



ANNO SECUNDO

# VICTORIÆ REGINÆ.

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## Cap. 1.

An Act for inclosing certain Open and Common Downs or Sheepwalks within the several Tithings of *Oxenbourn* and *Ramsdean* in the Parish and Manor of *Eastmeon* in the County of *Southampton*.  
[14th May 1839.]

**W**HEREAS there are within the several Tithings of *Oxenbourn* and *Ramsdean* in the Parish and Manor of *Eastmeon* in the County of *Southampton* certain Open and Common Downs or Sheepwalks called *Oxenbourn* and *Ramsdean* Downs, containing in the whole by Estimation One thousand three hundred and ninety-five Acres; viz. the said *Oxenbourn* Down containing One thousand and three Acres or thereabouts, and the said *Ramsdean* Down containing Three hundred and ninety-two Acres or thereabouts: And whereas the Lord Bishop of *Winchester*, in right of his Bishoprick, is Lord of the said Manor of *Eastmeon*, and as such is entitled to the Lord's Right in the Soil of the said Common Downs within the said several Tithings of *Oxenbourn* and *Ramsdean*: And whereas Sir *Samuel Clark Jervoise*, Sir *Richard Jackson*, *John Bonham Carter* Esquire, *Daniel Quarrier* Esquire, *William Weeks*, and *George Hellyer* senior, and divers other Persons, are the Owners and Proprietors of divers Lands and Hereditaments within the said Tithings respectively, and in respect thereof are entitled to certain Rights of Common in, over, or upon the said Open and Common Downs, or One of them: And whereas an Act was passed in the Forty-first Year

[Private.]

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of



41 G.3.c.109. of the Reign of His late Majesty King *George* the Third, intituled *An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts*: And whereas an Act was passed in the Second Year of the Reign of His late Majesty King *George* the Fourth, intituled *An Act to amend the Law respecting the inclosing of Open Fields, Pastures, Moors, Common and Waste Lands in England*: And whereas it would be highly advantageous to the several Persons interested in the said Open and Common Downs if the Exercise of Right of Common over the same were to be extinguished, and if the same were to be divided and inclosed, and if specific Parts and Shares thereof were to be allotted unto the several Persons interested therein, according to their respective Rights and Interests; but such Extinguishment, Division, Allotment, and Inclosure cannot be effected without the Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That *Charles Osborne* of *Hayling Island* in the County of *Southampton*, Gentleman, shall be and he is hereby appointed sole Commissioner for setting out, dividing, allotting, and inclosing the said Open and Common Downs or Sheepwalks within the said Tithings of *Oxenbourn* and *Ramsdean* respectively, and for carrying into execution the several other Purposes of this Act, pursuant to the Powers, Regulations, and Directions herein-after contained, and to such of the Powers, Authorities, Regulations, Restrictions, and Provisions contained in the said recited Acts as are not controlled by or repugnant to any of the Clauses and Provisions contained in this Act.

1 & 2 G. 4.  
c. 23.

Commis-  
sioner ap-  
pointed.

Appoint-  
ment of  
future Com-  
missioner.

II. And be it further enacted, That if the said *Charles Osborne*, the Commissioner appointed by this Act, or any other Commissioner to be appointed in his Place in manner herein-after mentioned, shall die, or neglect or refuse for the Space of Two Calendar Months to act, or become incapable of acting, before the Powers hereby vested in him shall be fully executed, then and so often as any of the said Events shall occur a public Meeting of the several Persons who respectively for the Time being shall be interested in the said Open and Common Downs or Sheepwalks hereby directed to be divided, allotted, and inclosed shall be called by any Two or more of such Persons, and be held within the said Parish of *Eastmeon*, as soon as conveniently may be after the Death, Neglect, Refusal, or Incapacity of such Commissioner shall happen, and of which Meeting at least Ten Days previous Notice shall be given and published in the Newspaper called the *Hampshire Chronicle*, if that Newspaper shall be then published, or in case the same shall not then be published, in some other Newspaper generally circulated in the County of *Southampton*; and the Proprietors then and there assembled, or the major Part of them in Value, (such Value to be ascertained by the Poor Rate Assessment for the current Year,) or their respective Agents or Solicitors, duly authorized by Writing under the Hands of the respective Proprietors, shall and may nominate, elect, and appoint some other proper Person (not interested in the said Division and Inclosure) to be a Commissioner in



the Room or Stead of the said *Charles Osborne*, and so from Time to Time as often as any future Vacancy in that Office shall happen by any Commissioner dying, or neglecting or refusing to act, or becoming incapable of acting as aforesaid; and every Person who shall be appointed a Commissioner in pursuance of this Act shall have and be invested with the same Powers and Authorities for carrying this and the said recited Acts into execution, to all Intents and Purposes, as if he had been originally appointed a Commissioner in and by this Act.

III. And be it further enacted, That the said Commissioner shall have Power and he is hereby authorized to appoint some fit and proper Person to be his Clerk to assist him in carrying this Act and the said recited Acts into execution, and such Clerk to remove, and appoint some other fit and proper Person to succeed him in the Office, and so from Time to Time to remove any future Clerk, and appoint another in his Stead, as often as Occasion shall, in the Judgment of the Commissioner, appear to require. Appointment  
of Clerk.

IV. And be it further enacted, That the said Commissioner shall have Power and he is hereby authorized to appoint some fit and proper Person (not interested in the said Division and Inclosure) to be Surveyor for the Purposes of this Act and the said recited Acts; and in case of the Death, Neglect, Refusal, or Incapacity to act of any such Surveyor before the Execution of all the Duties hereby or by the said recited Acts reposed in him, then and in every such Case the said Commissioner shall have Power and he is hereby authorized to appoint some other fit and proper Person (not interested in the said Division and Inclosure) to succeed to such Office, and so from Time to Time as often as any future Vacancy in that Office shall happen; and every such Surveyor shall be paid such Sum or Sums of Money for his Pains, Trouble, Expences, and Attendances as the said Commissioner shall think just and reasonable; and the Surveyor for the Time being to be appointed as aforesaid shall make a Survey, Plan, and Admeasurement of the said Open and Common Downs by this Act directed to be divided, allotted, and inclosed, and of any other Lands the said Commissioner shall think proper to direct him to survey for the Purposes of this Act or the said recited Acts, and produce the same to the said Commissioner when by him required so to do, and verify the same on Oath or Affirmation, as also any subsequent or other Plans and Admeasurements he the said Surveyor for the Time being, to be appointed in manner aforesaid, shall make by Order of the said Commissioner for the Purposes of this or the said recited Acts, which Oath or Affirmation the said Commissioner is hereby authorized to administer: Provided always, that no Person shall be capable of acting as a Surveyor in the Execution of the said recited Acts or this Act until he shall have taken and subscribed the Oath or Affirmation following; (that is to say,)

‘ I do swear, [*or, being one of the People called* Oath or  
‘ *Quakers, or one of the Persuasion of the People called Quakers, or of* Affirmation.  
‘ *the United Brethren called Moravians, do solemnly affirm,*] That I will  
‘ *[Private.]* b faithfully,



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‘ faithfully, honestly, and impartially, according to the best of my  
 ‘ Skill and Ability, execute and perform the Powers and Autho-  
 ‘ rities reposed in me as a Surveyor by virtue of an Act passed  
 ‘ in the Year of the Reign of Queen *Victoria*, intituled  
 ‘ [*here insert the Title of this Act*], according to Equity and good  
 ‘ Conscience, and without Favour or Affection, Prejudice or Partiality,  
 ‘ to any Person or Persons whomsoever. So help me GOD.’

Which Oath or Affirmation the said Commissioner is hereby empowered and required to administer ; and the said Oath or Affirmation, when so taken and subscribed by every such Surveyor, shall be annexed to and deposited with the Award of the said Commissioner.

Surveys, &c.  
 already made  
 may be used  
 if authenti-  
 cated.

V. And be it further enacted, That in case any Person or Persons, having in his, her, or their Custody any actual Surveys, Maps, or Plans of the said Open and Common Downs, or any of them, shall deliver such Surveys, Maps, and Plans to the said Commissioner at such Times as he may appoint for that Purpose, it shall be lawful for the said Commissioner thereupon to inquire into the Authenticity and Accuracy thereof, on the Oath or Affirmation as well of the Person or Persons producing and delivering such Surveys, Maps, and Plans respectively as of such other Person or Persons as he shall think fit, (which Oath the said Commissioner is hereby authorized to administer,) or by such other Means as he shall think proper ; and in case the said Commissioner shall be satisfied that the same are authentic and accurate, and will answer the Purposes of new Surveys, Maps, or Plans, then the said Commissioner is hereby authorized to make use of the same, so far as the same shall be available, for the Purpose of carrying this Act and the said recited Acts into execution.

Notice of Ad-  
 journment of  
 Sittings.

VI. And be it further enacted, That the said Commissioner shall and he is hereby required to cause public Notice to be given, upon some *Sunday* immediately after Divine Service, in the Parish Church of *Eastmeon*, or by Writing to be affixed on the principal outer Doors of the said Parish Church, and also by Advertisement to be inserted in the Newspaper called the *Hampshire Chronicle*, in case such Newspaper shall be then published, or in case the same shall not be at that Time published, then in some other Newspaper which may be generally circulated within the said County of *Southampton*, of the Time and Place of his First and every subsequent Sitting for the Execution of the Powers by this Act and the said recited Acts vested in him the said Commissioner, at least Eight Days before every such Sitting shall be had (Sittings by Adjournment only excepted) ; and the said Commissioner shall and may adjourn such Sittings from Time to Time as he shall see Occasion for the further Execution of this and the said recited Acts, without giving any public Notice of such Adjournment ; and that all the Sittings of the said Commissioner to be had by virtue of this Act shall be held at some convenient Place within the said Parish of *Eastmeon*, or within the Distance of Eight Miles from the Boundary of such Parish.

VII. And



VII. And be it further enacted, That all other Notices necessary to be made and given by the said Commissioner shall be so made and given by Notice to be affixed on the principal outer Doors of the said Parish Church of *Eastmeon*, and also by Advertisement to be inserted in the said Newspaper called the *Hampshire Chronicle*, in case such Newspaper shall be then published, or in case the same shall not be at that Time published, then in some other Newspaper which may be generally circulated within the said County of *Southampton*.

How other Notices are to be given.

VIII. And be it further enacted, That Minutes of all Orders, Proceedings, and Determinations of the said Commissioner at any Meeting or Meetings to be held in pursuance of this Act or the said recited Acts shall be entered in a Book or Books to be provided for that Purpose, and kept by the Clerk or Clerks to the said Commissioner, and shall be signed by the said Commissioner at the respective Meetings at which such Orders, Proceedings, and Determinations respectively were made or took place, and being so signed shall be deemed and taken as Originals; and all such Books may be read in Evidence in all Cases of Appeal, Suits, Actions, and other Proceedings whatever touching any Matter or Thing to be done in relation to or in pursuance of this Act or the said recited Acts.

Minutes of Proceedings of Commissioner to be kept.

IX. And be it further enacted, That if any Dispute or Difference shall happen to arise between any of the Parties that now are or shall before the making of the Award of the said Commissioner be or claim to be interested in the said Open and Common Downs directed by this Act to be divided, allotted, and inclosed, touching or concerning the respective Proportions, Rights, and Interests which they or any of them shall have or claim to have of or in the same, or touching or concerning any other Claims or Objections, Rights, Interests, Matters, or Things relating to the said intended Extinction, Division, and Inclosure, it shall and may be lawful to and for the said Commissioner, and he is hereby authorized and required, upon proper and sufficient Inquiry and Evidence, to examine into, hear, and determine the same: Provided always, that nothing in this Act contained shall extend to authorize the said Commissioner to determine the Title to any Manors, Messuages, Cottages, Lands, Tenements, or Hereditaments whatsoever, nor to determine any Right between any of the Parties interested in the said Open and Common Downs contrary to the Possession of any such Parties, but in case the said Commissioner shall be of opinion against the Right of the Person or Persons so in Possession, he shall forbear to make any Determination thereupon until the Possession shall have been duly taken from such Person or Persons by Ejectment or other due Course of Law.

Commissioner authorized to settle Disputes, but not to determine Titles;

nor to determine the Right contrary to the Possession.

X. And be it further enacted, That if the said Commissioner shall, upon the Hearing and Determination of any Claim or Claims, Objection or Objections, to be delivered to him in pursuance of the said first-recited Act or of this Act, see Cause to award any Costs, it shall and may be lawful to and for the said Commissioner, and he is hereby empowered, upon Application made to him for that Purpose,

Power to Commissioner to award Costs.

to



to settle, assess, and award such Costs and Charges as he shall think reasonable to be paid to the Party or Parties in whose Favour any Determination of the said Commissioner shall be made by the Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, whose Claim or Claims, Objection or Objections, shall be thereby disallowed or overruled; and in case the Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, who shall be liable to pay such Costs and Charges, shall neglect or refuse to pay the same, on Demand, then and in such Case it shall be lawful for the said Commissioner, and he is hereby authorized and required, by Warrant under his Hand and Seal directed to any Person or Persons whomsoever, to cause such Costs and Charges to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, so neglecting or refusing to pay the same, rendering the Overplus (if any), upon Demand, to the Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, whose Goods and Chattels shall have been so distrained and sold as aforesaid, after deducting the Costs and Charges attending such Distress and Sale.

Parties dissatisfied with Decision of Commissioner may try their Rights at Law.

XI. Provided always, and be it further enacted, That in case any Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, interested or claiming to be interested in the said intended Division, Allotment, and Inclosure, shall be dissatisfied with any Determination of the Commissioner for the Time being touching or concerning any Claim or Claims of Right of Common or other Rights or Interests in, over, or upon or out of the said Open and Common Downs hereby directed to be divided, allotted, and inclosed, or any Part or Parts thereof, or any Objection or Objections to such Claim or Claims, it shall be lawful for the Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, so dissatisfied, to cause an Action to be brought in any of Her Majesty's Courts of Record at *Westminster*, upon a feigned Issue, against the Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, in whose Favour any such Determination shall have been made, within Three Calendar Months next after the Determination of the said Commissioner shall have been made, and notified in Writing to the Party or Parties against whom such Determination shall have been so made, or to his, her, or their known Agent or Attorney, and thereupon the Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, so dissatisfied, shall proceed to a Trial at Law at the then next or at the Assizes immediately following the next to be holden for the said County of *Southampton* after such Action or Actions shall have been commenced; and the Defendant or Defendants in such Action or Actions shall and he, she, or they is and are hereby required to name an Attorney or Attornies, who shall appear thereto, or file Common Bail, and accept One or more Issue or Issues, whereby such Claim or Claims, and the Right or Rights thereby insisted on, may be tried and determined (such Issue or Issues to be settled by the proper Officer of the Court in which such Action or Actions shall be commenced in case the Parties shall differ about the same); and the Verdict or Verdicts which shall be given in such Action or Actions shall be final, binding, and conclusive upon all and every



every such Person and Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, 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 other Cases; and after such Verdict or Verdicts shall be obtained, and not set aside by the Court, the said Commissioner shall and he is hereby required to act in conformity thereto, and to allow or disallow the Claim or Claims thereby determined according to the Event of such Trial or Trials: Provided always, that the Determination of the said Commissioner touching such Claim or Claims or other Rights or Interests in, over, or upon the Open and Common Downs hereby directed to be divided, allotted, and inclosed, or any Part thereof, which shall not be objected to in due Time, or, being objected to, the Party or Parties objecting not causing such Action at Law to be commenced within the Time herein-before limited for that Purpose, or not proceeding therein as aforesaid, shall be binding, final, and conclusive to all Intents and Purposes whatsoever.

XII. Provided always, and be it further enacted, That if any of the Parties, Plaintiffs or Defendants in any such Action to be brought as aforesaid, shall die pending the same, such Action shall not abate by reason thereof, but may be proceeded in as if no such Death had happened; and 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 by this Act limited for bringing such Action or Actions, it shall be lawful for the Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate respectively, who might have brought such Action or Actions against the Person or Persons so dying, to bring the same, within the Time by this Act limited as aforesaid, against such Person or Persons as if actually living, and to serve the Clerk of the said Commissioner with Process for commencing such Action or Actions in the same Manner as the Party or Parties so dying might have been served therewith if living; and that it shall thereupon be incumbent on such Clerk to serve with such Process the Heir or Heirs or other Person or Persons who shall claim the Benefit of such Determination as aforesaid, and on such Process being served such Heir or Heirs or other Person or Persons shall appear and defend such Action or Actions in the Name or Names of the Person or Persons so dead, and Proceedings shall be had therein in the same Manner as if such Person or Persons had been actually living, and the Rights of all Parties shall be equally bound and concluded by the Event of such Action or Actions, as if the Death of any of the Persons interested therein had not occurred.

Actions not to abate by the Death of Parties.

If Party in whose Favour Decision made shall die before Expiration of Time for commencing the Action, Proceedings may be taken against his Heir.

XIII. Provided always, and be it further enacted, That no such Difference, Suit, or Proceeding as aforesaid, nor any Difference, Suit, or Proceeding respecting the Title to any Lands, Tenements, or Hereditaments within the said Tithings of *Oxenbourn* and *Ramsdean*, or either of them, shall impede or delay the Proceedings of the said

Commissioner to proceed with Inclosure, notwithstanding any Dispute or Trial.

[Private.]

C

Commissioner



Commissioner in the Execution of this Act, but that the Division, Allotment, and Inclosure by this Act directed to be made shall be proceeded in notwithstanding any such Difference, Suit, or Proceeding, and that the Allotment or Allotments to which any such Difference, Suit, or Proceeding respectively shall relate shall be taken by the Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, who by the Determination of such Difference, Suit, or Proceeding respectively shall become entitled to the same.

Bodies Politic, &c. empowered to act by Proxy.

XIV. Provided always, and be it further enacted, That it shall be lawful for all Bodies Politic, Corporate, Ecclesiastical, or Collegiate, and all other Persons, interested or claiming to be interested in the said Open and Common Downs hereby directed to be divided and inclosed, or being Owners or Proprietors of any Lands or Hereditaments affected by this Act, to act in all Matters and Things relating to the Provisions of this Act by their Agents or Proxies to be appointed for that Purpose by Writing under the Common Seal of such Bodies Politic, Corporate, Ecclesiastical, or Collegiate, or under the Hands of such other Persons, such Appointment being produced by their respective Agents or Proxies at the Times of their claiming to act by virtue hereof.

Encroachments.

XV. And be it further enacted, That all Encroachments and Inclosures which have been made at any Time or Times within the Space of Twenty Years previous to the passing of this Act, from, in, or upon the said Open and Common Downs hereby directed to be divided and allotted, shall be deemed and considered to be Part of the Open and Common Downs to be divided and allotted by virtue of this Act; and in case any Difference or Dispute shall arise touching any such Encroachments or Inclosures, or the Extent thereof, every such Dispute or Difference shall be determined by the said Commissioner.

Deaths of Parties entitled to Allotments not to interfere with Progress of Inclosure.

XVI. And be it further enacted, That if any of the Parties interested in the said intended Division or Inclosure shall die before the same shall be completed, the Powers and Authorities hereby given to the said Commissioner shall not be thereby determined or suspended, but the said Commissioner shall proceed in the Execution of the Powers given to him by this Act and the said recited Acts respectively in such Manner as he might have done in case such Parties had not died; and the Share or Shares of the Person or Persons so dying shall be allotted to the Person or Persons who by Law shall become entitled to the same, and shall be accepted and fenced by him, her, or them according to the Directions of this and the said recited Acts respectively, and he, she, or they shall be liable to the Charges and Expences and other Conditions of this and the said recited Acts.

Commissioner may by Notice extinguish or suspend

XVII. And be it further enacted, That the said Commissioner may, at any Time or Times when he in his Judgment shall think it convenient and proper, by Notice in Writing to be affixed on the principal Doors of the Parish Church of *Eastmeon* aforesaid, order



the Rights of Common in, over, and upon the said Open and Common Downs hereby directed to be divided, allotted, and inclosed, or any of them, to be extinguished, either in the whole or in part, or to be suspended; and from and after the Time or Times to be mentioned in and appointed by any such Notice all such Rights of Common as shall thereby be directed to be extinguished or suspended shall be extinguished or suspended according to such Notice.

Rights of  
Common at  
any Time.

XVIII. And be it further enacted, That the said Commissioner may and he is hereby authorized to widen any of the public Roads or Highways where he shall think it necessary within the said Tithings of *Oxenbourn* and *Ramsdean*, or either of them, and for that Purpose to take a sufficient Quantity of the ancient inclosed Lands and Grounds adjoining such Roads (the same not being a Yard, Garden, Orchard, Park, Paddock, Plantation, or Avenue to any House), and to make a full Compensation for the Value of the Land or Ground so to be taken for the widening of such public Roads or Highways, by allotting and awarding unto the Person or Persons from whom any such inclosed Land or Ground shall be so taken an adequate Part or Parts of the said Lands and Grounds hereby authorized to be divided, allotted, and inclosed, and also to make good and substantial Fences on each Side of all such widened public Roads and Highways for and in lieu of the Fences which shall be injured or destroyed by means of such widening.

Power to  
widen Roads,  
making Com-  
pensation to  
Land  
Owners.

XIX. And be it further enacted, That in setting out and appointing the several public Carriage Roads, Highways, Bridle Roads, and Footpaths in pursuance of this Act or of the first-recited Act the said Commissioner shall and he is hereby authorized and empowered, if he shall think it necessary or proper, with the Consent and under the Order in Writing of any Two Justices of the Peace for the County of *Southampton*, to discontinue, stop up, divert, turn, or alter any of the Carriage Roads, Highways, Bridle Roads, or Footpaths passing or leading through or over any of the Lands or Grounds intended to be divided and allotted by virtue of this Act, or passing or leading through or over any of the old Inclosures within the said Tithings of *Oxenbourn* and *Ramsdean*, or either of them; and the Soil of such of the Roads and Ways so to be discontinued and stopped up as pass or lead through allotable Lands shall be deemed and taken to be Part of the Lands and Grounds to be divided and allotted by virtue of this Act: Provided always, that nothing herein contained shall authorize the altering or diverting of any Turnpike Road leading through the said Tithings of *Oxenbourn* and *Ramsdean*, or either of them, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at a public Meeting called for that Purpose on Ten Days Notice, be first had and obtained.

Power to  
stop up  
Roads:

XX. Provided always, and be it further enacted, That before any public Carriage Road, Highway, Bridle Road, or Footpath shall be discontinued, diverted, stopped up, or altered by the said Commissioner, or any such Order of Two Justices of the Peace as herein-before mentioned shall be made, the said Commissioner shall cause to be affixed at each End of the said public Carriage Road, Highway,

Proceedings  
previously to  
stopping up  
and diverting  
Highways.

Bridle



Bridle Road, or Footpath so proposed to be discontinued, diverted, stopped up, or altered, a Notice to the Effect that such public Carriage Road, Highway, Bridle Road, or Footpath is intended to be discontinued, stopped up, diverted, or altered, as the Case may be, by the said Commissioner acting under or by virtue of this Act; and the said Commissioner shall also cause the same Notice to be inserted in some one Newspaper published or generally circulated in the said County of *Southampton* for Four successive Weeks, and shall also cause a like Notice to be affixed on some principal outer Door of the Church of the said Parish of *Eastmeon* on the Four *Sundays* of the said Four successive Weeks; and after the said several Notices shall have been so affixed and published as aforesaid, and after such Order as herein-before mentioned shall have been made, the said public Carriage Road, Highway, Bridle Road, or Footpath shall be and be deemed to be discontinued, stopped up, diverted, or altered, as the Case may be, subject however to such Appeal to the Court of General Quarter Sessions for the County of *Southampton* as is hereinafter mentioned.

Persons who may think themselves aggrieved if such Highway should be stopped up or diverted, may appeal.

XXI. Provided also, and be it further enacted, That it shall be lawful for any Person or Persons who may think that he, she, or they would be injured or aggrieved if any such Carriage Road, Highway, Bridle Road, or Footpath should be discontinued, stopped up, diverted, or altered, as the Case may be, within Four Months after the making of the said Order, to make his, her, or their Complaint thereof by Appeal to the Justices of the Peace at the said Quarter Sessions, upon giving to the said Commissioner or his Clerk Ten Days Notice in Writing of such Appeal, together with a Statement in Writing of the Grounds thereof; provided also, that it shall not be lawful for the Appellant to be heard in support of such Appeal unless such Notice and Statement shall have been so given as aforesaid, nor on any Hearing of Appeal to go into or give Evidence of any other Grounds of Appeal than those set forth in such Statement as aforesaid.

In case of Appeal Jury at Sessions to determine whether the old Highway shall be discontinued.

XXII. And be it further enacted, That in case of such Appeal the Justices at such Quarter Sessions shall, for the Purpose of determining whether the said public Carriage Road, Highway, Bridle Road, or Footpath so intended to be discontinued, stopped up, diverted, or altered shall be discontinued, stopped up, diverted, or altered, or whether the Party appealing would be injured or aggrieved, impanel a Jury of Twelve disinterested Men out of the Persons returned to serve as Jurymen at such Quarter Sessions; and if after hearing the Evidence produced before them the said Jury shall return a Verdict that the public Carriage Road, Highway, Bridle Road, or Footpath so intended to be discontinued, stopped up, diverted, or altered is unnecessary, or may beneficially to the Public be discontinued, stopped up, diverted, or altered, and that the Party appealing would not be injured or aggrieved, then the said Court of Quarter Sessions shall dismiss such Appeal; and in that Case the said Court of Quarter Sessions shall award the Costs and Expences of resisting the said Appeal to be paid by the Party appealing to the said Commissioner, and the same shall be recoverable from the said Party in such and the



the same Manner as any Penalties and Forfeitures are recoverable under the said recited Act of the Forty-first Year of the Reign of King *George* the Third; but if the said Jury shall return a Verdict that the public Carriage Road, Highway, Bridle Road, or Footpath, so to be discontinued, stopped up, altered, or diverted is not unnecessary, or that the same could not beneficially to the Public be so discontinued, stopped up, diverted, or altered, or that the Party appealing would be injured or aggrieved by such public Carriage Road, Highway, Bridle Road, or Footpath being so discontinued, stopped up, diverted, or altered, as the Case may be, the said Court of Quarter Sessions shall allow such Appeal, and such public Carriage Road, Highway, Bridle Road, or Footpath shall not be discontinued, stopped up, diverted, or altered, or in case the same shall have been discontinued, stopped up, diverted, or altered, the said Court shall make an Order for restoring such public Carriage Road, Highway, Bridle Road, or Footpath to its original State; and in that Case the said Court of Quarter Sessions is hereby authorized and required to award to the Party giving Notice of Appeal such Costs and Expences as shall be incurred in prosecuting such Appeal; and such Costs and Expences shall be paid by the said Commissioner, and shall be raised by the said Commissioner in such and the same Manner as he is hereby directed or empowered to raise the Money for discharging the Costs, Charges, and Expences of this Act.

XXIII. And be it further enacted, That the Charges and Expences attending the stopping up, discontinuing, diverting, and altering of such Roads, and the Money Compensation in respect thereof, shall be raised in such and the like Manner as the Expences of obtaining and executing this Act are hereby directed to be raised.

Expences of discontinuing or widening Roads provided for.

XXIV. And be it further enacted, That when and so soon as Two or more of Her Majesty's Justices of the Peace for the said County of *Southampton* shall, under their Hands and Seals, certify any of the public Carriage Roads to be set out in pursuance of this Act to be fully and sufficiently formed and completed, such Roads shall thenceforth be supported and kept in repair by such Persons and in such Manner as the public Roads within the said Tithings of *Oxenbourn* and *Ramsdean* respectively are or ought by Law to be amended and kept in repair; and every such Certificate shall, at the General or Quarter Sessions of the Peace to be holden for the said County of *Southampton* next after the Date thereof, be filed of Record by the Clerk of the Peace for the said County, and be valid and effectual to all Intents and Purposes.

Justices may declare any of the Carriage Roads completed.

XXV. And be it further enacted, That the said Commissioner shall and he is hereby empowered and required to set out and appoint such private Roads, Bridleways, and Footways through and over the Lands and Grounds hereby authorized to be divided, allotted, and inclosed as he shall think requisite, giving such Notice and subject to such Examination as is required by the said herein-before recited Act of the Forty-first Year of the Reign of King *George* the Third, in the Case of public Roads; and any Charges and Expences which the said Commissioner may think fit to incur or direct to be incurred

Commissioner to appoint private Roads.

[*Private.*]

*d*

prior



prior to the Time of making his Award relative to the setting out or the Formation or Completion of such private Roads, Bridleways, and Footways, or any of them, shall be raised in like Manner as the Charges and Expences of obtaining and passing this Act and carrying the same into execution; and the said private Roads, Bridleways, and Footways shall thereafter be made, supported, and kept in repair by and at the Expence of the Owners and Proprietors for the Time being of any of the Lands and Grounds within the said Tithings of *Oxenbourn* and *Ramsdean* respectively in such Shares and Proportions and in such Manner as the said Commissioner shall in and by his Award order and direct, or by the Inhabitants of the said Tithings of *Oxenbourn* and *Ramsdean* respectively in such Manner as the public Roads within the same are by Law liable to be supported and kept in repair, if the said Commissioner shall by his Award so direct.

Commissioner to allot the Herbage of private Roads.

XXVI. And be it further enacted, That the said Commissioner shall in and by his Award order and appoint the Grass and Herbage growing and renewing upon all and every the private Roads to be set out by him by virtue of this Act to be and for ever thereafter remain to and for the Use and Benefit of such Persons as he the said Commissioner shall in his Judgment think best entitled to the same.

Power to set out Land for Chalk and Gravel Pits.

XXVII. And be it further enacted, That the said Commissioner may and he is hereby authorized, if he shall deem it necessary, but not otherwise, to set out, allot, and award unto or for the Surveyor or Surveyors for the Time being of the Highways of the said Parish of *Eastmeon* any Part of the said Open and Common Downs hereby directed to be divided, allotted, and inclosed, not exceeding in the whole Three Acres, as and for public Gravel Pits, Chalk Pits, and watering Places for Cattle, with convenient Roads to and from the same, to be used in common by the Proprietors of Lands and Estates in the said Tithings of *Oxenbourn* and *Ramsdean* respectively, and their respective Tenants, as well for their own necessary Uses as for the Repairs of public and private Roads and Ways within the said Tithings of *Oxenbourn* and *Ramsdean* respectively.

Allotments for poor Cottagers.

XXVIII. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required to set out, allot, and award any Part of the said *Oxenbourn Down* not exceeding Fifteen Acres, for the Use and Occupation of the Occupiers of small Cottages not exceeding the annual Value of Four Pounds each in the said Tithing of *Oxenbourn*, and any Part of the said *Ramsdean Down* not exceeding Ten Acres for the Use and Occupation of the Occupiers of small Cottages not exceeding the annual Value of Four Pounds each in the said Tithing of *Ramsdean*; and the said Commissioner is hereby authorized and empowered to allot and award the same respectively unto and amongst the Owners and Proprietors of the said Cottages respectively, for the Use and Enjoyment of the Occupiers thereof respectively, in such Manner and under and subject to such Rules and Regulations for the Distribution of the said Allotments respectively among the Occupiers of the said Cottages respectively, and for the Use and Enjoyment of the same Allotments respectively, and



and otherwise concerning the same, as the said Commissioner shall by his Award direct or appoint and prescribe.

XXIX. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required to allot to the Lord for the Time being of the said Manor of *Eastmeon*, from each of the said Downs, any Quantity of Land not exceeding Two Acres of *Oxenbourn Down* and Two Acres of *Ramsdean Down*, to be appropriated for Purposes of Exercise and Recreation of the neighbouring Population, and such Allotment shall be held by the Lord of the said Manor for such Purposes.

Allotment  
for Exercise  
and Recrea-  
tion.

XXX. And be it further enacted, That the said Commissioner, after setting out the public Roads and Ways, the Allotments (if any) for Gravel Pits, Chalk Pits, and watering Places for Cattle, the Allotments for the Use of the Occupiers of small Cottages, and for the Recreation of the neighbouring Population as aforesaid, shall set out and allot unto the said Lord Bishop of *Winchester* as Lord of the said Manor of *Eastmeon*, or the Lord or Lords of the said Manor for the Time being, such Part or Parts of the said Open and Common Downs as by the said Commissioner shall be deemed, declared, and adjudged equal in Value to One full Sixteenth Part or Share of the said Open and Common Downs, as a Compensation and Satisfaction for his or their Right and Interest in and to the Soil of the said Open and Common Downs, and also as a Compensation and Satisfaction for all Heriots to which any Allotment or Allotments to be made under this Act in respect of any Hereditaments holden of the said Manor could or might have been liable.

Allotment  
of One Six-  
teenth to the  
Lord of the  
Manor in  
right of the  
Soil.

XXXI. And be it further enacted, That the said Commissioner, after setting out the Allotments herein-before directed, shall divide, set out, allot, and award all the Residue and Remainder of the said Open and Common Downs intended to be divided, allotted, and inclosed as aforesaid unto and amongst the several Persons, and Bodies Politic, Corporate, Ecclesiastical, and Collegiate, who at the Time of such Division and Allotment shall be interested therein, in proportion and according to their respective Shares, Rights, and Interests therein, which said Allotments so to be made by virtue of this Act shall be in full Compensation and Satisfaction for their several Rights and Interests in and upon the said Open and Common Downs hereby directed to be divided and inclosed.

Residue  
to be allotted  
amongst Per-  
sons having  
Right of  
Common.

XXXII. And be it further enacted, That the several Allotments to be made by virtue of this Act shall be inclosed, hedged, ditched, and fenced, at the Expence of the respective Proprietors to whom such Fences shall be directed to belong, with Quicksets, or in such other Manner and within such Time or Times as the said Commissioner shall by his Award, or any other Writing under his Hand, direct or appoint.

Fencing the  
Allotments.

XXXIII. Provided always, and be it enacted, That it shall be lawful for Four Fifths in Value of such Proprietors and Persons interested as aforesaid (such Value to be ascertained by the Poor Rate of the then current Year) to agree upon the Rules, Principles, and Conditions upon which the said Commissioners shall act in directing the said Allotments

Four Fifths  
in Value of  
Proprietors  
may agree  
upon Rules  
for fencing,  
&c.



Allotments to be inclosed, hedged, ditched, and fenced, and such Agreement shall be binding on the said Commissioner.

For shorten-  
ing Boundary  
Fences.

XXXIV. And be it further enacted, That for the Purpose of shortening or rendering straight or otherwise improving any Boundary Fence or Fences between the Lands and Grounds hereby authorized to be divided, allotted, and inclosed, or any of them, and the Lands and Grounds thereunto respectively adjoining, or between such Allotments and inclosed or other Lands, or any of them, and any adjoining Lands and Grounds, it shall be lawful for the said Commissioner, with the Consent of the Owners of any such adjoining Lands, testified by Writing under his, her, or their Hand or Hands, or under the Common Seal of any of them being a Corporation Aggregate, to set out, ascertain, and determine the Boundaries between the Land hereby authorized to be divided, allotted, and inclosed, and any adjoining Lands or Grounds lying in the same or in any adjoining Manor, as the said Commissioner shall judge proper for the Purposes aforesaid; and after such Boundaries shall have been so set out, ascertained, and determined as aforesaid the same shall be made, fenced, ditched, or mounded by such Person or Persons in such Manner and at such Time or Times as the said Commissioner shall direct, and shall for ever thereafter be deemed the Boundaries between the said allotted and inclosed Lands respectively, or (as the Case may be) between the said Allotments or inclosed or other Lands, and such adjoining Manor, any Law, Usage, or Custom to the contrary notwithstanding.

Power to  
make Pro-  
prietors of  
Allotments  
contribute to  
Expences of  
Fencing in  
equal Pro-  
portions.

XXXV. And be it further enacted, That if from the Nature or Necessity of Situation, or from any other Circumstance, it shall happen that One or more of the said Proprietors shall not have an equal or proportionate Share of Boundary or other Fencing allotted to him, her, or them on the said intended Inclosure, it shall be lawful for the said Commissioner, where he shall judge it necessary and reasonable, to award, ascertain, order, and appoint a Sum or Sums of Money to be paid or contributed by such Proprietor or Proprietors respectively towards making the said Fences of the Allotments of such other of the Proprietor or Proprietors who shall or may have a greater Proportion of the Fencing allotted to him, her, or them by virtue of this Act, the same Sum to be settled by the said Commissioner in such Manner as he shall think proper; and the Money so ordered, directed, and appointed to be paid shall be raised and recovered in such and the same Manner as the Expences of this Act (not payable out of Money raised by Sale of Land) are by the said first-recited Act ordered to be levied and recovered.

Remedy if  
Fences not  
maintained  
by Persons  
bound so to  
do.

XXXVI. And be it further enacted, That in case any Person or Persons by whom any Roads, Hedges, Fences, Banks, Ditches, Drains, Watercourses, Sewers, Bridges, Gates, Stiles, or other Works and Improvements shall be ordered and directed by the said Commissioner to be maintained, cleansed, and kept in repair, or his, her, or their Tenant or Tenants, shall neglect or refuse to maintain, cleanse, and keep in repair the same or any Part thereof for the Space of Twenty-one Days after Notice given by the Person or Persons aggrieved



of any Default therein, then and in every such Case it shall be lawful for the Person or Persons who shall be damaged or aggrieved thereby to make Complaint thereof upon Oath or Affirmation before any One Justice of the Peace acting in and for the Division in which the said Parish of *Eastmeon* is situated, not interested in the Matter in question, who is hereby authorized and required to administer such Oath and Affirmation, and to hear and determine the Matter of every such Complaint in a summary Way, and for that Purpose to summon the Party or Parties so accused, or, upon his, her, or their Neglect or Refusal to appear (except for some reasonable Excuse), to examine Witnesses upon Oath or Affirmation, and thereupon to give Judgment accordingly, and condemn the Party or Parties accused in such Penalty or Penalties, Sum or Sums of Money, from Time to Time, not exceeding at any One Time the Sum of Five Pounds, as the said Justice shall think just and reasonable, and thereupon to issue a Warrant under his Hand and Seal to cause such Penalty or Penalties to be levied by Distress and Sale of the Goods and Chattels of the Offender or Offenders, together with reasonable Costs, returning the Overplus (if any), on Demand, to the Owner or Owners of such Goods and Chattels; which Penalty or Penalties, Sum or Sums of Money, when so recovered, shall be paid to the Person or Persons so damaged or aggrieved as aforesaid.

XXXVII. And be it further enacted, That when and so soon as the said Commissioner shall have ascertained the respective Rights and Interests of the several Persons, and Bodies Politic, Corporate, Ecclesiastical, and Collegiate, in and over the said Open and Common Downs to be divided, allotted, and inclosed by virtue of this Act and the said recited Acts, and also the respective Shares and Proportions by him the said Commissioner proposed to be allotted to such Proprietors respectively for and in respect of such Rights and Interests, he the said Commissioner shall give Notice of some convenient Time and Place when and where the said Proprietors may be informed of such proposed Allotments, and may see the Plan thereof set out and delineated upon a Map thereof, to be produced to such Proprietors for their Inspection; and as some of those Proprietors may upon Inspection of such Map be dissatisfied with the proposed Allotments, the said Commissioner shall at such Time and Place as last aforesaid, or at some other Time and Place to be appointed for that Purpose, receive a Statement in Writing of the Objections against such proposed Allotments, and shall forthwith, or as soon after as conveniently may be, determine the same, and his Determination shall be final and conclusive.

Commissioner to have a Meeting to show the Plan of his proposed Allotments, and to receive Objections thereto.

XXXVIII. And be it further enacted, That all and every of the Allotment and Allotments to be made by virtue of this Act in or upon the said Open and Common Downs hereby directed to be divided, allotted, and inclosed shall, from and after the making and executing of the Award of the said Commissioner, be held under and subject to the same Tenures, Services, Rents, Chief Rents, and Quit Rents as the Lands and other Hereditaments in respect of which they were so respectively allotted were held.

Allotments to be under the same Tenure as Ladns in respect whereof they are made.

XXXIX. Provided nevertheless, and be it enacted, That no Allotment to be made by virtue of this Act of or from the said Open and  
[Private.]

No Allotment to be subject to any Heriot.



Common Downs shall be subject to the Payment of any Heriot to the Lord of the said Manor of *Eastmeon*, although the Lands or other Hereditaments in respect whereof any such Allotment was made were so subject.

If Hereditaments in respect of which Allotments are made are held by different Titles, the Commissioner to make distinct Allotments for each, and distinguish them from each other.

If Commissioner omit from any Cause to distinguish Title of Allotments, he may do so by a separate Deed after the Award is executed.

XL. And be it further enacted, That in case any Proprietor or Proprietors of any Lands or other Hereditaments within the said Tithings of *Oxenbourn* and *Ramsdean*, or either of them, shall hold the same by different Tenures, for different Estates, or in different Rights, or under different Titles, the said Commissioner shall and he is hereby authorized and required, upon the Request in Writing of any such Proprietor or Proprietors, to inquire into and ascertain and determine, by the Examination of Witnesses on Oath or Affirmation or other sufficient Evidence, the respective Lands or other Hereditaments holden by, for, in, or under such different Tenures, Estates, Rights, or Titles respectively, and shall accordingly in his said Award assign and set out distinct and several Allotments of the Lands and Grounds hereby directed to be divided and allotted by distinct and several Descriptions for such Lands or other Hereditaments respectively, and shall in his said Award also declare in right of what Estates, Rights, or Titles such Allotments shall have been respectively made; and in case the said Commissioner, from Want of necessary Information or any other Cause, shall have omitted to ascertain and distinguish such different Tenures, Estates, Rights, or Titles in his said Award, it shall be lawful for the said Commissioner, and he is hereby authorized, at any Time within Twelve Calendar Months from the Execution of his said Award, upon the Request in Writing of any Person or Persons interested in the Premises, to do all proper and necessary Acts for supplying such Omission, and for enabling him the said Commissioner to ascertain and distinguish the same, in like Manner as he might or could have done if his said Award had not been executed; and when within the Time aforesaid the said Commissioner shall have obtained sufficient Information in his Judgment for the Purposes aforesaid, he is hereby authorized and required, by any Deed or Instrument in Writing under his Hand and Seal, to ascertain and distinguish such Tenures, Estates, Rights, and Titles respectively, and to make distinct and several Allotments, in the same Manner as he is hereby required to do by his said Award; and every such Deed or Instrument shall have the same Force and Effect as if the Contents thereof had been inserted in his said Award, and shall be delivered to the Person or Persons upon whose Request the same shall have been executed, or to whom the Custody of the Deeds and Writings concerning the Title to the Premises in question shall in the Opinion of the said Commissioner at the Time of such Delivery belong; and all the Charges and Expences occasioned in making such Ascertainment and Distinction, and of preparing or executing any such Deed or Instrument, or in anywise relating thereto, shall be paid by the Person or Persons making such Request as aforesaid, or by his, her, or their Heirs, Executors, or Administrators, to such Person or Persons and at such Time and Place as the said Commissioner shall direct and appoint; and in case the said Charges and Expences shall not be paid, on Demand thereof made, then the same shall and may be raised and levied in such Manner and by such



Ways and Means as the Costs, Charges, and Expences of obtaining this Act and executing this and the said first-recited Act can or may be raised and levied.

XLI. And be it further enacted, That it shall be lawful for any Person or Persons, Bodies Politic, Corporate, Ecclesiastical, or Collegiate, who shall be entitled to any Allotment or Allotments by virtue of this Act, to give, grant, bargain, sell, mortgage, demise, limit, convey, and assure the same, for all or any Part of his, her, or their Estate and Interest therein or Right thereto, at any Time before the Execution of the Award of the said Commissioner, and every such Gift, Grant, Bargain, Sale, Mortgage, Demise, Limitation, and Disposition thereof shall be of the same Force and Validity as if made after the Execution of the said Award; and also that it shall be lawful for any of the Owners or Proprietors of any Right of Common on the Lands and Grounds hereby directed to be divided and inclosed to sell or dispose of the same Right of Common, or the Allotment or Allotments to be made and set out in respect thereof by virtue of this Act, separate and distinct from the Estate in right of which he or she is entitled to the same, in such Manner as he or she might have done at any Time after the Execution of the said Award; and it shall be lawful for the said Commissioner to award all and every such Allotment or Allotments as shall be so sold and conveyed, or as shall be made and set out in lieu of any Right of Common so sold and conveyed, to the Purchaser or Purchasers thereof, or other Person or Persons who shall be entitled to the same by virtue of any such Sale or Disposition.

Power of Sale, &c. of Allotment before Award is made.

XLII. And be it further enacted, That it shall and may be lawful to and for the said Commissioner for the Time being to set out, allot, and award any Lands, Tenements, or Hereditaments whatsoever within the said Tithings of *Oxenbourn* and *Ramsdean*, or either of them, in lieu of and in exchange for any other Lands, Tenements, or Hereditaments whatsoever within the said Tithings or either of them, or within any adjoining Parish, Township, or Place; provided that all such Exchanges be ascertained, specified, and declared in the Award of the said Commissioner, and be made with the Consent of the respective Owners or Proprietors for the Time being of the Lands, Tenements, or Hereditaments which shall be so exchanged, whether such Owners or Proprietors shall be a Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, or a Corporation or Corporations Aggregate or Sole, 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 any Life or Lives, by and with the Consent of the Lessor or Lessors of any such Lands, Tenements, or Hereditaments holden for Years determinable as aforesaid, but not otherwise, or with the Consent of the Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees, or Attornies of or acting for any such Proprietors or Owners as aforesaid who at the Time of making such Exchange or Exchanges shall respectively be Infants, Females Covert, Lunatics, or under any other legal Incapacity, or who shall be beyond the Seas, or otherwise disabled to act for themselves, himself, or herself (such Consent to be

Power of Exchange.



be respectively testified by Writing under the Common Seal of such Bodies Politic, Corporate, and 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 such 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 as aforesaid, of the Patron thereof, and of the Bishop of the Diocese in which such Lands, Tenements, or Hereditaments so to be exchanged shall lie and be situate: Provided always, that the Costs, Charges, and Expences of and attending the making and completing of any Exchanges to be made by virtue of this Act or the said first-recited Act shall be paid and borne by the several Persons, Bodies Politic, Corporate, Ecclesiastical, or Collegiate, whose Estates shall be exchanged, and in such Manner and in such Proportions as the said Commissioner shall by any Writing under his Hand order and direct, and shall be recovered in the same Manner as by the said first-recited Act is directed respecting the Recovery of any Rate to be made for defraying any Part of the Charges and Expences of obtaining and executing this Act.

Expences of Exchanges.

Allotments in respect of Lands in Lease for any Term not exceeding Twenty-one Years to be made to Lessor, who shall take same, and abate Rent to his Tenant, which shall be decided by Commissioner.

XLIII. Provided always, and be it further enacted, That the Allotments to be made and set out by virtue of this Act in right of any Property under Lease for any Term of Years not exceeding Twenty-one Years at Rack Rents shall be allotted and set out to the respective Lessors or Landlords, and shall be held and enjoyed by them free from all Rights and Interests of their respective Tenants; and such respective Lessors or Landlords, their Heirs, Executors, Administrators, or Assigns, shall make such Abatement out of the Rents reserved by such Leases respectively in respect of any Loss which the respective Tenants may suffer on account of such Allotments as the said Commissioner for the Time being shall judge reasonable, and shall in and by his Award, or any Writing under his Hand, ascertain, direct, or appoint: Provided always, that nothing herein contained shall extend or be construed to extend to avoid or affect any Lease, Agreement, or Engagement already made between Landlord and Tenant in contemplation of an Inclosure of the said Open and Common Downs or relating thereto.

Not to revoke Settlements, &c., but Allotments to be held subject to the same Uses, &c. as Lands in respect whereof they were made.

XLIV. Provided always, and be it further enacted, That nothing in this or the said recited Acts contained shall extend or be construed to extend to revoke, make void, or alter any Will, Settlement, or Deed, or to prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Annuity, Portion, Debt, Rent, Charge, or Incumbrance whatsoever in, out of, upon, or affecting any of the Lands, Tenements, or Hereditaments to be divided, allotted, and inclosed or exchanged as aforesaid, or any Part or Parts thereof respectively, but that the respective Persons to whom any Lands, Tenements, or Hereditaments shall be allotted or given in exchange by virtue of this Act or the said first-recited Act shall be seised and possessed thereof respectively to, for, and upon such and the same Uses, Estates, Trusts, Intents, and Purposes respectively, and subject to



to such and the same Wills, Settlements, Deeds, Limitations, Remainders, Conditions, Charges, and Incumbrances, and no other, as the Lands, Tenements, or Hereditaments in respect whereof such Allotments or Exchanges shall have been made would have stood severally limited, settled, vested, or subject to in case the same had not been allotted and exchanged respectively as aforesaid, and this Act had not been passed, except where any of the Provisions of this Act are to the contrary, and subject nevertheless to all such Mortgages and Sales as shall be made by Authority of this Act or of the said first-recited Act.

XLV. And be it further enacted, That in the meantime and until such Divisions and Allotments shall be made as aforesaid, the said Open and Common Downs hereby directed to be divided, allotted, and inclosed shall in all respects be governed, ordered, and controlled by the said Commissioner by Writing or Writings under his Hand, in case he shall think it expedient to make any Order or Regulation in that Behalf, any Usage or Custom to the contrary thereof notwithstanding.

Downs to be used till allotted as Commissioner shall direct.

XLVI. And be it further enacted, That no Person or Persons shall graze or keep any Sort of Cattle whatsoever in or upon any of the public Roads or Ways which the said Commissioner shall order and direct to be set out; and every Proprietor or Occupier of Lands and Tenements is hereby empowered to take and impound every Horse, Ass, Bullock, Cow, Sheep, Lamb, Pig, and other Beast which shall be found so grazing as aforesaid, as Cattle Damage feasant.

Roads not to be grazed upon.

Cattle found to be impounded.

XLVII. And be it further enacted, That the Costs, Charges, and Expences incident to and attending the obtaining and passing of this Act, and of carrying the same into complete Execution, (except the Costs, Charges, and Expences of and attending the making and completing of any such Exchanges as aforesaid,) shall be paid and defrayed by the Proprietors of Lands or Hereditaments to whom Allotments shall be made by virtue of this Act (except the Surveyors of Highways in respect of the Allotments to be made to them as aforesaid, and except the Proprietors of Cottages in respect of the Allotments to be made for the Use of the Occupiers thereof as aforesaid, and also except the neighbouring Population in respect of the Allotment to be made for their Recreation as aforesaid,) in such Proportions, at such Times, by such Persons, Bodies Politic, Corporate, Ecclesiastical, or Collegiate, and in such Manner, as the said Commissioner shall by Writing under his Hand affixed on the outer Door of the Parish Church of *Eastmeon* aforesaid order and direct; and in case any Person or Persons, Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, shall refuse or neglect to pay his, her, or their Share or Proportion or respective Shares or Proportions of the said Costs, Charges, and Expences, according to such Order and Direction as aforesaid, the said Commissioner shall and may, for the Recovery and compelling Payment thereof, use all or any of the Powers, Remedies, Ways, and Means which by the said first-recited Act are given in those Cases where it shall be provided by Acts of Inclosure that the Expences of obtaining and carrying the same

As to Costs of Act, and of carrying the same into Execution.

[Private.]

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into



into execution shall be paid in proportion by the Proprietors of Lands or Grounds to whom any Allotments should be made.

Sums not paid at the Time of the signing the Award may be recovered afterwards.

XLVIII. Provided always, and be it further enacted, That if at the Time of the Execution of the Award of the said Commissioner there shall remain due from any Person or Persons, Bodies Politic, Corporate, Ecclesiastical, or Collegiate, any Sum or Sums of Money which shall have been adjudged or ordered to be paid by virtue of this Act, it shall be lawful for the said Commissioner and he is hereby authorized and required to levy and raise the same in like Manner as he might and could have done before the Execution of his said Award.

Power to Commissioner to sell Allotments of incapacitated Persons to raise their Share of Expences.

XLIX. And be it further enacted, That it shall be lawful for the said Commissioner, on Application made to him for that Purpose in Writing by any Person or Persons entitled to any Allotment or Allotments under this Act, being Tenant or Tenants in Tail, or for Life or Lives, or for any other Estate of Freehold or Inheritance, or by the Husbands, Guardians, Trustees, Committees, or Attornies of any such Person or Persons, being under Coverture, Minors, Lunatics, or beyond the Seas, or under any other legal Disability, to sell and dispose of any Part or Parts of the Allotment or Allotments to be made from or out of the said Open and Common Downs by virtue of this Act to the Person or Persons by whom or on whose Behalf any such Application shall be made as aforesaid, for the Purpose of raising a Sum of Money sufficient to pay all or any Part or Parts of his, her, or their Proportion or Proportions of the Costs, Charges, and Expences of obtaining, passing, and executing this Act, and of the necessary Costs and Expences of fencing and dividing his, her, or their Allotment or Allotments as aforesaid; all which Sales hereby authorized shall be made in such Manner and Form and subject to such Regulations as by the said first-recited Act is directed or mentioned with respect to Sales thereby authorized; and the said Commissioner is hereby empowered, by any Deed or Instrument in Writing under his Hand and Seal, to convey and assure the Part or Parts so sold, at the Expence of the Purchaser or Purchasers thereof, unto and to the Use of or in Trust for him, her, or them, and his, her, or their Heirs and Assigns respectively, or to such Uses and in such Manner as he, she, or they shall appoint; and the Part or Parts so sold shall be inclosed and holden by such Purchaser or Purchasers respectively in Fee in Severalty, by the same Tenure as the Hereditaments in respect whereof the Allotment or Allotments, or Part or Parts whereof shall be so sold, was or were held and discharged of all Commonable and other Rights therein; and the Receipt of the said Commissioner for such Purchase Monies shall be a sufficient Discharge to such Purchaser or Purchasers: Provided always, that the Purchaser or Purchasers of any Part or Parts of an Allotment or Allotments made in respect of any Copyhold Hereditaments shall, within Six Calendar Months next after the Completion of the Sale or Sales to him, her, or them, be admitted Tenant or Tenants of the Premises so purchased by him her, or them.

XLVIII. And



L. And be it further enacted, That it shall be lawful for any Person or Persons entitled to any Allotment or Allotments under this Act, being Tenant or Tenants in Tail, or for Life or Lives, or for any other Estate of Freehold or Inheritance, and also for the Husbands, Guardians, Trustees, Committees, or Attornies of any such Person or Persons, being under Coverture, Minors, Lunatics, beyond the Seas, or under any other legal Disability, with the Consent in Writing of the said Commissioner, to charge all or any Part or Parts of the Allotment or Allotments to be made from or out of the said Open and Common Downs by virtue of this Act to any such Person or Persons with any Sum or Sums of Money, not exceeding the Amount of the respective Payments which shall be made by or on the Behalf of him, her, or them, under the Direction of the said Commissioner, for or on account of all or any of such Costs, Charges, or Expences as aforesaid; and for the better securing the Payment thereof, with Interest, it shall be lawful for any such Person or Persons so being Tenant or Tenants in Tail, or for Life or Lives, or for any other Estate of Freehold or Inheritance, and also for the Husbands, Guardians, Trustees, Committees, or Attornies of any such Person or Persons so being under Coverture, Minors, Lunatics, beyond the Seas, or under any other legal Disability, by any Deed or Instrument in Writing under the Hand and Seal or respective Hands and Seals of the Person or Persons exercising this Power, with such Consent as last aforesaid, to grant, surrender, convey, and assure the Lands so to be charged by way of Mortgage in such Manner as by the said first-recited Act is provided or authorized with respect to any other Money to be raised or borrowed for the Purposes of this Act; provided that nothing herein contained shall authorize any Person or Persons to raise or charge by Sale, Mortgage, or by any other Ways or Means by the said first-recited Act or this Act mentioned, any further or greater Sum or Sums of Money for defraying such Expences as aforesaid than after the Rate of Five Pounds for every Acre of his, her, or their Lands to be divided and allotted by virtue of this Act; and that in all Cases where any Lands shall be sold for the Payment of such Expences it shall not be lawful for such Person or Persons to charge his, her, or their Lands, Tenements, or Hereditaments, or any Part thereof, with any Sum or Sums of Money whatsoever for the Payment thereof.

Power to incapacitated Persons to charge their Allotments with Expences.

LI. Provided always, and be it further enacted, That in case the Lands and Grounds so to be sold as herein-before mentioned shall be sold for more Money than will be required to defray the Share or Proportion of such Costs, Charges, and Expences to be paid by the Person or Persons so requesting such Sales, then and in such Case such surplus Money shall be divided and apportioned between the several Persons so requesting such Sale, if more than One such Application shall be so made, in such Shares as the said Commissioner shall think proper; and the Shares of such of them as shall be Tenants of their respective Allotments in Fee shall be paid to them respectively, and the Shares of such other Persons of or in such surplus Money shall be applied and disposed of in the Manner directed by this Act with respect to the Money to be paid for the Purchase or Exchange of any Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, and which Money ought to be laid

Application of surplus Money arising from Sale.



laid out in the Purchase of other Lands, Tenements, or Hereditaments, to be settled to the same Uses.

Application  
of Compen-  
sation Money  
if amounting  
to 200*l.*

LII. And be it further enacted, That whenever any Sum of Money is, under the Provisions of the said recited Act of the Forty-first Year of the Reign of His said late Majesty King *George* the Third or this Act, to be paid for the Purchase or Exchange of any Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, which shall belong to any Body Politic, Corporate, Ecclesiastical, or Collegiate, or to any Person under any other Disability or Incapacity whatsoever, and which Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments, to be settled to the same Uses, it shall and may be lawful to and for the said Commissioner, out of such Sum, to defray such Proportion of the Expence of passing this Act and of carrying the same and the said recited Acts into execution as shall (if any) be charged upon any of the Lands, Tenements, or Hereditaments of the Person or Persons, Body Politic, Corporate, or Collegiate, Ecclesiastical or Civil, Corporation Aggregate or Sole, Tenant for Life or in Tail, Feoffee, Executor, Administrator, Husband, Guardian, Committee, or Trustee, in possession of the Lands, Tenements, or Hereditaments so purchased or exchanged, or on which such Timber or Wood actually grew; and in case the Surplus of such Money shall amount to or exceed the Sum of Two hundred Pounds, the same shall with all convenient Speed be paid into the Bank of *England* in the Name and with the Privity of the Accountant General of the Court of Exchequer, to be placed to his Account there *ex parte* the Commissioner for executing this Act, pursuant to the Method prescribed by an Act passed in the First Year of the Reign of His said late Majesty King *George* the Fourth, intituled *An Act for the better securing Monies and Effects paid into the Court of Exchequer at Westminster on account of the Suitors of the said Court, and for the Appointment of an Accountant General and Two Masters of the said Court, and for other Purposes, and the General Orders of the said Court, and without Fee or Reward; to the Intent that such Money may be applied, under the Direction and with the Approbation of the said Court, to be signified by an Order made upon a Petition to be preferred in a summary Way by the Person or Persons who would have been entitled to the Rents and Profits of the said Lands, Tenements, or Hereditaments, in the Purchase of the Land Tax, or towards the Discharge of any Debt or Debts, or such other Incumbrance, or Part thereof, as the said Court shall authorize to be paid, affecting the same Lands, Tenements, or Hereditaments, or affecting other Lands, Tenements, or Hereditaments standing settled therewith to the same or the like Uses, Intents, or Purposes; or where such Money shall not be so applied, then the same shall be laid out and invested, under the like Direction and Approbation of the said Court, in the Purchase of other Lands, Tenements, or Hereditaments, which shall be conveyed to, for, and upon such and the like Uses, Trusts, Intents, and Purposes, and in the same Manner, as the same Messuages, Lands, and Hereditaments which shall be so purchased or exchanged as aforesaid stood settled or limited, or such of them as at the Time of making such Conveyance and Settlement shall be existing undetermined and capable of taking effect; and in the meantime and*



until such Purchase shall be made the said Money shall, by Order of the said Court of Exchequer upon Application thereto, be invested by the said Accountant General in his Name in the Purchase of Three Pounds *per Centum* Consolidated or Three Pounds *per Centum* Reduced Bank Annuities; and in the meantime, and until the said Bank Annuities shall be ordered by the said Court to be sold for the Purposes aforesaid, the Dividends and annual Produce of the said Consolidated or Reduced Bank Annuities shall from Time to Time be paid, by Order of the said Court, to the Person or Persons who would for the Time being have been entitled to the Rents and Profits of the said Lands, Tenements, and Hereditaments so hereby directed to be purchased in case such Purchase or Settlement were made.

LIII. And be it further enacted, That in case the Surplus of such Money shall be less than the Sum of Two hundred Pounds and shall exceed the Sum of Twenty Pounds, then and in all such Cases the same shall, at the Option of the Person or Persons for the Time being entitled to the Rents and Profits of the Lands, Tenements, or Hereditaments so purchased or exchanged, or of his, her, or their Guardian or Guardians, Committee or Committees, in case of Infancy, Idiocy, Lunacy, or other Incapacity, with the Approbation of the said Commissioner, to be signified in Writing under his Hand, be paid into the Bank of *England* in the Name and with the Privity of the said Accountant General of the Court of Exchequer, and be placed to his Account as aforesaid, in order to be applied in manner herein-before directed; or otherwise the same may be paid, at the like Option and with the like Approbation, to Two Trustees, to be nominated by the Person or Persons who for the Time being would be entitled to the Rents and Profits of the said Lands, Tenements, and Hereditaments, such Nomination to be approved of by the said Commissioner, and such Nomination and Approbation to be signified in Writing under the Hands of the nominating and approving Parties; and the Monies so paid to such Trustees, and the Dividends and Produce arising thereon and therefrom, shall be by them applied in like Manner as is herein-before directed with respect to the Money so to be paid into the Bank in the Name of the Accountant General of the Court of Exchequer, but without obtaining or being required to obtain any Order of the said Court touching the Application thereof.

When less than 200*l.* and exceeding 20*l.*

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

When not exceeding 20*l.*

LV. And be it further enacted, That any Person or Persons who shall advance or lend any Sum or Sums of Money to the said Commissioner

Power to Commissioner to

[*Private.*]

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repay Money lent him for Purposes of the Act.

missioner towards defraying the Costs, Charges, and Expences of obtaining this Act, and carrying the same and the said recited Acts into execution, shall be repaid the same out of the first Monies which shall be raised and collected in pursuance of this Act, with lawful Interest for the same from the Time or respective Times of advancing or lending the same.

Fees to Commissioner and Clerk.

LVI. And be it further enacted, That the Commissioner for the Time being acting in the Execution of the Trusts and Powers vested in him by this Act, and also his Clerk, shall be paid the Sum of Three Pounds and Three Shillings each, and no more, for every Day they respectively shall be employed in the Execution of this Act, in full Satisfaction for the Trouble which they respectively shall be put unto in the Execution of the Trusts and Powers hereby given, and for the several Expences that they respectively shall be put unto during their several Journeys and Attendances in the Execution of this Act: Provided always, that all Proprietors and Persons interested in the said Inclosure, their Attornies and Agents, shall pay their own Expences when they or any of them shall attend at any Meeting to be holden in pursuance of this Act.

Commissioner to submit Accounts yearly to Justices.

LVII. And be it further enacted, That once in each and every Year during the Execution of this Act (such Year to be computed from the Day of passing thereof) the said Commissioner shall and he is hereby required to make a true and just Statement or Account of all Sums of Money by him received and expended or due to him for his own Trouble and Expences in the Execution of this Act; and such Statement or Account, when so made, together with the Vouchers relating thereto, shall be by him laid before One of Her Majesty's Justices of the Peace for the County of *Southampton* (not interested in the Inclosure directed by this Act to be made), to be by him examined and balanced, and such Balance shall be by such Justice stated in the Book of Accounts to be kept in the Office of the Clerk of the said Commissioner; and no Charge or Item in such Accounts shall be binding on the Parties concerned or valid in Law unless the same shall have been duly allowed by such Justice.

Publication of Award, and Custody of Award and Map.

LVIII. And be it further enacted, That the Award to be made by the said Commissioner under the Authority of this Act and the said first-recited Act shall be executed and published within Three Years after the passing of this Act, and, together with a Map or Plan of the said Lands hereby directed to be inclosed thereto annexed, shall within Six Calendar Months after the Execution thereof be delivered to the Clerk of the Peace for the County of *Southampton*, who is hereby required to deposit and keep the same among the Records of the said County, so that recourse may be had thereto by any Person or Persons interested in the Premises, for the Reception whereof the Fee of Two Pounds and Two Shillings shall be paid, and no more, and for the Inspection and Perusal thereof the Sum of One Shilling, and no more, shall be paid; and the said Award shall, from and after the Delivery thereof to the said Clerk of the Peace for the said County, be deemed and taken to be enrolled according to the Directions and within the Meaning of the said first-recited Act; and  
a Copy



a Copy of the said Award, fairly transcribed in a Book, with the said Map or Plan, shall within the Time aforesaid be deposited in the said Parish Church of *Eastmeon*, and there kept in a Box to be provided for that Purpose; and the said Award and Copy thereof, and any other Copy of the said Award or any Part thereof, attested by the said Clerk of the Peace or his Deputy, (for every Sheet of which Copy containing Seventy-two Words Four-pence, and no more, shall be paid,) shall be admitted and allowed as legal Evidence of the Matters and Things therein contained in all Courts whatsoever.

LIX. And be it further enacted, That a Copy of the said Award shall within Three Years after the passing of this Act be entered on the Court Rolls of the said Manor of *Eastmeon* by the Steward of such Manor, for which he shall be paid the Fee of Four Pounds, and no more.

Award to be entered on the Court Rolls.

LX. And be it further enacted, That if any Person or Persons, or Body or Bodies Politic, Corporate, Ecclesiastical, or Collegiate, shall think himself, herself, or themselves aggrieved by any thing done by the said Commissioner in pursuance of the said recited Acts or of this Act (other than and except such Orders and Determinations of the said Commissioner as are by this Act or the said first-recited Act directed to be final and conclusive, and except in such Cases where an Issue at Law may be tried as herein-before mentioned), then and in every such Case he, she, or they may appeal to the Justices at the General Quarter Sessions of the Peace which shall be holden in and for the County of *Southampton* within Four Calendar Months next after the Time when the Cause of Complaint shall have arisen, giving to the said Commissioner and the Party or Parties concerned Notice in Writing of such Appeal, and of the Matter thereof, within Twenty-eight Days after the Cause of Complaint shall have arisen, and Fourteen Days at the least before such General Quarter Sessions; and the Justices (not interested in the Premises) assembled at the said General Quarter Sessions, or at any subsequent General Quarter Sessions to which the said Justices shall adjourn any such Appeal, either for Want of such Notice having been given as aforesaid, or for any other Cause which to the said Justices shall seem a sufficient Cause to adjourn such Appeal, are hereby authorized and required to hear and determine the Matter of every such Appeal, and to make such Order therein, and award such Costs and Damages, as to them in their Discretion shall seem reasonable, and by their Order or Warrant to levy the Costs and Damages which shall be so awarded by Distress and Sale of the Goods and Chattels of the Party or Parties, Person or Persons made liable to pay the same, rendering the Overplus (if any) to the Owner or Owners of such Goods and Chattels, after deducting the reasonable Charges of such Warrant, Distress, and Sale; and every Order and Determination of the said Justices upon every such Appeal shall be final and conclusive on all Parties concerned to all Intents and Purposes whatsoever, and shall not be removed or removeable by Certiorari or any other Writ or Process whatsoever into any of Her Majesty's Courts of Record at *Westminster* or elsewhere; but in case such Appeal shall appear to the said Justices to be frivolous or vexatious, or without sufficient

Power of Appeal to the Sessions.

Foundation,



Foundation, then the said Justices shall award such Costs to be paid by the Appellant or Appellants as to the said Justices in their Discretion shall seem reasonable, and such Costs shall be levied in manner last aforesaid.

Rights of  
Lords of Ma-  
nors not to  
be preju-  
diced.

LXI. Provided always, and be it further enacted, That nothing in this Act contained shall prejudice, lessen, or defeat the Right, Title, or Interest of any Lord or Lords of any Manor or Manors within which the said Open and Common Downs are situate and being (other than such Interest as is intended to be barred by this Act), but that such Lord or Lords shall and may from Time to Time and at all Times hereafter hold, receive, and enjoy all Rents, Courts, Services, Perquisites and Profits of Courts, and all other Royalties and Privileges incident, appendant, or belonging to such Manor or Manors, as fully and effectually as if this Act had not been passed; save and except as herein provided respecting Heriots, and also save and except that such Lord or Lords shall not nor will at any Time for the Space or Term of Five Years next after the Execution of the Commissioner's Award, raise or advance any of the Fines to be paid or advanced for the Admission to Copyhold Estate within the said Manor of *Eastmeon*, but shall be obliged, during such Five Years only, to accept and receive the like Fine which was theretofore last paid for the same.

Saving the  
Rights of the  
Crown.

LXII. Saving always to the Queen's most Excellent Majesty, Her Heirs and Successors, and to all and every other Person and Persons, Bodies Politic, Corporate, Ecclesiastical, and Collegiate, his, her, and their respective Heirs, Successors, Executors, and Administrators, all such Estate, Right, Title, and Interest (other than and except such as are expressly barred and destroyed or are meant and intended to be barred and destroyed by this Act) as they, any or either of them, had and enjoyed of, in, to, out of, or in respect of any of the said Open and Common Downs hereby directed to be divided and allotted before the passing of this Act, or could or might have had or enjoyed in case this Act had not been passed.

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

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

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