ANNO DECIMO QUARTO

VICTORIÆ REGINÆ.

****

Cap. xiii.

An Act for keeping in repair the Road from *Appleby* in the County of *Westmoreland* to *Kirkby-in-Kendal*, and from *Orton* to the Turnpike Road near *Shap*, and from *Highgate*, near *Tebay*, through *Kirkby Stephen*, to *Market Brough* in the said County. [20th *May* 1851.]

WHEREAS an Act was passed in the Fifth Year of the Reign of His Majesty King *George* the Fourth, intituled *An Act for more effectually improving and keeping in* 5 G. 4. c. 15. *repair the Road from* Appleby *in the County of* Westmoreland *to* Kirkby-in-Kendal, *and from* Orton *to the Turnpike Road near* Shap, *and from* Highgate, *near* Tebay, *through* Kirkby Stephen, *to* Market Brough *in the said County:* And whereas the Term granted by the said Act, and continued from Time to Time by virtue of divers Acts of Parliament for continuing certain Turnpike Acts for limited Periods, will expire on the First Day of *November* One thousand eight hundred and fifty-one: And whereas considerable Sums of Money have been advanced upon the Credit of the Tolls authorized to be taken by the said Act, which Money still remains owing, together with certain Interest thereon, and such Money cannot be paid off, or the Interest

thereof discharged, unless further Powers are granted, and the Term of the said Act further continued: And whereas it is expedient that the said recited Act should be repealed, and that further and more effectual Powers should be granted in lieu thereof; but the Purposes aforesaid cannot be effected without the Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows; (that is to say,)

Recited Act repealed, and this Act to take effect.

I. That upon the Thirty-first Day of *October* next after the passing of this Act the said recited Act of the Fifth Year of the Reign of His Majesty King *George* the Fourth shall be repealed, and that this Act shall thereafter be put into execution during the Term and for the Purposes hereafter mentioned.

Short Title.

II. That in citing this Act for any Purpose whatsoever it shall be sufficient to use the Expression "The *Appleby and Kendal* Turnpike Road Act, 1851."

Roads to which this Act is applicable.

III. That this Act shall be put into execution for the Purpose of more effectually improving, maintaining, and keeping in repair the Road leading from the Borough of *Appleby* in the County of *Westmoreland*, through the Township of *Orton*, to *Kirkby-in-Kendal* in the said County, and from *Orton* to the *Heronsyke and Eamont Bridge* Turnpike Road near *Shap*, and from *Highgate*, near *Tebay*, in the said County, in a Part of the Highway between *Appleby* and *Kirkby-in-Kendal*, through the Town of *Kirkby Stephen*, to the Town of *Market Brough* in the said County.

Monies and Property to vest in the new Trustees on Commencement of this Act.

IV. That all Monies due to, and all Property, Books, Accounts, Papers, Writings, or other Things, and all Choses in Action, vested in or belonging to the Trustees under the said recited Act, shall, immediately on the Commencement of this Act, be vested in and belong to the Trustees for executing this Act; and such last-mentioned Trustees may sue for and recover the same, and act in respect thereof, as effectually as if the same had been vested in and belonged to them under the said recited Act, and they shall be liable to all the Debts and Engagements to which the Trustees under the said recited Act were liable at the Repeal thereof.

Mortgagees in possession to account.

V. That on or before the Thirtieth Day of *November* next after the passing of this Act the Mortgagees in possession of the Toll Gates, Toll Houses, and Buildings upon the said Roads shall render an exact Account in Writing to Mr. *Robert Wharton*, Gentleman, or

other the Clerk for the Time being to the Trustees of the said Roads, at his Dwelling House, or to such other Person as the Trustees of the said Roads for the Time being shall direct, of all Monies received by such Mortgagees, or by any other Person for their Benefit or by their Authority, at such Toll Gates and Toll Houses, or otherwise, and of all Monies expended by them in keeping or repairing the said Roads, Toll Gates, and Toll Houses, and of the Manner in which they shall have disposed of the Residue of the Monies so received, and shall produce all the Vouchers and Receipts in their Possession or Power relating to such Accounts, and shall, on or before the Thirtieth Day of *November* next after the passing of this Act, pay over to such Person as the Trustees by this Act appointed shall direct to receive the same, all Monies (if any) which shall appear to be due from the said Mortgagees on the Balance of such Accounts.

Appointment of Trustees.

VI. That all Her Majesty's Justices of the Peace for the Time being respectively acting for the County of *Westmoreland*, together with *Bowness Addison*, *Robert Addison*, *John Atkinson*, *William Atkinson*, the Reverend *Joseph Watkins Barnes*, *Robert Benson*, *James Beetham*, *Joseph Benn*, *Thomas Bland*, *Richard Branthwaite*, *Edward Branthwaite*, *George Braithwaite*, *Isaac Braithwaite*, *Charles Lloyd Braithwaite*, *George Foster Braithwaite*, *John Brunskill*, *Stephen Brunskill* (of *Bland*), *Orton Bradley*, *John Brass*, *William Dillworth Crewdson*, *William Dillworth Crewdson* the younger, *John Crosby* (*Kirkbythorn*), *Anthony Davis*, *John Dent*, the Reverend *John Dickenson*, *Thomas Fawcett*, *Thomas Farrar*, *Richard Fothergill*, *John Gandy*, *Gerard Gandy*, *George Gelderd*, *George Gibson*, *Thomas Gibson*, the Reverend *Henry Guy*, *Daniel Harrison*, *John Harrison*, *Thomas Harrison* (of *Appleby*), *Thomas Harrison* (of *Kendal*), *John Handley*, *John Heelis*, *John Hewitson*, *Marmaduke Holme*, *Jonathan Horne*, *Thomas Hutton*, *John Ireland*, *William Jameson* (*Crackenthorpe*), *Joseph Jameson* (*Long Marton*), *Thomas Mason*, *John Moreland* (of *New Hall*), *Thomas Reveley*, *Matthew Robinson*, *Thomas Robinson*, *John Rowlandson*, *Thomas Salkeld*, *Arthur Shepherd*, *Robert Shearman*, *Joseph Thompson*, *Matthew Thompson*, the Honourable *George Frederick Upton*, *Edward William Wakefield*, *William Henry Wakefield*, the Reverend *George Frederick Weston*, *William Whitwell*, the Reverend *George Wilson*, *John Jowitt Wilson*, *William Wilson* (*Shearman*), *William Wilson* (*Oxenholme*), *Robert Wilson*, and their Successors, being duly qualified to act as Trustees of Turnpike Roads in *England*, shall be Trustees for putting this Act into execution.

Power to appoint additional Trustees.

VII. That it shall be lawful for the said Trustees from Time to Time, at any Meeting under this Act, to elect any Number of Persons, duly qualified to act as Trustees of Turnpike Roads in *England*, not exceeding

exceeding Three in the whole, to be Trustees for the Purposes of this Act, in addition to the Trustees hereby nominated, and such Trustees so elected shall have the same Powers and Authorities for executing this Act as if they had been hereby appointed.

First Meeting of Trustees.

VIII. That the said Trustees shall hold their First Meeting at the *White Hall Buildings* in *Kirkby-in-Kendal* aforesaid, or at some other convenient Place in the Neighbourhood of the said Roads, on the Seventh Day of *November* One thousand eight hundred and fifty-one, between the Hours of Ten and Twelve of the Clock in the Forenoon, and shall then and from Time to Time thereafter adjourn to and meet at such Time and at such Places in the Neighbourhood of the said Roads as they shall think proper.

Power to appoint Committees.

IX. That the said Trustees may appoint Committees out of their own Number to take the Care and Management of any particular Part of the said Roads, or to execute any of the Purposes of this Act, according to such Instructions and Regulations as shall be laid down by the said Trustees at any General Meeting, and the said Committees and their Surveyors may proceed to act according to such Appointment, but shall always be accountable according to the Instructions and Regulations so to be made.

Present Tolls continued for a certain Term.

X. That, notwithstanding the Repeal of the said recited Act, the several Tolls thereby granted and made payable shall continue to be paid at the Toll Gates to be continued or erected on or on the Sides of the said Roads until the Fourteenth Day of *November* One thousand eight hundred and fifty-one.

Power to take Tolls.

XI. That upon and after the said Fourteenth Day of *November* One thousand eight hundred and fifty-one it shall be lawful for the said Trustees to demand and take at the several and respective Toll Gates which now are or hereafter shall be upon or on the Sides of the said Roads such Tolls as the said Trustees at any of their Meetings shall direct, not exceeding the Sums following; (that is to say,)

For every Horse or other Beast of Draught drawing any Coach, Chariot, Landau, Landaulet, Barouch, Chaise, Phaeton, Vis-à-vis, Calash, Curricle, Car, Chair, Gig, Hearse, Caravan, Litter, Taxed Cart, or other such Carriage, the Sum of Sixpence:

For every Horse or other Beast of Draught drawing any Waggon, Wain, Cart, or other such Carriage, if drawn by Two or more Horses or other Beasts of Draught, the Sum of Sixpence; and if drawn by One Horse or other Beast of Draught, the Sum of Fourpence:

For every Horse or other Beast of Draught drawing any Waggon, Wain, Cart, or other such Carriage laden with Cordwood for Fuel,

Fuel, Peats, Coals, Cannel, or Cinders only, if drawn by Two or more Horses or other Beasts of Draught, the Sum of Threepence; and if drawn by One Horse or other Beast of Draught, the Sum of Twopence:

For every Horse or other Beast of Draught drawing any Waggon, Wain, Cart, or other such Carriage, having paid Toll for drawing the same, laden with Cordwood for Fuel, Peats, Coals, Cannel, or Cinders only, and returning the same Day with the same Waggon, Wain, Cart, or other such Carriage through the same Toll Gate with any other Loading not hereby exempted from the Payment of Toll, if drawn by Two or more Horses or other Beasts of Draught, the Sum of Threepence; and if drawn by One Horse or other Beast of Draught, the Sum of Twopence:

For every Horse or Mule, laden or unladen, and not drawing, the Sum of Twopence:

For every Ass, laden or unladen, and not drawing, the Sum of One Penny:

For every Drove of Oxen, Cows, or Neat Cattle, *per* Score, the Sum of Tenpence, and so in proportion for any greater or less Number:

For every Drove of Calves, Sheep, Lambs, or Swine, *per* Score, the Sum of Fivepence, and so in proportion for any greater or less Number:

Which said Tolls shall be taken before any Horse, Mule, Ass, Beast, or other Cattle or Carriage whatsoever shall be permitted to pass through any Toll Gate which shall be by virtue of this Act upon or across the said Roads or on the Sides thereof.

As to the Fraction of a Halfpenny in Tolls.

XII. That in all Cases in which there shall be a fractional Part of a Halfpenny in the Amount of the Tolls by this Act authorized to be collected the Sum of One Halfpenny shall be payable in lieu of such fractional Part.

Exemptions from Toll.

XIII. That none of the Tolls hereby authorized to be taken shall be demanded, taken, or received at any of the Toll Gates erected and continued or to be erected upon, across, or by the Sides of the said Roads, for any Horse, Beast, or other Cattle or Carriage used or employed in carrying or conveying, or going empty to fetch, carry, or convey, or returning empty from carrying or conveying, having been employed only in carrying or conveying on the same Day, any Dung, Soil, Lime, Marl, Compost, or Manure for improving Lands, or any Grist or Meal to or from any Corn Mill, such Grist or Meal to be actually used by the Owner and his Family, and not for Sale, or any Gravel, Stones, Timber, Sand, or other Materials for the building, rebuilding, or repairing of any present or future Toll House or Toll Gate now erected and continued or hereafter to be erected

on the said Roads under this Act, or any Milk or any Grains or Draff for the feeding of Cattle.

Only Three full Tolls to be taken in One Day.

XIV. That no more than Three full Tolls shall be demanded and taken for passing on the same Day throughout the whole Line of the said Road between the Borough of *Appleby* aforesaid and *Kirkby-in-Kendal* aforesaid, or between *Kirkby-in-Kendal* aforesaid and the Town of *Market Brough* aforesaid.

Persons having paid Toll to return free.

XV. That all Horses, Beasts, Cattle, or other Animals (except Horses or Cattle drawing any Stage Coach, Waggon, or other Stage Carriage, Postchaise, or other Carriage travelling for Hire, as hereinafter mentioned, and except Horses or other Beasts of Draught drawing any Waggon, Wain, Cart, or other such Carriage, having paid Toll for drawing the same, laden with Cordwood for Fuel, Peat, Coal, Cannel, or Cinders only, and returning the same Day with the same Waggon, Wain, Cart, or other such Carriage through the same Toll Gate with any other Loading not hereby exempted from the Payment of Toll,) in respect whereof the Toll hereby authorized to be taken shall have been paid at any Toll Gate on the said Roads or on the Sides thereof, shall, upon a Ticket denoting such Payment being produced, be permitted, in returning, passing, and repassing through the same Toll Gate, and in going and returning, passing and repassing, through such other Toll Gate (if any) as the Ticket for such Payment shall free, to pass Toll-free the same Day.

Postchaises to pay every fresh Hiring.

XVI. That the Tolls hereby made payable shall be paid for all Horses or other Beasts of Draught drawing any Postchaise or other Carriage travelling for Hire for every Time of passing and repassing along the said Roads on the same Day with a Ticket denoting a fresh Hiring, in the same Manner as if no previous Payment of Toll in respect of such Horses or Beasts had been made on the same Day.

Stage Coaches, &c. to pay each Time of passing.

XVII. That for and in respect of all Horses or other Beasts of Draught drawing any Stage Coach, or any Stage Waggon, Van, Caravan, Cart, or other Stage Carriage carrying Passengers or Goods for Payment, Hire, or Reward, for which Toll shall have been paid, and which shall return on the same Day through the same Toll Gate, the Tolls hereby made payable shall be paid for every Time of passing and repassing through such Toll Gate, in like Manner as if no Toll had been paid thereat.

Regulations as to Stage Coaches.

XVIII. That all Horses and Cattle drawing any Stage Coach, Waggon, or other Stage Carriage conveying Passengers or Goods for Hire or Reward, in respect whereof the Toll hereby authorized to

to be taken shall have been paid at any Toll Gate, shall, upon a Ticket denoting such Payment being produced, be permitted to pass once Toll-free on the same Day through any other Toll Gate which such Ticket would free in the Case of Horses or Cattle drawing any other Carriage; and no further or additional Toll shall be payable in respect of any Stage Coach or other such Carriage as aforesaid at any such other Toll Gate the Payment at which shall be freed by such Ticket as aforesaid, on account only of their conveying other Passengers, or of the Horses or Cattle drawing the same having been changed.

Application of Monies.

XIX. That all Monies which shall come to the Hands of the said Trustees by virtue of this Act shall be applied as follows; (that is to say,)

Firstly, in paying and discharging the Expenses of obtaining and passing this Act, or incident thereto:

Secondly, in defraying the necessary Expenses of erecting, altering, and repairing Toll Gates and Toll Houses, and the necessary Expenses of Management of the said Roads:

Thirdly, in paying Interest at the Rate of Three Pounds Five Shillings *per Centum per Annum* upon the Principal Sums which may from Time to Time be owing in respect of Money borrowed under the Powers of the said repealed Act on the Credit of the Tolls thereby authorized to be taken:

Fourthly, in reducing, paying off, and discharging the Principal Sums for the Time being owing in respect of Money borrowed on the Credit of the Tolls authorized to be taken by the said repealed Act:

Fifthly, in paying the Expenses of maintaining and keeping the said Roads in repair, and in putting this Act into execution with reference thereto.

Mortgagees to deliver up Possession of Gates.

XX. That on or before the said Thirtieth Day of *November* next after the passing of this Act the Mortgagees in possession of any of the Toll Gates, Bars, Chains, Toll Houses, or Buildings upon the said Roads or on the Sides thereof shall deliver up the same to the said Trustees, and the said Trustees, their Collectors and Servants, shall enter into possession of the said Toll Gates, Toll Houses, and Buildings, and shall thenceforth receive the Tolls which can be collected thereat; and if any Collector, Receiver, or other Person shall refuse or neglect to deliver up Possession as aforesaid of any of the said Toll Gates, Toll Houses, or Buildings, then such Receiver, Collector, or other Person may be removed therefrom in manner provided by any Law or Statute then in force relating to Turnpike Roads in *England*.

XXI. That

Mortgagees to take possession for Payment of Interest only.

XXI. That whenever and as long as the Interest upon all existing Mortgages made under the Powers of the said recited Act shall be duly paid at the Rate herein-before mentioned within One Calendar Month next after the same shall become due, no Holder of any Mortgage of the Tolls collected upon the said Roads shall be entitled to enter into possession of the Toll Gates, Toll Houses, or Buildings upon the said Roads, or into the Receipt of the Tolls arising thereon, or of the Rent payable upon any Letting of such Tolls; and every Mortgagee entering into possession of such Toll Gates, Toll Houses, or Buildings, or into the Receipt of such Tolls or Rent, shall pay the Interest from Time to Time becoming due at the Rate herein-before mentioned upon all the said existing Mortgages, without any Priority or Preference, and may also reimburse himself any Costs to which he may be entitled; and every such Mortgagee so being in possession or receipt as aforesaid shall, within Twenty-one Days next after each of the half-yearly Days whereon the Interest on such existing Mortgages shall be payable, render to the Clerk to the said Trustees for the Time being a full and true Account of his Receipts and Expenditure while so in possession or receipt as aforesaid, with proper Vouchers for the same; and if it shall appear by any such Account that the Interest due at the Rate herein-before mentioned on such Mortgages up to the last of such half-yearly Days, and all such Costs as aforesaid, have been fully paid and satisfied, then such Mortgagee shall, when thereunto required by the said Trustees, pay over to their Treasurer the Balance (if any) remaining in his Hands, and deliver up Possession of the said Toll Gates, Toll Houses, and Buildings, and the Receipt of the said Tolls, and of any such Rent as aforesaid, to the said Trustees, or any Person appointed by them to receive the same, anything in this Act, or in any Statute or Law in force relating to Turnpike Roads in *England*, to the contrary notwithstanding.

As to Mode of discharging Debt.

XXII. That when and so often as the Sum applicable to the Discharge of the Principal Monies for the Time being owing on the Credit of the said Tolls shall amount to the Sum of Two hundred Pounds, the Trustees shall at any General, Annual, or other Meeting, apply such Sum in the Payment of a proportionate Part of the said Principal Monies to Persons entitled thereto, and shall, Twenty-eight Days at least before such General, Annual, or other Meeting, cause Notice to be given of such Meeting and of the Purposes thereof, so far as the same relate to the Application of such Sum, in some Newspaper published in the County of *Westmoreland*, or if there shall be no Newspaper published therein, then in some Newspaper published in an adjoining County; and at such Meeting the Trustees shall apply such Sum, or a Portion thereof, (as the Case may require,) in or towards the Discharge of Monies owing on the Security of the said Tolls

Tolls to the Creditor who shall, by Proposal in Writing transmitted to the Clerk of the Trustees before such Meeting, have offered to accept the lowest Composition in respect of such Monies, and after Payment to such Creditor as aforesaid shall apply the Surplus (if any) of such Sum, or a Portion thereof, (as the Case may require,) in or towards the Discharge of other Monies owing on the Security of the said Tolls to the Creditor who, by Proposal as aforesaid, shall have offered to accept the next lowest Composition in respect of the Principal Monies due to him, and so in like Manner until the Sum applicable to such Payments shall be exhausted; and if and whenever Two or more Creditors, by such Proposals as aforesaid, shall have offered to accept an equal Rate of Composition, it shall be lawful for the Trustees to determine by Lot the Preference between or amongst such Creditors, or to pay such Composition rateably between or amongst such Creditors, as the Trustees think fit; and if there be no such Proposal as aforesaid, or if there be any Surplus of the Sum applicable to such Payments, after applying the same so far as may be necessary in or towards the Discharge of the Monies to which any such Proposals relate, the Trustees may apply the Sum applicable to such Payments, or the Surplus thereof, (as the Case may be,) rateably amongst the Creditors on the said Tolls, or may pay the same to such of them as may be determined by Lot, as the Trustees think fit.

No Money collected under this Act to be laid out in certain Towns.

XXIII. That no Money shall be laid out on the said Roads within the Towns of *Appleby*, *Kirkby-in-Kendal*, *Kirkby Stephen*, or *Market Brough*, or within the Limits of any Act of Parliament passed for the Improvement of any Town, nor shall any be collected therein.

No Money to be borrowed on Credit of the Tolls.

XXIV. That it shall not be lawful for the said Trustees to borrow any further Sum or Sums of Money on the Credit of the Tolls by this Act authorized to be taken.

Trustee or Clerk to be competent Witness.

XXV. That no Trustee or Clerk acting under the Authority of this Act, if not otherwise interested, shall be deemed incompetent to give Evidence, or shall be disqualified from giving Evidence, in any Action, Suit, or other Proceeding brought by or against him in such his Capacity of Trustee or Clerk, by reason of his being Plaintiff or Defendant in such Action, Suit, or other Proceeding.

Roads not exempted from General Act.

XXVI. That nothing herein contained shall be deemed to exempt the said Roads from the Provisions of any General Act relating to the Consolidation or other improved Arrangement of Turnpike Roads which may pass during the present or any future Session of Parliament.

Term of Act.

XXVII. That this Act shall commence on the Thirty-first Day of *October* next after the passing thereof, and shall continue in force for the Term of Twenty-one Years, and from thence to the End of the Session of Parliament which shall then next follow.

Interpretation of certain Terms.

XXVIII. That in this Act the following Words and Expressions shall have the several Meanings hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction; (that is to say,)

The Word "Person" shall be understood to include "Corporation:"

The Expression "the Trustees," or "the said Trustees," shall mean the Trustees for the Time being acting in the Execution of this Act:

The Word "Toll Gates" or "Toll Gate" shall include Turnpikes, Bars, Chains, and Side Gates.

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