ANNO QUINQUAGESIMO

GEORGII III. REGIS.

****

Cap. 213.

An Act for inclosing Lands in the Manor of *Nether Kellet* in the Parish of *Bolton by the Sands* in the County Palatine of *Lancaster*. [20th *June* 1810.]

WHEREAS there is within the Manor of *Nether Kellet* in the Parish of *Bolton by the Sands* in the County Palatine of *Lancaster* a certain Tract of Moor, Common, and Waste Ground, usually called *Nether Kellet Moor*, containing Five hundred Acres or thereabouts, and there are also several other small Parcels of Common and Waste Ground within the same Manor: And whereas *Alexander Butler* Esquire of *Kirkland Hall* in the said County Palatine, and of *Beaumont Cote* in the said Parish of *Bolton by the Sands*, is the Lord of the said Manor or Lordship of *Nether Kellet*, and seised of the same and the Royalties of and within the said Tracts or Parcels of Moor, Common, and Waste Ground, and the said *Alexander Butler* and *Thomas Greene* Esquire, *Joshua Lodge* Esquire, the Reverend *James Stainbank* Clerk, and divers other Persons are the Owners and Proprietors of several ancient Messuages, Lands, Tenements, and other Hereditaments within the said Manor, and in respect thereof or otherwise are entitled to the Herbage and Pasturage in, over, and upon the said Tracts or Parcels of Moor, Common, and Waste Ground in Common, and the said several Persons or some of them are also, in right of their said Messuages or otherwise, entitled to certain Moss Dales, Flaw Dales, Sod Dales, and Bracken Dales upon the said Tract of Moor, Common, and Waste Ground called *Nether Kellet Moor*, which said Moss Dales, Flaw Dales, Sod Dales, and Bracken Dales are set out and ascertained by Metes and Boundaries, and also to certain Rights of getting and taking Peatmoss or Turves, Flaws, Sods, and Brackens, or some of them, in, upon, and from their said Moss Dales, Flaw Dales, Sod Dales, and Bracken Dales, or some of them:

And whereas the said Tracts or Parcels of Moor, Common, and Waste Ground are at present in a very rude and uncultivated State, yielding little Profit; but if the same were divided and inclosed, and if specific Parts thereof were allotted to the several Parties interested therein according and in proportion to their respective Rights and Interests, the same would be capable of great Improvement; and from the beneficial Consequences which would be thereby afforded to Agriculture the Estates of the several Individuals so interested therein as aforesaid would be rendered more valuable and the public Good would be promoted; but as such Division, Allotment, and Inclosure cannot be carried into effect and established 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, That *Edmund Jackson* of *Bolton Sand Side* in the said Parish of *Bolton by the Sands*, Gentleman, and *William Miller* of *Preston* in the said County Palatine of *Lancaster*, Gentleman, and their Successors, to be appointed in manner herein-after mentioned, shall be and they are hereby appointed Commissioners for setting out, dividing, allotting, and inclosing each and every of the said Tracts or Parcels of Moor, Common, or Waste Ground, and for putting this Act into execution, pursuant to the Powers, Regulations, and Directions herein-after contained, and to such of the Powers, Regulations, Restrictions, and Provisions contained in an Act passed in the Forty-first Year of His present Majesty's Reign, 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 controlled by or repugnant to any of the Clauses, Provisions, or Regulations contained in this Act, and that the Notices by the said recited Act required to be given in some public Newspaper, and all other Notices by virtue of this Act necessary or requisite to be given by the said Commissioners, shall be given and published in the *Lancaster Gazette*, or if that Newspaper shall not then be published, in some other Newspaper generally circulated in the said County of *Lancaster*.

Commissioners.

II. And be it further enacted, That in case either of the said Commissioners herein-before named, or any other Commissioners to be appointed by virtue of this Act, shall before the finishing and Completion of the said Inclosure, or before executing such general Award as herein-after mentioned, die, or refuse to act, or become incapable of acting as a Commissioner, then and from Time to Time in every such Case the surviving or remaining Commissioner shall and he is hereby required forthwith, or within Two Calendar Months at the farthest after such Death, Refusal, or Incapacity shall be known to him, by Writing under his Hand to appoint another fit and proper Person, not being interested in the said Tracts of Moor, Common, or Waste Ground, to be a Commissioner in the Room, Place, and Stead of every such Commissioner so dying or refusing to act, or rendered incapable of acting as aforesaid; but in case there shall at any Time be a total Want of Commissioners by reason of any such Death, Refusal to act, or Incapacity as aforesaid, then and in every such Event the Vacancies thereby occasioned shall be filled up and supplied by such Two Persons as may be for that Purpose appointed by the Lord of the said Manor for the Time being, with the Approbation and Consent of such Majority as

New Commissioners to be appointed upon Vacancies.

as with the said Lord shall constitute a Majority in Value (according to the Land Tax Assessment) of the Land Owners, Proprietors, and Persons entitled as aforesaid, who shall appear at any public Meeting to be convened by the said Lord for the Time being; and such public Meeting may and shall, when and as often as Occasion shall require, be convened by Notice in Writing, specifying the Time and Place together with the Cause and Purpose of such Meeting, and published Ten Days at the least previous to the holding the same, in such Manner as herein is prescribed in respect to the Notices of Meetings by the said Commissioners; and when and as often as any such Appointment of any new or other Commissioner or Commissioners shall be made upon any of the Events, and by either of the Modes aforesaid, the Commissioner or Commissioners so as aforesaid to be appointed shall have such and the like Powers and Authorities for putting this Act in execution as if he or they had been originally a Commissioner or Commissioners appointed by Name in or by this Act.

Commissioners.

For appointing an Umpire.

III. Provided always, and be it further enacted, That in case the Commissioners named or appointed in or by virtue of this Act shall at any Time or Times disagree in Opinion upon any Matter concerning which it shall be necessary for them to judge and determine in the Execution of this Act or the said recited Act, then and as often as it shall so happen the said Commissioners shall and may and they are hereby authorized and required to refer such Difference to the Judgment and Determination of an Umpire to be chosen by the said Commissioners; and in case the said Commissioners shall, for the Space of Ten Days after such Difference shall arise, neglect to appoint an Umpire as aforesaid, or if such Umpire shall die, or being appointed shall refuse to act or become incapable of acting, then and in every such Case an Umpire shall be nominated and appointed by the major Part in Value of the said Proprietors of Lands after the like Notice and in such Manner as is herein-before directed concerning the Nomination and Appointment of a Commissioner in the Room or Stead of any Commissioner dying, or refusing or neglecting to act or becoming incapable of acting, and so *toties quoties* in case any Umpire as last mentioned shall die, or refuse to act, or become incapable of acting; and the Judgment and Determination of such Umpire so to be chosen or nominated and appointed shall be conclusive between the said Commissioners, and shall by all Persons whomsoever be deemed and taken as the Determination of the said Commissioners.

New Commissioners to be appointed upon Vacancies.

Umpire to take an Oath.

IV. Provided always, and be it further enacted, That no Person shall be capable of acting as Umpire in the Execution of the Powers given by this or the said recited Act until he shall have taken and subscribed the Oath following; (that is to say,)

'I do swear, That I will faithfully, impartially, and honestly, according to 'the best of my Skill and Judgment, execute and perform the several 'Powers and Authorities vested and reposed in me as an Umpire by 'virtue of an Act passed in the Fiftieth Year of the Reign of King *George* 'the Third, intituled [*here insert the Title of this Act*], according to 'Equity and good Conscience, and without Favour or Affection, Prejudice 'or Partiality, to any Person or Persons whomsoever. So help me GOD.'

Which

Which Oath it shall be lawful for the said Commissioners or either of them to administer; and the said Oath so taken and subscribed by such Umpire shall be annexed to and inrolled with the Award of the said Commissioners, and a Copy of the Inrolment thereof shall be admitted as legal Evidence.

Notice of Time and Place of Commissioners Meeting.

V. And be it further enacted, That the said Commissioners may and they are hereby required to cause Notice in Writing under their Hands to be affixed on some one of the outer Doors of the Parish Church of *Bolton by the Sands* aforesaid, and also to be inserted in the said Newspaper called the *Lancaster Gazette*, or in some other Newspaper circulating in the said County of *Lancaster*, of the Time and Place of holding the First, Second, and Third Meetings for the Purpose of putting in execution the several Powers vested in them by this Act, Ten Days at the least before such Meetings respectively (Meetings by Adjournment only excepted), each of which Meetings shall be held at *Bolton by the Sands* in the said County Palatine of *Lancaster*; and the said Commissioners may and shall after the said Third Meeting from Time to Time appoint such Time and Place for every subsequent Meeting as to them shall seem proper, causing Notice in Writing under their Hands to be affixed on some one of the outer Doors of the Parish Church of *Bolton by the Sands* above mentioned, and by Advertisement as aforesaid respectively, Ten Days at the least before every subsequent Meeting, and the said Commissioners shall have full Power and Authority (if they shall think it convenient and proper) to continue any of the said Meetings by Adjournment without giving any such Notice as aforesaid of any such adjourned Meeting, such adjourned Meetings nevertheless to be held within the Space of Fourteen Days from the Time of Adjournment: Provided always, that all Meetings of the said Commissioners shall be held in the said Parish or within Eight Miles thereof.

Commissioners to settle Differences.

VI. And be it further enacted, That if any Dispute or Difference shall arise between any of the Proprietors of or Persons interested or claiming to be interested in any of the Lands intended to be inclosed by this Act, concerning the respective Rights or Interests which they or any of them may have or claim to have in or upon or in any Manner respecting or relating to the same Lands or any or either of them, or touching or concerning any Matter or Thing relating to the said Division, Allotment, and Inclosure, it shall be lawful for the Commissioners to hear, adjudge, and determine, the same: Provided always, that nothing herein contained shall authorize the said Commissioners to determine the Title to any Messuages, Cottages, Lands, Tenements, or Hereditaments whatsoever.

Commissioners may award Costs.

VII. And be it further enacted, That in case the said Commissioners shall, upon the Hearing and Determination of any Claim or Claims, Objection or Objections, to be delivered to them in pursuance of this Act, or the said Act of the Forty-first Year of His present Majesty, see Cause to award any Costs, it shall be lawful for them and they are hereby empowered, upon Application made to them for that Purpose, to settle, assess, and award such Costs and Charges as they shall think reasonable to be paid to the Party or Parties in whose Favour any Determination shall be made, by the Person or Persons whose Claim or Claims, Objection or Objections, shall be thereby disallowed or over-ruled, and in case the Person or Persons who shall be liable to pay such Costs and Charges shall neglect or refuse to

pay the same on Demand, then and in such Cases it shall be lawful for the said Commissioners and they are hereby authorized and required, by Warrant under their Hands directed to any Person whomsoever, to cause the same to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons so neglecting or refusing to pay the same, rendering the Overplus (if any), on Demand, to the Person or Persons whose Goods and Chattels shall have been so distrained, after deducting the Expences attending such Distress and Sale.

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

VIII. Provided always, and be it further enacted, That in case the Party or Parties making any Claim in pursuance of this Act, or the Person or Persons objecting thereto, shall be dissatisfied with any Determination of the Commissioners, and shall, by Writing under his, her, or their Hand or Hands, or the Hand or Hands of his, her, or their Agent respectively, signify the same to the said Commissioners within Two Calendar Months next after any such Determination shall be made, then and in such Case, but not otherwise, it shall be lawful for the Person or Persons so dissatisfied to have the Subject of such Claim or Objection (in respect of which such Determination shall be made) tried by an Action at Law, to be brought by him, her, or them against any Person or Persons in whose Favour any Determination shall have been so made, upon a feigned Issue, to be settled by the proper Officers of the Court where such Action shall be brought, in case the Parties differ about the same, such Action to be brought within Three Calendar Months next after such Determination shall have been made; and the Defendant or Defendants in such Action shall and is and are hereby required to appear to such Action, accept a Declaration, and plead to Issue; and the Plaintiff or Plaintiffs shall thereupon proceed in such Action so as to have the same tried and determined at the First or Second Assizes to be holden for the said County of *Lancaster* next after the Commencement of such Action; and the Verdict of the Jury upon such Trial (unless the Court wherein such Action shall be brought shall set aside such Verdict, and order a new Trial therein, which it shall be lawful for the Court to do as is usual in such Cases) shall be binding, final, and conclusive upon all the Parties interested therein; and after such Trial the said Commissioners shall and they are hereby required to act in conformity to the Verdict or Verdicts thereupon given, and to allow or disallow the Claim or Claims thereby determined, according to the Event of such Trial or Trials: Provided always, that all such Determinations of the said Commissioners as shall not be objected to by such Notice to be given to them as aforesaid, or being so objected to, and the dissatisfied Parties respectively not causing such Action at Law to be brought and proceeded in as aforesaid, shall be absolutely binding, final, and conclusive.

Actions not to abate by Death of the Parties.

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

Suits respecting Titles not to impede the Execution of this Act.

X. 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, Body or Bodies Politic, Corporate, or Collegiate, in or to any Manor, Messuage, 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 or Grounds hereby directed to be divided, allotted, and inclosed,

inclosed, or any Part thereof, shall be claimed, such Suit or Suits shall not impede, delay, hinder, or prevent the said Commissioners from proceeding in the Powers vested in them by this and the said recited Act, but the said Division, Allotment, and Inclosure shall be proceeded in notwithstanding such Suit or Suits, and the Allotment or Allotments in respect of such Rights and Interests, or any of them, may be had and taken by the Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, who upon the Determination of such Suit or Suits shall become entitled to the same.

If Parties die before Actions commence, the same shall not stop by reason thereof.

XI. Provided always, and be it further enacted, That if any Person or Persons in whose Favour any such Determination as aforesaid shall have been made, and against whom any such Action or Actions might have been brought if living, shall die before any such Action or Actions shall have been brought, and before the Expiration of the Time herein-before limited for bringing such Action or Actions, it shall be lawful for the Person or Persons, Bodies Politic 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 Commissioners 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.

Ancient Messuages and Lands to be valued agreeably to the Land Tax Assessment.

Commissioners not to determine contrary to Possession.

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

Allotment of Parcel of the Lands proper for public Stone Quarries.

XIII. And be it further enacted, That it shall and may be lawful for the said Commissioners and they are hereby required to set out and appoint a certain Stone Quarry now in and upon the said Moor, Common, or Waste Ground called *Nether Kellet Moor*, known by the Name of *Brockhole Cragg Quarry*, with such Quantity of Land immediately adjoining thereto as they shall think sufficient and proper, not exceeding in the Whole the Quantity of Two Acres of Statute Measure, with suitable and commodious Ways and Roads to and from the same, for the Purpose of working, getting, and taking upon, in, and from the same, all such Quantities of Stone, Sand, Gravel, or other Materials there to be found as may be useful and necessary for making any new or repairing any old Houses, Outhouses, Fence Walls, or Erections or other Buildings, or for making or repairing any Roads or Ways, or for draining or improving any Lands or Grounds within the Manor and Township of *Nether Kellet* aforesaid, but not to be sold or taken, used or employed, otherwise than within the said Manor and

Township, or for any other Intent or Purpose, save only as aforesaid; and the said Commissioners shall and may and they are hereby required also to set out, appoint, and allot some proper, convenient, and reasonable Portion of the said Waste Land within the Town of *Nether Kellet* aforesaid, as and for a Quarry for the Purpose of digging, getting, and taking away from and out of the same Stones and Gravel to be used and appropriated for repairing and amending the Highways and public Roads of and within the said Township of *Nether Kellet*, and for no other Purpose whatever; and that all such Stone, Sand, and Gravel shall be sunk for, won, got, and worked in the said Quarries in such Pits or Breasts, to be opened and cleared, and the Rubbish thereby made to be removed, at such Times and Seasons, in such Sort, Manner, and Form, and subject to and under such Rules and Regulations, and to be superintended by such Person or Persons, and with such Powers and Authorities in respect thereto, as the said Commissioners in and by their Award herein-after mentioned shall in that Behalf order and direct, and which Orders and Directions such Commissioners may and they are hereby authorized and required to make when and as to them shall seem meet; and the said Quarries, and the Land adjoining, and to be set out, appointed, and annexed thereto, shall from and after such setting out and Appointment as aforesaid be and remain, and is and are hereby declared to be and remain, vested in the Lord for the Time being of the said Manor, in Trust only for the Purposes of this Act.

If Parties die before Accounts completed, the same shall not stop by reason thereof.

Ancient Messuages and Lands to be valued agreeably to the Land Tax Assessment.

XIV. And whereas all the Parochial and County Rates and Assessments within the said Manor and Township of *Nether Kellet* have, from Time whereof the Memory of Man runneth not to the contrary, and still are, rated, assessed, laid, levied, and collected in the same Proportion as the several ancient Messuages, Lands, Tenements, and Hereditaments within the same Manor and Township have been and are rated to the Land Tax; be it therefore enacted, That the said Commissioners shall (for the Purposes of the Allotment and Inclosure hereby intended) take and estimate the annual Value of the several ancient Messuages, Lands, Tenements, and Hereditaments within the said Manor of *Nether Kellet* at the same Rate and Proportion at which they were respectively rated and assessed to the Yearly Land Tax according to the Land Tax Assessment made for the Service of the Year One thousand seven hundred and ninety-eight; but the said Commissioners shall, according to the best of their Skill and Judgment, and in such Manner as to them shall appear just and right, and most proper for the Purposes of this Act, estimate, ascertain, and settle, and by Writing under their Hands set down and specify, the Value of the Right of Common of Pasture or Herbage to which every Owner or Proprietor of the ancient Messuages, Lands, Tenements, and Hereditaments within the said Manor of *Nether Kellet*, or any other Person or Persons, is or are respectively legally and fairly entitled in respect thereof or as appurtenant thereto, or otherwise, upon the said Tracts or Parcels of Moor, Common, and Waste Ground; and shall also in like Manner ascertain, settle, set down, and specify the proportionate Value, by the Acre or otherwise, of each of the Moss Dales, Flaw Dales, Sod Dales, and Bracken Dales respectively, and Rights of getting and taking Peatmoss or Turves, Flaws, Sods, and Brackens thereon, and all other Rights (if any) in or upon the said Tracts or Parcels of Moor, Common, and Waste Ground, or any of them, which shall have been admitted and proved according to the Intent and true Meaning of this Act; and shall also in like Manner ascertain, settle,

Allotment of Parcel of the Lands proper for public Stone Quarries.

Commissioners not to determine controversy to Possession.

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set down, and specify the Quantity and likewise the Value, by the Acre or otherwise, of all the other Parts of the said Tracts or Parcels of Moor, Common, and Waste Ground, according to the Nature and Situation of such Parts respectively.

Allotment to Mr. Lodge for a Dam.

XV. And whereas the said *Joshua Lodge* hath heretofore during the Winter Season penned and banked up the Water on the said Moor called *Nether Kellet Moor*, at or near to a Place there called *Swancliffe*, the Turbary or Soil whereof belongs to certain Owners of ancient Messuages within *Nether Kellet* aforesaid, in order the better to work and supply with Water a certain Corn Mill belonging to him the said *Joshua Lodge*, situate in the said Manor of *Nether Kellet*, called *Dunnel Mill*: And whereas the penning and banking up of the said Water as aforesaid, if it were to continue, would prevent the Allotment and Inclosure of the said Moor in as beneficial a Manner as would be effected if a Portion of Land were allotted unto the said *Joshua Lodge*, his Heirs and Assigns, for a Reservoir, Dam, or Penn for Water lower down upon the said Moor on the South-westerly Side thereof, near to certain ancient Inclosures there belonging to *Richard Loxham* of *Nether Kellet* aforesaid, Yeoman, which being upon a lower Level than *Swancliffe* Dam more Water might be drawn into it than at *Swancliffe*; it hath therefore been proposed and is intended that the said Reservoir, Dam, or Penn of Water, which hath been heretofore made and kept as aforesaid by the said *Joshua Lodge* or his Assigns upon the said Moor at or near to *Swancliffe* aforesaid, shall be removed and taken away, and that a Portion of Land shall be set out and allotted for a Reservoir or Dam instead thereof unto the said *Joshua Lodge*, his Heirs and Assigns, in Perpetuity, on the South-westerly Side of the said Moor near to the said Inclosures of the said *Richard Loxham*, and certain Drains to communicate therewith to draw and convey Water into the same from the adjacent Parts of the said Moor, and that the said Commissioners should have Power to alter and improve the lower Dam belonging to the said Mill in the Lands of the said *Richard Loxham*, in such Manner as they might think proper, so as to prevent the Water of the said Lower Dam from flowing over and damaging the Lands of the said *Richard Loxham*, in the Manner it hath heretofore done; be it therefore further enacted, That it shall and may be lawful for the said Commissioners and they are hereby authorized and required to remove and take away the said present Reservoir or Dam on the said Moor at or near to *Swancliffe* aforesaid, and to allot the Soil and Land in and under the same to such Person or Persons (Owners of Messuages or Lands in *Nether Kellet* aforesaid) and in such Manner as they shall think most just and equitable, and in lieu thereof that they the said Commissioners shall and they are hereby authorized and required to set out and allot unto and for the Use of the said *Joshua Lodge*, his Heirs and Assigns, in Fee Simple, a certain Portion or Parcel of Land, to contain Seven Statute Acres, at the South-westerly Side of the said Moor, near to the Inclosures of the said *Richard Loxham*, to be appropriated and used by the said *Joshua Lodge*, his Heirs and Assigns, as a Dam or Reservoir to the said Mill, or so that he the said *Joshua Lodge*, his Heirs and Assigns, may at any Time hereafter (after such setting out and Allotment thereof), if he or they shall think proper, convert the same into and use the same as Arable, Meadow, or Pasture Land, for his or their own private Use and Benefit; and that they the said Commissioners shall (if requested so to do by the said *Joshua Lodge*, his Heirs or Assigns, before the

Execution of their Award) make such and so many Drains, to communicate with the said Portion or Parcel of Land, so to be set out and allotted unto and for the Use of the said *Joshua Lodge*, his Heirs and Assigns, as aforesaid, as they may think proper and necessary to draw and convey the Water into the same, and to make and raise such an Embankment at the South-west End or Side of the said Portion or Parcel of Land, or within the Inclosures of the said *Richard Loxham*, as they may think necessary; and the said Commissioners are hereby also authorized and empowered to alter and improve the lower Dam or Reservoir belonging to the said Mill, in the Lands of the said *Richard Loxham*, and to make such Embankments therein, in such Manner as they may think proper and necessary, so as to confine and penn up the Water in the said intended new Reservoir, and to prevent the Water which may be in such lower Dam or Reservoir from flowing over and damaging the Lands of the said *Richard Loxham*, and that the Expence of making such Drains, Embankments, and Alterations shall be raised and levied by the said Commissioners in the same Manner as the Expences of passing this Act are herein-after directed and provided for.

Allotment to Alexander Butler Esquire, as Lord of the Manor.

XVI. And be it further enacted, That the said Commissioners after the said Public Quarry and the necessary Roads shall have been set out and ascertained shall and may and they are hereby authorized and required to set out, allot, and award unto the said *Alexander Butler*, his Heirs and Assigns, One full Twenty-fourth Part (Quantity, Quality, and Situation considered) of the said Tracts or Parcels of Moor, Common, and Waste Ground, hereby meant and intended to be inclosed, in Compensation and Satisfaction for his Right (except as herein-after is mentioned) in the Residue of the said Tracts or Parcels of Moor, Common, and Waste Ground respectively, and for his Consent to the Division and Inclosure of the same as Lord of the said Manor or Lordship of *Nether Kellet*.

Allotment of certain Quarries to the Lord of the Manor.

XVII. And be it further enacted, That the said Commissioners shall and they are hereby required to set out and allot unto the Lord of the Manor for the Time being, as and for Parcel of his said Twenty-fourth Part of the said Tracts of Moor, Common, and Waste Ground, the Surface and Ground of and occupied in the getting and working of the said several Stone Quarries called and known by the said Names of *Swine Cragg*, *Timpenny's Quarry*, *Mill Stone Quarry*, and *Swancliffe*, with a sufficient Quantity of the Ground lying immediately adjoining thereto, for the better enabling the Lord of the said Manor to get and work the Stones in and out of the said Quarries respectively.

Allotment of the Residue.

XVIII. And be it further enacted, That the said Commissioners shall and they are hereby authorized and required, after making such Deductions and Allotments as before mentioned, to divide, apportion, set out, and allot all the Residue and Remainder of the said Tracts or Parcels of Moor, Common and Waste Ground, and the Moss Dales, Flaw Dales, Sod Dales, and Bracken Dales thereon, hereby directed to be divided and inclosed, unto and among the said *Alexander Butler* and the several other Owners and Proprietors of Messuages and Lands, and other Persons having Common Right, Moss Dales, Flaw Dales, Sod Dales, Bracken Dales, or other Rights or Interests in or upon the said Tracts or Parcels of Moor, Common, and Waste Ground, only in exact Proportion to the yearly Land Tax according

according to the Land Tax Assessment made for the Service of the Year One thousand seven hundred and ninety-eight, paid or borne by the said several Owners and Proprietors in the said Township and Manor of *Nether Kellet.*

Purchasers of Rights of Common to stand in place of original Possessors.

XIX. And be it further enacted, That if any Person or Persons who shall be entitled to any Allotment or Allotments under or by virtue of this Act, or to any Right of Common or other Right upon the said Tracts or Parcels of Moor, Common, or Waste Ground, hereby directed to be inclosed, and who by Writing under his, her, or their Hand or Hands delivered to the said Commissioners previous to their making their said Award, shall give Notice of his, her, or their having sold or disposed of the same to any Person or Persons to be named in such Writing, and shall request the same to be set out and allotted to the Person or Persons who shall have purchased the same, then every such Sale or Disposition shall be of the same Force and Validity as if made after the Execution of the said Award, and it shall and may be lawful to and for the said Commissioners, and they are hereby authorized and required, to award all and every such Allotment and Allotments or other Rights so sold or disposed of to the Person or Persons entitled or intended to be entitled to the same by virtue of any such Sale or Disposition.

Leases at Rack Rent to be void.

XX. Provided also, and be it further enacted, That all and every Lease and Leases upon Rack Rent now subsisting, touching or in anywise affecting any Part or Parts of the Tracts or Parcels of Moor, Common, or Waste Ground to be inclosed by virtue of this Act as aforesaid, and all other Agreements for any Term or Terms therein, at Rack Rent, shall, as to any Allotment or Allotments of any Part of the said Tracts or Parcels of Moor, Common, or Waste Ground which are or shall be comprized in such Leases or Agreements, cease, determine, and be void at such Time or Times as the said Commissioners shall by any Writing under their Hands in that Behalf order and appoint, and such Allotment or Allotments shall be made and assigned unto the Landlord or Landlords, and not to the Tenant or Tenants, Lessee or Lessees, and such Allotment or Allotments shall be freed and discharged from all Right and Interest which may or otherwise might be claimed in or to the same by virtue of such Lease or Leases, and the respective Owners and Proprietors of the Premises in such respective Leases or Agreements shall make such Satisfaction and Compensation to the Lessee or Lessees, Tenant or Tenants, and at such Time or Times as the said Commissioners shall ascertain, direct, and appoint, as reasonable to be paid or made to such Lessee or Lessees, Tenant or Tenants, on account thereof, or as an Equivalent for the same; and if any Person or Persons shall refuse or neglect to make any such Compensation to the Person or Persons entitled thereto, on Demand, then and in such Case it shall and may be lawful to and for the said Commissioners and they are hereby authorized and required to raise and levy the same for the Use and Benefit of the Person or Persons entitled thereto by such Ways and Means as the Costs, Charges, and Expences of obtaining and executing this Act, or any Part thereof, can or may be raised and levied.

Exchanges.

XXI. And be it further enacted, That it shall and may be lawful to and for the said Commissioners to set out, allot, and award any Messuages, Buildings, Lands, Tenements, Hereditaments, new Allotments, or old Inclosures, within

within the Township of *Nether Kellet*, in lieu of or in exchange for any other Lands, Tenements, and Hereditaments whatsoever within the said Township, or within any adjoining Township or Place, so as that all such Exchanges be made with the Consent of the respective Owners, Proprietors, or other Persons, whether such Owners, Proprietors, or other Persons shall be a Body or Bodies Politic, Corporate, or Collegiate, or a Tenant or Tenants in Fee Simple, or in Fee Tail, General or Special, or by the Courtesy of *England*, or for Life or Lives, or for Years determinable on any Life or Lives, or with the Consent of the Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees, or Attornies as aforesaid, who at the Time of making such Exchange or Exchanges shall be respectively Infants, Femes Covert, Lunatics, or under any other legal Disability, or who shall be beyond the Seas, or otherwise incapable of acting for himself, herself, or themselves; such Consent to be testified in Writing under the Common Seal of the Body Politic, Corporate, or Collegiate, or under the Hands of the other consenting Parties respectively; and all and every such Exchange and Exchanges so to be made shall be good, valid, and effectual in the Law to all Intents and Purposes whatsoever: Provided nevertheless, that no Exchange shall be made of any Lands, Tenements, or Hereditaments held in Right of any Church or Chapel, or other Ecclesiastical Benefice, without the Consent (testified as aforesaid) of the Patron thereof, and of the Bishop of the Diocese in which such Lands, Tenements, or Hereditaments so to be exchanged shall lie and be situate.

Purchasers of Rights of Common to stand in place of original Possessors.

Leases at Rack Rent to be void.

XXII. Provided always, and be it further enacted, That all Costs, Charges, and Expences attending the making and completing any Exchanges and Partitions shall be paid and borne by the several Persons making such Exchanges and Partitions, or for whose Interest the same shall be made, in such Manner and in such Proportions as the said Commissioners shall order and direct.

Expences of Exchanges not to delay Inclosures.

XXIII. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to revoke, make void, alter, or annul any Will or Settlement, or to prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Portion, Debts, or Incumbrances upon or affecting any Parts of the said Tracts or Parcels of Moor, Common, or Waste Ground which shall be respectively allotted or exchanged by virtue of this Act, or any Part or Parts thereof respectively, but the Lands or Grounds, Allotments, Tenements, or Hereditaments which shall be allotted or exchanged under or by virtue of this Act shall be held to such and the same Uses, and for such and the same Estates, and subject to such and the same Wills, Jointures, Rents, Charges, Covenants, and Incumbrances, as the Lands and Grounds, Tenements and Hereditaments, for or in respect or in lieu of which 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 (except such Leases or Agreements as shall be determined by virtue of this Act).

This Act not to revoke or alter Wills.

XXIV. And be it further enacted, That all such Lands or Grounds or other Hereditaments as shall be allotted to any of the said Proprietors under or by virtue of this Act or the said recited Act shall be held by such Proprietors or other Person or Persons respectively under the same Tenure, and with

Allotments to follow the Tenures of ancient Estates.

with the same Immunities, Easements, and Privileges, as the Lands or Grounds or Hereditaments in respect of which such Allotments shall be made were respectively held and enjoyed at or immediately before the making of such Allotments.

Expences of the Act.

XXV. And be it further enacted, That all Costs, Charges, and Expences as shall or may have been incurred preparatory to or which shall or may be incurred in or about the applying for and obtaining and passing of this Act, as also all Costs, Charges, and Expences which shall or may have been incurred or which shall or may be incurred in surveying, measuring, planning, and allotting the said Tracts or Parcels of Moor, Common, or Waste Ground, and of setting out, forming, and making public and private Ways and Roads, and principal or sufficient Drains or Watercourses within the same, and for preparing and enrolling the Award of the said Commissioners and all other reasonable Expences and Charges of the said Commissioners and other proper and necessary Expences in the Execution of this Act, from Time to Time as the same shall respectively accrue, shall be paid and borne by the several Owners and Proprietors of Commonable Messuages, Lands, Tenements, and Hereditaments within the said Township of *Nether Kellet*, and other Persons entitled to Moss Dales, Flaw Dales, Sod Dales, and Bracken Dales, and other Rights and Interests in and upon the said Tracts or Parcels of Moor, Common, and Waste Ground intended to be hereby divided and inclosed, in such Proportion and in such Manner, and at such Time and Times, either before or after the Execution of the Award of the said Commissioners, as the said Commissioners shall direct or appoint.

Commissioners may sell Allotments of incapacitated Persons upon certain Conditions.

XXVI. And be it further enacted, That it shall and may be lawful for the said Commissioners, on Application being made to them in Writing by the Husbands, Guardians, Trustees, Committees, or Attornies of any of the said Owners or Proprietors, being under Coverture, Minors, Lunatics, beyond the Seas, or under any other Disability, or by any of the said Owners or Proprietors, being Tenants in Tail and for Life or Lives, or for any other Contingency, to sell and absolutely dispose of any Part or Parts of the said Allotments belonging to such incapacitated Persons, for the Purpose of defraying his, her, or their Proportion of the Charges and Expences of passing this Act, and carrying the same and the said recited Act into execution, or of the Expences such Owner or Proprietor as last aforesaid may be put to in fencing, inclosing, and subdividing his, her, or their Allotment or Allotments: Provided always, that it shall not be lawful to raise by such Sale any further or greater Sum of Money than the Person or Persons, Part of whose Allotment or Allotments shall be so sold or disposed of, would have been empowered and authorized to borrow upon or charge his or her Estate or Estates with, under, and by virtue of the said recited Act, nor shall the said Commissioners be hereby authorized or empowered to sell any Part of the Allotment or Allotments of any Person or Persons who shall have borrowed any Money by virtue of the said recited Act and this Act.

Money advanced to be repaid with Interest.

XXVII. And be it further enacted, That if any of the Proprietors or Persons interested in the Execution of this Act, or any other Person or Persons on the Behalf of them or any of them, shall have advanced and paid or shall advance

advance and pay any Money in the Discharge of the Fees or other Expences preparatory to or of obtaining or executing this Act, the Money so paid and advanced shall be repaid and satisfied by the Direction of the said Commissioners, together with lawful Interest for the same, out of the first or any other Monies that shall or may be raised for the Purposes of this Act.

Commissioners Allowance.

XXVIII. And be it further enacted, That the said Commissioners and Umpire shall bear and pay their own Expences (except the Money they shall pay to Servants and for the Room or Rooms wherein their Meetings shall be held); and that out of the Money which shall be raised for defraying the Expences of obtaining, passing, and executing this Act, they the said Commissioners and Umpire shall be paid and allowed the Sum of Two Guineas and no more for each and every Day to be by them respectively employed in or about the putting this Act in execution.

Commissioners Account to be annually passed before Justices.

XXIX. And be it further enacted, That once at least in each and every Year during the Execution of this Act, (such Year to be computed from the passing thereof,) the said Commissioners shall and they are hereby required to make a true and just Statement or Account of all Sums of Money by them received and expended or due to them for their own Trouble and Expences in the Execution of this Act; which Statement or Account when so made, together with the Vouchers relating thereto, shall be by them laid before any Two Justices of the Peace for the County of *Lancaster*, 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 Commissioners; and no Charge or Item in such Accounts shall be binding on the Parties concerned or valid in Law unless the same shall have been duly allowed by such Justices.

Penalty on Persons getting Flaws, Turves, &c. from the Moor.

XXX. And be it further enacted, That if any Person or Persons whomsoever shall at any Time or Times after the passing of this Act, by himself, herself, or themselves, or by his, her, or their Servants or Workmen, dig, delve, or break up, or take, lead, or carry away, or cause or procure to be dug, delved, broken up, gotten, or taken, led or carried away, any Flaws, Turves, or Peats, or any Sods, Earth, Ground, or Soil whatsoever, in, upon or from the said Moors, Commons, or Waste Grounds to be inclosed under or by virtue of this Act or any Part thereof, (except such Part or Parts thereof as may be allotted or become the Property of him, her, or them respectively under or by virtue of this Act,) or shall put or turn, or cause or suffer to be put or turned, any Horses, Cows, Sheep, or other Cattle into or upon the same Moors, Commons, or Waste Grounds, for the Space of Twelve Calendar Months after the passing of this Act, (unless the said Commissioners shall by Notice under their Hands, to be published in the *Lancaster Gazette*, allow of the same sooner,) every such Person so offending shall for every such Offence, upon being duly convicted thereof before any One of His Majesty's Justices of the Peace in and for the said County of *Lancaster*, upon the Information and Complaint of the said Lord of the said Manor for the Time being, his Steward or Agent, or if any other Person or Persons interested in the the said Inclosure hereby intended, by the Oath or solemn Affirmation of One credible Witness (which Oath or Affirmation the said Justice is hereby authorized and required to administer), forfeit and pay such Penalty or Sum of Money not exceeding the Sum of Ten Pounds (over and besides the Costs and Charges of such Conviction) as the said Justice

Justice so acting in the Premises shall in that Behalf adjudge, order, and direct, which said Penalties and Forfeitures, with the Costs and Charges of recovering the same, shall forthwith upon every such Conviction as aforesaid become and be payable and paid to such Person or Persons, to be by him or them applied for the Purposes of this Act, in such Manner as the said Justice so as aforesaid acting in the Premises shall in that Behalf appoint; and upon Nonpayment of any such Penalty or Forfeiture the same shall be levied by Distress and Sale of the Goods and Chattels of the Offender or Offenders by Warrant under the Hand and Seal of such Justice as aforesaid, rendering the Overplus, if any, after making such Deductions as aforesaid, together with the Costs and Charges of such Warrant and Distress, to the Owner or Owners of such Goods and Chattels when thereunto required; and for Want of sufficient Distress it shall and may be lawful to and for the said Justice so acting as aforesaid, by Warrant under his Hand and Seal, to commit such Offender or Offenders to His Majesty's Gaol the Castle of *Lancaster*, or to any House of Correction in and for the said County of *Lancaster*, there to remain without Bail or Mainprize for any Time not exceeding Three Calendar Months at the Discretion of such Justice, as the Case may be, unless he or they shall sooner pay the Penalties or Forfeitures and Costs.

One Part of the Award to be deposited in Bolton Church, and the other with the Prothonotary of the Common Pleas at Lancaster.

XXXI. And be it further enacted, That the general Award to be made by the said Commissioners pursuant to the before-mentioned Act of the Forty-first Year of His present Majesty, and the Maps or Plans explanatory of the same, and also every such Award as shall be made by the Commissioners touching any Claim or Claims to be determined as aforesaid, and counter Parts of the same respectively, (to the end that the same may be preserved and recourse had thereto by any Body Politic or Corporate, or any Person or Persons whomsoever,) shall be duly made out, executed, and perfected; one Part of which said Awards, Maps, or Plans shall, before or at the Expiration of Six Calendar Months next after the making and perfecting thereof by the said Commissioners, be put into a proper Box to be provided by them for that Purpose, and deposited in the Parish Church of *Bolton by the Sands* aforesaid, and there be kept and remain at all Times thereafter for ever, and for the Inspection thereof the Sum of Five Shillings, and no more, shall be paid to the officiating Minister of the said Church for the Time being; and the other Part of the said Awards, Maps, or Plans shall, at the Assizes to be holden at *Lancaster* aforesaid, and next ensuing the Execution of the said general Award by the said Commissioners, be by the said Commissioners delivered to and deposited with the Prothonotary of His Majesty's Court of Common Pleas at *Lancaster*, or his Deputy, to be by him kept amongst the Records of the said Court of *Lancaster* aforesaid, and the said Prothonotary or his Deputy is hereby required and empowered to receive and keep the same accordingly; for or in respect of which said last-mentioned depositing and keeping such Awards, and Maps or Plans, the Sum of Twenty Shillings shall be paid, and no more, and for every Inspection thereof, after the same shall have been so deposited, the Sum of Five Shillings and no more shall be paid to the said Prothonotary or his Deputy; and such respective Awards, and the Maps or Plans to be annexed thereto as aforesaid, or a true Copy of such Awards, Maps, or Plans, or any Part thereof, on Papers stamped according to Law for Copies of Records, and signed by the said Prothonotary or his Deputy, purporting to be a true Copy, shall be admitted and allowed as

Saving Manorial Rights

legal Evidence in all Courts whatsoever; and the said Prothonotary or his Deputy is hereby required to make and deliver unto any Person or Persons, Body Politic or Corporate, requesting and offering to pay for the same, a true Copy of the said Awards, Maps, or Plans, or any of them, or any Part thereof, for which he shall be paid by the Person or Persons, Bodies Politic or Corporate requesting the same, after the Rate of Twopence for every Sheet of the said Awards so copied, counting Seventy-two Words to each Sheet; and a reasonable Allowance shall also be paid to him besides for a Copy or Copies of such Maps or Plans, or any Part thereof.

Appeal to Quarter Sessions.

XXXII. And be it further enacted, That if any Person or Persons shall think himself, herself, or themselves aggrieved by any thing done in pursuance of this Act or of the before-mentioned Act, (other than and except such Orders and Determinations of the said Commissioners as are herein or by the said Act of the Forty-first Year of His present Majesty directed to be final and conclusive, and excepting such Cases wherein an Issue at Law shall be tried as herein mentioned,) then and in 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 *Lancaster*, within Three Calendar Months next after the Cause of Complaint shall have arisen, on giving the said Commissioners and the Party concerned Ten Days Notice in Writing of such Appeal, in which Notice shall be distinctly stated and specified the Ground or Grounds, Cause or Causes of such Appeal; and the Justices, not interested therein, at such General Quarter Sessions, are hereby authorized and required to hear and determine the Matter of every such Appeal, and to make such Order and award such Costs and Damages as to them shall seem reasonable, and by their Order and Warrant to levy the Costs and Damages which shall be so awarded by Distress and Sale of the Goods and Chattels of the Party or Parties liable to pay the same, rendering the Overplus, if any, to the Owner or Owners of such Goods and Chattels, deducting the reasonable Charges of such Warrant, Distress, and Sale; and the Determination of such Justices shall be final and conclusive to all Parties, and shall not be removed by Certiorari, or any other Writ or Process, into any of His Majesty's Courts of Record at *Westminster* or elsewhere; but in case such Appeal shall appear to the said Justices to be frivolous, vexatious, or without Foundation, then the Justices shall award such Costs to be paid by the Appellant or Appellants as to them shall seem reasonable, and to be levied in manner aforesaid.

One Part of the Award to be deposited in Bolton Church, and the other with the Prothonotary of the Common Pleas at Lancaster.

Saving Manorial Rights.

XXXIII. And be it further enacted, That nothing herein contained shall extend or be construed to extend to defeat, lessen, or prejudice the Right, Title, or Interest of the said *Alexander Butler*, or the Lord or Lords, Lady or Ladies of the said Manor of *Nether Kellet* for the Time being, of, in, and to any Quit Rents, Chief Rents, Fee Farm Rents, or other Rents now payable to the said *Alexander Butler*, or of or to the Seignory and Royalty incident and belonging to the said Manor; but that the said *Alexander Butler*, and all and every Person and Persons claiming or to claim by, from, under, or in Trust for the Lord or Lords, Lady or Ladies of the said Manor, shall and may from Time to Time and at all Times for ever hereafter, hold and enjoy all Rents, Services, Courts, Perquisites, and Profits of Courts, Peculiars, Deodands, Waifs, Estrays, Forfeitures, and all other Royalties, Jurisdictions, Privileges, Pre-eminences, and Appurtenances whatsoever to the said Manor incident, appendant, belonging, or appertaining,

taining, (other than and except such Immunities, Easements, Privileges, and Advantages of and in the said Tracts or Parcels of Moor, Common, and Waste Ground as are meant and intended to be barred and extinguished by this Act,) in as full, ample, and beneficial a Manner to all Intents and Purposes as the said *Alexander Butler*, or the Lord or Lords, Lady or Ladies of the said Manor or Lordship of *Nether Kellet* for the Time being, could or might have held and enjoyed the same respectively in case this Act, or the said intended Division and Inclosure, had not been made.

General Saving.

XXXIV. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and to all and every Person and Persons, Bodies Politic and Corporate, his, her, and their Successors, Executors, and Administrators, (other than and except the several Persons, Bodies Politic and Corporate, to and amongst whom the said Moors, Commons, and Waste Lands shall be allotted and divided in pursuance of this Act,) all such Right, Title, and Interest (other than and except such as are hereby intended to be barred and destroyed,) as they, every or any of them, had and enjoyed of, in, to, or out of the said several Tracts or Parcels of Moor, Common, and Waste Lands at the Time of passing this Act, or could or might have had or enjoyed in case this Act had not been made.

Act to be printed by the King's Printer.

XXXV. 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 SPOTTISWOODE,
Printers to the King's most Excellent Majesty. 1834.