



ANNO QUADRAGESIMO OCTAVO

GEORGI II. REGIS.

Cap. 78.

An Act for inclosing Lands in the Manor of *Kirkby Lonsdale*, in the County of *Westmorland*.

[27th May 1808.]

WHEREAS, within the Manor of *Kirkby Lonsdale* in the County of *Westmorland*, there are certain Commons and Waste Grounds, containing by Estimation One thousand Acres or thereabouts: And whereas the Right Honourable *William Earl of Lonsdale* is Lord of the said Manor, and as such is entitled to the Royalties therein, and to the Soil of the said Commons and Waste Grounds: And whereas the said Earl of *Lonsdale*, *William Wilson Carus Wilson* Esquire, and divers other Persons, in respect of certain Messuages, Lands, and Tenements, are or claim to be entitled to Right of Common upon the said Commons and Waste Grounds, and also claim to be Owners of certain Turf Dalts or Right of digging for Turbary upon certain Parts of the said Commons: And whereas the said Earl of *Lonsdale*, *William Wilson Carus Wilson*, and the several other Persons entitled to Right of Common, or otherwise interested in the said Commons and Waste Grounds, are willing and desirous that the same should be divided, allotted, and inclosed, in the Manner herein-after expressed: But 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,

[Loc. & Per.] 16 E That

Commissioner
appointed.

That *Edmund Tatham* of *Cantsfield*, in the County Palatine of *Lancaster*, Gentleman, shall be and he is hereby appointed sole Commissioner for dividing and allotting the said Commons and Waste Grounds, and putting this Act in Execution, in such Manner and subject to such Regulations as are hereinafter contained, and with such of the Powers, and subject to such of the Rules, Orders, Directions, Regulations, Restrictions, and Provisions contained in an Act, passed in the Forty-first Year of the Reign of His present Majesty, intituled, *An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts*, as are not varied, altered, repealed, or otherwise provided for by this Act.

On Death or
Refusal to
act as Com-
missioner,
any other to be
elected.

II. Provided always, and be it further enacted, That if the said *Edmund Tatham* shall die, or refuse, or be rendered incapable of acting as Commissioner in the Execution of this Act, before the Powers and Authorities hereby vested in him shall be carried into Execution, the Lord of the said Manor for the Time being, by his Steward or Agent, shall with all convenient Speed appoint a Meeting of the Proprietors of ancient Messuages, Lands, and Tenements within the said Manor, to be held in the Market Town of *Kirkby Lonsdale* aforesaid, between the Hours of Ten and Twelve of the Clock in the Forenoon, and shall at least give Fourteen Days previous Notice of the Time and Place of holding such Meeting, by Advertisement to be inserted in *The Lancaster Gazette*, or if that Newspaper shall not then be published, in some other Newspaper usually and generally circulated in the County of *Westmorland*; and also by affixing Notice upon the principal Door of the Parish Church of *Kirkby Lonsdale* aforesaid, Fourteen Days at least before such Meeting shall be holden; and the Lord of the said Manor for the Time being, or his Agent, and the major Part in Value of the Proprietors of Messuages, Lands, and Tenements, entitled to Right of Common upon the said Commons and Waste Grounds hereby intended to be divided, or their respective Attornies, Agents, or Proxies (such major Part in Value to be ascertained by the Land Tax Assessment or Duplicate for the said Manor, or for the Township of *Kirkby Lonsdale* for the Year One thousand eight hundred and seven,) shall and may by any Instrument in Writing under their Hands nominate and appoint, as often as there shall be Occasion, a proper Person (not being beneficially interested in the said Division and Inclosure, or an Agent to, or Father, Son, or Brother of a Person so interested) to be Commissioner in the Room and Place of the said *Edmund Tatham*, or of any other Commissioner (to be hereafter appointed in his room so dying or refusing to act, or becoming incapable of acting as aforesaid); and every Person who shall be nominated and appointed Commissioner as aforesaid, shall, after taking the Oath prescribed in that Behalf, have the like Powers and Authorities for putting the said recited Act and this Act into Execution, as if he had been named and appointed Commissioner in and by this Act.

Copies of
Instruments
appointing
Commissioner
to be enrolled
and to be
Evidence.

III. Provided always, That the Writing or Instrument of the Nomination and Appointment of every Commissioner to be nominated and appointed by virtue of this Act, shall be enrolled with the Award of the Commissioner, and a Copy of such Writing or Instrument, attested by the proper Officer of the Court where the same shall be enrolled, shall be

and be allowed to be full and sufficient Evidence thereof in all Courts whatsoever.

IV. And be it further enacted, That the said Commissioner shall; and he is hereby required, to cause publick Notice by Advertisement to be inserted in One or more Newspapers published at *Lancaster*, *Carlisle*, or *Whitehaven*, and usually circulated in the said County of *Westmorland*; and also by Notice to be affixed on the principal Door of the Parish Church of *Kirkby Lonsdale* aforesaid, upon some *Sunday* immediately before or after Divine Service, of the Time and Place of holding his First and every other Meeting for the Purpose of carrying this Act into Execution, Twenty-one Days at least before every such Meeting (Meetings by Adjournment only excepted) and all which Meetings shall be held at *Kirkby Lonsdale* aforesaid, or within Eight Miles thereof; and it shall and may be lawful to and for the Commissioner, and for the Clerk to the said Commissioner in case the said Commissioner shall not attend, to adjourn such Meeting to any future Day, not exceeding Twenty-eight Days from the Day of such Adjournment, such Meeting to be holden at the same Place.

Commissioner
to give Notice
of Meetings.

V. And be it further enacted, That out of the Money that shall be raised for defraying the Expences of obtaining and executing this Act, there shall be paid to the said Commissioner, as a Recompence for his Pains and Trouble, the Sum of Two Pounds and Two Shillings, and no more, for each Day he shall be employed in travelling to or returning from and attending on the Execution of this Act; and the said Commissioner shall defray his travelling Expences, and also his own Expences at all Meetings to be held in pursuance of this Act.

Commissioner's Allowance.

VI. 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 Division and Inclosure, touching or concerning the Right to the Soil of the said Commons and Waste Lands, or any Part or Parts thereof, or touching or concerning the respective Rights and Interests which they, or any of them, shall have or claim to have in the same, or touching or concerning any other Matter or Thing relating to the said Division and Inclosure, it shall and may be lawful to and for the said Commissioner, and he is hereby authorized and required, upon proper and sufficient Enquiry and Evidence, to examine into, hear, and determine the same.

Commissioner
to settle
Disputes.

VII. 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 the said recited Act or of this Act, see Cause to award any Costs, it shall and may be lawful 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, Body or Bodies Politick, Corporate or Collegiate, whose Claim or Claims, Objection or Objections, shall be thereby disallowed or over-ruled, and in case the Person or Persons, Body or Bodies Politick, Corporate or Collegiate, who shall be liable to pay such Costs and Charges, shall neglect or refuse to pay the same on Demand,

May award
Costs.

mand, then and in such Case it shall and may be lawful to and for the said Commissioner, and he is hereby authorized and required by Warrant under his Hand 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, Body or Bodies Politick, Corporate or Collegiate, so neglecting or refusing to pay the same, rendering the Overplus (if any) upon Demand, to the Person or Persons, Body or Bodies Politick, 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.

Encroach-
ments.

VIII. And be it further enacted, That all Encroachments which shall have been made upon any Part of the Commons and Waste Lands, intended by this Act to be divided and inclosed, within the Space of Twenty Years next before the passing of this Act, shall be deemed Part of the Commons and Waste Lands to be divided and inclosed by virtue of this Act, and the same shall be divided and inclosed accordingly: Provided nevertheless, that all and every such Encroachments shall be allotted to the Person or Persons who shall at the Time of making the Allotments be in the Possession of such Encroachments, or in Receipt of the Rents and Profits thereof, as the Whole or Part of the Share or Proportion of the Commons or Waste Lands to which such Person or Persons will be entitled by virtue of this Act, without considering the Value of any Erection or other Improvements made thereon; and if any such Person or Persons shall not be entitled to any Allotment equal to the Value of such Encroachment, but shall be willing to purchase the same, then the said Commissioner shall ascertain the Price thereof, or of such Part thereof as shall exceed the Rights of such Possessor or Possessors thereof, in respect of any other Property as aforesaid; on ascertaining of which Price the said Commissioner shall not value the Buildings or other Improvements thereon, but shall value the Land only, and that at so much Money *per* Acre, as the same shall in his Estimation be worth, having Reference to the Waste next adjoining; and upon such Person or Persons paying such Price *per* Acre, and so in Proportion for any less Quantity than an Acre, to the said Commissioner, at such Time or Times as he shall appoint for that Purpose, and taking his Receipt or Receipts for the same, every such Encroachment, or such Part thereof as shall be so purchased, shall be allotted to such Person or Persons, and shall be holden and enjoyed by him, her, or them accordingly, and the said Commissioner shall, and he is hereby required, to apply such Purchase Money in such and the like Manner as Monies to be raised by Sale of Lands for defraying the Expences of obtaining and passing this Act, and of carrying the same into Execution, as herein directed to be applied; and in case any Disputes or Differences shall arise touching any such Encroachments, or to the Extent thereof, such Disputes shall be settled by the said Commissioner.

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

IX. Provided always, and be it further enacted, That in case any Person or Persons, or Body or Bodies Politick, Corporate or Collegiate, shall be dissatisfied with any Determination of the said Commissioner touching or concerning any Claim or Claims of Right to the Soil of the said Commons and Waste Lands, or any Right of Common or other Rights or Interests in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, then and

and in every such Case it shall and may be lawful to and for any Person or Persons, Body or Bodies Politick, Corporate or Collegiate, to proceed to a Trial at Law of the Matter so determined by the said Commissioner, at the First Assizes to be holden for the said County of *Westmorland*, or for any adjoining County, next after the Expiration of Three Calendar Months from the Time of such Determination; and for that Purpose the Person or Persons, Body or Bodies Politick, Corporate or Collegiate, so dissatisfied with the Determination of the said Commissioner shall cause an Action to be brought upon a feigned Issue against the Person or Persons; Body or Bodies Politick, Corporate or Collegiate, in whose Favour such Determination shall have been made, within Two Calendar Months next after such Determination of the said Commissioner, and Notice thereof in Writing given to him, her, or them; and the Defendant or Defendants in such Action or Actions shall, and he, she, or they is and are hereby required to name an Attorney or Attornies who shall appear thereto, or file common Bail, and accept One or more Issue or Issues, whereby such Claim or Claims, and the Right or Rights thereby insisted on, may be tried and determined (such Issue or Issues to be settled by the proper Officer of the Court in which the said 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 or Persons whomsoever, Body or Bodies Politick, Corporate or Collegiate, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, and order a new Trial or Trials to be had therein, which it shall be lawful for the Court to do, in case the said Court shall think proper; and after such Verdict or Verdicts shall be obtained, and not set aside by the said Court, the said Commissioner shall and he is hereby required to act in Conformity thereto, and to allow or disallow the Claim or Claims thereby determined according to the Event of such Trial or Trials: Provided always, that the Determination of the said Commissioner touching such Claim or Claims of Right to the Soil of the said Commons and Waste Grounds, or Right of Common or other Rights or Interests in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, which shall not be objected to, or being objected to the Party or Parties objecting not causing such Action or Actions at Law to be brought or proceeded in as aforesaid, shall be final and conclusive upon all Parties whatsoever.

Determination of the Commissioner to be final, if not objected to, or Action not brought.

X. Provided always, That nothing in this Act contained shall authorize the said Commissioner to determine the Title to any Messuages, Lands, Tenements, or Hereditaments whatsoever.

Commissioner not to determine Titles.

XI. And be it further enacted, That if any of the Parties in any Action to be brought in pursuance of this Act shall die pending the same, such Action shall not abate by reason thereof, but shall be proceeded in as if no such Event had happened.

Actions not to abate on account of the Death of the Parties.

XII. 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

In Cases of Deaths of Parties before Actions brought, the same to be carried on and defended in their Names.

[Loc. & Per.]

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limited

limited for bringing such Action or Actions, it shall be lawful for the Person or Persons, Bodies Politick or Corporate, 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, 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 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.

Persons in Possession not to be molested without due course of Law.

XIII. Provided also, and be it further enacted, That nothing in this Act contained shall extend to enable the said Commissioner to determine any Right between any Parties, contrary to the Possession of any of such Parties, except in Cases of Encroachments made within the Period of Twenty Years; but in case the said Commissioner shall be of Opinion against the Right of the Person or Persons so in Possession, he shall forbear to make any Determination thereupon until the Possession shall have been given up by or recovered from such Person or Persons by Ejectment or other due Course of Law.

Suits not to impede the Execution of the Act.

XIV. 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 in or to any Messuages, Lands, Tenements, or Hereditaments, for or in respect of which any Right of Common or other Right or Interest, in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, shall be claimed, such Suit or Suits shall not delay, impede, or hinder the said Commissioner from proceeding in the Powers vested in him by this Act; but the said Allotments shall be proceeded in notwithstanding any such Suit or Suits, and may be had and taken by the Person or Persons who upon the Determination of such Suit or Suits shall become entitled to the same.

Allotments to the Surveyors of the Highways.

XV. And be it further enacted, That the said Commissioner shall and he is hereby required to set out, appoint, and allot unto the Surveyor or Surveyors of the Highways within the said Manor of *Kirkby Lonsdale* for the Time being, the Parcel of Common or Waste Ground called *The Mill Area* (nevertheless subject and liable to all the ancient Rights, Privileges, and Usages of the Inhabitants of the said Manor therein and thereupon, other than and except to the Herbage or Pasturage thereof) and also such other Part or Parts of the said Commons and Waste Grounds as he shall think proper and necessary to be used as and for publick Quarries, and for getting Gravel for making and repairing of the Roads to be made over and upon the said Commons and Waste Grounds and other the publick Roads within the said Manor; and the said Owners and Proprietors of Messuages, Lands, and Tenements, and their respective Tenants or Farmers, shall have free Liberty of getting Stone, Gravel, and Sand in the said Quarries for their own Use and Benefit, to be used within the said Manor, but not otherwise, and not to sell or dispose thereof;

thereof; and the said Commissioner shall also set out and allot upon the said Common or Waste Ground called *Mill Area* and elsewhere also, if by him thought necessary, a proper Place or Places for a publick Watering Place or Places for the Cattle of or belonging to the Owners and Occupiers of Messuages, Lands, or Tenements within the said Manor, and for such Owners and Occupiers themselves to take Water at or fetch Water from; and the said Allotments for publick Quarries and publick Watering Places shall for ever thereafter be used by the Surveyors of the Highways for the Time being, and by the Proprietors of Messuages, Lands, and Tenements within the said Manor and their Tenants for the Time being, in such Manner and under such Rules, Orders, and Regulations as the said Commissioner shall in and by his said Award order and appoint; save that the Grass and Herbage thereof respectively shall be and the same is hereby for ever vested in the Surveyor or Surveyors of the Highways within the said Manor of *Kirkby Lonsdale* for the Time being; and the Value or full and fair Rents and Profits thereof shall be by him and them, from Time to Time, laid out and applied in and towards the Repair of the publick Highways of and within the said Manor, and accounted and answered for Yearly and every Year, in the same Manner and under the same Regulations, Restrictions, Penalties, and Forfeitures as the Composition Money or other Money raised by Assessment or otherwise for repairing of the publick Highways is to be accounted and answered for, by and under the general Laws now in force or hereafter to be made for the Repairs of such Highways.

XVI. And be it further enacted, That the said Commissioner shall in the next Place mark and set out such Part and Parts of the said Commons and Waste Grounds, other than and except the said *Mill Area*, as will by the Sale thereof be in his Judgment fully sufficient to defray and discharge all the Costs and Charges and Expences incident to and attending the obtaining and passing of this Act, and of surveying, admeasuring, planning, valuing, dividing, and allotting the Lands and Grounds to be divided, allotted, and inclosed by virtue thereof, and all the Charges of the said Commissioner, his Assistants and Servants, and all the other necessary Expences of the several Persons to be employed by the said Commissioner in and about the Premises, and all the Expences of forming, completing, and repairing the publick Carriage Roads and Highways to be set out and appointed by the said Commissioner, and all other Expences of carrying this Act into Execution.

Commissioner to set out part of the Commons to defray the Expences of this Act.

XVII. And be it further enacted, That the said Commissioner shall and he is hereby required at such convenient Times and Places as to him shall seem meet, to cause the said Part or Parts of the said Commons and Waste Grounds to be set out for Sale by him as aforesaid, to be put up to publick Sale or Auction in Manner by the said recited Act directed, first causing at least Six Weeks previous Notice to be given in *The Lancaster Gazette* or Newspaper if then printed, and in One of the *Carlisle* or *Whitehaven* Newspapers, of the Time and Place to be appointed for that Purpose: Provided always, that the said Commissioner shall not set out any Part of the said Commons and Waste Lands to be sold, which ought on account of Contiguity or Conveniency to be allotted to any of the Parties concerned in the said Division or Inclosure.

Lands set apart for paying Expences, to be sold to the best Bidder.

Commissioner in setting out Land to be sold, to have Regard to Contiguity and Conveniency.

Allotment of
One Sixteenth
to the Earl of
Lonsdale, for
Right of Soil.

XVIII. And be it further enacted, That the said Commissioner shall, and he is hereby required in the next Place to set out, appoint, and allot unto and for the said Earl of *Lonsdale*, or the Lord or Lords, Lady or Ladies of the said Manor for the Time being, such Quantity of the said Common and Waste Grounds as shall, in the Judgement of the said Commissioner, be equal to One-sixteenth Part or Share of the Remainder of the said Commons and Waste Grounds, which shall remain after the Allotments and Appropriations herein-before mentioned, in lieu of and as a full Compensation for the Right and Interest of the said Earl of *Lonsdale* as Lord of the said Manor, in and to the Soil of the said Commons and Waste Grounds.

Allotments
to the Owners
of Turf Dalts,
&c.

XIX. And be it further enacted, That the said Commissioner shall in the next Place set out, allot, and appoint unto the said Owners and Proprietors of Turf Dalts, such Part and Parts of the said Commons and Waste Grounds as shall in the Judgement of the said Commissioner be a full Equivalent and equal in Value to the present Interest of such respective Owners or Proprietors in such Turf Dalts; the same to be set out in such Places and Parts of the said Commons and Waste Grounds as in the Judgement of the said Commissioner may and will be most convenient for such Owners and Proprietors respectively; to be and for ever hereafter remain subject to such Lord's Rents as the said Turf Dalts or Turbary Grounds are now respectively subject or liable to.

Claims of
Turf Dalts to
be delivered to
Commissioner.

XX. And be it further enacted, That the Person or Persons claiming to be entitled to any Turf Dalt or Turf Dalts upon the said Commons and Waste Grounds, shall particularly set forth and specify the same, and his, her, or their Right and Interest therein and thereto, in the Account or Schedule in Writing directed by the said recited Act or this Act to be delivered to the said Commissioner at his First or Second Meeting for putting this Act in Execution, of the Right and Interest of such Person or Persons upon the said Commons and Waste Grounds; otherwise and in Default of the Delivery to the said Commissioner as aforesaid, of a particular Specification of such Turf Dalt or Turf Dalts, the Person or Persons afterwards claiming or pretending to claim any such Right or Interest in the said Commons and Waste Grounds, shall be totally barred and excluded of and from all Claim, Right, and Title thereto, or to Benefit and Advantage in or to any Share or Allotment in respect thereof.

Allotment of
the Residue.

XXI. And be it further enacted, That the said Commissioner shall and he is hereby required in the next Place to assign, set out, and allot the Residue and Remainder of the said Commons and Waste Grounds unto and amongst the said Earl of *Lonsdale*, *William Wilson Carus Wilson*, and the several other Person and Persons, Body and Bodies Politick, Corporate or Collegiate, having any Right of Common or other Right or Interest, in, over, or upon the same, or any Part or Parts thereof, in such Shares and Proportions as the said Commissioner shall adjudge and determine to be proportionate to and a full Satisfaction and Compensation to him, her, or them respectively, for his, her, or their respective Rights of Common and other Rights and Interests, in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof.

XXII. Provided

XXII. Provided always, and be it further enacted, That the said Commissioner shall and he is hereby required to set out and allot the Share and Proportion of the said Earl of *Lonsdale*, for and in respect of his Right to the Soil of the said Commons and Waste Grounds, and also for and in respect of his Messuages, Lands, and Tenements within the said Manor, as contiguous and near to his Estate called *Spittle*, as the Nature of the Case will admit.

Respecting
the Allot-
ments to the
Earl of *Lons-*
dale.

XXIII. And be it further enacted, That, from and after the Execution of the Award to be made by the said Commissioner, all the Lands and Grounds by this Act divided, allotted, and inclosed, shall be and are hereby declared to be Freehold Lands and Grounds.

Allotments
to be Free-
hold.

XXIV. And be it further enacted, That when Two or more Allotments shall be laid together, and the respective Proprietors thereof shall by any Writing under their Hands signify their Desire to the said Commissioner that such Allotments may lie open to each other, then and in such Case the said Commissioner (unless there shall be good Cause to the contrary) shall not make or give any Orders or Directions touching the Fencing such small Allotments from each other, but shall exempt and except such small Allotments and the Proprietors thereof out of and from the General Orders and Regulations touching the Fencing of the Allotments to be made in pursuance of this Act; so far as such Orders or Directions shall respect the Fencing such small Allotments from each other, but not so far as such Orders or Directions shall respect the Fencing of the same, or any of them, from any other Allotment or Allotments to be made under or by virtue of this Act; and the said Commissioner in his said Award shall take due Notice of all such Exemptions and Exceptions.

Small Allot-
ments may be
laid together.

XXV. Provided always, and be it further enacted, That in case through Necessity of Situation, or any other Circumstance, it shall happen that any One or more of the said Proprietors shall not have an equal Share of Mounds or Fences allotted to him, her, or them, it shall and may be lawful to and for the said Commissioner, when he shall judge it necessary and reasonable, to award, order, ascertain, and appoint, what Sum or Sums of Money such Proprietor or Proprietors shall pay and contribute towards the making of the Mounds and Fences of the Allotment or Allotments of such other Proprietor or Proprietors 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; and the Sum or Sums of Money so ordered, directed, or appointed to be paid, shall be raised, levied, and recovered in such and the like Manner as the Costs, Charges, and Expences of obtaining and executing this Act can or may be raised, levied, and recovered, in case the Lands hereby directed to be sold shall be insufficient for such Purpose.

Satisfaction
for unequal
Share of
Fencing.

XXVI. And be it further enacted, That if any Person or Persons shall after the passing of this Act, cut, dig, pare, grave, flay, or carry Peat, Turf, Sods, Soil, Flags, Whins, or Furze, in, upon, or from the said Commons and Waste Grounds, or any Part thereof, without or contrary to the Licence of the said Commissioner first had and obtained in Writing for that Purpose (which Licence the said Commissioner is hereby empowered to grant, under such Rules, Orders, Regulations, and Restrictions as to him shall seem right and proper to insert therein) then and in every such Case the said Commissioner upon due Proof made before him

No Peat,
Turf, Flags,
Whins, or
Furze to be
cut.

[*Loc. & Per.*]

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upon Oath (which Oath the said Commissioner is hereby authorized to administer) shall and he is hereby required by Warrant under his Hand and Seal directed to any Person or Persons whomsoever, to cause any Sum of Money not exceeding Forty Shillings to be levied by Distress and Sale of the Goods and Chattels of any Person or Persons so offending in the Premises, rendering the Overplus (if any) upon Demand to the Person or Persons whose Goods and Chattels 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.

Gaps to be
left for a cer-
tain Time.

XXVII. Provided always, That convenient Gaps or Openings shall be left in the said Fences and Inclosures for such Space of Time next ensuing the Execution of the Award of the said Commissioner, for the Passage of Carts, Carriages, and Cattle, as the said Commissioner shall in and by his said Award direct and appoint.

To fence
against
Sheep.

XXVIII. And be it further enacted, That no Lambs or Sheep shall be depastured in any of the said intended new Inclosures during the Space of Ten Years from the Execution of the Award of the said Commissioner; unless the Persons respectively so depasturing or keeping Lambs or Sheep do at their own Expence effectually guard and fence their Neighbours Quicksets adjoining to such Inclosures respectively, in which Lambs or Sheep shall be depastured or kept as aforesaid, so as to prevent any Damage or Injury from being done to such Fence or Fences or Quicksets by any such Lambs or Sheep.

Rights of
Common to
be suspended.

XXIX. And be it further enacted, That it shall and may be lawful to and for the said Commissioner, and he is hereby authorized and empowered at any Time or Times before the Execution of the said Award, by Notice in Writing under his Hand to be fixed upon the principal Door of the Parish Church of *Kirkby Lonsdale* aforesaid, to order and direct all or any Part of the Rights of Common, in, over, and upon the said Commons and Waste Grounds, 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 of Common 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 Church Door, cease, determine, and be extinguished, or the Exercise thereof suspended accordingly; any Law, Usage, or Custom to the contrary notwithstanding.

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

XXX. Provided always, That if any Person or Persons hath or have sold and contracted or agreed to sell, or shall at any Time within Six Calendar Months next after such Notice given by the said Commissioner for extinguishing the Right of Common as aforesaid, sell, or contract, or agree to sell his, her, or their Right, Interest, and Property, in, over, or upon the said Commons and Waste Grounds, 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 directed, authorized, and required, upon Notice thereof in Writing to be given to him by the Vendor, provided the same be within the Time before mentioned, 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

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, or such Rights, Interests, or Property had been vested in such Vendor at the Time of making such Allotment as aforesaid.

XXXI. And be it further enacted, That all and every Lease or Leases and other Agreements at Rack Rent, affecting all or any Part of the Commons or Waste Grounds by virtue of this Act intended to be divided and inclosed or exchanged as in the said Act mentioned, shall cease, determine, and be void, as to such Commons or Waste Grounds, on such respective Days and Times as the said Commissioner shall by Writing under his Hand order and appoint; the respective Lessors or Landlords in such Leases or Agreements having first paid or tendered such Satisfaction to the respective Lessee or Lessees, Tenant or Tenants, as the said Commissioner shall ascertain as reasonable to be paid to such Lessee or Lessees, Tenant or Tenants, on account thereof, or as an Equivalent for the same: Provided always, that nothing herein contained shall extend or be construed to extend to avoid any Agreement or Engagement already made between Landlord and Tenant in Contemplation of a Division or Inclosure of the said Commons and Waste Grounds or relating thereto: Provided also, that if there shall be any Lease or Agreement of Lands, Part of which shall lie in the said Manor of *Kirkby Lonsdale*, and Part in any adjoining Manor or Place, all and every such Lease or Leases and Agreements at Rack Rent now subsisting may be vacated; but where any Land shall have been taken in Exchange, which Land shall be holden under any Lease, and situate in an adjoining Manor or Place, the Lease of such last-mentioned Land shall not be vacated.

Vacating
Leases at
Rack Rent.

XXXII. And be it further enacted, That all Costs, Charges, and Expences attending the making any Exchanges and Partitions shall be paid and borne by the several Persons making such Exchanges or Partitions, in such Manner and in such Proportions as the said Commissioner shall order and direct.

Costs of Ex-
changes, how
to be paid.

XXXIII. And be it further enacted, That all the Costs, Charges, and Expences (in case the Lands herein directed to be sold shall be insufficient for such Purpose) of inclosing the Allotments hereby directed to be made, to the Surveyor or Surveyors of the Highways within the said Manor of *Kirkby Lonsdale*, and all the Costs, Charges, and Expences incident to and attending the obtaining this Act, and of surveying, measuring, planning, valuing, dividing, and allotting the Lands, Grounds, and Premises to be divided and allotted by virtue of this Act, and of preparing and inrolling the Award of the said Commissioner, and all Charges and Expences of the said Commissioner, his Clerk, Assistants, and Servants, and other necessary Expences of the several Persons to be employed by the said Commissioner, in and about the Premises, and all the Expences of forming, completing, and repairing the publick Carriage Roads and Highways to be set out and appointed by the said Commissioner, and all other

Costs of the
Act.

Expences

Expences of carrying this Act into Execution, shall be borne and defrayed by the several Persons to whom any Allotment or Allotments shall be made by virtue of this Act (save and except the Surveyor or Surveyors of the Highways within the said Manor of *Kirkby Lonsdale* respectively for the Time being, for and in respect of the Allotment or Allotments hereby directed to be made to him or them as aforesaid); which said Costs, Charges, and Expences, together with the Proportions thereof, to be paid by the several Persons hereby made liable to the Payment thereof, shall be settled and adjudged by the said Commissioner, and shall be paid at such Time and Place and to such Person or Persons as the said Commissioner shall appoint.

Application
of Overplus
Money raised
by Sale of
Common.

XXXIV. And be it further enacted, That if the Part or Parts of the said Commons or Waste Grounds marked and set out for Sale, and actually sold by the said Commissioner, shall happen to raise more Money than may be requisite for defraying all the Costs, Charges, and Expences of or incident to the obtaining of this Act, and fully carrying the same into Execution in every Respect, the Overplus Money shall be by the said Commissioner paid and divided, and he is hereby directed to pay and divide the same to and among the several Proprietors of Allotments of the said Commons and Waste Grounds allotted by him under and by virtue of the Powers contained in this Act and the said recited Act or either of them, if seized thereof in Fee Simple or otherwise, such Surplus shall be paid into the Bank of *England*, in the Manner directed by the said recited Act, with respect to Money to be paid for the Purchase or Exchange of Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, and which Sum of Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments to be settled to the same Uses.

Money ad-
vanced for
the Purposes
of this Act,
to be repaid
with Interest.

XXXV. And be it further enacted, That if any of the Proprietors or Persons interested in any of the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any other Person or Persons, on his, her, or their Behalf, shall advance and pay any Sum of Money for defraying the Expences of obtaining and executing this Act, or of carrying the same into Execution, the Money so paid and advanced shall be repaid and satisfied by the Direction of the said Commissioner, together with lawful Interest for the same.

Power to
borrow
Money.

XXXVI. And whereas some of the Owners and Proprietors of and Persons interested in the Lands and Grounds within the said Manor of *Kirkby Lonsdale*, 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; be it therefore enacted, That it shall and may be lawful to and for the Proprietors and Owners of, and all other Persons whomsoever interested in such Lands and Grounds, being a Tenant or Tenants for Life with or without Impeachment of Waste, or a Tenant or Tenants in Fee Tail General or Special, or by the Courtesy of *England*, or for Years determinable on any Life or Lives, 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

Tenants for Life with or without Impeachment of Waste, Tenants in Fee Tail General or Special, or Tenants by the Courtesy of *England*, 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 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 Commissioner 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, 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 the Law for the Purposes thereby intended.

XXXVII. Provided always, That the said Proprietors, their Attornies or 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.

Proprietors
to pay their
own Ex-
pences.

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

Commissioner
to lay Ac-
counts before
Two Justices
once a Year.

[*Loc. & Per.*]

16 H

XXXIX. And

Wills, &c.
not to be af-
fected.

XXXIX. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend, so as to revoke, alter, or annul any Will or Settlement, or to prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Portion, Debts, Rents, or Incumbrances, out of, upon, or affecting any of the Messuages, Buildings, Lands, or Grounds to be divided, allotted, inclosed, or exchanged as aforesaid, or any Part or Parts thereof respectively; but that the respective Persons to whom any Lands, Tenements, or Hereditaments shall be allotted or given in Exchange by virtue of this Act, shall be seised thereof to such and the same Uses, and for such and the same Estates, and subject to such and the same Wills, Jointures, Rents, Charges, and Incumbrances, and no other, as the Messuages, Buildings, Lands, and Tenements, and Hereditaments whereof such Persons were seised or possessed at or immediately before the Execution of the Award to be made by the said Commissioner, 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.

Award where
to be depo-
sited.

XL. And be it further enacted, That the Award to be made by the said Commissioner shall, after the same shall have been inrolled in Manner directed by the said recited Act made in the Forty-first Year of His present Majesty's Reign, be deposited in the Vestry of the Parish Church of *Kirkby Lonsdale* aforesaid.

Appeal.

XLI. And be it further enacted, That if any Person or Persons shall think himself or herself or themselves aggrieved by any Thing done in pursuance of the said recited Act or of this Act (other than and except such Determinations of the said Commissioner as are by the said recited Act or this Act declared to be final, binding, 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 General Quarter Sessions of the Peace which shall be holden for the said County of *Westmorland* within Six Calendar Months next after the Cause of Complaint shall have arisen, on giving to the said Commissioner, and to the Party or Parties concerned, Thirty Days Notice in Writing of such Appeal and of the Matter thereof; and the Justices (not interested in the Premises) in such Sessions assembled, are hereby required to hear and determine the Matter of every such Appeal, and to make such Order therein, and to award such Costs and Damages as to them in their Discretion shall seem reasonable, and by their Order or Warrant to levy the Costs and Damages which shall be so awarded by Distress and Sale of the Goods and Chattels of the Party or Parties made liable to pay the same, rendering the Overplus (if any) to the Owner or Owners of such Goods and Chattels after deducting the reasonable Charges of such Warrant, Distress, and Sale; and every such Order and Determination of the said Justices upon every such Appeal shall be final and conclusive to all Parties concerned, and shall not be removed or removable by *Certiorari* or any other Writ or Process whatsoever, into any of His Majesty's Courts of Record at *Westminster* or elsewhere; but in case such Appeal shall appear to the Justices to be frivolous, vexatious, or without Foundation, then and in every such Case 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 such Costs shall be levied in Manner aforesaid.

XLII. Provided always, and be it enacted, That nothing in this Act contained shall be construed or adjudged to defeat, lessen, or prejudice the Right, Title, or Interest of the said Earl of *Lonsdale* Lord of the said Manor, his Heirs or Assigns, or any of the future Lord or Lords, Lady or Ladies of the said Manor for the Time being, of, in, and to the Coal, Lead, Tin, Copper, Stone or Slate, Minerals or Metals within or under the said Commons and Waste Grounds intended to be inclosed as aforesaid (save and except the Stones in the publick Quarries to be set out as aforesaid,) or of, in, or to the Seignories and Royalties, Franchises, and Liberties incident and belonging to the said Manor; but that the said Earl of *Lonsdale* and all and every Person and Persons claiming by, from, or under or in Trust for him as Lord of the said Manor, and all succeeding Lord and Lords, Lady and Ladies and Owners thereof for the Time being, shall and may at all Times for ever hereafter have, hold, take, and enjoy all Rents, Services, Courts, Perquisites, and Profits of Courts, Hunting, Fishing, Hawking and Fowling, Goods and Chattels of Felons and Fugitives, Felons of themselves and those put in Exigent, Deodands, Waifs, Estrays, Forfeitures, Escheats, and other Royalties, Liberties, Franchises, Privileges, Pre-eminences, Jurisdctions, and Appurtenances whatsoever to the said Manor, or to the Lord or Lords, Lady or Ladies thereof for the Time being, incident, appertaining, or belonging, or which have been anciently used, exercised, and enjoyed by the Lord or Lords, Lady or Ladies of the same Manor (other than and except such Right of Soil and Right of Common of Pasture, and such other Rights and Interests as is and are by this Act meant and intended to be barred, destroyed, and extinguished) as could or might be claimed by him, her, or them, as Owner or Owners of the Soil of the said Commons and Waste Grounds, in as full, ample, and beneficial a Manner to all Intents and Purposes as he, she, or they could or might have held and enjoyed the same in case this Act had not been made; and that the said Earl of *Lonsdale* and all the future Lords, Ladies, and Owners of the said Manor respectively for the Time being, shall and may from Time to Time, and at all Times hereafter, have, hold, work, and enjoy all Mines, Minerals, and Quarries, of what Nature or Kind soever, within or under the said Commons and Waste Grounds intended to be divided and inclosed as aforesaid, as well those not opened as those already opened (save and except the said publick Quarries of Stone to be set out as aforesaid) and to have, enjoy, and be vested with all convenient and necessary Ways, Wayleaves, and Liberties of laying, making, and preparing Waggon Ways and other Ways, in, over, and along the same, or any Part thereof, and of searching for, winning, and working the Mines and Quarries, and leading and carrying away the Coals, Lead, Tin, Copper, Stones, Lime, Slate, Metals, and Minerals, to be gotten thereout, or out of any other of his Lands or Grounds, and making Pits, Shafts, Pit Rooms, Heap Rooms, Drifts, Levels, Water-courses, erecting and using Fire Engines and other Engines, and all and every other Matters and Things now in use or hereafter to be invented for the Purposes aforesaid, or any of them, in, upon, through, over or along the said Commons and Waste Grounds or any of them, or any Part or Parts thereof, and all other Powers, Privileges, and Authorities, for all or any of the Purposes aforesaid, in the same Manner as if this Act had not been made.

Rights of the Lord of the Manor to Minerals, not to be prejudiced.

XLIII. Provided also, and be it enacted, That in case the Lord or Lords, Lady or Ladies of the said Manor for the Time being, or any Person or

Satisfaction to be made for working Mines.
Persons

Persons claiming under him, her, or them, shall, after such Inclosure made as aforesaid, search for, win, work, or lead away, any Coal, Lead, Tin, Copper, Stones, Lime, Slate, Metal, or Minerals, lying within or under any of the said Allotments or Inclosures so to be made as aforesaid, or Lands or Tenements in respect whereof such Allotments shall be made, then and in every such Case the Lord or Lords, Lady or Ladies of the said Manor for the Time being, or such Person or Persons so searching for, winning, working, or leading away the same, shall make full and reasonable Satisfaction for the Damages and Spoil of Ground occasioned thereby, or in making or using of Waggon Ways or other Ways, or any other Matters and Things, according to the Powers herein reserved or granted to the said Earl of *Lonsdale*, and the Lord or Lords, Lady or Ladies of the said Manor for the Time being, to the Person or Persons who shall be in the Possession of such Ground at the Time or Times of such Damage or Spoil.

Owners of
Allotments
may get
Limestone
and other
Stone for
their own
Use, to be used
within the
Manor.

XLIV. And be it further enacted, That it shall and may be lawful to and for the said several Owners of Messuages, Lands, and Tenements within the said Manor, to whom Allotments shall be made as aforesaid, their Heirs and Assigns, to dig for, take, and carry away, within, upon, from, and under their respective Allotments, any Quantity of Lime or other Stone for the Improvement of their respective Lands and Grounds within the said Manor, or for any other Purpose or Purposes for which Lime or Stone is used; so as the same be used by them respectively within the said Manor, and so as the same be not sold or otherwise disposed of, and so as no Damage or Obstruction be thereby done or given to the working of any Mine or Mines, Colliery or Collieries, Pit or Pits, Quarry or Quarries, Delph or Delphs, Work or Works, carried on or to be carried on by the said Earl of *Lonsdale*, or the Lord or Lords, Lady or Ladies of the said Manor for the Time being, or his, her, or their Stewards, Agents, or Workmen respectively.

General
Saving.

XLV. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and all and every other Person or Persons, Bodies Politick and Corporate, his, her, and their Heirs, Successors, Executors, and Administrators, and all Persons claiming under or in Remainder after them, all such Right, Title, and Interest (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 and enjoyed, of, in, to, or out of the Lands and Grounds hereby directed to be divided, allotted, and inclosed, in case this Act had not been made.

This Act to
be noticed as
a Publick Act.

XLVI. And be it further enacted, That this Act shall be printed by the Printer to the King's most Excellent Majesty; and a Copy thereof so printed shall be admitted as Evidence thereof by all Judges, Justices, and others.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN,
Printers to the King's most Excellent Majesty. 1808.