



ANNO QUINQUAGESIMO SECUNDO

GEORGII III. REGIS.

Cap. 174.

An Act for amending and rendering more effectual an Act of the Thirty-third Year of the Reign of His present Majesty, for embanking and draining certain Salt Marshes in the Parishes of *Spalding, Moulton, Whaplode, Holbech, and Gedney*, in the County of *Lincoln*; and also for repealing so much of an Act of the Thirty-fourth Year of His present Majesty as affects the Marshes and Sands on the Outside of the Sea Bank lately made by virtue of the first-mentioned Act. [20th June 1812.]

WHEREAS an Act was passed in the Thirty-third Year of the Reign of His present Majesty, intituled *An Act for embanking and draining certain Salt Marshes and Low Lands within the several Parishes of Spalding, Moulton, Whaplode, Holbech, and Gedney, in the County of Lincoln, and for preventing the same Marshes and Lands from being overflowed with the Sea; and for altering an Act passed in the Thirty-first Year of the Reign of His present Majesty, intituled 'An Act for dividing and inclosing the Commons, Marshes, Drovers, Waste Lands and Grounds, in the Parish of Gedney and Hamlet thereof, called 'Gedney Fen, in the County of Lincoln.'* And whereas the Commissioners appointed to carry the said Embankment Act into execution have raised

[Loc. & Per.] 43 T Money

South Hol-
land Em-
bankment,
33 G. 3.

Gedney In-
closure,
31 G. 3.

Moulton Inclosure,
33 G. 3.

Former Powers of Sale and Mortgage may be exercised by Committee-men, under Embankment Act, until Arrears discharged.

Money by Sale of Parts of the Commonable Salt Marshes in *Gedney*, in the said Act mentioned, and by Mortgage of Part of the Commonable Salt Marshes in *Moulton*, in that Act also mentioned, according to the Powers and Directions therein contained, for the Purpose of defraying such proportionate Part of the Expenses to be incurred in the Execution of the said Act as should be assessed by the same Commissioners on the said Commonable Salt Marshes in *Gedney* and *Moulton* respectively, and the Commissioners of the said Act of the Thirty-first Year aforesaid afterwards divided and allotted the Remainder of the said Commonable Salt Marshes in *Gedney* aforesaid, and the Persons interested in the said Commonable Salt Marshes in *Moulton* aforesaid soon afterwards paid off the Monies so raised on Mortgage by the said Embankment Commissioners, and the said Commonable Salt Marshes in *Moulton* were afterwards divided and allotted by virtue of an Act passed for that Purpose in the Thirty-third Year aforesaid, intituled *An Act for dividing and inclosing the Commonable Salt Marshes, Drovers, Commons, and Waste Lands within the Parish of Moulton in the County of Lincoln*: And whereas the said Embankment Commissioners afterwards proceeded to carry the said Embankment Act of the Thirty-third Year aforesaid into execution, and formed and drew up their Award, wherein it is expressed that they had assessed and did thereby assess the proportionate Parts of the Expenses of executing the same Act on the said Commonable Salt Marshes of *Moulton* and *Gedney* respectively, which considerably exceeded the Monies raised by Sale and Mortgage respectively as aforesaid, and such Excess remains for the most Part unpaid; and inasmuch as it hath been doubted whether the said Powers of Sale and Mortgage contained in the said Embankment Act of the Thirty-third Year aforesaid can now be further exercised, by reason of the said Embankment Commissioners having executed their Award, and otherwise, and as many of the Persons who in Justice and Equity ought to pay and make good such Excess refuse so to do, may it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Powers of Sale and Mortgage which by the said Embankment Act of the Thirty-third Year aforesaid were given to or vested in the said Embankment Commissioners for raising the proportionate Shares of the Expenses of carrying the same Act into execution, in respect of the said Commonable Salt Marshes of *Gedney* and *Moulton* respectively, shall or lawfully may at any Time or Times hereafter be exercised by the Committee-men for the Time being acting under the Directions of the said Embankment Act or of this Act, over or upon any Allotment or Allotments, or any Part or Parts of any Allotment or Allotments, made by virtue of the said Inclosure Acts of the Thirty-first and Thirty-third Years aforesaid, of the said Salt Marshes in *Gedney* and *Moulton*, heretofore commonable, until such proportionate Shares of the Expenses of carrying the said Embankment Act into execution, which in the said Award are expressed to have been and to be thereby assessed as aforesaid in respect of the said Commonable Salt Marshes of *Gedney* and *Moulton* respectively, shall be fully paid,

paid, satisfied, and discharged, together with the Costs and Charges attending every Sale and Mortgage to be made by the said Committee-men respectively, and that nothing in the said Embankment Act contained shall confine or be construed to confine the Exercise of the Power of Mortgage with respect to the said Salt Marshes of *Moulton*, heretofore commonable, to the Portion thereof directed to be staked out by the said Embankment Commissioners.

II. Provided always, and it is hereby further enacted, That it shall not be lawful for the said Committee-men to exercise the said Powers of Sale or Mortgage respectively or either of them over or upon any Allotment or Allotments of the said late Commonable Salt Marshes of *Gedney* and *Moulton* respectively, whose Owner or Owners have or hath already paid to the said Embankment Commissioners, or shall, on or before the First Day of *October* next after the passing of this Act, pay to the said Committee-men, such Sum or Sums of Money as according to the Calculation made or to be made by the said Embankment Commissioners or the said Committee-men is or are or shall be estimated to be the Proportion or Proportions payable in respect of such Allotment or Allotments of and in the Excess of the said Assessments respectively beyond the Sums so raised by Sale or Mortgage respectively as aforesaid: Provided nevertheless, that if any Person or Persons shall so pay any Sum or Sums of Money which, or any Part of which, ought to be repaid to him, her, or them by some One or more of the Owners and Proprietors of Messuages, Cottages, or Tofts in *Gedney* and *Moulton* respectively, or by some One or more Person or Persons deriving Title under any of the former Owners or Proprietors of Messuages, Cottages, or Tofts in *Gedney* and *Moulton* respectively, it shall be lawful for any such Person or Persons so paying as aforesaid to proceed, if necessary, against the Person or Persons who ought to repay the same, by Action of Debt in any of His Majesty's Courts of Record at *Westminster*, in which Action it shall be sufficient for the Plaintiff or Plaintiffs to declare that the Defendant or Defendants, at the Time of the Commencement thereof, was or were indebted to such Plaintiff or Plaintiffs in a Sum of Money to be specified, payable on Demand, in respect of a certain Assessment made pursuant to the said Embankment Act by the Commissioners appointed to carry the same into execution, and in which Action no Essoign, Protection, or Wager of Law, or more than One Impar lance, shall be allowed.

III. Provided also, and it is hereby further enacted, That the Receipt or Receipts of the said Committee-men for the Time being, or of their Collector or Collectors, for any Monies which shall or may be so raised by Sale or Mortgage as aforesaid, shall effectually discharge the Person or Persons paying the same from being obliged or concerned to see to the Application thereof, or from being answerable for the Nonapplication or Misapplication thereof.

IV. And be it further enacted, That the said Committee-men for the Time being shall pay and apply the Money to be received by them as aforesaid in satisfying and discharging all the Expenses remaining unpaid

Allotments in respect of which Arrears have been or shall be paid not to be sold or mortgaged;

and Persons so paying to recover over.

Receipts of Committee-men or their Collectors sufficient Discharges.

How Arrears when received are to be applied.

unpaid relative to the said Embankment Act, and the carrying the same into execution, and shall pay and apply the Surplus thereof, if any, in such and the same Manner as the Monies raised or to be raised by any Rate or Assessment made or to be made by the said Committee-men for the Time being may by virtue of that Act or this Act be paid or applied.

V. And whereas the said Embankment Commissioners were by the said Embankment Act empowered and required to alter, remove, shorten, or straighten such of the ancient Divisions or Fences in the said Salt Marshes, or to cause new or other Divisions or Fences to be made in such Places and Instances as to them should seem most convenient, so as to preserve the Frontage of the Parties interested in manner therein-after provided for, and they the same Commissioners were also required to make such Parts of the Divisions before-mentioned as would abut upon the New Sea Bank therein directed to be made in such Manner as to preserve straight Lines of One hundred Yards in Length, and as nearly parallel to each other as might be, upon the Marshes within the said New Sea Bank; and it was by the same Act enacted, that all Claims to future Accretion of Salt Marsh should, from and after the Execution of the Award of the said Embankment Commissioners, be regulated by a Continuation of the said straight Lines across the said New Sea Bank and into the Salt Marshes to be from Time to Time for ever thereafter acquired from the Sea, so that no Person or Persons should be entitled to or have Right of Common upon any further Part of the said new acquired Salt Marshes than should have a Frontage on such of the private or Commonable Salt Marshes within the said New Sea Bank as belonged to or as were enjoyed by the same Person or Persons so claiming to be entitled to such Accretion of Salt Marsh as aforesaid: And whereas the said Embankment Commissioners were by the said Embankment Act directed to insert in their Award a Description of the respective Messuages, Tenements, Lands, and Grounds, entitled to Right of Common on the said Commonable Lands in the said Parishes of *Moulton* and *Gedney*, and also to cause Five Parts of their Award to be engrossed, with a Plan annexed to each and every Part thereof, describing the Boundaries of the Commonable Salt Marshes in *Gedney* and *Moulton* aforesaid, and of each Proprietor's or Owner's Part and Share in the said private Salt Marshes, after the Divisions should be shortened as before directed; and the same Commissioners were to sign and seal the said Five Parts of their Award, one Part of which was to be kept in the Parish Chest of *Spalding*, one other Part in the Parish Chest of *Moulton*, another Part in the Parish Chest of *Holbeck*, another Part in the Parish Chest of *Whaplode*, and the remaining Part in the Parish Chest of *Gedney*: And whereas the said Embankment Commissioners found it impossible to insert in their Award a Description of the respective Messuages, Tenements, Lands, and Grounds entitled to Right of Common in the said Commonable Salt Marshes in the said Parishes of *Moulton* and *Gedney* respectively, and have not in the Plan annexed to the said Award described the Boundaries of the same Commonable Salt Marshes and of the Proprietor's Shares in the said private Salt Marshes; and the said Embankment Commissioners, instead of signing and sealing Five Parts of their

their said Award as directed by the said Embankment Act, which would have been attended with a great and unnecessary Expense, have only executed one Part thereof, and have deposited the same in the Parish Chest of *Holbeck* aforesaid: And whereas the said Embankment Commissioners may also have omitted to do or may have imperfectly or irregularly done other Acts required of them by the said Embankment Act: Be it therefore enacted, That the Omissions and Irregularities of the said Embankment Commissioners, and Acts imperfectly done by them in the Execution of the said Embankment Act, or in their Award, or in their Plan thereto annexed, shall not be deemed to affect the Validity of or otherwise vitiate their Proceedings under the same Act; and that the Banks, Drains, Creeks, Sewers, Sluices, Tunnels, Bridges, and other Works made and done by the said Embankment Commissioners, under the Authority of the said Embankment Act, shall be deemed to have been perfected and completed, and that the Award so executed by them shall be deemed and taken to have been and to be the Award of the said Embankment Commissioners, as if the Directions of the said Embankment Act had been in every respect duly observed by the same Commissioners, and as if the said Award and the Plan thereto annexed had contained all the Matters directed by the said Embankment Act to be inserted therein, and as if the same Commissioners had signed and sealed Five Parts of the said Award, with a Plan annexed to each, and had disposed of the same as in the said Embankment Act is directed, and that the same Award shall be deemed and taken to be valid and effectual as to all the Matters therein contained; and that no Acts, Matters, or Things heretofore made or done by the Trustees or by the Committee-men, or by the Superintendent for the Time being, acting under the said Embankment Act, shall be impeached or rendered invalid by reason of any such Omissions, Imperfections, or Irregularities of the said Embankment Commissioners, or for any Want of Form in the Appointments of the said Committee-men or Superintendent, or any of them, or for any other Want of Form whatsoever.

Award of
Embankment
Commission-
ers con-
firmed.

VI. Provided always, and be it further enacted, That nothing herein contained shall be construed to injure or diminish the Right of Frontage of the Reverend *James Suttell Wood*, or of any other Person or Persons under the said Embankment Act, or to alter or vary the Directions respecting the Right of Frontage in the same Act contained; but that the Right to the present and all future Accretions of Salt Marsh beyond the New Sea Bank, made under the Authority of the said Embankment Act, shall be determined according to the Directions of that Act, so as to give to the said *James Suttell Wood*, and the several other Persons interested in the Frontages, the same Right in and to the present and all future Accretions of Salt Marsh beyond the said New Sea Bank, as by the said Embankment Act was given to or provided for, or intended to be given to or provided for him, her, or them respectively, in such Manner as he, she, or they would have been entitled, in case the said Embankment Commissioners had pursued the Directions of the said Embankment Act for making the Boundaries and Divisions, so as to preserve straight Lines of One hundred Yards in Length, and as nearly parallel to each other as might be, upon the Marshes within the said New Bank,

Not to affect
Rights of
Frontage.

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and had in their Award and the Plan thereto stated their Execution of such Direction.

Feigned
Issue.

VII. Provided always, and be it further enacted, That in case and when and so often as any Dispute shall at any Time or Times hereafter arise between any Persons interested or claiming to be interested in any such Accretion of Salt Marsh as aforesaid, the Person or Persons so interested or claiming to be so interested as aforesaid is or are hereby authorized to give Notice in Writing to or to leave the same at the Dwelling House or usual Place of Abode of the Person or each of the Persons objecting to or resisting his, her, or their Claim or Claims; and if the Person or Persons so objecting to or resisting such Claim or Claims as aforesaid shall not, within the Space of One Calendar Month next after the giving or leaving such Notice as aforesaid, acquiesce in or admit such Claim or Claims, then it shall be lawful for the Person or Persons so interested or claiming to be so interested as aforesaid to proceed to a Trial at Law of the Matter or Matters in Difference at the First or Second Assizes to be holden for the said County of *Lincoln* next after the Expiration of One Calendar Month from the Time of giving or leaving such Notice as aforesaid; and for that Purpose the Person or Persons interested or claiming to be interested as aforesaid shall cause an Action to be brought in any of His Majesty's Courts of Record at *Westminster* upon a feigned Issue against the Person or Persons objecting to or resisting his, her, or their Claim or Claims; and such Person or Persons resisting such Claim or Claims is and are hereby required to name an Attorney or Attornies, who shall appear thereto, or file Common Bail, and accept One or more feigned Issue or Issues, whereby such Claim or Claims, and the Right or Rights thereby insisted on, may be tried and determined, such Issue or Issues to be settled by the proper Officer of the Court in which the said Action or Actions shall be commenced, in case the Parties shall differ about the same; and if at the Trial of any such Issue or Issues it shall appear that the Person or Persons so claiming to be interested as aforesaid is or are entitled to any qualified or less Right or Rights, Interest or Interests, than was or were claimed by such Person or Persons, then it shall be lawful for the Jury by whom such Issue or Issues shall be tried to find and declare the same by their Verdict, which shall be indorsed on the Postea, in addition to the Issue or Issues joined, but nevertheless the Costs of such Action shall abide and be determined by the Issue or Issues joined, as if no such special Verdict had been made; and the Verdict or Verdicts or such special Finding and Indorsement (if any), which shall be given in such Action or Actions, shall be final, binding, and conclusive upon the Parties, and each and every of them, and upon all and every Person and Persons claiming respectively from, by, or under the said Parties or any of them, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, and order a new Trial or new Trials to be had therein, which it shall be lawful for the said Court to do; and also, upon sufficient Cause shown, it shall be lawful for the said Court in Term, or for any One of the Judges of the said Court in Vacation, or for any One of His Majesty's Justices assigned to hold the Assizes in and for the said County

County of *Lincoln*, to put off the Trial of such Action or Actions as is usual in other Cases.

VIII. And whereas by an Act passed in the Thirty-fourth Year of Welland Act, the Reign of His present Majesty, intituled *An Act for improving the Outfall of the River Welland in the County of Lincoln, and for the better draining of the Fen Lands, Low Grounds, and Marshes, discharging their Waters through the same into the Sea, and for altering and improving the Navigation of the said River Welland by means of a new Cut to commence below a certain Place called The Reservoir, and to be carried from thence through the enclosed Marshes and open Salt Marshes, into Wyberton Roads, between the Port of Boston and a Place called The Scalp, and for disposing of the bare or White Sands adjoining to the said River, and for building a Bridge over the said Cut*, reciting that by the making of the aforesaid New River or Cut, and turning the Waters out of their present Channel or Course into, through, and along the said New River or Cut, a large Tract of bare shifting Sands called *The White Sands*, lying between the Salt Marshes on the North Shore and the Salt Marshes on the South Shore, and also the Channel from the great Dam intended to be made across the same at or near the upper End thereof, extending downwards to the Junction of the said Channel with the Channel of the *Witham* Waters, would be raised and brought into a State of Pasturage, and thereafter become capable of Cultivation; and also reciting that the Limits and Boundaries between the Parishes on the North Shore and the Parishes on the South Shore had been immemorially determined by the Low-water Mark of the Channel of the said *Welland* Waters in their Course through the bare shifting Sands, and that the Salt Marshes lying on the North Shore between the present Sea Bank and the said bare shifting Sands were enjoyed by certain Owners of embanked and open Marshes in respect of their Frontages, or certain Persons having Right of Common upon the said Salt Marshes, or other Rights and Interests therein; and also reciting that by the herein-before recited Embankment Act of the Thirty-third Year of the Reign of His present Majesty it was enacted, that all Claims to future Accretion of Salt Marsh on the said South Shore should for ever after the Execution of the Award of the Commissioners therein appointed be regulated by Lines therein directed to be set out by the said Commissioners, and that it would be expedient, not only that the Limits and Boundaries between the Parishes on the North Shore and the Parishes on the South Shore, but also between the said bare shifting Sands and the Salt Marshes on the said Shores respectively, should be exactly ascertained and set out; it was by the said Act of the Thirty-fourth Year of the Reign of His present Majesty now in recital enacted, that for better ascertaining the Bounds and Limits of the said bare shifting Sands and the Low-water Mark of the said Channel, and for keeping the exact Quantity of Acres and Boundary Line in Memory at all Times to come, the said Commissioners, at their First, Second, or Third Meeting, to be held by public Advertisement, should and they were thereby directed and required to cause Notice to be affixed upon the Doors of the several Parish Churches next adjoining on each Side of the said bare shifting Sands and Channel, on Three successive *Sundays*, of their Intention