should be lawful for the said Commissioners, until the said then intended Embankment and Drainage therein mentioned of the said Marshes and all the Works necessary for that Purpose should be perfected, to assess, tax, and charge all and singular the said Marshes, and the Proprietors thereof, with such Sum and Sums of Money, not exceeding Twenty Pounds for every Acre of the said Marshes, as they the said Commissioners should from Time to Time find requisite, for defraying the Charges and Expences of obtaining the said recited Act, and carrying the same into Execution, as far as the same related to the Embankment and Drainage of the said Marshes, and for the Commissioners to complete the Works relating thereto, and to carry into Execution the several Powers thereby given to them for those Purposes, and to assess, rate, and charge every Proprietor of the said Marshes by an equal Acre Rate with such Share and Part of the same Expences, according and in proportion to the Number of Acres which each such Proprietor had in the said Marshes then intended to be embanked; and all such Sum and Sums of Money so to be charged and assessed were to be paid as therein is mentioned: And whereas a Sea Bank has been made under the Powers in the said recited Act contained, and it is expedient to make Provision for the future Repair of the said Sea Bank; now therefore be it enacted, That from and after the passing of this Act, each Proprietor, having a Frontage of Land towards the Sea, shall from Time to Time, at his own Costs and Charges, repair and keep and maintain in repair so much of the said Sea Bank as adjoins his particular Frontage of Land, and that in case of Neglect by such Proprietor to repair and

Provision for Support of Sea Bank.

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make

make good such Part of the said Sea Bank as he is hereby made liable to repair, it shall be lawful for the said Commissioners, or any Two of them; until they have made their Award, and for the Surveyor to be appointed under the said Act, after they shall have made their Award (at any Time after Three Days Notice in Writing of the Necessity of such Repair shall have been given to such Proprietor) to cause the same to be repaired and made good, as to them or him may seem requisite; and that the Expences of such Repairs, so caused to be made by the said Commissioners or Surveyor, shall be borne and paid by every such Proprietor so making Default.

Recovery of
Expences.

VII. And be it further enacted, That in case any Proprietor who shall neglect to repair and make good such Part of the said Sea Bank as he is hereby made liable to repair, after such Notice given to him as aforesaid, shall refuse or neglect to pay the Expences of such Repairs which shall be caused to be made by the said Commissioners or Surveyor, in pursuance of the Power herein-before given to them for that Purpose, for the Space of Fourteen Days next after Demand thereof made upon such Proprietor, it shall be lawful for the said Commissioners, or any Two of them, by Warrant under their Hands and Seals, or for the said Surveyor, by Warrant under his Hand and Seal, to authorize and empower any Person or Persons to levy the Amount of the Expences of such Repairs, by Distress and Sale of any Goods and Chattels of such Proprietor, or her Husband, together with the reasonable Charges of such Warrant, Distress, and Sale, or otherwise to enter into and upon any of the Lands and Grounds within the said Parish of *Wainfleet Saint Mary*, of or belonging to any such Proprietor so making Default, and to receive and take the Rents and Profits thereof, until thereby or therewith the Expences of such Repairs which shall be caused to be made by the said Commissioners or Surveyor, in pursuance of the Power herein-before given to them for that Purpose; and also all Costs, Charges, and Expences occasioned by or attending such Entry and Receipt of such Rents and Profits as aforesaid, shall be fully paid and satisfied.

Payment of
the Expences
of this Act.

VIII. And be it further enacted, That the Costs and Charges of obtaining this Act, and of carrying the same into Execution, shall be borne and paid by the Proprietors of the ancient inclosed Lands in the said Parish, and the Proprietors of the Salt Marshes herein-before mentioned, and the Persons interested in the Commonable Lands and Waste Grounds directed to be allotted by the said former Act, according to their respective Interests in the Subject-matter of this Act, in such Shares and Proportions as to the said Commissioners, or any Two of them, shall seem just; and in case of Default in the Payment of such Sum as shall be directed by the said Commissioners to be paid in respect of such Costs and Charges, by any Person hereby made liable thereto, for Twenty-one Days after Demand thereof made, the same may be
levied

levied and recovered in the same Manner as the Expences of the Repairs of the said Sea Bank are hereby authorized to be levied and recovered; and if any Person or Persons shall advance and pay any Money in Discharge of the Costs and Charges of obtaining this Act, or of carrying the same into Execution, the Money so advanced and paid shall be repaid by the said Commissioners, with lawful Interest for the same, out of the first Monies received by the Commissioners which shall be applicable to the Payment of such Costs and Charges.

IX. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to charge the said Proprietors, or any of them, with any Sum or Sums of Money which have been already expended in the making the said Sea Bank, beyond the Sum of Twenty Pounds *per Acre* in the said recited Act mentioned.

Proprietors
not to be
charged for
Sea Bank
beyond 20l.
per Acre.

X. And be it further enacted, That it shall not be lawful for the said Commissioners to continue or appoint the Person who has been or may be appointed their Clerk in the Execution of the said recited Act and this Act, or the Partner of any such Clerk, or the Clerk or other Person in the Service or Employ of any such Clerk, the Treasurer for the Purposes of the said recited Act and this Act, or to continue or appoint any Person who has been or may be appointed Treasurer, or the Partner of any such Treasurer, or the Clerk or other Person in the Service or Employ of any such Treasurer, the Clerk to the said Commissioners; and if any Person shall accept both the Offices of Clerk and Treasurer for the Purposes of the said recited Act and this Act, or if any Person being the Partner of any such Clerk, or the Clerk or other Person in the Service or Employ of any such Clerk, shall accept the Office of Treasurer, or being the Partner of any such Treasurer, or the Clerk or other Person in the Service or Employ of any such Treasurer, shall accept the Office of Clerk in the Execution of the said recited Act and this Act, or if any such Treasurer shall hold or accept any Place or Office of Profit or Trust under the said Commissioners other than that of Treasurer, every such Person so offending shall for every such Offence forfeit and pay the Sum of One hundred Pounds to any Person who shall sue for the same, to be recovered with full Costs of Suit, in any of His Majesty's Courts of Record at *Westminster*, by Action of Debt or on the Case, or by Bill, Suit, or Information, wherein no Essoign, Protection, or Wager of Law, nor more than One Imparlance, shall be allowed.

Clerk and
Treasurer not
to be the
same Person.

XI. And be it further enacted, That all Offences whatsoever which, by virtue or under the Authority of the said recited Act or this Act, are or shall be subject to or punishable with any pecuniary Penalties, Fines, or Forfeitures, the Recovery of which is not otherwise directed by the said recited Act or this Act, shall and may in every Case be heard, adjudged, and determined by or before any Justice or Justices of the Peace in and for the County of *Lincoln*,

Recovery of
Penalties.

in

in a summary Way, upon Information or Complaint made, whether the same shall be in Writing or not (and which shall in every Case be made within Six Calendar Months at furthest next after the committing of such Offences respectively, and not afterwards); and upon any such Information or Complaint as aforesaid, the said Justice or Justices shall summon the Party or Parties accused, and examine into the Matter thereof; and if upon the Confession of the Party or Parties accused, or on the Oath of any One or more credible Witness or Witnesses, the Party or Parties accused shall be convicted of having committed such Offence or Offences, then and in every such Case the Penalty or Penalties, Fine or Fines, Forfeiture or Forfeitures, by the said recited Act or this Act made payable in respect of such Offence or Offences, together with the Costs of Conviction, to be ascertained by such Justice or Justices, shall be forthwith paid by the Party or Parties so convicted as aforesaid; and in case such Party or Parties so convicted shall refuse or neglect to pay the same forthwith, then the same shall and may, by Warrant or Warrants under the Hand and Seal or Hands and Seals of any such Justice or Justices (which he and they is and are hereby empowered and required to grant), be levied and recovered, together with the Costs of Conviction and Recovery thereof, to be ascertained by such Justice or Justices, by Distress and Sale of the Goods and Chattels of such Offender or Offenders, rendering the Overplus of the Money arising by such Sale (if any) to the Party or Parties whose Goods and Chattels shall be distrained, One Moiety of which Penalties, if not by the said recited Act or this Act directed to be otherwise applied, shall be paid to the Informer, and the other Moiety shall be paid to the Treasurer of the said Commissioners, to be applied to the Purposes of the said recited Act and this Act; and it shall and may be lawful for the said Justice or Justices to order the Offender or Offenders so convicted to be detained in safe Custody until Return can be conveniently made to such Warrant or Warrants of Distress, unless the said Offender or Offenders shall give sufficient Security to the Satisfaction of such Justice or Justices for his, her, or their Appearance before the said Justice or Justices on such Day or Days as shall be appointed for the Return of such Warrant or Warrants of Distress, such Day or Days not being more than Five Days from the Time of taking any such Security, and which Security the said Justice or Justices is and are hereby empowered to take by way of Recognizance or otherwise; but if upon the Return of such Warrant or Warrants it shall appear that no sufficient Distress can be had whereupon to levy the said Penalty or Penalties, Fine or Fines, Forfeiture or Forfeitures, and such Costs as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to such Justice or Justices, either upon the Confession of the Offender or Offenders, or otherwise, that the Offender or Offenders hath or have not sufficient Goods or Chattels whereon such Penalty or Penalties, Fine or Fines, Forfeiture or Forfeitures, and such Costs as aforesaid can be levied were such Distress Warrant issued, such Justice or Justices shall not be required to issue the same; and thereupon it shall be lawful for the said Justice or Justices,

tices, and he and they are hereby required and empowered, by Warrant or Warrants under his Hand and Seal or their Hands and Seals, to commit such Offender or Offenders to the Common Gaol of the said County of *Lincoln*, there to remain without Bail or Mainprize for any Term not exceeding Three Calendar Months, or until such Offender or Offenders shall have fully paid such Penalty or Penalties, Fine or Fines, Forfeiture or Forfeitures, and all Costs attending such Proceedings as aforesaid, to be ascertained by such Justice or Justices, or shall otherwise be discharged by due Course of Law,

XII. And be it further enacted, That no Action or Suit shall be commenced or prosecuted against any Person or Persons, for anything done or to be done in pursuance or under the Authority of the said recited Act or this Act, after the Expiration of Three Calendar Months next after the Fact committed, or the Cause of Action has ceased and determined, except as may be in the said recited Act or this Act otherwise directed; and all such Actions and Suits shall be laid and tried in the County or Place where the Cause of Action shall have arisen, and not elsewhere; and the Defendant or Defendants in any such Action or Suit may plead the General Issue, and give this Act and the Special Matter in Evidence at any Trial which shall be had thereupon, and that the Matter or Thing for which such Action or Suit shall be so brought was done in pursuance and by the Authority of the said recited Act or this Act; and if upon such Trial such Matter or Thing shall appear to have been so done, or if such Action or Suit shall have been brought before Twenty-one Days Notice shall have been given, or after sufficient Satisfaction shall have been made or tendered as in the said recited Act or this Act mentioned, or after the Time herein-before limited for bringing the same, or if the same shall be brought in any other County or Place than as aforesaid, or if such Action shall be proceeded in after sufficient Money shall have been paid into Court, as in the said recited Act or this Act authorized, then and in any of the said Cases the Jury shall find a Verdict for the Defendant or Defendants, and upon such Verdict being given, or if the Plaintiff or Plaintiffs shall become nonsuited, or suffer a Discontinuance of such Action or Suit after the Defendant or Defendants shall have appeared thereto, or if upon Demurrer or otherwise Judgment shall be given against the Plaintiff or Plaintiffs, then and in every such Case the Defendant or Defendants shall have Treble Costs, and shall have such and the like Remedy for recovering the same as any Defendant hath for recovering Costs of Suit in any other Cases by Law: Provided nevertheless, that in the Case of paying Money into Court as aforesaid, the Defendant or Defendants shall be entitled to Treble Costs from the Time of such Payment only,

XIII. Saving always to the King's most Excellent Majesty, His Heirs and Successors, as well in right of His Crown as in right of His Duchy of *Lancaster*, and to all and every other Person and

Limitation of Actions.

General Saving of Rights.

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Persons,

Persons, Body or Bodies Politic, Corporate or Collegiate, and his, her, and their Heirs, Successors, Executors, and Administrators, all such Right, Title, and Interest 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 or authorized to be watered or used for the Purposes of this Act, in case this Act had not been made.

Public Act.

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

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN,
Printers to the King's most Excellent Majesty. 1825.