



ANNO SECUNDO & TERTIO

VICTORIÆ REGINÆ.

C A P. LXII.

An Act to explain and amend the Acts for the
 Commutation of Tithes in *England and Wales*.
 [17th August 1839.]

WHEREAS an Act was passed in the Seventh Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for the Commutation of Tithes in England and Wales*: And whereas an Act was passed in the First Year of the Reign of Her present Majesty to amend the recited Act: And whereas an Act was passed in the Second Year of the Reign of Her present Majesty, intituled *An Act to facilitate the Merger of Tithes in Land*: And whereas it is expedient to explain and amend the said Acts in certain respects: Be it therefore declared and 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 in every Case where any Tithes or Rent-charge shall have been or shall hereafter be released, assigned, or otherwise conveyed or disposed of under the Provisions of the said Acts, or any of them, or of this Act, for merging or extinguishing the same, the Lands in which such Merger or Extinguishment shall take effect shall be subject to any Charge, Incumbrance, or Liability which lawfully existed

6 & 7 W. 4.
c. 71.
1 Vict. c. 69.
1 & 2 Vict.
c. 64.
On Merger
of Tithes or
Rent-charge,
the Charges
thereon to be
Charges on
Lands.

existed on such Tithes or Rent-charge previous to such Merger to the Extent of the Value of such Tithes or Rent-charge; and any such Charge, Incumbrance, or Liability shall have Priority over any Charge or Incumbrance existing on such Lands at the Time of such Merger taking effect; and such Lands, and the Owners thereof for the Time being, shall be liable to the same Remedies for the Recovery of any Payment and the Performance of any Duty in respect of such Charge, Incumbrance, or Liability, or of any Penalty or Damages for Nonpayment or Nonperformance thereof respectively, as the said Tithes or Rent-charge, or the Owner thereof for the Time being, were or was liable to previous to such Merger.

Power for special Apportionment of such Charge on Lands being of Three Times the Value of the Charge.

II. And be it enacted, That every Person entitled to exercise the Powers for Merger of Tithes or Rent-charge in Land under the said Acts or any of them, or of this Act, may, with the Consent of the Tithe Commissioners for the Time being under their Hands and Seal of Office, and of the Person to whom the Lands in which such Merger or Extinguishment shall take effect shall belong, either by the Deed or other Instrument or Declaration by which such Merger shall be effected, or by any separate Deed, Instrument, or Declaration, to be made in such Form as the Commissioners shall approve, specially apportion the Whole or any Part of any such Charge, Incumbrance, or Liability affecting the said Tithes or Rent-charge so merged or extinguished, or proposed to be merged or extinguished in such Lands, upon the same or any Part thereof, or upon any other Lands of such Person held under the same Title and for the same Estate in the same Parish, or upon the several Closes or Portions of such Lands, or according to an acreable Rate or Rates upon Lands of different Quality, in such Manner and Proportion, and to the Exclusion of such of them, as the Person intending to merge the same, with such Consent as aforesaid, may by any such Deed, Instrument, or Declaration direct: Provided always, that no Land shall be so exclusively charged unless the Value thereof shall in the Opinion of the said Commissioners be at least Three Times the Value of the Amount of the Charge, Incumbrance, or Liability charged or intended to be charged thereon, over and above all other Charges and Incumbrances, if any, affecting the same.

Name of each Occupier, and Sum charged on him, to be specified by Assessor, on Notice from Owner.

III. And be it enacted, That the Assessor or Collector of any Rate or Tax shall, within Forty Days after the Receipt of a Notice in Writing signed by any Land Owner or Tithe Owner interested therein, specify in his Assessment made for the Purpose of collecting and levying such Rate or Tax the Names of the several Occupiers of Tithes, Lands, and Tenements subject to such Rate or Tax, as well as the Sum assessed on the Tithes, Lands, or Tenements held by each such Occupier.

Power of special Apportionment on Tithes or Rent-charge.

IV. And be it enacted, That where the whole of the Great Tithes or the whole of the Small Tithes, or the respective Rent-charges in lieu thereof, shall be lawfully subject to any such Charge, Incumbrance, or Liability, and the Person entitled to such Tithes or Rent-charge respectively shall be desirous of apportioning such Charge, Incumbrance, or Liability respectively exclusively upon any Part of such Tithes or Rent-charge, although such Person

Person has not the Power or does not intend to merge the same under the said Acts or this Act, such Person may, with the like Consent of the said Commissioners, and in such Manner as they shall see fit and prescribe, and also with the Consent of the Bishop of the Diocese, specially apportion such Charge, Incumbrance, or Liability respectively upon any Part or Portion of the Tithes or Rent-charge respectively subject thereto, not being in the Opinion of the said Commissioners less than Three Times the Value of the said Charge, Incumbrance, or Liability, or of such Part thereof as shall be so apportioned thereon, or intended so to be.

V. And be it enacted, That in every such Case of special Apportionment the Costs and Expences of or incident thereto shall be borne by the Party at whose Instance the same shall have been made, and shall be recoverable as other Costs of Apportionments are recoverable under the Provisions of the said recited Acts or either of them, or of this Act.

Expences of special Apportionment to be borne by Parties applying for same.

VI. And be it declared and enacted, That the Provisions of the said Acts and this Act for Merger or Extinguishment of Tithes or Rent-charge instead of Tithes in the Lands out of which such Tithes shall have been issuing, or whereon such Rent-charge shall be fixed, do and shall extend to Glebe or other Land, in all Cases where the same and the Tithes or Rent-charge thereof shall belong to the same Person in virtue of his Benefice, or of any Dignity, Office, or Appointment held by him.

Tithes and Rent-charge of Glebe may be merged.

VII. And be it enacted, That in every Case of Merger of Tithes or Rent-charge issuing out of Land of Copyhold Tenure, and subject to arbitrary Fine, it shall be lawful for the said Commissioners, on the Application of the Owner of such Land, to ascertain, by such Ways and Means as they shall think fit, the annual Value of the Tithes or Rent-charge so merged or intended to be merged; and the said Commissioners shall in such Case cause to be endorsed on the Deed, Declaration, or other Instrument effecting such Merger a Certificate under their Hands and Seal, setting forth such annual Value so ascertained; and in every Case of future Assessment of Fine on the Lands which before such Merger were subject to such Tithes or Rent-charge, the Parties entitled to such Fine shall assess the same as if such Lands were subject to the Tithes or Rent-charge of which the annual Value shall be so endorsed; and the Production of such Deed, Declaration, or Instrument of Merger, or of a Duplicate thereof, with such Certificate endorsed, or of an Office Copy of such Deed, Declaration, or Instrument and Certificate endorsed thereon, shall be sufficient Evidence of the annual Value of such Tithes or Rent-charge.

Provision for deducting Value of Tithes and Rent-charge from arbitrary Fines in Cases of Merger in Copyholds, 1 & 2 Vict. c. 64. s. 4.

VIII. And be it enacted, That, notwithstanding any thing in the said Acts or any of them contained, in any Case where a Parochial Agreement for Rent-charge or for giving Land instead of Tithes, or any compulsory Award, has been duly confirmed by the said Commissioners, and it shall appear to them, at any Period before the Confirmation of the Apportionment of such Rent-charge, that by reason of

Power to make Award by way of Supplement to Parochial Agreement in Cases of Fraud, &c.

of Fraud, or by the Omission or Insertion through Error of the Tithes or Lands of any Party thereto, or of the Name of any Person, whether as Tithe Owner or Land Owner, who ought, or, as the Case may be, who ought not, to have been Party thereto, or any other manifest Error, that such Agreement or Award would be unjust, and that if such Fraud, Omission, Insertion, or other manifest Error had not occurred the said Commissioners would have come to a different Conclusion in respect of such Agreement or Award, and would have declined to confirm or would have varied the same previous to such Confirmation, it shall be lawful for the said Commissioners, if they shall see fit, and in their sole Discretion, but not otherwise, by a separate Award to rectify such Agreement or Award in any of the Matters aforesaid, in such Manner as to them shall seem just; and all the Provisions and Powers of the recited Acts relating to compulsory Awards shall be applied in every such Case, in respect of the Matter so dealt with, in as full a Manner as if no such Agreement or Award had been made, or as if the same were made in respect of a separate District: Provided always, that in every such separate Award the Matter so dealt with, and the Grounds on which the Commissioners shall have seen fit to make the same, shall be recited or otherwise set forth in the Draft thereof, in addition to the other Particulars required by the said Acts, or any of them, to be set forth in compulsory Awards; and every such Award shall, in the Notice of meeting for hearing Objections thereto, be called a separate Award by way of Supplement to the Parochial Agreement or Award in the Parish to which such separate Award relates.

Power after Award to make Parochial Agreement for Easter Offerings, &c.
6 & 7 W. 4. c. 71. s. 90.

IX. And be it enacted, That it shall be lawful, at any Time before the Confirmation of any Apportionment after a compulsory Award in any Parish, for the Land Owners and Tithe Owners, having such Interest in the Lands and Tithes of such Parish as is required for the making a Parochial Agreement, to enter into a Parochial Agreement for the Commutation of *Easter Offerings*, *Mortuaries*, or *Surplice Fees*, or of the Tithes of *Fish or Fishing*, or *Mineral Tithes*; and all the Provisions, Conditions, Limitations, and Powers of the said recited Acts or any of them, relating to Parochial Agreements, so far as the same shall in the Judgment of the Commissioners be applicable to the Subject of the proposed Commutation, shall be observed and applied in every such Case as if no previous Award had been made; and every such Agreement may fix the Period at which the Rent-charge to be paid under such Agreement shall commence, but so nevertheless that the same and the subsequent Payments thereof shall be made on some Day fixed for the Payment of the Rent-charge awarded in such Parish, and shall be recoverable from Time to Time by the Means provided in the said Acts or either of them for the Recovery of the Rent-charges in the said Parish.

Power to fix Commencement of Rent-charge.

X. And be it enacted, That it shall be lawful for the Commissioners in any compulsory Award, or by any supplementary Award, in Cases where the Parties shall not have fixed the same by Parochial Agreement, as under the said secondly-recited Act is provided, to
fix,

fix, or where the Commissioners shall not have so fixed for the Land Owners and Tithe Owners having such an Interest in the Land and Tithes of any Parish as is required for making a Parochial Agreement to enter into a supplementary Agreement for fixing, such Sum as to them respectively shall seem fit to be paid in consideration of the Time (if any) which may intervene between the Termination of any previous Agreement or Composition for the Payment of Tithe and the Time at which the Rent-charge shall commence, either under such compulsory Award or Parochial Agreement where the same shall have been previously made, and also for the said Commissioners by their said Award to fix, or for the Land Owners and Tithe Owners having such Interest in the Lands and Tithes of any Parish as is required for the making a Parochial Agreement, at any Time after such Award, and before the Confirmation of the Apportionment, to enter into a supplementary Agreement for fixing the Period at which the Rent-charge to be paid under such Award shall commence, in like Manner and subject in both Cases to the like Conditions as are provided in the secondly-recited Act, enabling Parties to agree to pay any such Sum, or to fix the Period at which any Rent-charge shall commence.

XI. And be it enacted, That where Lands are exempted from the Payment of Tithes, or of Rent-charge instead of Tithes, whilst in the Occupation of the Owner of such Lands, by reason of having been Parcel of the Possessions of any privileged Order, it shall be lawful for the respective Owners of the said Lands and Tithes or Rent-charge, by the Parochial Agreement for the Rent-charge, or by a supplemental Agreement in Cases where the Parochial Agreements or any Award shall have been confirmed by the said Commissioners, to be made in such Form as the Commissioners shall direct or approve, to agree to the Payment, or for the Commissioners in the Case of a compulsory Award, with the Consent of the respective Owners of the said Lands and Tithes, to award the Payment of a fixed and continuing Rent-charge, without regard to the Change of Occupation or Manurance of such Lands, equivalent in Value, according to the Judgment of the Commissioners, to such contingent Rent-charge; and such Lands shall, from the Date of the Confirmation by the Commissioners of such Parochial Agreement or supplemental Agreement or Award, as the Case may be, or from such Date as shall be fixed by the Parties, with the Approval of the said Commissioners, in any such Agreement or supplemental Agreement, be subject to such fixed Rent-charge instead of the contingent Tithes or Rent-charge to which such Lands were subject previous to such Agreement or supplemental Agreement or Award being made; and every such fixed Rent-charge shall from such Period respectively be paid and recoverable by the Means provided in the said Acts, in like Manner as if the same had been the Rent-charge originally fixed in any Parochial Agreement or Award in respect of the said Tithes.

Fixed Rent-charge may be substituted for contingent Rent-charge on Lands partially exempt. 6 & 7 W. 4. c. 71. s. 71.

XII. And whereas certain Crown Lands, by reason of their being of the Tenure of ancient Demesne or otherwise, are exempted from Payment of Tithes whilst in the Tenure, Occupation, or Manurance of Her Majesty, Her Tenants, Farmers, or Lessees, or their Under-

Provisions of 6 & 7 W. 4. c. 71. ss. 43. and 71. for substituting fixed Rent-

charge ex-
tended to
Crown
Lands.

tenants, as the Case may be, but become subject to Tithes when alienated or occupied by Subjects not being Tenants, Farmers, or Lessees of the Crown, and Doubts have arisen how far the Provisions of the said first-recited Act relating to Lands heretofore Parcel of the Possessions of any privileged Order, or in the Nature of Glebe, or otherwise in like Manner privileged and partially exempt, are applicable to such Crown Lands; be it declared and enacted, That all and every the said Provisions of the said first-recited Act do extend to such Crown Lands, and that the Provision lastly in this Act contained for substituting a fixed Rent-charge instead of a contingent Rent-charge on Lands partially exempt from Tithes shall extend and be applicable to such Crown Lands as aforesaid: Provided always, that no such fixed Rent-charge shall be substituted instead of such contingent Rent-charge on such Crown Lands without the Consent of the Persons or Officers who are by the said first-recited Act respectively required to be substituted in Cases of Commutation of Tithes where the Ownership of Lands or Tithes is vested in Her Majesty.

Provision for
Tithes of
Lammas
Lands, &c.

XIII. And whereas large Tracts of Land called Lammas Lands are in the Occupation of certain Persons during a Portion of the Year only, and are liable to the Tithes of the Produce of the said Lands increasing and growing thereon during such Occupation, and at other Portions of the Year are in the Occupation of other Persons, and in their Hands liable to different Kinds of Tithes arising from the Agistment, Produce, or Increase of Cattle or Stock thereon; and by reason of such Change of Occupation such last-mentioned Tithes cannot be commuted for a Rent-charge issuing out of or fixed upon the said Lands, and the said recited Acts are thereby rendered inoperative in the several Parishes where such Lammas Lands lie: And whereas the said Acts are in like Manner inoperative in certain Cases where a personal Right of Commonage, or a Right of Common in gross, is vested in certain Persons by reason of Inhabitaney or Occupation in the Parish where any Common may lie, or by Custom or Vicinage, but without having such Right of Common so annexed or appurtenant to or arising out of or in respect of any Lands on which any Rent-charge could be fixed in stead of the Tithes of the Cattle or Stock, or their Produce, Increase, or Agistment, on such Common, annexed to such personal Right; for Remedy thereof be it enacted, That in every Case where by reason of the peculiar Tenure of such Lands, and the Change during the Year of the Occupiers thereof, or of such Right of Commonage, a Rent-charge cannot, in the Judgment of the said Commissioners, be fixed on the said Lands in respect of Cattle and Stock received and fed thereon, or of the Produce and Increase of such Cattle and Stock, at such Portion of the Year as the said Lands are thrown open, or where such Right of Commonage alone exists, it shall be lawful for the Parties interested in such Lands or Commons and the Tithes thereof in the Case of a Parochial Agreement, or for the Commissioners in the Case of a compulsory Award, in every such Parochial Agreement or Award respectively, or by any supplemental Agreement in the Nature of a Parochial Agreement, or by a supplemental Award, as the Case may be, where any Parochial Agreement or Award has been already made,

to fix a Rent-charge instead of the Tithes of such Lammas Land or Commons, to be paid during the separate Occupation thereof by the separate Occupiers, in like Manner as other Rent-charges are fixed by the said Acts or any of them, and to declare in such Agreement or Award, or supplemental Agreement or Award, as the Case may be, such a Sum or Rate *per Head* to be paid for each Head of Cattle or Stock turned on to such Lammas Land or Commons by the Parties entitled to the Occupation thereof after the same shall have been so thrown open, or by the Parties entitled to such Right of Commonage as aforesaid; and every such Sum shall be ascertained and fixed upon a Calculation of the Tithes received in respect of such last-mentioned Occupation or Right for the Period and according to the Provisions for fixing Rent-charges in the said recited Acts, and shall be due and payable by the Owner of such Cattle or Stock on the same being first turned upon such Lands or Commons, and shall be recoverable by the Persons entitled thereto by Distress and impounding of the Cattle or Stock in respect of which such Sum shall be due, in like Manner as Cattle are distrained and impounded for Rent, and be subject to the same Provisions as to Distress and Replevin of the same as are by Law provided in Cases of Distress for Rent: Provided always, that nothing herein contained shall extend to Lammas Lands where no Tithes or Payments instead of Tithes have been taken during the Seven Years ending at *Christmas* One thousand eight hundred and thirty-five in respect of the Cattle or Stock received and fed thereon, or of the Produce and Increase of such Cattle or Stock at such Portion of the Year as the said Lands are thrown open.

XIV. And whereas in certain Cases of Commons hereafter to be inclosed Allotments may be made in respect of Tenements and Hereditaments to which a Right of going on such Common is appendant or appurtenant, the Tithes whereof would be chargeable on the Tenements or Hereditaments in respect of which such Allotments may be made, and such Tenements or Hereditaments are not of themselves an adequate Security for the Rent-charge to be fixed in respect of such Tithes; be it therefore declared and enacted, That in every such Case the Rent-charge to be fixed instead of such Tithes shall be a Charge upon and recoverable out of any Allotments to be in future made in respect of such Rights, as well as upon such Tenements or Hereditaments in respect of which such Allotments are made, and by the same Ways and Means as are provided for the Recovery of Rent-charges by the said Acts or any of them, or this Act.

Rent-charge in respect of Tithes of Common appurtenant to be a Charge on the Allotments made in respect of the Lands to which Right of Common attached.

XV. And be it declared and enacted, That all the Provisions in the recited Acts or any of them in any way relating to or enabling the pulling down or Sale of Barns and Buildings generally used for housing Tithes paid in Kind, and the Sale of the Materials and the Site thereof, either with or without any Farm Buildings or Homesteads thereto belonging, and for the Conveyance and Delivery thereof, and for securing the Consideration Money for the Benefit of the Persons thereunto entitled, shall apply to and may be made available by any Corporate Body or Person, whether as Trustees or otherwise,

Recited Acts extended to Collegiate Bodies, &c., notwithstanding restraining Statute.

by

13 Eliz. c. 10. by any Master and Fellows of any Collegè, Dean and Chapter of any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, Vicar, or any other having any Spiritual or Ecclesiastical Living, being seised or possessed of any such Barns or Buildings, or the Site thereof, notwithstanding any thing in a certain Statute made in the Thirteenth Year of the Reign of Queen *Elizabeth*, for making void fraudulent Deeds made by Spiritual Persons to defeat their Successors of Remedy for Dilapidations, or in any other Statute.

6 & 7 W. 4. c. 71. s. 77. extended to Corporate and Collegiate Bodies. XVI. And be it declared and enacted, That so much of the said Acts or any of them as enables any Owner of a particular Estate in Lands or Tithes to charge so much of the Expences of the Commutation as is defrayed by him, or any Part thereof, and the Interest thereon, upon the Lands whereof the Tithes are commuted, or upon the Rent-charge to be received by him instead of such Tithes respectively, shall in like Manner extend and be applicable to and may be made available by any Corporate Body or Person, Master or Fellows of any College, Dean and Chapter of any Cathedral or Collegiate Church, Master or Guardian of any Hospital, Parson, Vicar, or any other having any Spiritual or other Ecclesiastical Living, and whether seised in Fee or for a limited Estate in such Lands, Tithes, or Rent-charge, any thing in the said Statute of Queen *Elizabeth*, or any other restraining Statute, or in the Tenure by which such Lands, Tithes, or Rent-charge respectively are holden, to the contrary notwithstanding, but so nevertheless that the Charge upon such Lands or Rent-charge respectively shall be lessened in every Year following such Commutation by One Twentieth Part at least of the whole original Charge thereon.

Colleges and Corporations Aggregate may charge Expences on other Lands than those in respect of which such Expences are incurred. XVII. And be it enacted, That it shall be lawful for any Ecclesiastical Corporation Aggregate, or any Collegiate Body, with the Consent of the said Commissioners testified under their Hands and Seal, to charge with the Amount of the Expences of commuting the Tithes of any Lands of which they are Owners, or any Part of such Expences, with Interest thereon, on any other Lands holden by them to the same Uses or on the same Trusts as the Lands in respect of which such Expences were incurred, but so nevertheless that the Charge upon such Lands shall be lessened in every Year following by One Twentieth Part at the least of the whole Original Charge thereon.

For Recovery of Expences of Apportionment. XVIII. And be it enacted, That Payment of the Expences of or incident to making any Apportionment, or any other Expences which the said Commissioners are authorized and may have ordered or may order to be paid by any Owner of Lands under and by virtue of the recited Acts, or any of them, or this Act, may be enforced by the same Ways and Means as Payment of Rent-charge in arrear may be enforced under the Provisions of the said Acts or either of them.

Extension of 6 & 7 W. 4. c. 71. ss. 29, 62. for giving Land in lieu of Tithes. XIX. And be it enacted, That so much of the said first-recited Act as enables any Land Owner, either by Parochial Agreement or individually, to give Land instead of Tithes or Rent-charge at any Time before the Confirmation of any Instrument of Apportion-

portionment, shall be and the same is hereby extended, and the Powers and Provisions for that Purpose may be exercised in every such Case at any Time, as well after as before such Confirmation of the Apportionment as aforesaid, during the Continuance of the Commission constituted and with the Consent of the Commissioners appointed and acting under the said first-recited Act.

XX. And be it enacted, That in any Case where any Land shall have been or shall hereafter be taken by any Ecclesiastical Tithe Owner under any Agreement for the Commutation of any Tithes, or for giving Land instead of any Rent-charge, under the recited Acts, or any of them, or this Act, such Land shall upon the Confirmation of such Agreement vest absolutely in such Tithe Owner and his Successors, free from all Claims of any Person or Body Corporate, and without being thereafter subject to any Question as to any Right, Title, or Claim thereto, or in any Manner affecting the same; and the Commissioners shall cause to be inserted in or endorsed upon every such Agreement the Amount of the Rent-charge instead of which such Land was given, and the Lands upon which the same was chargeable; and every Person who if this Act had not been made would have been entitled to recover any such Land given instead of Rent-charge, or any Rents or Profits issuing out of such Land, shall be entitled to recover against the Party or Parties giving such Land instead of Tithes or Rent-charge, his, her, or their Heirs, Executors, or Administrators, by way of Damages, in an Action on the Case, such Compensation as he or she may be entitled to for any Loss thereby sustained; and such Damages, and all Costs and Expences awarded to the Plaintiff in such Action, shall forthwith attach upon and be payable out of the Lands exonerated by such Agreement.

Lands taken by Ecclesiastical Tithe Owners instead of Tithes to vest absolutely in them.

XXI. And be it enacted, That all Agreements and other Assurances which shall be made for the Purpose of effecting the taking of Land instead of Rent-charge under the Provisions of the said recited Acts, or any of them, or this Act, shall be valid and effectual for the Purpose of vesting an Estate of Inheritance as to such Lands in such Ecclesiastical Tithe Owner and his Successors, notwithstanding the same be made by any Corporation Sole or Aggregate, or any Trustees or Feoffees for charitable Purposes, otherwise restrained from or incapable of making any such valid Conveyance or Assurance.

Corporations, Trustees, and Feoffees to charitable Uses may convey Lands.

XXII. And be it enacted, That the Provisions and Conditions of the said secondly-recited Act, whereby the said Commissioners are enabled to confirm any Instrument of voluntary Apportionment, although they shall not be satisfied of the Accuracy of any Map or Plan annexed thereto, or that the several Quantities of Land specified in such Apportionment or Agreement are therein truly stated, shall extend to enable the Commissioners, if they shall think fit, to confirm any compulsory Apportionments to which any existing Map or Plan, agreed to be adopted at a Parochial Meeting, shall be annexed, although the said Commissioners shall not be satisfied of the Accuracy of such Map or Plan, or that the several Quantities of Land specified in such Apportionment are truly stated in such Map or Plan.

Apportionments may be confirmed though Commissioners not satisfied of Accuracy of Maps. 7 W. 4. & 1 Vict. c. 69. s. 1.

Expences of
Apportion-
ment to be
borne in
certain Cases
as Commis-
sioners may
direct.
6 & 7 W. 4.
c. 71. ss. 12,
74, 75.

s. 74.

s. 75.

XXIII. And whereas in and by the said first-recited Act the Words "Land Owner" or "Tithe Owner," or "Owner of Lands" or "Owner of Tithes," are defined to mean and include every Person who shall be in the actual Possession or Receipt of the Rents or Profits of any Lands or Tithes, except (amongst other Exceptions) any Tenant for Life or Lives, or for Years, holding under a Lease or Agreement for a Lease on which a Rent of not less than Two Thirds of the clear yearly Value of the Premises therein shall have been reserved, and that without regard to the real Amount of Interest of such Person; and in every Case in which any Tithes or Lands shall have been leased or agreed to be leased to any Person for Life or Lives, or for Years by any Lease or Agreement for a Lease on which a Rent less than Two Thirds of the clear yearly Value of the Premises comprised therein shall have been reserved, the Person in receipt of such Rent shall, jointly with the Person liable to the Payment thereof, be deemed for the Purposes of the said Act to be the Owner of such Tithes or Lands: And whereas certain Allowances and Expences to Surveyors and Tithe Valuers necessary for making any Award, and all other Expences of or incident to making an Award, are by the said recited Acts or some of them directed to be paid by the Land Owners and Tithe Owners interested in the said Award, in such Proportion, Time, and Manner as the Commissioners or Assistant Commissioners shall direct; and the Expences of or incident to making any Apportionment are by the said first-recited Act to be paid by Owners of Lands in rateable Proportions to the Sums charged on the said Lands in lieu of Tithes by such Apportionment: And whereas Cases have occurred and may occur where by reason of the Rent reserved in certain Leases or Agreements for Leases not being less than Two Thirds of the clear yearly Value of the Premises thereby demised or agreed to be demised at the Date or Time of coming into operation of such Leases or Agreements, but which Premises are at the Time of putting in force the Provisions of the said recited Acts of improved yearly Value, so that the Rent originally reserved or agreed for is less than Two Thirds thereof, but by the Operation of the said recited Words, as defined in the said first-recited Act as aforesaid, such Expences, or a Part thereof, would, under the said Acts, be chargeable on the original Lessor or original Lessee, and not on the intermediate or Sub-Lessors or Lessees whose beneficial Interest in the said Lands and Tithes, or Rent-charge in lieu of Tithes, is proposed to be or has been dealt with under the said recited Acts, or some or One of them, or this Act: And whereas certain other Cases have occurred and may occur in which it is expedient that the Commissioners should be empowered to vary and fix the Proportion of the Expences of Apportionment, including therein the Expences of or incident to the Map or Plan annexed thereto, and the Copies thereof, between the Owners of the Lands affected thereby, as such Owners are defined in the said first-recited Act as aforesaid, and according to such Principles as to the said Commissioners shall seem just and equitable; be it therefore declared and enacted, That, notwithstanding any thing in the said Acts or any of them contained, it shall be lawful for the Commissioners, in such Cases as they may deem it just and equitable, to order and direct that such Expences of or incident to any Award, or any Part thereof, shall

be borne and paid in such Proportion and Manner, by and amongst the Persons interested in the Lands, Tithes, or Rent-charge respectively dealt with in such Award, and that such Expences of or incident to any Apportionment, or any Part thereof, shall be borne and paid by and amongst the Persons interested in the Lands, in such Proportions and Manner respectively as the said Commissioners shall direct; and such Expences, and every or any Part thereof, shall in every such Case be recoverable in like Manner as Expences, or the Share thereof to be borne by any Person, are or is recoverable under the Provisions of the said first-recited Act or this Act.

XXIV. And whereas in certain Cases of compulsory Award where Tithes are held by One Tithe Owner in different Rights, or where by reason of Owners of Land having purchased or otherwise acquired such a beneficial Interest in the Tithes arising out of the same, for Life or Lives or for Years, as under the said Provisions of the said first-recited Act requires that such Persons respectively should be dealt with and distinguished in such Award as joint Owners with the Lessor of or the Person having the reversionary Interest in such Tithes, but great Difficulties have arisen in distinguishing the Sums payable to each such Tithe Owner, as also in distinguishing the respective Lands out of which the Tithes accruing to any such Tithe Owner, either as holding such Tithes in different Rights or as joint Tithe Owner, arise, or whereon any several Rent-charge should be awarded, and the Completion of such Award has been thereby impeded; be it therefore declared and enacted, That in any such Case it shall not be necessary in any such Award to distinguish the Lands or award a several Rent-charge to each such Owner of the Tithes by Name, or otherwise to distinguish such Tithe Owner, but it shall be sufficient to award a gross Rent-charge to such Owner of Tithes in different Rights in respect of such Tithes so held by him, or, as the Case may be, to the original Lessor of such Tithes, or the Person in whom the ultimate Reversion thereof shall be, by his proper Name and Description, and in any such Case of joint Ownership to the several Persons claiming under him, and being so respectively joint Owners of such Tithes, by such general Terms and Description as to the Commissioners or Assistant Commissioner making such Award shall seem fit: Provided always, that the Name of each such Tithe Owner, and the Lands out of which his respective Tithes, or the Portion of such gross Rent-charge instead of such Tithes, shall respectively accrue or issue, shall be distinguished in the Instrument of Apportionment made in pursuance of such Award; and every such Tithe Owner shall be as fully entitled to take, hold, and recover such Portion of the Rent-charge as shall be so apportioned in such Instrument of Apportionment, upon the several Lands the Tithes or Rent-charge whereof are so held by him respectively, according to his respective Term and Interest in such Tithes or the Rent-charge, in as ample a Manner as if such Tithe Owner and Lands had been respectively named and distinguished in such Award under the Provisions of the said first-recited Act.

Award may be made of Rent-charge to certain Owners of Tithes by general Description. 6 & 7 W. 4. c. 71. ss. 12. 21. 50.

XXV. And be it enacted, That it shall be lawful for the said Commissioners to adjourn any Meeting by Notice in Writing under their Hands
Commissioners may adjourn Meet-

ing without attending to adjourn.

Hands or the Hands of any Two of them, to be affixed and published in manner provided for Notices in the said firstly-recited Act, without any Commissioner or Assistant Commissioner giving Attendance for the Purpose of making such Adjournment.

Provision for dividing the Tithe of Fruit Plantations in certain Cases.

XXVI. And be it enacted, That in case any of the Lands in a Parish the Tithes whereof shall be in course of Commutation under the Provisions of the said first-recited Act shall be Orchards or Fruit Plantations, and Notice in Writing, under the Hands of any of the Owners thereof whose Interest therein shall not be less than Two Thirds of the whole of the Orchards and Fruit Plantations in such Parish, shall be given to the Valuers or Commissioners or Assistant Commissioner by whom any Apportionment provided for by the said Act shall be made at any Time before the Draught of such Apportionment shall be framed that the Tithes thereof should be distinguished into Two Parts, the Amount which shall be charged by any such Apportionment upon the several Orchards and Fruit Plantations in such Parish shall be distinguished into Two Parts accordingly, and the same shall be called the Ordinary Charge and the Extraordinary Fruit Charge; and the Extraordinary Charge shall be a Rate *per* Imperial Acre, and so in proportion for less Quantities of Ground, according to the Discretion of the Valuers or Commissioners or Assistant Commissioner by whom such Apportionment shall be made as aforesaid.

Newly-cultivated Fruit Plantations to be charged an additional Sum.

XXVII. And be it enacted, That all Lands the Tithes whereof shall have been commuted under the said Act, which shall be situate within the Limits of any Parish in which an Extraordinary Fruit Charge shall have been distinguished as aforesaid at the Time of Commutation, and which shall be newly cultivated as Orchards or Fruit Plantations at any Time after such Commutation, shall be charged with an additional Amount of Rent-charge *per* Imperial Acre equal to the Extraordinary Fruit Charge *per* Acre in that Parish: Provided always, that no such additional Amount shall be charged in respect of any Plantation of Apples, Pears, Plums, Cherries, and Filberts, or of any One or more of those Fruits, during the first Five Years, and Half only of such additional Amount during each of the next succeeding Five Years, of such new Cultivation thereof; and that no such additional Amount shall be charged in respect of any Plantation of Gooseberries, Currants, and Raspberries, or of any One or more of those Fruits, during the first Two Years, and Half only of such additional Amount during each of the next succeeding Two Years, of such new Cultivation thereof; and that no such additional Amount shall be charged in respect of any mixed Plantation of Apples, Pears, Plums, Cherries, or Filberts, and of Gooseberries, Currants, or Raspberries during the first Three Years, and Half only of such additional Amount during each of the next succeeding Three Years, of such new Cultivation thereof.

Fruit Plantations when displanted to be relieved from additional Charge.

XXVIII. And be it enacted, That all Lands the Tithes whereof shall have been commuted as aforesaid, which shall be situated within the Limits of any Parish in which an Extraordinary Fruit Charge shall have been distinguished as aforesaid, and which shall cease to be cultivated as Orchards or Fruit Plantations at any Time after such Commutation,

mutation, shall be charged, after the Thirty-first Day of *December* next following such Change of Cultivation, only with the ordinary Charge upon such Lands.

XXIX. Provided also, and be it enacted, That in case any Lands within the Limits of a Parish in which an Extraordinary Fruit Charge shall have been distinguished as aforesaid shall have been or shall at any Time be planted with Fruit, and also with Hops, the same shall, during the Continuance of such mixed Plantation of Hops and Fruit, be liable to the Extraordinary Hop Charge only, or to the Extraordinary Fruit Charge only, payable in respect of the same Lands, not to both those Charges; and that the Extraordinary Charge to which the Lands so planted shall be liable shall be the higher of the Two for the Time being.

Provision for mixed Plantations of Hops and Fruit.

XXX. And be it enacted, That where any Land liable to any such extraordinary Charge for the Tithes of a mixed Plantation of Hops and Fruit shall at the Time of the Commutation produce both Rectorial and Vicarial Tithes payable to different Persons the Apportionment shall set out the same, distinguishing the Amount of ordinary and extraordinary Charge payable to each Tithe Owner, and shall divide the whole Acreable extraordinary Charge between such Tithe Owners, according to the Quantity of Land producing Rectorial Tithe, and the Quantity producing Vicarial Tithe.

When Land subject to Rectorial and Vicarial Tithe, acreable Rent-charge to be fixed.

XXXI. And be it enacted, That in all Cases in which there shall be hereafter mixed Plantations of Hops and of such Fruit as aforesaid in any Parish or District in which an extraordinary Fruit Charge shall have been declared, the Rectorial and Vicarial Tithes whereof but for the Commutation would have been payable to different Owners, the extraordinary Charge payable in respect of the Tithes of such mixed Plantation shall be divided between such Owners in proportion to the Extent of Land occupied by that Produce which would have paid Tithes to each of them respectively: Provided always, that Payment of the Share of each Tithe Owner, when so ascertained, shall be taken to be subject to the Provisions contained in the said first-recited Act and in this Act, for lessening the Amount of extraordinary Charge payable in respect of Hop Gardens and Orchards respectively at the Beginning of such Cultivation.

Provision for future mixed Plantations.

XXXII. And be it enacted, That for the Purpose of fixing any Charge for the Tithes of Hops or Fruit, or of any mixed Plantation as aforesaid, the Commissioners may, if they see fit, assign the Parish or Lands in respect of which due Notice shall have been given, requiring the Tithes thereof to be separately valued, as required by the said first-recited Act, or any Part or Parts of such Parish or Lands, as a District under the Provisions of the said Act, and may fix a Charge upon such Lands in respect of the Tithes of Hops or Fruit as the Rent-charge to prevail and to be established in respect of the same, without specific Reference in the Award to any other Parish or Lands, but having regard nevertheless to the general Amount of Compositions which they shall find to have prevailed in other Parishes of a similar Description, and not to the Money Payments

How the Rent-charge for Hops and Fruit may be fixed in certain Cases.

ments in the Parish under Consideration, or the Value of the Tithes in Kind therein.

Provision for giving Effect to Parochial Agreements and Proceedings thereon in certain Cases of extraordinary Charge.

XXXIII. And be it enacted and declared, That the Provisions of the said first-recited Act for distinguishing Rent-charges apportioned upon Lands cultivated as Hop Grounds into Two Parts, and for relieving Lands from and subjecting the same to an extraordinary Charge when ceased to be cultivated, and when newly cultivated as such respectively, shall be held to extend to Parochial Agreements already or hereafter made, and to the Proceedings consequent thereupon, and to the Lands discharged from Tithes by virtue thereof; and that every such Agreement and Proceeding, whereby any District has been or shall be assigned for establishing or distinguishing into Two Parts any Rent-charge in respect of Lands cultivated as aforesaid, shall be deemed valid, operative, and effectual for all the Purposes of the said recited Acts and of this Act, and that every District assigned by virtue thereof shall be deemed a District duly assigned, and every Rent-charge created thereby a valid Rent-charge for the like Purposes.

For the Settlement of Disputes as to Boundaries.

XXXIV. And be it enacted, That in case there shall be any Question between any Parishes or Townships, or between any Two or more Land Owners, touching the Boundaries of such Parishes or Townships, or the Lands of such Land Owners respectively, or if such Parishes or Townships or Land Owners shall be desirous of having such Boundaries ascertained or a new Boundary Line defined, it shall be lawful for the said Commissioners, or any Assistant Commissioner, on the Application in Writing of a Majority of not less than Two Thirds in Number and Value of the Land Owners of such Parishes or Townships in the Case of Parochial or Township Boundaries, or on the like Application of such Two or more Land Owners in the Case of Boundaries between their Lands, to deal with any Dispute or Question concerning such Boundaries, and to ascertain, adjust, set out, and define the ancient Boundaries between such Parishes or Townships or the Lands of such Land Owners respectively, or draw and define a new Line of Boundary, as they may see fit; and in every such Case the Powers and Provisions of the said recited Acts and of this Act, so far as the same may, in the Judgment of the said Commissioners or Assistant Commissioner respectively, be applicable, shall extend and may be applied by them or him to such Question; and the Boundary Line so ascertained or newly defined by the said Commissioners or Assistant Commissioner shall thenceforward be the Boundary Line of and between such Parishes, Townships, or Lands of such Land Owners respectively for all Purposes whatsoever: Provided always, that nothing in this Provision contained shall extend to any Boundary or Part of a Boundary being also the Boundary Line or Part of the Boundary Line of any County, or to the Boundary Line of any Copyhold or Customary Land, unless the Consent in Writing of the Lord of the Manor whereof such Land is holden to such Application being dealt with by the said Commissioners or Assistant Commissioner shall have been first sent to them or him for such Purpose: Provided also, that every such Boundary Line shall be duly set out and delineated on the Map annexed to the Schedule of Appointment,

or upon a separate Plan to be attached thereto, with proper Descriptions and References, showing in what respects such Map so annexed to the Apportionment is varied, and in what respect the several Closes whereon any Rent-charge is fixed are affected thereby; and such Map shall in every such Case be deemed to be varied by such Plan, and be as valid for all Purposes as if the same had been originally drawn and sealed or certified by the said Commissioners with such Variation.

XXXV. And be it enacted, That in every Case in which any Judgment or Determination of the Commissioners or of any Assistant Commissioner respecting the Boundary of any Parish, District, or Lands shall have been or shall be removed into the Court of Queen's Bench, it shall be lawful for the Court to direct the Trial of One or more feigned Issues upon such Points as the Court shall think fit, and also to direct who shall be the Plaintiff or Plaintiffs and who shall be the Defendant or Defendants on such Trial, or determine the same in a summary Manner, or otherwise to dispose of the Question or Questions in dispute, and to make such other Rules and Orders therein as to Costs and all other Matters as may appear to be just and reasonable.

How Questions of Boundary removed before the Queen's Bench are to be dealt with.

XXXVI. And be it enacted, That it shall be lawful for the said Commissioners and for such Assistant Commissioner as aforesaid to order and direct that all reasonable Costs, Charges, and Expences already or hereafter to be incurred by any Parties interested in or about any Inquiry into any Boundary which the said Commissioners or such Assistant Commissioner are or is authorized to settle, shall be borne and paid in such Proportion and Manner by and amongst the several other Parties interested therein (as well those who shall have signed a Request to the Tithe Commissioners that the said Commissioners should inquire into and settle such Boundaries, as every other Person interested who shall, either personally, or by his or her Counsel, Attorney, or Agent, appear upon such Inquiry before the said Commissioners or before such Assistant Commissioner) as the said Commissioners or any such Assistant Commissioner shall direct; and such Costs, Charges, and Expences, and every Part thereof, shall in every such Case be recoverable in the like Manner as Expences or the Share thereof to be borne by any Person are or is recoverable by the recited Acts or this Act.

Commissioners may award Costs of Inquiry into Boundaries.

XXXVII. And be it enacted, That this Act shall be taken to be a Part of the first-recited Act for the Commutation of Tithes in *England* and *Wales*, and of the secondly-recited Act for amending the same, and of the said thirdly-recited Act to facilitate the Merger of Tithes; and that in the Construction of this Act, unless there be something in the Subject or Context repugnant to such Construction, the several Words used in this Act shall have and bear the same Interpretation as is given to such Words respectively in the said recited Acts or either of them; and whenever a Word importing the Singular Number or Masculine Gender only is used the same shall be understood to include and shall be applied to several Persons or Parties as well as one Person or Party, and Females

This Act to be taken as Part of 6 & 7 W. 4. c. 71.

Females as well as Males, and several Matters or Things as one Matter or Thing respectively, and the converse.

Act may be amended or repealed. XXXVIII. And be it enacted, That this Act may be amended or repealed by any Act passed in this Session of Parliament.

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