



ANNO QUINTO

GEORGII IV. REGIS.

Cap. 31.

An Act for dividing, allotting, and inclosing certain Lands and Waste Grounds, called the Town and undivided Lands of *Castle Island* in the County of *Kerry*.
[17th June 1824.]

WHEREAS there are, within the Parish of *Castle Island* in the County of *Kerry*, certain Lands and Waste Grounds, containing by Estimation One thousand and twenty Acres or thereabouts: And whereas *Henry Arthur Herbert* of *Muckruss* in the said County, Esquire, *Frances Crosbie* and *Mary Anne Crosbie*, the Right Honourable *Jane Lady Headley*, *William Meredith* of *Dick's Grove* in the said County, Esquire, *Richard Chute* of *Chutehall* in the said County, and the Right Honourable *William Townsend* Lord Baron *Ventry*, are Owners and Proprietors of said Lands and Waste Grounds, and it would be advantageous to the said Owners and Proprietors, and all other Persons interested in the said Lands and Grounds, if the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments called and known by the Name of the Town and Undivided Lands of *Castle Island* were divided, allotted, and inclosed: But as such Division, Allotment, and Inclosure cannot be effected without the Aid and Authority of Parliament, may it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,
[Private.] 8 k That

Commis-
sioner.

That *John Wiggins* of *Sloane Street* in the Parish of *Saint Luke Chelsea*, in the County of *Middlesex*, Esquire, and his Successor and Successors, to be elected in manner herein after mentioned, shall be, and he and they is and are hereby appointed Commissioner or Commissioners for dividing, allotting, and inclosing the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments called and known by the Name of the Town and Undivided Lands of *Castle Island*, and for carrying this Act into Execution.

New Com-
missioner in
case of
Death.

II. And be it further enacted, That if the Commissioner herein named, or any Commissioner or Commissioners to be appointed by virtue of this Act, shall, before the Execution of all the Powers and Authorities hereby vested in him or them, die, neglect or refuse to act, or become incapable of acting in the Execution of this Act, then and in every such Case it shall and may be lawful to and for the Owners and Proprietors for the Time being of the said Lands and Grounds, and all the Lands, Tenements, and Hereditaments before mentioned, or the major Part of them, and they are hereby required at any Time and from Time to Time within Thirty Days next after such Death, Neglect, Refusal, or Incapacity shall be known to him or them, by Writing under their or his Hands or Hand, to appoint another Person (not being interested in the said Division or Inclosure) to be a Commissioner in the Place of each Commissioner so dying, neglecting or refusing to act, or becoming incapable of acting; and every Commissioner so to be appointed as aforesaid shall, after taking the Oath herein mentioned, have the like Powers and Authorities for carrying this Act into Execution in all respects as if he had been named and appointed a Commissioner in and by this Act.

Notice of
Meetings of
Commis-
sioner.

III. And be it further enacted, That the said Commissioner shall and he is hereby required to cause Notice in Writing of the Time and Place of his first and every other Meeting for the Execution of this Act, to be placed on the principal Door of the Parish Church of *Castle Island*, and to be inserted in *Chute's Western Herald and Kerry Advertiser*, if then published, and if not, then in some other Newspaper printed and circulated within the said County of *Kerry*, Ten Days at least before every such Meeting (Meetings by Adjournment only excepted), and such Commissioner may adjourn such Meeting to any Time and Place within the said Parish, or within Eight Miles thereof, which he shall think most convenient: Provided always, that no Person shall be capable of acting as a Commissioner in the Execution of this Act (except only in the Power hereby given of appointing the First Meeting) until he shall have taken the following Oath; (that is to say),

Qualification
of Commis-
sioner.

I *A. B.* do swear, That I will faithfully, impartially, and honestly, examine into, hear, and determine all such Matters and Things as shall be brought before me as a Commissioner, by virtue of an Act for dividing, allotting, and inclosing certain Lands and Waste Grounds, called the Town and Undivided Lands of *Castle Island* in the County of *Kerry*, and otherwise execute the Powers thereby in me reposed, according to the best of my Skill and Judgment, and without Favour or Affection to any Person or Persons whomsoever.

' So help me GOD.'

Which

Which Oath it shall and may be lawful to and for any Justice of the Peace of the County of *Kerry*, and which he is hereby required to administer to the said Commissioner.

IV. And be it further enacted, That the said Commissioner shall be allowed the Sum of **Five Pounds Thirteen Shillings and Nine pence Irish Currency per Diem**, and no more, for his Trouble and Expences in the Execution of this Act, in full Satisfaction for his Trouble, Costs, Charges, and Expences.

Allowance to
Commissioner.

V. And be it further enacted, That with all convenient Speed after the passing of this Act, a true and perfect Admeasurement of all the Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments called and known by the Name of the Town and Undivided Lands of *Castle Island*, by this Act directed to be divided, allotted, and inclosed, shall be made and laid down as a Survey or Plan, by such Person or Persons (not interested in the said intended Division and Inclosure) as the said Commissioner shall appoint; and the said Plan or Survey shall contain and set forth the Number of **Messuages**, Cottages, Acres, Roods, and Perches, in Statute Measure, belonging to the several Owners or Proprietors respectively, and also the Number of Acres, Roods, and Perches contained in the said Lands and Waste Grounds, and said other Lands, Tenements, and Hereditaments, and shall be used by the said Commissioner as often as Occasion shall require; and the said Plan or Survey, together with all other Acts, Matters, and Things to be done by the Person or Persons so to be appointed as aforesaid, shall be verified by his or their Oath (which Oath any Justice of the Peace of the said County is hereby empowered to administer), and the said Commissioner and Surveyor, their Assistants and Servants, and all and every other Person or Persons employed by the said Commissioner shall, and he and they hereby has and have full and free Liberty and Power, at any Time before the Execution of the Award herein directed to be made by the said Commissioner, to enter into, view, examine, survey, admeasure, plan, and value the Lands and Grounds, and all other Lands, Tenements, and Hereditaments, and to fix **Stakes or Land Marks thereon**, and to do all Matters and Things which shall in the Judgment of the said Commissioner be requisite for carrying this Act into Execution: Provided nevertheless, that if any Plan or Survey already made of the Lands and Grounds, and all other the Lands, Tenements, and Hereditaments before-mentioned, shall be produced and laid before the said Commissioner, of the Authenticity whereof he shall be satisfied, it shall and may be lawful to and for the said Commissioner to contract for and purchase the same, and to use or cause the same to be made use of by every Surveyor or Surveyors as aforesaid to be appointed by him.

Survey to be
made.

VI. And whereas Disputes may arise touching the Boundaries of the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments before mentioned; be it therefore enacted, That the said Commissioner shall, and he is hereby required to perambulate the Boundaries of the said Lands and Waste Grounds, and all other Lands, Tenements, and Hereditaments before mentioned, and to cause Notice of such intended Perambulation to be inserted in the said *Western Herald*, if then published, and if not, then in some other Newspaper printed and

Perambulation of Boundaries of the Parish.

Appeal to
Sessions
against Bound-
aries.

and circulated within the said County of *Kerry*, Ten Days at least before the Time of such intended Perambulation; and after the Expiration of the Time to be specified in such Notice, the said Commissioner is hereby authorized and required to inquire into, set out, and ascertain, fix and determine the Boundaries of the said Lands, Grounds, and other the Lands, Tenements, and Hereditaments before mentioned, and within Thirty Days after the Determination of the said Boundaries to cause a Description of such Boundaries to be inserted in the said *Western Herald* if then published, and if not, then in some other Newspaper printed and circulated within the said County of *Kerry*: Provided always, that if any Person or Persons interested in the Determination of the said Commissioner respecting the said Boundaries shall be dissatisfied with such Determination, such Person or Persons may appeal to the Justices of the Peace acting in and for the said County of *Kerry*, at any Quarter Sessions of the Peace to be holden within Four Calendar Months next after the Publication as aforesaid, of the Description of the said Boundaries, (the Party or Parties making such Appeal giving Ten Days Notice of such Appeal, and of the Matter thereof, to the said Commissioner); and the Decision of the said Justices therein shall be final and conclusive.

Power of
shortening
Boundary
Fences
against ad-
joining
Parishes.

VII. And whereas it may shorten the Boundary Fences between the Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments aforesaid, by this Act directed to be divided, allotted, and inclosed, and the Lands lying in the Parish or Parishes adjoining thereto, if the said Commissioner were empowered to cause such Fences to be raised in such Directions as he shall think most proper and convenient for shortening and making the same regular; be it therefore enacted, That it shall and may be lawful to and for the said Commissioner, with the Consent in Writing under the Hand or Hands of the major Part in Value of the Land Owners in any Parish or Parishes adjoining to the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments aforesaid, and also under the Hand or Hands of the Lord or Lords, Lady or Ladies of the Manor or Manors in any such adjoining Parish or Parishes, or of the Owner or Owners of the Land upon which such Fence or Fences shall or may be intended to be made, to set out, ascertain, and determine the Boundary Fences to be made between the Lands and Grounds, and all other the Lands, Tenements, and Hereditaments by this Act directed to be divided, allotted, and inclosed, and the Lands lying in such adjoining Parish or Parishes, as they shall judge proper for the Purposes aforesaid; and after such Boundaries shall be set out, ascertained, and determined as aforesaid, the same shall be fenced in such Manner, and at such Time or Times as the said Commissioner shall direct, and shall for ever thereafter be deemed and taken to be the Boundaries between the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments aforesaid, and such adjoining Parish or Parishes; any Law, Usage, or Custom to the contrary thereof notwithstanding.

Encroach-
ments within
20 Years to
be Part of the
Lands to be
divided.

VIII. And be it further enacted, That all Encroachments which within Twenty Years now last past have been made upon the said Lands and Waste Grounds, and all other Lands, Tenements, and Hereditaments before mentioned, shall be deemed Part of the Lands, Grounds, Tenements, and Hereditaments to be divided and allotted by virtue of this Act, and shall be

be divided and allotted accordingly by the said Commissioner; and in case any Dispute shall arise touching any such Encroachments, or the Extent thereof, such Dispute shall be finally determined by the said Commissioner.

IX. And be it further enacted, That all and every Person and Persons, Body or Bodies Politic, Corporate, or Collegiate, having or claiming to have any Estate or Property, Right of Common, or other Right or Interest whatsoever, in, to, over, or upon the Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments hereby directed to be divided and allotted, or any Part thereof, shall, by himself, herself, or themselves, or by his, her, or their Guardians, Trustees, Agents, or Tenants, and he, she, and they is and are hereby respectively required at the First or Second Meeting of the said Commissioner to be holden in pursuance of this Act, to deliver in Writing to the said Commissioner a true and just Account of the Messuages, Cottages, Lands, and Tenements belonging to him, her, or them respectively, for or in respect of which such Estate, Property, Right of Common, or other Right or Interest shall be claimed; and also a true and just Account of his, her, and their respective Claims, Rights, and Interests in, to, over, or upon the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments hereby directed to be divided and allotted, or any Part thereof; and that no such Accounts or Claims shall be received by the said Commissioner after such Second Meeting, except for some special Cause to be allowed by them; and all and every Person and Persons, Body and Bodies Politic, Corporate, or Collegiate, neglecting or refusing to deliver such Accounts as aforesaid, shall be and is and are hereby excluded and debarred from all Rights of Common and other Rights or Interest whatsoever, in, to, over, or upon the Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments hereby directed to be divided and allotted, or in, to, over, or upon any Part or Parts of the same, to be assigned or allotted to any other Person or Persons by virtue of or under this Act; and if any one or more of the said Owners and Proprietors, or other Persons interested in the said intended Division and Allotments, shall have any Objection or Objections to the said Accounts or Claims, or any of them, such Objection or Objections shall be reduced into Writing and delivered to the said Commissioner, and to such other Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, whose Account or Accounts, Claim or Claims shall be objected to, in such Manner and at such Time or Times as the said Commissioner shall appoint.

Claims to be delivered to the Commissioner.

By the said Commissioner.

X. And be it further enacted, That if any Dispute or Difference shall arise between any of the Parties interested, or claiming to be interested in the said intended Division and Allotments, touching or concerning the respective Rights, Interests, Shares, and Proportions which they or any of them shall claim to have of and in the Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments hereby directed to be divided and allotted, or touching or concerning any other Matter or Thing relating to the said Division and Allotments, it shall and may be lawful to and for the said Commissioner, and he is hereby authorized and required, as well by Examination of Witnesses upon Oath (which Oath the said Commissioner is hereby empowered to administer), as upon any

Commissioner to settle Differences.

[Private.]

other proper and sufficient Inquiry and Evidence, to examine into, hear, and determine the same.

Commis-
sioner may
summon
Witnesses.

XI. And be it further enacted, That it shall and may be lawful to and for the said Commissioner, and he is hereby required from Time to Time, as he shall see Occasion, by any Writing under his Hand, to summon and require any Person or Persons to appear before him at any Time and Place in such Writing mentioned, and to testify the Truth upon Oath (which Oath the said Commissioner is hereby empowered to administer), touching any Matter in Difference or Dispute between any of the said Proprietors or Persons interested, or concerning any Matter or Thing wherein any Doubt or Difficulty shall occur to the said Commissioner, and to cause a Duplicate or Copy of such Writing to be delivered to every such Person required to testify, or left at his or her last or usual Place of Abode; and if any Person or Persons having been so summoned as aforesaid, and having been paid or tendered a sufficient Sum of Money, to be ascertained by the said Commissioner, to defray the Charges of his, her, or their Attendance or Attendances, shall, without any just and reasonable Excuse, neglect or refuse to appear before the said Commissioner, pursuant to such Summons or Writing, or shall refuse to be sworn or to be examined, or to give Evidence touching the Premises, then and in every such Case the said Commissioner, due Proof being made before him upon Oath (which Oath the said Commissioner is hereby empowered to administer) of the Service of such Summons upon the Person or Persons who shall not appear before him at the Time and Place therein specified, and of such Person or Persons having been paid or tendered a sufficient Sum of Money to defray the Charges of his, her, or their Attendance, shall cause, and he is hereby required to cause, by Warrant under his Hand and Seal directed unto any Person or Persons whomsoever, any Sum of Money not exceeding Ten Pounds to be levied by Distress and Sale of the Goods and Chattels of every Person so neglecting or refusing to appear, or to be sworn, or to be examined, or to give Evidence, rendering the Overplus (if any) upon Demand, to the Person whose Goods and Chattels shall have been so distrained and sold, after deducting the Costs and Charges attending such Distress and Sale; and the Money so to be levied as aforesaid shall be applied towards defraying the Costs and Charges of obtaining and executing this Act.

Commis-
sioner to as-
sess Costs.

XII. And be it further enacted, That in case 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 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, 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, or Body or Bodies Politic, Corporate, or Collegiate, whose Claim or Claims, Objection or Objections, shall be thereby disallowed or overruled; and in case the Person or Persons, or Body or Bodies Politic, Corporate, 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 and may be lawful to and for the said Commissioner, and he is hereby authorized and empowered, by Warrant under his Hand

and

and Seal, directed to any Person whomsoever, to cause such Costs and Charges to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, so neglecting or refusing to pay the same, rendering the Overplus, (if any) upon Demand, to the Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, whose Goods and Chattels shall have been so distrained and sold, after deducting the Costs and Charges attending such Distress and Sale.

XIII. Provided always, and be it further enacted, That in case any Person or Persons, Body or Bodies Politic or Corporate, interested or claiming to be interested in the said intended Division or Allotment, shall be dissatisfied with any Determination of the said Commissioner, touching or concerning any Claim or Claims of Common or other Rights or Interests, in, over, or upon or out of the Lands or Grounds 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 or Corporate, so dissatisfied, to cause an Action to be brought upon a feigned Issue, against the Person or Persons, Body or Bodies Politic or Corporate, 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 notified in Writing to the Party or Parties against whom such Determination shall have been made, or to his, her, or their known Agent or Attorney; and thereupon the Person or Persons, Body or Bodies Politic or Corporate, so dissatisfied, shall proceed to a Trial at Law at the then next or the following Assizes to be holden for the said County of *Kerry*, 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, to file Common Bail, and accept of one or more Issue or Issues, whereby such Claim or Claims, and the Right or Rights thereby insisted on, may be tried and determined, (such Issue or Issues to be settled by the proper Officer of the Court in which such Action or Actions shall be commenced, in case the Parties shall differ about the same); and the Verdict or Verdicts which shall be given in such Action or Actions, shall be final, binding, and conclusive upon all and every Person and Persons, Body or Bodies Politic or Corporate whomsoever, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, and order a new Trial to be had therein, which it shall be lawful for the Court to do; and that 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 if no such Action at Law shall be commenced as aforesaid, or if any such Action shall be commenced, and the Plaintiff or Plaintiffs therein shall not proceed to Trial within the Time herein-before limited for that Purpose, then the Determination of the said Commissioner shall be binding, final, and conclusive, to all Intents and Purposes whatsoever: Provided also, that if any of the Parties 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.

Allowing Parties to try their Rights by an Issue at Law.

If no Action the Commissioner's Determination to be final.

Death of Parties not to stop Proceedings at Law.

XIV. Pro-

Provision in
case of Death
of Parties
before Ac-
tions
brought.

XIV. Provided always, and be it further enacted, That if any Person or Persons in whose Favour any such Determination as aforesaid shall have been made, and against whom any such Action or Actions might have been brought if living, shall die before any such Action or Actions shall have been brought, and before the Expiration of the Time herein-before limited for bringing such Action or Actions, it shall be lawful for the Party or Parties who might have brought such Action or Actions against the Person or Persons so dying, to bring the same within the Time so limited as aforesaid against such Person or Persons as if actually living, and to serve the Clerk of the said Commissioner with Process for commencing such Action or Actions, in the same Manner as the Party or Parties might have been served therewith if living; and it shall thereupon be incumbent on the Heir or Heirs of the Person or Persons so dead, or other Person or Persons who shall claim the Benefit of such Determination as aforesaid, to appear and defend such Action or Actions in the Name or Names of the Person or Persons so dead, and Proceedings shall be had therein, and the Costs shall follow the Event, and be recoverable 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: Provided always, that nothing in this Act contained, shall authorize the said Commissioner to determine the Title to any Mesuages, Lands, Tenements, or Hereditaments whatsoever.

Commission-
er not to de-
termine
Titles.

Disputes
about Titles
not to impede
the Proceed-
ings, &c.

XV. And be it further enacted, That if any Suit or Suits shall be commenced or prosecuted, touching or concerning the Title of any Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, in or to the Lands, Tenements, or Hereditaments before-mentioned, such Suit or Suits shall not impede, delay, or hinder the said Commissioner from proceeding in the Execution of the Powers vested in him by this Act; but the said Division and Allotment shall be proceeded in notwithstanding such Dispute or Suit, and such Allotment or Allotments may be had and taken by the Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, who, upon the Determination of such Difference or Suit, shall become entitled to the same.

For extin-
guishing or
suspending
Rights of
Common be-
fore the
Award.

XVI. And be it further enacted, That it shall and may be lawful to and for the said Commissioner, and he is hereby authorized at any Time before the Execution of the Award herein directed to be made by him, by Writing under his Hand, to be affixed upon the principal Door of the Parish Church of *Castle Island* aforesaid, to order or direct all or any Part of the Rights of Common, or other Rights or Interests in, over, and upon the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments aforesaid, or any Part thereof, to be extinguished, or the Exercise thereof to be suspended for and during such Time as shall be expressed in such Writing, and that all such Rights as the said Commissioner shall by such Writing order and direct to be extinguished, or the Exercise thereof to be suspended as aforesaid, shall from the Time of affixing such Writing on the said Church Door, cease, determine, and be extinguished, or the Exercise thereof shall be suspended accordingly, any Law, Usage, or Custom to the contrary thereof notwithstanding.

Roads, &c.

XVII. And be it further enacted, That the said Commissioner shall order and direct such Bridges, Ditches, Fences, Banks, Stiles, Water-courses,

courses, Drains, Tunnels, and other Works to be made in, over, and upon any Part or Parts of the Lands and Grounds, and all other the Lands and Grounds within the Limits and Provisions of this Act, and shall set out and appoint such public and private Roads and Ways in, over, and upon the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments aforesaid, as he shall think necessary and proper, so that all new public Carriage Roads so to be set out and appointed as aforesaid shall contain Thirty Feet in Breadth between and exclusive of the Ditches, and shall be well and sufficiently fenced out on both Sides, in such Manner and within such Time as the said Commissioner shall direct and appoint, and that it shall not be lawful for any Person to erect any Gate across any of the said public Roads or to plant any Trees in or near the Hedges on the Sides thereof, at a less Distance from each other than Fifty Yards.

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

The Powers of Grand Jury over the Road not to be prejudiced, &c.

XIX. And whereas it would be convenient to the several Persons interested in the said Division and Inclosure, if a competent Part of the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments aforesaid, were set apart and sold, and the Money arising from such Sale applied in defraying the Expences of obtaining and carrying this Act into Execution, be it therefore further enacted, That the said Commissioner shall, and he is hereby required and authorized, as soon as conveniently can be done after the passing of this Act, to set out so much of the said Lands and Waste Grounds, and other the Lands, Tenements, and Hereditaments aforesaid, as in his Opinion will by the Sale thereof produce a Sum of Money sufficient to pay and defray all the Charges and Expences of obtaining this Act, and of the surveying, admeasuring, planning, valuing, dividing, and allotting the Lands and Grounds hereby intended to be divided, allotted, and inclosed, and of preparing the Award hereby directed to be made, and of setting out and making all public Roads and Works, and all other Costs, Charges, and Expences of carrying this Act into Execution; and such Lands, when so marked and set out, shall be and are hereby declared to be vested in the said Commissioner, and he is hereby directed and required to sell the same to any Person or Persons whomsoever, for the best Price or Prices that can be gotten for the same, by public Auction or Auctions, (Notice of the Time and Place or Times and Places thereof being given Three Times in One or more public Newspaper or Newspapers circulated in the said County of *Kerry*, Six Weeks previous to such Auction or Auctions); and the Person or

For selling Part of the Lands, &c. for defraying the Expences of obtaining this Act, &c.

[*Private.*]

8 m

Persons

Persons who shall at such Sale be the highest Bidder or Bidders for any such Lands and Grounds, shall be deemed and taken to be the Purchaser or Purchasers thereof, and shall immediately pay to the Commissioner who may be present at such Sale, **One-tenth Part** of the Purchase Money as and for a Deposit, and shall engage to pay the **Residue** of the Purchase Money **within Three Calendar Months** afterwards into the Hands of the said Commissioner, who is hereby authorized to give Receipts for the same, and also for the Money to be paid as and for a Deposit as aforesaid; and if any Purchaser, having made such Deposit as aforesaid, shall not pay the whole of the Purchase Money within the Time appointed for the Payment thereof, the Money so deposited shall be forfeited to the said Commissioner, and shall be applied towards defraying the Expences attending the Execution of this Act; and it shall and may be lawful to and for the said Commissioner, upon giving such Notice as aforesaid, to put up again to Sale such Lands and Grounds for which the whole of such Purchase Money shall not have been paid, and so *toties quoties*, until the same shall be sold; or the said Commissioner may, if he think proper, sell and dispose of such Lands and Grounds by private Contract for the best Price that can be gotten for the same, and the Money arising by the Sale or Sales of such Lands and Grounds shall be applied by the said Commissioner for the several Purposes aforesaid.

Commis-
sioner may
convey the
Lands so sold
to the Pur-
chaser.

XX. And be it further enacted, That the said Commissioner shall and he is hereby authorized, by Indentures of Lease and Release to be executed by him under his Hand and Seal, to grant and convey the Fee Simple and Inheritance of the Lands and Grounds so sold to the Purchaser or Purchasers thereof, his, her, or their Heirs and Assigns, or as he, she, or they shall direct or appoint, and all such Grants and Conveyances shall be valid and effectual in the Law to all Intents and Purposes whatsoever; and after the Execution of every such Grant and Conveyance, the Lands and Grounds so granted and conveyed shall be held by every such Purchaser, his or her Heirs and Assigns, freed and discharged of and from all Rights of Common, Right of Soil, and all other Rights and Interests of any other Person or Persons whomsoever, in, over, and upon the same; **save and except the Rights of the Right Honourable Edward Herbert** commonly called *Viscount Clive*, and any Persons claiming under him, and save and except the Tithes; any Law, Custom, or Usage to the contrary thereof in anywise notwithstanding: Provided always, that the Purchaser or Purchasers of such Land and Grounds so to be sold as aforesaid, shall be subject to the Performance of all Orders, Regulations, and Directions which shall be made by the said Commissioner, and inserted in the Award for inclosing, fencing, and draining such Land, and for maintaining and keeping the Drains and Fences belonging thereto in good Repair.

Purchasers to
be subject to
the Direc-
tion of Com-
missioner in
certain Cases.

Application
of Surplus
Money aris-
ing by Sale,
&c.

XXI. And be it further enacted, That in case there shall be any Surplus of the Money arising from the Sale of such Part of the said Lands and Waste Grounds, after paying all the Charges and Expences of obtaining and executing this Act, such Surplus shall be paid to or applied for the Benefit of the several Proprietors in the said Lands, Waste Grounds, and all other the Lands, Tenements, and Hereditaments aforesaid, in proportion to their respective Rights and Interests therein; but in case the Money arising from such Sale or Sales shall not be sufficient to pay all such Charges

Charges and Expences as aforesaid, then and in such Case such Deficiency shall be made up and paid by the Owners and Proprietors for the Time being of said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments aforesaid, in such Shares and Proportions, at such Time or Times, and to such Person or Persons as the said Commissioner shall by Writing under his Hand appoint; and if any Person or Persons shall refuse or neglect to pay his, her, or their Share or Shares of the said Costs, Charges, and Expences, to the Person or Persons authorized to receive the same, at the Time or Times which shall be appointed by the said Commissioner for the Payment thereof, then and in every such Case the said Commissioner shall and may, by Warrant under his Hand and Seal, directed unto any Person or Persons whomsoever, cause the same to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons so refusing or neglecting as aforesaid, rendering the Overplus (if any) after deducting the Charges and Expences attending such Warrant, Distress, and Sale, to the Person or Persons whose Goods and Chattels shall have been so distrained and sold; or otherwise it shall and may be lawful to and for the said Commissioner, by Writing under his Hand and Seal, to authorize and empower one or more Person or Persons to enter into and upon the Lands and Grounds to be allotted or belonging to the Person or Persons so refusing or neglecting as aforesaid, and to take and receive the Rents, Issues, and Profits of the same Premises, until thereby or therewith the Share or Shares of the said Costs, Charges, and Expences so appointed to be paid by such Person or Persons so refusing or neglecting as aforesaid, with lawful Interest thereupon from the Time the same shall have become due, and also all the Costs and Expences occasioned by or attending such Entry and Perception of the Rents and Profits of the said Premises, shall respectively be fully paid and satisfied: Provided also, that the several Persons interested in such Lands, Waste Grounds, and other the Lands, Tenements, and Hereditaments aforesaid, their Solicitors, Attornies, and Agents, shall pay their own Expences, when they or any of them shall attend the said Commissioner at any of the Meetings to be holden in pursuance of this Act: Provided also, that if any Person or Persons shall advance and pay any Money in discharge of the Fees or other Expences of preparing, soliciting, obtaining, or executing this Act, the Money so paid and advanced shall be repaid and satisfied to him, her, or them, by the Direction of the said Commissioner, together with lawful Interest for the same.

Owners, &c.
to pay their
own Ex-
pences.

Persons ad-
vancing
Money to
be repaid
with Interest.

XXII. And be it further enacted, That in case there shall be any Money arising from the Sale of any Lands, Tenements, or Hereditaments purchased by virtue of the Powers of this Act, to be paid by the said Commissioner to any Body Politic, Corporate, or Collegiate, Feoffee in Trust, Executor, Administrator, Husband, Guardian, Committee, or other Trustees for or on Behalf of any Infant, Lunatic, Idiot, Feme Covert, or other Cestuique Trust, or to any Person whose Lands, Tenements, or Hereditaments are limited in strict or other Settlement, or to any Person under any other Disability or Incapacity whatsoever, such Money shall, in case the same shall be equal to or exceed the Sum of Two hundred Pounds, with all convenient Speed be paid into the Bank of Ireland, in the Name and with the Privy of the Accountant General of the High Court of Chancery in Ireland, to be placed to his Account there, *ex parte* the said Commissioner, to the Intent such Money shall be applied, under the

Application
of Compen-
sation where
amounting to
200*l*.

Directions

Directions 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 Discharge of any Debt or Debts, or other Incumbrances, or Part thereof, 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 and settled to, for, and upon such and the like Uses, Trusts, Intents, and Purposes, and in the same Manner as the Lands, Tenements, and Hereditaments, which shall be so purchased, taken, or used as aforesaid, stood settled or limited, or such of them as at the Time of making such Conveyance and Settlement shall be existing undetermined and capable of taking Effect; and in the meantime, and until such Purchase shall be made, the said Money shall, by Order of the Court of Chancery, upon Application thereto, be invested by the said Accountant General, in his Name, in Government Securities; and in the meantime, and until the said Government Securities shall be ordered by the said Court of Chancery to be sold for the Purpose aforesaid, the Dividends and annual Produce of such Government Securities shall from Time to Time be paid, by Order of the said Court, to the Person or Persons 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 sold, in case such Purchase or Settlement were made.

Application
of Compensa-
tion when
less than
200*l.* and
exceeding
20*l.*

XXIII. Provided also, and be it enacted, That in case such Money, arising from the Sale of any such Lands, Tenements, or Hereditaments, to be paid by the said Commissioner to any Corporation, or to any Person or Persons under any Disability or Incapacity as aforesaid, shall be less than the Sum of Two hundred Pounds, and shall be equal to or exceed 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, taken, or used, or of his, her, or their Guardian or Guardians, Committee or Committees, in case of Infancy or Lunacy, to be signified in Writing under their respective Hands), be paid into the Bank of *Ireland*, in the Name and with the Privy of the said Accountant General of the High Court of Chancery in *Ireland*, and be placed to his Account as aforesaid, in order to be applied in manner herein-before directed, or otherwise the same shall be paid, at the like Option, to Two Trustees, to be nominated by the Person or Persons making such Option, and approved of by the said Commissioner (such Nomination and Approbation to be signified in Writing, under the Hands of the nominating and approving Parties), in order that such Principal Money, and the Dividends arising therefrom, may be applied in manner herein-before directed, so far as the Case be applicable, without obtaining or being required to obtain the Direction or Approbation of the Court of Chancery: Provided also, that where such Money so agreed or awarded to be paid as next before mentioned, shall be less than Twenty Pounds, then and in all such Cases the same shall be applied to the Use of the Person or Persons who would for the Time being have been entitled

Application
where the
Money is less
than 20*l.*

to

to the Rents and Profits of the Lands, Tenements, and Hereditaments so purchased, taken, or used for the Purposes of this Act, in such Manner as the said Commissioner shall direct; or in case of Infancy or Lunacy, then such Money shall be paid to his, her, or their Guardian or Guardians, Committee or Committees, to and for the Use and Benefit of such Person or Persons so entitled respectively.

XXIV. And be it further enacted, That the said Commissioner shall then divide, set out, and allot in Severalty all the Residue and Remainder of the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments before mentioned, unto and amongst all and every the Owners and Proprietors thereof for the Time being, in such Shares and Proportions as in the Judgment of the said Commissioner shall be a just and reasonable Compensation, Share, and Allotment in respect of and in proportion to the real Value of the said Lands and Waste Grounds, and all other Lands, Tenements, and Hereditaments herein-before mentioned respectively.

Allotment of
the Residue.

XXV. And whereas Cottages and other Buildings have at different Times been built and erected on Encroachments made upon the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments, be it therefore enacted, That no Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, shall be or be deemed to be entitled to any Share, Proportion, or Allotment of the said Lands and Waste Grounds for or in respect of any such Cottage or Building built or erected upon any such Encroachment upon the said Lands and Waste Grounds, and other the Lands, Tenements, and Hereditaments herein-before mentioned.

Cottages
built upon
Encroach-
ments not to
receive an
Allotment.

XXVI. And be it further enacted, That if after the said Commissioner shall have adjudged any Parcel of Land to be an Encroachment upon any Part of the Lands, Grounds, and other the Lands, Tenements, and Hereditaments to be divided, allotted, and inclosed by virtue of this Act, within Twenty Years before the passing of this Act, the Possessor or Possessors, Occupier or Occupiers whereof shall refuse or decline to yield up the Possession thereof, being thereunto duly required by a Notice or Notices in Writing, signed by the said Commissioner, and affixed upon the Church Door of the Parish of *Castle Island* Six Weeks at the least before the Time to be expressed in the said Notice for yielding up such Possession to them, that then and in every such Case it shall and may be lawful to and for the said Commissioner to bring One or more Ejectment or Ejectments in the Name or Names of the Owners and Proprietors for the Time being of the Lands, Waste Grounds, and all other the Lands, Tenements, and Hereditaments before mentioned, as Lessors in such Ejectment or Ejectments, for the Recovery of the Possession of the Lands and Grounds so adjudged and withheld; and if upon the Trial of such Ejectment or Ejectments it shall appear that the Adjudication of the said Commissioner was duly made, pursuant to the Powers given to the said Commissioner by this Act, then and in every such Case the Plaintiff in such Ejectment or Ejectments shall be entitled to recover Judgment and have Execution, and the Lands and Grounds so to be recovered shall be deemed and taken to be Part and Parcel of the Lands and Grounds to be divided, allotted, and inclosed by virtue of this Act, and shall be divided, allotted, and inclosed accordingly.

Commis-
sioner may
bring Eject-
ments.

[*Private.*]

8 n

XXVII. Pro-

For laying
Allotments
convenient-
ly together.

XXVII. Provided always, That in making the said Allotments, the said Commissioner shall have due Regard as well to the Quality and Quantity of the Lands and Grounds so to be divided and allotted as aforesaid, as also to the Situation and Contiguity of the same to the respective Habitations, Messuages, Barns, and other Property of the several Parties to or for whom such Lands and Grounds shall respectively be assigned and allotted.

For fencing
Allotments.

XXVIII. And be it further enacted, That the several other Allotments of the Lands, Tenements, and Hereditaments hereby directed to be divided and allotted, shall be inclosed, hedged, and fenced by such Person or Persons, and Body or Bodies Politic, Corporate, or Collegiate, within such Time and in such Manner as the said Commissioner shall in and by the said Award order, direct, and appoint; and the Hedges, Ditches, Drains, and Fences, which shall be made pursuant to the said Award, shall at all Times thereafter be maintained and kept in Repair and cleansed by such Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, as the said Commissioner shall by his said Award order and direct; and if any Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, shall neglect or refuse to make and raise such Hedges, Ditches, Drains, or Fences, according to the Award of the said Commissioner, it shall and may be lawful to and for the said Commissioner, and he is, hereby empowered and required to cause such Hedges, Ditches, Drains, or Fences, to be raised and made by such Person or Persons, in such Manner and at such Time or Times as he the said Commissioner shall think proper; and if the Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, who ought to have raised and made such Hedges, Ditches, Drains, or Fences, shall neglect or refuse to pay the Costs and Expences of raising and making the same (such Costs and Expences being settled by the said Commissioner) within Ten Days after Demand made thereof, then and in such Case it shall and may be lawful to and for the said Commissioner, and he is hereby required to raise and levy the same by such Ways and Means as the Costs, Charges, and Expences of obtaining and executing this Act, or any Part thereof, can or may be raised and levied, in case the Lands and Grounds herein directed to be sold are insufficient for the Payment thereof; and for better preserving the Hedges, Ditches, Banks, Plants, Quicksets, and Fences of the said intended Inclosures, it shall and may be lawful to and for the said respective Persons, and Body or Bodies Politic, Corporate, or Collegiate, to whom any Allotment or Allotments shall be made by virtue of this Act, from Time to Time, and at all Times during the Term of Seven Years next after the Execution of the said Award, to set or fix Posts or Rails, or any other Guards, on the Outside of the Hedges, Banks, and Fences bounding their respective Allotments, not exceeding Three Feet from such Hedges, Banks, and Fences, and at all seasonable Times, before the End of the said Term, to remove, take, and carry away such Posts, Rails, and other Guards, and to convert the same to their respective Uses.

Fences may
be made
before the
Execution of
the Award.

XXIX. And be it further enacted, That when the said Commissioner shall have staked out the several Allotments intended to be made by virtue of this Act, it shall and may be lawful to and for any Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, to whom any Allotment or Allotments is or are intended to be made, to inclose or fence

fence such Allotment or Allotments in such Manner as the said Commissioner shall by Writing under his Hand appoint, although the said Award shall not then have been executed: Provided always, that convenient Gaps and Openings shall be left in the Fences and Inclosures to be made in pursuance of this Act, for the Space of Twelve Calendar Months next after the Execution of the said Award, for the Passage of Cattle, Carts, and Carriages into and through the same, unless the several Parties interested shall agree that the same shall be sooner fenced in, made up, and inclosed: Provided always, that in case through Necessity of Situation or any other Circumstance, it shall happen that One or more of the said Proprietors shall not have an equal or proportionable Share of Boundary Mounds or Fences 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, order, ascertain, and appoint what Sum or Sums of Money such Proprietor or Proprietors shall respectively pay and contribute towards the making the Mounds and Fences of the Allotments of such other of the said Proprietors or either of them, who shall or may have too great a Share or Proportion of Mounding or Fencing allotted to him, her, or them, by virtue of this Act, the same to be settled by the said Commissioner in such Manner as he shall award, order, direct, or appoint; and the Money so ordered, directed, or appointed to be paid, shall be paid, raised, levied, and received in such and the same Manner as the other Expences of this Act are herein ordered and directed to be levied and recovered, in case the Lands and Grounds herein directed to be sold are insufficient for the Payment of such Expences: Provided also, that if any Person or Persons hath sold or contracted, or agreed to sell, or shall at any Time before the Execution of the said Award sell or contract, or agree to sell his, her, or their Right, Interest, and Property in, over, or upon the Lands, Grounds, Tenements, and Hereditaments hereby directed to be divided and allotted, or any Part thereof, to any other Person or Persons, then and in every such Case it shall and may be lawful to and for the said Commissioner, and he is hereby authorized and required to make an Allotment of Land unto the Vendee or Purchaser in every such Sale, Contract, or Agreement, or to his or her Heirs or Assigns for or in respect of such Right, Interest, and Property so sold or contracted, or agreed to be sold as aforesaid; and every such Vendee or Purchaser, or his or her Heirs or Assigns, shall and may, from and after the Execution of the said Award, hold and enjoy the Land so to be allotted to him, her, or them as aforesaid, in the same Manner to all Intents and Purposes as the Vendor in every such Sale, Contract, or Agreement might, could, or ought to have held and enjoyed the same, in case such Sale, Contract, or Agreement had not been made.

For leaving
Gaps.

Satisfaction
for unequal
Share of
Fencing.

In case any
Person shall
sell his Com-
mon Right,
Allotment to
be made to
the Pur-
chaser.

XXX. And be it further enacted, That it shall and may be lawful to and for the said Commissioner to make Partition of any Messuages, Tenements, Lands, or other Hereditaments within the said Parish of *Castle Island*, belonging to any Persons as Coparceners or as Joint Tenants or Tenants in Common, so as every such Partition be made upon Application from, and by and with the Consent and Approbation of the several Proprietors thereof, to be signified in Writing under their Hands, or under the Hands of the Husbands, Guardians, Trustees, Committees, Agents, or Attornies duly authorized, of such of the said Proprietors as are under Coverture, Minors,

Commission-
er may make
Partition
of Undivided
Estates.

Minors, Lunatics, or beyond the Seas, or under any other Disability or Incapacity of acting for themselves, and be specified and declared in the Award of the said Commissioner, or by any Instrument to be signed by him, to be enrolled with the said Award; and every such Partition shall be good, valid, and effectual, to all Intents and Purposes whatsoever.

For allowing
Exchanges
to be made.

XXXI. And be it further enacted, That it shall and may be lawful to and for the said Commissioner to set out, allot, and award any Lands, Tenements, or Hereditaments whatsoever within the said Parish of *Canterbury* Island aforesaid, in lieu of and in exchange for any other Lands, Tenements, or Hereditaments within the said Parish, 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 Owner or Owners, Proprietor or Proprietors of the Lands, Tenements, or Hereditaments which shall be so exchanged, whether such Owner or Owners, Proprietor or Proprietors shall be a Body or Bodies Politic, Corporate, or Collegiate, or a Tenant or Tenants in Fee Simple or for Life, or in Fee Tail General or Special, or by the Courtesy of *England*, or for Years determinable on any Life or Lives (by and with the Consent of the Lessor or Lessors thereof, but not otherwise), or with the Consent of the Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees, or Attornies of or acting for any such Proprietors or Owners as aforesaid, who at the Time of making such Exchange or Exchanges shall be respectively Females, Coverts, Lunatics, or under any other legal Disabilities, or who shall be beyond the Seas, or otherwise disabled to act for themselves, himself, or herself, such Consent to be testified in Writing under the Common Seal of the Body or Bodies Politic, Corporate, or Collegiate, and under the Hands of the other consenting Parties respectively), and all and every such Exchanges so to be made shall be good, valid, and effectual in the Law to all Intents and Purposes whatsoever: Provided that no Exchange of any Lands, Tenements, or Hereditaments held in right of any Church, Chapel, or other Ecclesiastical Benefice shall be made without the Consent of the Patron thereof, and of the Ordinary of the Diocese in which such Lands, Tenements, or Hereditaments so to be exchanged shall lie and be situate: Provided also, that all Costs, Charges, and Expences attending the making and completing any Exchanges or Partitions shall be paid and borne by the several Persons making such Exchanges and Partitions, in such Manner and in such Proportions as the said Commissioner shall by his Award order and direct.

Allotments
to be made in
bar of former
Rights.

XXXII. And be it further enacted, That the several Allotments to be made unto and for the several Persons who by virtue of this Act shall be entitled to the same, shall be in full Satisfaction and Compensation for their several Parts and Shares of the Lands and Grounds, and other the Lands, Tenements, and Hereditaments hereby directed to be divided and allotted; and for all their respective Rights and Interests in, over, and upon the same; and that from and immediately after the Execution of the said Award all Rights of Common and other Interests whatsoever belonging to or claimed by any Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, out of, in, over, or upon the Land and Grounds hereby directed to be divided and allotted, shall cease, determine, and be for ever extinguished.

XXXIII. And

XXXIII. And be it further enacted, That the several Persons to whom any Lands or Grounds shall be allotted by virtue of this Act shall accept of their respective Allotments by taking Possession thereof within the Space of Six Calendar Months next after the Execution of the said Award, and Notice thereof in Writing to them respectively given by the said Commissioner, or left at their respective usual or last Place of Abode, or given to or left at the usual or last Place of Abode of the known Agent of any of the said Persons who shall be over Seas or out of the Kingdom of *Ireland*; and in case any Person or Persons shall neglect or refuse to accept his, her, or their Allotment or Allotments within the Time herein for that Purpose mentioned, such Person or Persons shall be totally excluded from and debarred of any Estate, Interest, Right of Common, or any other Property whatsoever in, over, or upon any Lands, Grounds, Tenements, or Hereditaments, which shall be assigned or allotted to any other Person or Persons in pursuance of this Act: Provided always, that the Guardians, Husbands, Committees, Trustees, Agents, or Attornies of any Person or Persons being Minors, under Coverture, Idiots, Lunatics, out of the Kingdom of *Ireland* or beyond the Seas, or otherwise incapable by Law to accept such Shares and Allotments as aforesaid, shall and they are hereby enabled and required to accept thereof for the Use of such Person or Persons so incapacitated, being out of *Ireland* or beyond the Seas as aforesaid, and such Acceptance shall be and is hereby declared to be as valid and effectual as if the Person or Persons for or to whom such Allotments shall be made respectively were capable of acting for himself, herself, or themselves, and had accepted such Shares and Allotments as aforesaid, any Law or Usage to the contrary notwithstanding: Provided also, that the Nonclaim or Nonacceptance of any Guardian, Husband, Executor, Committee, or Trustee shall not exclude or prejudice the Right or Claim of any Infant, Feme Covert, or Person under any Disability as aforesaid, who shall claim or accept his or her Share or Allotment within the Space of Six Calendar Months next after such Disability or Incapacity shall be removed, nor shall any such Nonclaim or Nonacceptance exclude or prejudice the Claim or Right of any Person entitled as Heir or in Remainder after the Death of any Person dying under such Disability or Incapacity, the Person or Persons so entitled claiming or accepting his, her, or their Share or Allotment within the Space of Six Calendar Months next after his, her, or their Right, Title, or Interest shall have descended or accrued: Provided always, that nothing in this Act contained shall extend or be construed to extend, to revoke, make void, alter, or annul any Will or Settlement, or to prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Portion, Debt, or Incumbrance out of, upon, or affecting any of the Messuages, Buildings, Lands, and Grounds to be divided, allotted, or exchanged by virtue of this Act, or any Part thereof; but that each and every Proprietor shall stand and be seised of the several Messuages, Buildings, Lands, and Grounds to be allotted to or exchanged with him or her as aforesaid, to such and the same Uses, and for such and the same Estates, and subject to such and the same Wills, Jointures, Rents, and Charges, and no other, as the Messuages, Buildings, Lands, and Grounds whereof such Proprietor was seised or possessed at or immediately before the Execution of the said Award, or for which or in respect whereof such Allotments or Exchanges shall be made, would have been subject to, charged with, or affected by, in case this Act had not been made.

[*Private.*]

8 0

XXXIV. And

Persons to
accept their
Allotments.Guardians,
&c. may
accept for
Persons
incapable.But their
Non-accept-
tance shall
not prejudice
Persons who
shall accept,
&c.Wills and
Settlements
not to be
affected.

Leases at
Rack Rent to
be void.

XXXIV. And be it further enacted, That all and every Lease or Leases upon Rack Rent now subsisting, of all and every or any Part or Parts of the said Lands, Grounds, Tenements, and Hereditaments intended to be divided or inclosed by virtue of this Act as aforesaid, and all other Agreements for any Term or Terms at Rack Rent or from Year to Year, or at Will, shall, at such Time as the said Commissioner shall appoint by any Writing under his Hand, cease and be void; the respective Owners and Proprietors of such Messuages, Lands, Tenements, and Hereditaments, making such Satisfaction and Compensation to the Lessee or Lessees, Tenant or Tenants, as the respective Owners and Proprietors and the Lessee or Lessees, Tenant or Tenants shall agree upon; or in case he, she, or they shall disagree, as the said Commissioner shall order, direct, or appoint to be paid to such Lessee or Lessees, Tenant or Tenants respectively, on account thereof, as an Equivalent for the Loss or Losses he, she, or they shall respectively suffer or sustain on account of the Determination of the same; and any Sum of Money so directed to be paid by the said Commissioner shall and may be recovered by such Ways and Means as the Costs, Charges, and Expences of obtaining and executing this Act are herein directed to be recovered.

Award to be
made.

XXXV. And be it further enacted, That so soon as conveniently may be after the said Commissioner shall have completed the Division and Allotments of the Lands, Grounds, Tenements, and Hereditaments hereby directed to be divided and allotted pursuant to the Directions of this Act, he shall form and draw up an Award or Instrument in Writing, which shall express and denote the Quantity in Statute Measure of Acres, Roods, and Perches of the said Lands and Grounds, and the Quantity of each and every Part and Parcel thereof, which shall be assigned and allotted to or exchanged with each of the Parties entitled to and interested in the same, and shall also contain a Description of the Situation, Abutments, and Boundaries of the same Parcels and Allotments respectively, and such Orders and Directions for raising and maintaining the Fences, and also for making, laying out, and maintaining proper Roads, Passages, Bridges, Gates, Stiles, Drains, Tunnels, and Watercourses in, through, over, and upon the same Premises, and such other Orders and Regulations as the said Commissioner shall think proper and necessary to be inserted in such Award, conformable to the true Purport and Tenor of this Act; and the said Award shall be fairly engrossed or written on Parchment (with a reduced Map or Plan of the said Lands and Waste Grounds, and all other the Lands, Tenements, and Hereditaments before mentioned thereto annexed), and signed and sealed by the said Commissioner; and the said Award shall, within Six Calendar Months after the Execution thereof, be inrolled with the Clerk of the Peace for the said County of *Kerry*, or in One of His Majesty's Courts of Record at *Dublin*, to the end that Recourse may be had thereto by any Person or Persons interested in the said Premises, for the Inspection and Perusal whereof the Sum of One Shilling and no more shall be paid; and the said Award, after such Inrolment as aforesaid, shall be deposited and kept in the Parish Church of *Castle Island*, or in such other Place within the said County of *Kerry* as the said Commissioner shall appoint; and the said Award, or a true Copy thereof, or of any Part thereof, signed by the said Commissioner, or by the said Clerk of the Peace or his Deputy, or by the proper Officer of the Court or his Deputy where the same shall be inrolled as aforesaid, for which no more shall

shall be paid than Two-pence *per* Sheet (each Sheet containing Seventy-two Words) shall from Time to Time and at all Times thereafter be admitted and allowed in all Courts whatsoever, as legal Evidence of all Matters and Things therein contained; and the said Award, and the several Allotments, Partitions, Exchanges, Orders, Directions, Matters, and Things therein contained shall be and is and are hereby declared to be binding and conclusive unto and upon all and every the several Parties interested in and entitled unto the several and respective Premises so to be divided, allotted, inclosed, and exchanged as aforesaid, their several and respective Heirs and Assigns.

XXXVI. Provided always, and be it enacted, That the Award of the said Commissioner shall be read and executed by him in the Presence of such of the Proprietors as shall attend at a Special Meeting called for that Purpose, of which Ten Days Notice at least shall be given in *The Western Herald or Kerry Advertiser*, if then published, and if not, then in some other Newspaper circulated in the said County of Kerry, which Execution of such Award shall be proclaimed the next Sunday in the Parish Church of *Castle Island*, immediately after Divine Service; from the Time of which Proclamation only, and not before, such Award shall be considered as complete.

Commissioner's Award to be read and executed by them in the Presence of the Proprietors, &c.

XXXVII. And whereas some of the Owners and Proprietors of the Lands and Grounds, Tenements and Hereditaments by this Act directed to be divided, allotted, and inclosed, may have Occasion to borrow Money to defray their respective Shares and Proportions of the Charges and Expences of obtaining and carrying this Act into Execution, and of inclosing and fencing their respective Allotments; be it therefore enacted, That it shall and may be lawful to and for the Proprietors and Owners of such Lands and Grounds respectively, and also to and for the Husbands, Guardians, Trustees, and Committees of any of the said Owners or Proprietors, being under Coverture, Minors, Idiots, Lunatics, or beyond the Seas, or labouring under any other Disability whatsoever, and also to and for all Persons acting as Guardians, Trustees, or Committees of any Owners or Proprietors being under any Disability or Incapacity whatsoever, whether such Owners or Proprietors respectively be Tenants for Life, with or without Impeachment of Waste, Tenants in Fee Tail, General or Special, or Tenants by the Courtesy, or for Years determinable on any Life or Lives, by any Deed or Deeds, Writing or Writings, under their respective Hands and Seals, to be duly executed in the Presence of and attested by Two or more credible Witnesses, to charge the Lands and Grounds which shall be allotted to them respectively by virtue and in pursuance of this Act, with any Sum or Sums of Money, for defraying their respective Proportions of the said Charges and Expences, and of inclosing and fencing their respective Allotments, as the said Commissioner shall think necessary, not exceeding the Sum of Five Pounds for every Acre of the Lands and Grounds so to be allotted to them respectively, the same to be paid to such Person or Persons, and applied for the Purposes aforesaid, in such Manner as the said Commissioners shall direct and appoint; and for securing the Repayment of such Sum or Sums of Money, with Interest for the same, to grant, mortgage, lease, demise, or otherwise subject the said Premises or any Part thereof, unto any Person or Persons who shall advance and lend such Sum or Sums of Money respectively,

Power to borrow Money.

respectively, his, her, or their Heirs, Executors, Administrators, or Assigns, for any Term or Number of Years, so that every such Grant, Mortgage, Demise, or Security be made with a Proviso or Condition to cease and be void, or with an express Trust to be surrendered, when such Sum or Sums of Money thereby to be secured, and the Interest thereof, shall be fully paid and satisfied, and so that in every such Grant, Mortgage, Demise, or Security, which shall be made by any Person or Persons interested in or entitled unto the Premises for the Term of their natural Lives only, or by his, her, or their Guardian or Guardians, Trustee or Trustees, Committee or Committees, there be contained a Proviso or Covenant that the Owner or Proprietor of the said Premises shall duly pay and keep down the Interest of any Sum or Sums of Money to be thereby secured during their respective Lives; and no Person afterwards becoming seised or possessed of the said Premises shall be liable to the Payment of any further or larger Arrear of Interest than for One Year preceding the Time that the Title to such Possession shall have commenced; and every such Grant, Mortgage, Lease, or Demise of the said Premises shall be good, valid, and effectual in Law, for the Purposes thereby intended.

Book of Accounts to be left with the Clerk for the Inspection of the Proprietors.

XXXVIII. And be it further enacted, That the said Commissioner shall and he is hereby required to enter in a Book or Books to be provided for that Purpose, an Account of all Monies whatever received from the Proprietors or others during the said Division and Inclosure, and also of all the Charges and Expences incurred in the Execution of this Act; which Book or Books of Accounts shall be kept at the Office of the Clerk to the said Commissioner, and be open at all reasonable Times during the Progress of the said Division and Inclosure, and till all the Accounts are finally settled, for the Inspection of any of the Proprietors, without Fee or Reward; and in case the said Commissioner, or his said Clerk, shall neglect to procure and keep such Book or Books of Accounts as aforesaid, or refuse the Inspection thereof to any of the Proprietors at reasonable Times, the Party or Parties so offending shall, for every such Offence, forfeit and pay any Sum not exceeding Ten Pounds, nor less than Five Pounds; and in case of Nonpayment thereof, on Conviction of the Offenders respectively, on the Oath of any credible Witness or Witnesses, or by the Confession of the Party or Parties offending, before some Justice of the Peace for the said County of *Kerry*, such Fine or Forfeiture shall be levied by Distress and Sale of the Goods and Chattels of the Offender or Offenders, by Warrant under the Hand and Seal of such Justice; and all such Fines and Forfeitures shall be applied and disposed of towards defraying the Charges and Expences of obtaining and executing this Act; and the Overplus of the Money raised by such Distress and Sale, after deducting the Fines or Forfeitures, and the Expences of such Distress and Sale, shall be rendered to the Owner of the Goods and Chattels so distrained; and for want of sufficient Distress, and in case the Fine or Forfeiture shall not be forthwith paid, it shall and may be lawful to and for such Justice, by Warrant under his Hand and Seal, to commit such Offender or Offenders to the Common Gaol or House of Correction, there to remain without Bail or Mainprize for any Time not exceeding Three Calendar Months, unless such Fine, Penalty, or Forfeiture, and all reasonable Charges attending the Recovery thereof, shall be sooner paid and satisfied.

XXXIX. Pro-

XXXIX. Provided always, and be it enacted, That all Sums of Money to be raised under and by virtue of the Powers contained in this Act shall, as often as the same shall amount to the Sum of Fifty Pounds, be paid into the Hands of some Banker, or of such other Person or Persons as shall be approved by a Majority in Value of such Proprietors who shall be present at the first Meeting of the said Commissioner, and in the Notice of which Meeting shall be expressed the Intention of then appointing such Banker or such other Person or Persons; and that no Monies shall be issued out of the Hands of such Banker or other Person or Persons, without an Order of the said Commissioner, specifying the Person to whom the same are payable, and the Service for which the same are due; and that the Balance (if any) upon the final Settlement of Accounts, shall be immediately repaid to the Land Owners, in proportion to the Sums respectively paid by them.

Monies received when amounting to 50*l.* to be paid into the Hands of such Person as shall be approved by a Majority in Value of the Proprietors.

XL. And be it further enacted, That it shall and may be lawful to and for the said Commissioner to nominate and appoint a Clerk to assist him in the Discharge of the Duties by this Act imposed, and to allow such Salary and Reward to such Clerk for his Trouble and Attendance, as to the said Commissioner shall seem just and reasonable.

Commissioner to appoint a Clerk.

XLI. Provided always, and be it enacted, That the several Commissioners acting from Time to Time in the Execution of this Act, and each of them, shall make out an Account, containing a true Statement of all Sum and Sums of Money by him or them received or expended, or due to him or them for his or their own Trouble or Expences; and that such Account shall, at least Once in every Year from the Date of the passing this Act, until such Accounts shall be finally allowed, together with the Vouchers relating to the same, be examined by *Richard Townsend Herbert of Cabernane* in the said County of *Kerry*, Esquire, or (in case of his Decease, or of his refusing or neglecting to examine such Accounts when thereunto required) by any Justice of the Peace acting for the said County of *Kerry*, and the Amount or Balance thereof shall be by him stated in the Book of Accounts by this Act required to be kept in the Office of the Clerk of such Commissioner as herein mentioned; and that no Charge or Items in such Accounts shall be binding on the Parties concerned, or be valid in Law, unless the same shall be duly allowed by such Persons as aforesaid.

Commissioner's Accounts to be examined yearly.

XLII. And be it further enacted, That if any Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, shall think him, her, or themselves aggrieved by any thing done in pursuance of this Act (other than and except such Orders and Determinations of the said Commissioner as are herein ordered to be final or conclusive, and except in such Cases where an Issue at Law shall be tried as herein mentioned) then and in every such Case, he, she, or they may appeal to the Justices (not interested in the Premises, and who shall be of the Quorum) at the General or Quarter Sessions of the Peace which shall be holden for the said County of *Kerry* within Four Calendar Months next after the Cause of Complaint shall have arisen, on giving to the said Commissioner Ten Days Notice in Writing of such Appeal, and of the Matter thereof; and the said Justices (not interested in the Premises) at their said General or Quarter Sessions, are hereby required to hear and determine the Matter of every such Appeal, and to

Appeal to the Sessions.

[Private.]

make such Order, and award such Costs and Damages as to them in their Discretion shall seem reasonable; and by their Order and Warrant to levy the Costs and Damages which shall be so awarded, by Distress and Sale of the Goods and Chattels of the Party or Parties liable to pay the same, rendering the Overplus (if any) on Demand, to the Owner or Owners of such Goods and Chattels, after deducting the reasonable Charges of such Warrant, Distress, and Sale; and the Determination of such Justices shall be final and conclusive to all Parties concerned, and shall not be removed by Certiorari, or any other Writ or Process whatsoever, into any of His Majesty's Courts of Record at *Dublin* or elsewhere; but in case such Appeal shall appear to the said Justices to be frivolous, vexatious, or without Foundation, then the said Justices shall award such Costs to be paid by the Appellant or Appellants, as to them in their Discretion shall seem reasonable, and to be levied in manner aforesaid.

Saving Rights
of Lord Clive.

XLIII. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to extend to take away, prejudice, curtail, or in any Manner affect the Right or Title of the Right Honourable *Edward Herbert* commonly called Viscount *Clive*, or the Person or Persons who shall for the Time being be entitled to a certain Fee Farm Rent charged upon and payable out of the said Lands, Tenements, and Hereditaments hereby directed to be divided and allotted, or to any Mines, Minerals, and Seams of Coal, Lead, Brass, Tin, Copper, and all other Mines and Minerals of whatsoever Kind or Nature in, upon, or under the Lands, Tenements, and Hereditaments hereby directed to be divided and allotted, or in any Manner to abridge or weaken any of the Powers, Rights, Privileges, or Authorities for recovering the said Fee Farm Rent or any Part thereof, or for the working and carrying away the said Mines and Minerals.

Saving the
Rights of
Lords of
Manors.

XLIV. Provided always, That nothing contained in this Act shall defeat, lessen, or prejudice, or be construed to defeat, lessen, or prejudice the Right, Title, or Interest of the Lord or Lords, Lady or Ladies of the said Manor, or any of them, or of any other Manor or Manors within the said Parish of *Castle Island* for the Time being, in or to the Seignior, Royalties, Rights, and Services incident and belonging to the said Manors; but that such Lord or Lords, Lady or Ladies of the said Manors for the Time being respectively, shall and may, from Time to Time and at all Times hereafter, hold and enjoy all Rents, Services, Courts, Perquisites, and Profits of Courts, Goods, and Chattels of Felons, Fugitives, Felons of themselves, Persons put in Exigent, Deodands, Waifs, Estrays, Forfeitures, and all other Royalties, Jurisdictions, Rights, and Pre-eminences whatsoever to the said Manors, or to the Lord or Lords, Lady or Ladies thereof for the Time being respectively incident, appendant, appurtenant, belonging, or in anywise appertaining (save and except such Rights and Interests as are hereby meant and intended to be barred and destroyed), in as full, large, ample, and beneficial Manner as he, she, or they could or might have held and enjoyed the same, in case this Act had not been passed.

General
Saving.

XLV. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and to all and every other Person or Persons, Body or Bodies Politic, Corporate, and Collegiate, his, her, and their Heirs, Successors, Executors, and Administrators, all such Right, Title, and Interest,

(other

(other than and except such as is and are hereby meant and intended to be barred, destroyed, and extinguished), as they, every, or any of them, could or ought to have had or enjoyed, of, in, to, or out of the said Lands and Waste Grounds hereby directed to be divided, allotted, and inclosed, in case this Act had not been made.

XLVI. And be it further enacted, That this Act shall be printed by the Printer to the King's most Excellent Majesty; and when so printed may be given in Evidence in all Courts of Justice, and before all Judges and Justices whomsoever, who shall take judicial Notice thereof, in like Manner as if the same had been declared to be a Public Act.

Directing the
Act to be
printed by the
King's
Printer.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN,
Printers to the King's most Excellent Majesty. 1824.