ANNO QUADRAGESIMO SEXTO

GEORGII III. REGIS.

Cap. 108.

An Act for inclosing Lands in the Manor of *Newby*, in the County of *Westmorland*. [3d *July* 1806.]

WHEREAS there are within the Manor or Townſhip of *Newby*, in the Pariſh of *Morland*, in the County of *Weſtmorland*, ſeveral Open Commons and Waſte Grounds, containing by Eſtimation One thouſand Acres, or thereabouts; and alſo Two Common Stinted Paſtures, called *Newby High Paſture* and *Newby Low Paſture*, containing together by Eſtimation Three hundred Acres, be the ſame more or leſs: And whereas the Right Honourable *William* Viſcount *Lowther* is Lord of the Manor and Owner of the Soil of the ſaid Open Commons and Waſte Grounds, and of the ſaid Common Stinted Paſtures, and of the Coal Mines, Veins, and Seams of Coal, and other Mines and Minerals therein: And whereas the Right Worſhipful the Dean and Chapter of the Cathedral Church of *Saint Mary Carliſle*, in the County of *Cumberland*, are Patrons of the Vicarage, Pariſh, and Pariſh Church of *Morland* aforeſaid, of which the ſaid Manor or Townſhip of *Newby* is Parcel, and as ſuch entitled to all the Tythes of Corn, Grain, Hay, and all other Great Tythes ariſing, renewing, and growing due within the ſaid Manor or Lordſhip; and the Reverend *John Jackſon* is the preſent Vicar and Incumbent thereof, and entitled to the Glebe Lands, and all Small Tythes, Moduſes, and Eccleſiaſtical Dues whatſoever, ariſing and growing due within the ſaid Manor or Townſhip of *Newby*; and the ſaid *William* Viſcount *Lowther* is, by virtue of a Leaſe or Demiſe from the ſaid Dean and Chapter, entitled to all the Tythes of Corn, Grain, Hay, and all other Great Tythes ariſing, renewing, and growing due within the ſaid Manor or Lordſhip, for the

Remainder of a Term of Twenty-one Years yet to come and unexpired: And whereas an Act was 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*: And whereas it would be of great Advantage to the several Owners and Proprietors of and Persons interested in the said Commons, Moors, and Waste Grounds, and the said Common Stinted Pastures, if the same were divided and inclosed, and specific Parts thereof allotted unto and amongst the several Persons interested therein, according to their respective Rights, Shares, and Interests: 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 *Robert Lumb* of *Lowther*, in the County of *Westmorland*, and *John Todd* of *Kendal* in the said County of *Westmorland*, Gentlemen, and their Successors, to be nominated in Manner herein-after mentioned, shall be and they are hereby appointed Commissioners for setting out, dividing, allotting, and inclosing the said Commons, Moors, and Waste Grounds, and also the said Common Stinted Pastures, and for carrying this Act into Execution subject to the Rules, Orders, and Directions in the above mentioned Act, and hereinafter mentioned.

Appointment of Commissioners.

Appoinment of other Commissioners.

II. And be it further enacted, That if either of the said Commissioners appointed by this Act, or who shall be nominated in Manner herein-after mentioned, shall, before the Execution of the Powers and Authorities hereby in them respectively vested, die, or refuse to act, or without some reasonable Cause neglect to attend a Meeting for putting this Act into Execution, for the Space of Two Calendar Months after he shall have received Notice from any Person interested in the said Inclosure of the passing this Act, or requiring him to attend as a Commissioner, a new Commissioner shall be nominated in Manner following; that is to say, if the said *Robert Lumb* shall die, or refuse to act, or neglect to attend as aforesaid, it shall be lawful for the said *William* Viscount *Lowther*, his Heirs or Assigns, by any Writing under his or their Hand or Hands, to appoint one other Commissioner, not interested in the said Inclosure, in the Room of the said *Robert Lumb*, and so from Time to Time as often as any Commissioner so to be appointed by the said *William* Viscount *Lowther*, his Heirs or Assigns as aforesaid, shall die, refuse to act, or neglect to attend as aforesaid; and in case the said *John Todd* shall die or refuse to act, or neglect to attend as aforesaid, it shall and may be lawful for the Majority in Value (to be ascertained by the Rate for the Relief of the Poor) of the Proprietors or Persons interested in the Lands and Grounds directed by this Act to be divided and inclosed, or their Agents, to be appointed by Writing under their respective Hands for such Purpose, or their known Agents or Attornies (except the said *William* Viscount *Lowther*) who shall be present at a publick Meeting to be held for that Purpose in the Parish Church of *Morland* aforesaid, in pursuance of a Notice to be given in the said Church, or by Writing to be affixed upon the most publick outer Door of the said Church, and also in some Newspaper usually published or circulated in the said County of *Westmorland*, at least Twenty-one Days before such Meeting, by Writing under

under their Hands, to appoint one other Commiſſioner, not intereſted in the ſaid Incloſure, in the Room of him the ſaid *John Todd*, and ſo from Time to Time as often as any Commiſſioner to be appointed by the ſaid Proprietors as aforeſaid, ſhall die, refuſe to act, or neglect to attend as aforeſaid; and in caſe the ſaid *William* Viſcount *Lowther*, his Heirs or Aſſigns, or the ſaid Proprietors or either of them reſpectively, ſhall make Default in appointing any new Commiſſioner, ſo directed to be appointed by him and them as aforeſaid, within Two Calendar Months after the Death of any Commiſſioner, or his Refuſal to act, or Neglect of Attendance ſhall be known, then the ſurviving Commiſſioner ſhall and he is hereby required from Time to Time by Writing under his Hand, within One Calendar Month next after the Expiration of the ſaid Two Calendar Months allowed to the reſpective Parties and Perſons for naming ſuch new Commiſſioner by him or them reſpectively as aforeſaid, to appoint One other Commiſſioner, not intereſted in the ſaid Incloſure, in the Room of every ſuch Commiſſioner ſo dying, refuſing to act, or neglecting to attend as aforeſaid; and every Commiſſioner ſo to be appointed, ſhall have the like Power and Authority as the Commiſſioner in whoſe Place he ſhall be appointed, was veſted with by virtue of this Act.

Allowance to Commiſſioners.

III. And be it further enacted, That the ſaid Commiſſioners and Umpire ſhall be each reſpectively paid the Sum of One Pound Eleven Shillings and Sixpence and no more, for all their Trouble and the Expences which they ſhall incur on each and every Day that they ſhall reſpectively be employed in travelling to, returning from, and attending on the Execution of this Act; and alſo the further Sum of One Pound Eleven Shillings and Sixpence unto each and every Commiſſioner, for his Trouble and Expence on each and every Day that he ſhall attend, or be engaged or employed for the Purpoſe of enquiring into, examining Witneſſes, ſettling and determining any objected or diſputed Claims, or any other Diſputes or Differences which ſhall or may ariſe or happen touching or concerning the ſaid Diviſion or Incloſure, and hereby referred to the ſaid Commiſſioners, the ſaid Sum of One Pound Eleven Shillings and Sixpence to be paid by the Perſon or Perſons againſt whom the Award of the ſaid Commiſſioners ſhall be made, in caſe of a Reference to them as herein-before expreſſed: Provided always, that the ſaid Proprietors or Perſons intereſted in the ſaid Diviſion and Incloſure, their Agents and Attornies, ſhall pay their own Expences, when they or any of them ſhall attend the ſaid Commiſſioners in the Execution of this Act.

Proprietors to pay their own Expences.

For appointing an Umpire.

IV. Provided always, and be it further enacted, That in caſe the ſaid Commiſſioners 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 Judgement and Determination of an Umpire, to be choſen by the ſaid Commiſſioners; and in caſe the ſaid Commiſſioners ſhall for the Space of Fourteen 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-

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 Judgement and Determination of such Umpire, so to be chosen or nominated and appointed, shall be conclusive between the said Commissioners, who shall in every such Case act conformably thereto.

Umpire to take an Oath.

V. 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),

Oath.

'I DO swear, That I will faithfully, impartially, and honestly, according 'to the best of my Skill and Judgement, execute and perform the 'several Powers and Authorities vested and reposed in me as an Umpire, 'by virtue of an Act, passed in the Forty-sixth Year of the Reign of 'King *George* the Third, intituled, [*here insert the Title of this Act*] ac- 'cording to Equity and good Conscience, and without Favour or Affec- 'tion, Prejudice or Partiality, to any Person or Persons whomsoever.

'So help me GOD.'

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.

Commissioners to appoint Surveyors.

VI. And be it further enacted, That it shall be lawful for the said Commissioners, and they are hereby authorized and empowered, when and as to them shall seem meet, to appoint such and so many Persons as they shall think proper or necessary, to be Surveyors or Assistants to such Surveyors for the Purposes of the said intended Division and Inclosure, or to survey and admeasure the same themselves, and from Time to Time to displace and remove any such Person or Persons so to be appointed, and to appoint any other Person or Persons in the Room, Place, and Stead of any such Surveyor or Surveyors, Assistant or Assistants, so to be displaced and removed, and to make such Surveyor or Surveyors, Assistant or Assistants, such Recompence for their respective Labour, Skill, and incidental Expences, as to the said Commissioners shall appear just and reasonable.

Notice to be given of the first Meeting.

VII. And be it further enacted, That the said Commissioners shall and they are hereby required to cause publick Notice to be given in some Newspaper usually circulated in the said County of *Westmorland*, and also in the said Parish Church of *Morland*, or by affixing a Notice in Writing upon the principal outer Door of the said Church of *Morland*, upon some *Sunday* during or immediately before or after Divine Service, of the Time and Place of their first Attendance, or beginning to put this Act into Execution, and also of all such other Times and Places as they shall appoint for the Purpose of receiving, adjusting, and settling the Claims, Rights, Shares, and Proportions of any Person or Persons interested in the said Commons, Moors, and Waste Grounds, and also in the said Commons,

Common Stinted Paſtures, hereby directed to be divided and incloſed, or for any other Purpoſe whatſoever, which ſhall or may require the Attendance of any Perſon or Perſons intereſted in the ſaid Diviſion and Incloſure, ſo as that the Place of every ſuch Attendance or Meeting be within Five Miles of *Newby* aforeſaid, and that Fourteen Days previous Notice be given thereof (Meetings by Adjournment only excepted.)

Other Notices how to be given.

VIII. Provided always, and be it further enacted, That all other Notices of Meetings of the ſaid Commiſſioners, requiſite or neceſſary to be given, and not herein otherwiſe directed, ſhall be ſo given by them in ſome Newſpaper uſually publiſhed or circulated in the ſaid County of *Weſtmorland*.

Encroachments made within Twenty Years to be deemed Common.

IX. And be it further enacted, That all Encroachments which ſhall have been made upon any of the Commons and Waſte Lands, or the ſaid Common Stinted Paſtures, intended by this Act to be divided and incloſed, within the Space of Twenty Years next before the paſſing of this Act, without any legal Grant or Authority for that Purpoſe, 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 the Receipt of the Rents and Profits thereof, as the Whole or Part of the Share or Portion of the Commons or Waſte Lands to which ſuch Perſon or Perſons will be entitled unto by virtue of this Act, without conſidering the Value of any Erection thereon or Improvement made thereto.

Commiſſioners to ſettle Diſputes.

X. 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 hereby directed to be made, touching or concerning the Right of the Soil of the ſaid Commons, Moors, and Waſte Grounds, and alſo of the ſaid Common Stinted Paſtures, or any Part or Parts thereof, or touching or concerning the reſpective Rights and Intereſts therein, which they or any of them ſhall or may have or claim to have in or to ſuch Commons, Moors, and Waſte Grounds or Common Stinted Paſtures, or touching or concerning any other Matter or Thing relating to the ſaid Diviſion and Incloſure, it ſhall be lawful for the ſaid Commiſſioners to examine into, hear, and determine the ſame; provided that no Determination of the ſaid Commiſſioners or Umpire, ſhall exclude any Perſon from trying and aſcertaining his Right at Law or in Equity, in reſpect of the Title to any of the Shares or Allotments of the ſaid Commons, Moors, and Waſte Grounds, or of the ſaid Common Stinted Paſtures, intended to be divided by virtue of this Act, ſo that no ſuch Trial or any Judgement thereupon ſhall ſuſpend or impede the Execution of this Act, and provided that nothing herein contained ſhall authorize the ſaid Commiſſioners or Umpire to determine the Title to any Meſſuages, Cottages, Lands, or Hereditaments whatſoever.

Commiſſioners to award Coſts.

XI. 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, ſee Cauſe to award any Coſts, it ſhall be lawful for the ſaid Commiſſioners, and

and they are hereby empowered, upon Application made to them for that Purpose, peremptorily, and forthwith to tax such Costs and Charges as they shall think reasonable, to be paid to the Party or Parties in whose Favour the Determination of the said Commissioners shall be made, by the Person or Persons whose Claim or Claims, Objection or Objections, shall be thereby disallowed or overruled; 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 upon Demand, then and in such Case it shall be lawful for the said Commissioners, and they are hereby authorized and required, by Warrant under their Hands and Seals, to direct 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 so neglecting or refusing to pay the same, rendering the Overplus (if any) upon Demand, to the Person or Persons whose Goods and Chattels shall be distrained and sold, after deducting the Costs and Charges attending such Distress and Sale.

Parties may try their Right by an Issue at Law.

And Provided always, and be it further enacted, That in case any Person or Persons interested or claiming to be interested in the said intended Division and Inclosure, shall be dissatisfied with any Determination of the said Commissioners or Umpire, touching or concerning any Claim or Claims of the Right to the Soil of the said Commons, Moors, and Waste Grounds, or the said Common Stinted Pastures, or of any Rights of Common, or other Rights or Interests in, over, or upon the said Commons, Moors, and Waste Grounds, or upon the said Common Stinted Pastures hereby directed to be divided, allotted, and inclosed, or any Part thereof, it shall be lawful for the Person or Persons so dissatisfied, to proceed to a Trial at Law of the Matter so determined by the said Commissioners, at the next or at the following Assizes to be holden for the said County of *Westmorland*, and for that Purpose the Person or Persons who shall be dissatisfied with the Determination of the said Commissioners or Umpire, shall cause an Action to be brought upon a feigned Issue, against the Person or Persons in whose Favour such Determination shall have been made, within Two Calendar Months next after such Determination of the said Commissioners or Umpire; 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, 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 such 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 binding upon all Persons and Bodies Politick and Corporate whomsoever, unless the Court wherein such Action or Actions shall be brought, shall set aside such Verdict or Verdicts, and order a new Trial or new Trials to be had, which it shall be lawful for the Court to do, and also upon sufficient Cause shewn to put off the Trial of such Issue as is usual in other Cases; and that after such Verdict or Verdicts shall be obtained and not set aside by the Court, the said Commissioners shall and they are hereby empowered to act in conformity thereto: Provided always, that if any of the Parties in any Action to be brought in pursuance of this Act shall die pending the

If any of the Parties die, Proceedings not to abate.

the ſame, ſuch Action ſhall not abate by reaſon thereof, but ſhall be proceeded in as if ſuch Event had not happened.

Power to ſell Common Rights, ſeparate from other Property.

XIII. And be it further enacted, That it ſhall be lawful for any of the Perſons entitled to Right of Common upon the ſaid Commons, Moors, and Waſte Grounds hereby directed to be divided, allotted, and incloſed, to ſell and diſpoſe of his, her, or their Right, Share, or Intereſt in ſuch Commons, Moors, and Waſte Grounds, ſeparate and apart from the Property to which ſuch Right or Intereſt is appurtenant; and that the ſaid Commiſſioners ſhall and may award the Allotments to be made in lieu of the Right of Common ſo ſold and diſpoſed of, to the Purchaſer or Purchaſers thereof reſpectively, having received a Requeſt in Writing ſo to do, ſigned by the Owners or Proprietors of ſuch Rights of Common, in the Preſence of one or more credible Witneſs or Witneſſes; and that ſuch Purchaſer ſhall hold and enjoy the ſame unto him, his Heirs and Aſſigns for ever, any Law to the contrary thereof notwithſtanding.

Allotments for publick Watering Places, Gravel Pits, and for getting Sand, and for Stone Quarries.

XIV. And be it further enacted, That the ſaid Commiſſioners ſhall and they are hereby authorized and empowered in the firſt Place to aſſign, ſet out, and allot unto the Surveyors of the Highways within the Township or Manor of *Newby* aforeſaid, for the Time being, ſuch Part or Parts of the ſaid Commons and Waſte Grounds, and Common Stinted Paſtures ſo to be divided by them as aforeſaid, as they ſhall think fit and neceſſary, to be uſed as and for public watering Places for Cattle, and for getting Sand, and alſo for getting Gravel for making and repairing of the Roads to be made over the ſaid Common and Waſte Grounds, and the ſaid Common Stinted Paſtures, and alſo to be uſed as and for a Common Stone Quarry or Stone Quarries; and the ſaid Allotments when ſet out, ſhall for ever thereafter be uſed by the Surveyors of the Highways of the ſaid Townſhip for the Time being, and by the Owners and Proprietors of Meſſuages, Lands, and Tenements within the Manor of *Newby* aforeſaid; and the Proprietors of the ſaid Commons and Waſte Grounds, and Common Stinted Paſtures, ſhall have free Liberty of getting Stone therein for their own Uſe and Benefit, but not to ſell and diſpoſe thereof; and that it ſhall be lawful for the ſaid Commiſſioners to ſet out Roads to and from the ſaid Stone Quarries for publick Uſe and Benefit.

Allotment to the Dean and Chapter, in lieu of Great Tythes of Common.

XV. And be it further enacted, That after the ſaid Allotments ſhall be ſo made as aforeſaid, the ſaid Commiſſioners ſhall and they are hereby required and empowered, by and with the Conſent in Writing of the Lord or Lady of the ſaid Manor of *Newby* for the Time being, and of a Majority of the ſeveral Perſons having Right of Common on the ſaid Commons and Waſte Grounds, and of the ſaid Dean and Chapter and their Leſſee, or other Perſon or Perſons entitled to the Tythes of Corn, Grain, Hay, and all other Great Tythes ariſing and growing due, or which hereafter might ariſe and become due, for and in reſpect of the ſaid Commons and Waſte Grounds ſo to be divided and incloſed as aforeſaid, to ſet out, allot, and aſſign unto the ſaid Dean and Chapter or their Succeſſors, or other Perſon or Perſons entitled to ſuch Tythes as aforeſaid, ſuch Quantity, Part, or Portion of the ſaid Commons and Waſte Grounds, as the ſaid Commiſſioners ſhall adjudge to be a full Equivalent and Compenſation for and in lieu of ſuch Tythes, which ſaid Quantity, Part, or Portion ſhall be accepted by and veſted in the ſaid Dean and Chapter and their Succeſſors,

for

for ever, in lieu of and as a full Satisfaction and Compensation for the Tythe of Corn, Hays and all Manner of other Great Tythes, Modules, Payments, Claims, and Demands whatsoever, arising, renewing, or growing due or payable, or which would, could, or might become due or payable, or to which they or their Successors are, can, might, or could be entitled to, from, and out of, or for or in respect of all and every or any Part of the Commons and Waste Grounds within the said Manor of *Newby*, the same being well and sufficiently cast, ring-fenced, and planted with Quicksets, and defended by a sufficient Hedge or Fence, according to the usual and accustomed Method of fencing, by and at the Expence of the said *William* Viscount *Lowther* and the Land Owners and other Persons interested in the Division and Inclosure of the said Commons and Waste Grounds, and with the Money arising from the Sale of Part of the said Commons and Waste Grounds as hereinafter mentioned, which said Allotment, Part, or Parcel shall be accepted by and vested in the said Dean and Chapter and their Successors, for ever, in lieu of and as a full Compensation and Satisfaction for all the Tythes of Corn, Grain, Hay, and all Manner of other Great Tythes, Modules, Payments, Claims, and Demands whatsoever, arising, renewing, or growing due to the said Dean and Chapter or their Successors, or their said Lessee or any of them, for and in respect of the said Commons and Waste Grounds to be divided and inclosed within and throughout the whole Manor of *Newby* aforesaid.

Commissioners to sell Lands for Payment of Expences, &c.

XVI. And be it further enacted, That the said Commissioners shall and they are hereby empowered from Time to Time, when they shall think proper, to sell, in the Manner directed or prescribed by the said recited Act, such Part or Share of the said Commons and Waste Grounds to be divided and inclosed, as shall be necessary to raise a sufficient Sum for defraying the Charges of obtaining this Act, and attending the Division of the said Commons, Moors, and Waste Grounds, and Common Stinted Pastures, and of calling, ring fencing, and planting with Quicksets the Allotments by this Act directed to be set out and allotted unto the said Dean and Chapter and their Lessee, in lieu of Tythes as herein-before and herein-after mentioned, and carrying this Act into full Execution, as herein in all Respects to the Rules and Regulations in the said recited Act mentioned; but if the Money to be raised by such Sale or Sales shall not be sufficient to answer the Purposes aforesaid, then the Deficiency therein shall be raised and paid by the Proprietors of the several Allotments of the said Commons and Waste Grounds, and Common Stinted Pastures, in Proportion to the Value of such their respective Allotments, to be ascertained by an Assessment or Assessments to be made for that Purpose by the said Commissioners.

Allotment of One-sixteenth Part of the Common to the Lord of the Manor.

XVII. And be it further enacted, That the said Commissioners shall and they are hereby authorized and required in the next place, out of the Residue and Remainder of the Commons and Waste Grounds hereby intended to be divided and inclosed, to set out, allot, and appoint unto and for the said *William* Viscount *Lowther* and his Heirs, One-sixteenth Part in Value of the said Commons and Waste Lands, Quantity and Quality considered, to be awarded and allotted to him for his Right to the Soil of the said Commons and Waste Lands hereby intended to be divided and inclosed.

XVIII. And

Allotment in lieu of Tythes of ancient inclosed Ground.

XVIII. And be it further enacted, That the said Commissioners shall and they are hereby authorized and required in the next place, having first obtained the like Consent in Writing as herein-before mentioned and specified, to set out, allot, and appoint unto and for the said Dean and Chapter and their Successors, such Parcel of the said Commons and Waste Grounds, as shall in the Judgement of the said Commissioners be a full Equivalent and Compensation for and in lieu of the Tythes of Corn, Grain, Hay, and all other Great Tythes arising, renewing, and growing due, from and out of the ancient inclosed Lands and Common Stinted Pastures within the said Manor of *Newby*; which said Allotment, Part, or Portion so to be made to the said Dean and Chapter and their Successors, or their Lessee, shall be in lieu of and as a full Compensation for all Tythes of Corn, Grain, Hay, and all Manner of other Great Tythes, Modules, Payments, Claims, and Demands whatsoever, arising, renewing, due, or payable, or which would, could, or might become due or payable, or to which they or their Successors are, may, can, might, or could be entitled to, from, and out of, or for or in respect of all and every or any of the ancient Messuages, Tenements, and inclosed Lands, and also the said Common Stinted Pastures, hereby intended to be divided and inclosed within the said Manor or Township of *Newby* aforesaid, the same being well and sufficiently cast and planted with Quicksets, and defended by a sufficient Hedge or Fence, according to the usual and accustomed Method of fencing, to the Satisfaction of the said Commissioners.

Allotment to the Vicar in lieu of Small Tythes.

XIX. And be it further enacted, That the said Commissioners shall and they are hereby authorized and required in the next Place, out of the Residue and Remainder of the said Commons and Waste Grounds hereby intended to be divided and inclosed, to set out, allot, and appoint unto and for the said *John Jackson* and his Successors, Vicars of the Parish and Parish Church of *Morland* aforesaid, such Quantity, Part, or Portion of the Residue of the said Commons, Moors, and Waste Grounds, as they the said Commissioners shall adjudge to be a full Equivalent and Compensation for all the Vicarial Tythes of what Nature or Kind soever, and all Modules, Prescriptions, Oblations, Obventions, Mortuaries, Surplice Fees, and Ecclesiastical Dues whatsoever, arising, increasing, becoming, or growing due within the whole Manor or Township of *Newby* aforesaid; all which said several Allotments so to be made to the said Dean and Chapter and their Successors, and the said *John Jackson* and his Successors, Vicars of *Morland* aforesaid, when set out and well and sufficiently cast, ring-fenced, and planted with Quicksets, shall be severally and respectively accepted by, and vested in them and their Successors for ever as aforesaid, in lieu of and as a full Compensation and Satisfaction for all the Tythes of Corn, Grain, Hay, Wool, Lambs, Calves, Agistment, and all and all Manner of other Tythes, as well great as small, Modules, Prescriptions, Payments, Claims, and Demands, Oblations, Obventions, Mortuaries, Surplice Fees, and all other Ecclesiastical Dues whatsoever, arising, increasing, becoming, or growing due, or which would, could, or might become due or payable within and throughout the whole Manor or Township of *Newby* aforesaid.

Allotment of the Residue of the Com-

XX. And be it further enacted, That immediately after the Commissioners shall have deducted Lands for the Roads, and for Ways and Drains,

Drains, and make the several Allotments herein before mentioned; They shall in the next Place set out and allot all the Roads and Remainder of the said Commons, Moors, and Waste Grounds, and also the said Common stinted Pastures, by this Act directed to be divided and allotted unto and amongst the several Persons who at the Time of such respective Allotments shall be entitled to any Estate, Property, Right, or Interest in the said Common stinted Pastures according to the Number of Gates each Proprietor shall be possessed of, entitled to, or use in the said Commons, Moors, and Waste Grounds, according to the true Intent and Meaning of this Act, and to the Value of the several Estates as they are respectively to be allotted in such Proportions, and in such Parts and Places as by the said Commissioners shall be adjudged most proper and convenient for the several respective Lands and Grounds to which the said Rights of Common and other Interests appertain, or to the Owners and Occupiers thereof, and as shall be most beneficial for the Proprietors of the said Commons, Moors, and Waste Grounds, and for the Improvement thereof; and the said Commissioners shall set out and allot unto the Lord of the Manor of *Newby* aforesaid such Quantity of the said Commons, Moors, and Waste Grounds, not exceeding the Quantity of One Acre, as they shall think proper, for a Compensation for the Soil of the said Commons, Moors, and Waste Grounds, and all Royalties and Seignories thereof, and all Mines, Minerals, Quarries, Stone, Coals, Turbary, and Game Rights of the said Proprietors, as aforesaid, in such Commons, Moors, and Waste Grounds, which shall be vested in such Lord, his Heirs and Assigns, for ever, in Fee Simple, as Freehold Estates of Inheritance in Fee Simple, discharged from all Rights of Common and other Interests; and all such Parts of the said Commons, Moors, and Waste Grounds lying in the said Common stinted Pastures, as shall be inclosed and remaining as Compensation for the Soil of the said Common stinted Pastures, according to the Terms of the said several Gates in the said Common stinted Pastures hereby intended to be divided as aforesaid.

Tythes to be paid as heretofore, until Division made.

XXI. And be it further enacted, That until the Division and Allotment shall be made, finished, and accepted and taken by the said Dean and Chapter or their Lessee, and the said *John Jackson*, Vicar of *Kirkby* in pursuance of this Act, the said Dean and Chapter and their Successors or Lessee, and the said *John Jackson* or such Person or Persons as shall be entitled to such Tythes as aforesaid, shall be entitled to and shall receive and take such and the same Tythes, as he or they could or might lawfully have done in case this Act had not been made.

Allotments to be fenced.

XXII. And be it further enacted, That the several Allotments to be made as aforesaid, shall, within such Time either before or after the Execution of the said Award as the said Commissioners shall order and direct, be inclosed and fenced, and such Fences for ever afterwards maintained, repaired, and supported by and at the Expence of the respective Proprietors, in such Shares and Proportions as the said Commissioners shall by their said Award direct; and in case any of the Proprietors or Persons interested in the said Division and Inclosure, shall refuse or neglect to inclose and fence such Part or Proportion of the said Commons and Waste Grounds, or Common Stinted Pastures, as shall be allotted and awarded to him, her or them, within the Time limited and prescribed by the said Commissioners as aforesaid, it shall and may be lawful to and for the said Commissioners to cause the same to be inclosed and fenced, and charge such Proprietor with the Expences of such Division and Inclosure.

Exchanges may be made.

XXIII. And be it further enacted, That it shall be lawful for the said Commissioners to set out, allot, and award any Messuages, Lands, Tenements, or Hereditaments whatsoever, within the said Manor or Township of *Newby*, in lieu of and in exchange for any other Messuages, Lands, Tenements, or Hereditaments whatsoever, within the said Manor or Township, or within any adjoining Manor, Parish, Hamlet, Township, or

or Place; provided that all such Exchanges be ascertained, specified, and declared in the said Award of the said Commissioners, and be made with the Consent of the Owner or Owners, Proprietor or Proprietors of the Messuages, Lands, Tenements, or Hereditaments which shall be so exchanged, whether such Owner or Owners, Proprietor or Proprietors, shall be a Body or Bodies Politick, Corporate, or Collegiate, or a Tenant or Tenants in Fee Simple, or for Life, or in Fee Tail General or Special, or by the Courtesy of *England*, 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 of or acting for any such Proprietors or Owners as aforesaid, who at the Time of making such Exchange or Exchanges, shall be respectively Infants, Femes Covert, Lunaticks, or under any legal Disability, or who shall be beyond the Seas, or otherwise disabled to act for themselves, himself, or herself, such Consent to be testified in Writing, under the Common Seal of the Body Politick, Corporate, or Collegiate, and 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, 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 Messuages, Lands, Tenements, or Hereditaments so to be exchanged shall lie and be situate.

Costs of Exchanges how paid.

XXIV. And be it further enacted, That all Costs, Charges, and Expences attending the making and completing of any Exchanges and Partitions, shall be paid and borne by the several Persons making such Exchanges and Partitions, in such Manner and in such Proportions as the said Commissioners shall by their said Award or other separate Deed or Instrument, order or direct.

Not to dig Turves, Sods, &c.

XXV. And be it further enacted, That from and after the passing of this Act, no Person shall pare, dig, or take away any Sods, Turves, or Soil, in, upon, or from any Part of the said Commons or Waste Grounds, until the same shall be set out and allotted as aforesaid, under a Penalty not exceeding Forty Shillings for every such Offence, the same to be recovered and levied by the said Commissioners, and applied in defraying the Expences of carrying this Act into Execution.

No Sheep or Lambs to be kept in the Allotments for Fourteen Years.

XXVI. And be it further enacted, That if any Person shall, during the Space of Fourteen Years from the Execution of the said Award, keep or depasture, or permit to be kept or depastured, any Sheep or Lambs in the Allotments to be made in pursuance of this Act, unless he, she, or they shall first effectually fence and guard the adjoining Allotment or Allotments belonging to any other Proprietor or Proprietors, from any Injury or Damage to their Quickets or new planted Fences, or shall wilfully turn or put, or cause to be turned or put, any Sheep or Lambs, Horses, Asses, or other Beasts or Cattle, into any of the Lanes, Ways, or Roads, on either Side whereof any new growing Fence shall be planted, every Person so offending shall forfeit and pay for every such Offence any Sum of Money not exceeding Five Pounds, at the Discretion of the Justice before whom such Offender shall be convicted, to be levied by Distress

Distress and Sale of the Goods and Chattels of the Person subject to the Payment of the said Penalty, by Warrant of such Justice, together with the Costs and Charges of such Distress and Sale; and every such Penalty, when so levied, shall be paid to the Person or Persons injured.

Wills and Settlements not to be affected.

XXVII. And be it further enacted, That nothing in this Act contained shall extend, or be deemed or taken to revoke, make void, alter, or annul any Settlement, Deed, Will, or Limitation, or to prejudice any Person having or claiming any Jointure, Dower, Portion, Reversion, Rent, Service, Debt, Charge, or Incumbrance, of, in, out of, upon, or affecting any of the Lands and Grounds to intended to be divided and inclosed, or which shall be exchanged in pursuance of this Act, or any Part thereof respectively; but that the several Lands and Grounds to be allotted and allotted upon such Division and Inclosure, to the several Parties concerned, or their Trustees, and which shall be taken in Exchange in pursuance of this Act, shall immediately after such Allotments or Exchanges shall be made, be remain and enure, and the several Persons to whom the same shall be allotted and assigned, or given in Exchange as aforesaid, shall from thenceforth stand and be seised thereof, to and for such and the same Uses and Estates, and subject to such and the same Wills, Settlements, Limitations, Remainders, Charges, and Incumbrances, as the said several Lands, Grounds, Tenements, or Hereditaments, in lieu or in respect whereof such Allotments shall be made as aforesaid, now are, or should or would have been subject and liable to be charged with or affected by, in case the same had remained uninclosed and unexchanged, or this Act had not been passed.

Commissioners Accounts to be audited.

XXVIII. 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 Day of 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 or Expences in the Execution of this Act; and such Statement or Account when so made, together with the Vouchers relating thereto, shall be by them laid before one of His Majesty's Justices of the Peace for the said County of *Westmorland*, to be by him examined and balanced, and such Balance shall be by such Justice stated in the Book of Accounts, to be kept at the Office of the Clerk of 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 Justice.

Persons advancing Money for the Purposes of the Act, to be repaid, with Interest.

XXIX. And be it further enacted, That if any of the said Proprietors, or any other Person or Persons, shall advance and pay any Money in discharge of Fees, or other Expences of obtaining, passing, and 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.

Commissioners to make Two Parts of Award.

XXX. And be it further enacted, That the said Commissioners shall make and execute Two Parts of their said Award, one Part whereof shall be deposited where the other publick Papers belonging to the Township and Manor of *Newby* aforesaid are usually kept, and the other Part thereof

with

with the Clerk of the Peace for the ſaid County of *Weſtmorland*; and for which a Fee of One Guinea, and no more, ſhall be paid, and that the ſame ſhall reſpectively be depoſited within Three Calendar Months next after the Execution thereof; and a true Copy of ſuch Award, or any Part thereof, ſigned by the Clerk of the Peace or his Deputy, for which no more than Four-pence for each Sheet ſhall be paid, each Sheet to contain Seventy-two Words, and alſo each Part of the ſaid original Award ſhall be allowed as good and legal Evidence; and the ſaid Clerk of the Peace and his Deputy, ſhall permit and ſuffer any Perſon or Perſons whomſoever, from Time to Time and at all Times, within the Office Hours of Attendance, to peruſe and inſpect the Part of the ſaid Award or Inſtrument depoſited in the Office of the ſaid Clerk of the Peace, upon paying for every ſuch Peruſal or Inſpection One Shilling, and no more.

Saving to the Lord of the Manor his Seigniories and Royalties.

XXXI. Provided always, and be it further enacted, That nothing in this Act contained ſhall be conſtrued to defeat, leſſen, or prejudice the Right, Title, or Intereſt of the ſaid *William* Viſcount *Lowther*, as Lord of the ſaid Manor of *Newby*, his Heirs or Aſſigns, of, in, and to the Seigniories and Royalties incident and belonging to the ſaid Manor; but that the ſaid *William* Viſcount *Lowther*, and all ſucceeding Lords or Ladies of the ſaid Manor, ſhall and may from Time to Time and at all Times, hold and enjoy all Quit Rents, Free Rents, Reliefs, Duties, Cuſtoms, and Services, and all Courts, Perquiſites and Profits of Courts, within the ſaid Manor, Goods and Chattels of Felons and Fugitives, Felons of themſelves and put in Exigent, Deodands, Treaſure Trove, Waifs, Eſtrays, Forfeitures, Royalties, Juriſdictions, Franchiſes, Matters, and Things whatſoever to the ſaid Manor, or to the Lord or Lords, Lady or Ladies thereof, incident, belonging, or appertaining (other than and except ſuch Common Rights as could or might be claimed by him, her, or them as Owner of the Soil and Inheritance of the ſaid Commons, Moors, and Waſte Grounds, and of the ſaid Common Stinted Paſtures) in as full, ample, and beneficial a Manner, to all Intents and Purpoſes, as he, ſhe, or they might have held and enjoyed the ſame if this Act had not been paſſed; and that the ſaid *William* Viſcount *Lowther*, his Heirs and Aſſigns, ſhall and may, from Time to Time and at all Times hereafter, have, hold, win, work, and enjoy all Mines of Coal, Iron-ſtone, and Minerals, of what Nature or Kind ſoever, within and under the ſaid Commons, Moors, and Waſte Grounds, and alſo within and under the ſaid Common Stinted Paſtures hereby directed to be divided, allotted, and incloſed, together with all convenient and neceſſary Ways, Wayleaves, Roads, and Paſſages, already made and hereafter to be made through, over, and upon the ſaid Lands and Grounds, and Liberty of laying, making, and repairing Waggon Ways and other Ways in, over, and along the ſame or any of them, or any Part thereof, and of ſearching for, winning and working the ſaid Mines and Minerals, and leading and carrying away the Coal, Ironſtone, Lead, Minerals, Things, and other Produce thereof, making Pit Rooms and Heap Rooms, Drifts, Levels, Soughs, Drains, Ways, and Watercourſes, and of erecting and uſing Fire Engines and other Engines, and of altering, changing, and pulling down and carrying away the ſame, or any of the Materials thereof, in, through, over, and upon the ſaid Lands and Grounds hereby directed to be incloſed, and to have and uſe any Stone got in the courſe of ſinking Pits or Shafts, or working or getting the ſaid Minerals ſo reſerved as aforeſaid, at his her, or their own free

Reſerving a Right to the Lord of the Manor to work Mines, &c.

free Will and Pleaſure, and to do all ſuch other Works, Acts, and Things, either now in uſe or hereafter to be invented, as may be neceſſary or convenient for the full and complete Enjoyment thereof in and upon the ſaid Commons, Moors, and Waſte Grounds, and alſo in and upon the ſaid Common Stinted Paſtures, in as full, ample, and beneficial a Manner, to all Intents and Purpoſes, as he, ſhe, or they could or might have done in caſe this Act had not been made: Provided nevertheleſs, that nothing in this Act contained ſhall give to the ſaid *William* Viſcount *Lowther*, or to any future Lord or Lords, Lady or Ladies of the Manor of *Newby* aforeſaid, any greater, further, or other Authority, Power, Privilege, or Liberty whatſoever, touching or concerning the ſinking, ſearching for, winning, working, carrying away, and diſpoſing of the Mines of Coal, Ironſtone, and other Minerals contained in the ſaid ſeveral Commons, Moors, and Waſte Grounds, and alſo in the ſaid Common Stinted Paſtures hereby directed to be divided, allotted, and incloſed, than he the ſaid *William* Viſcount *Lowther* was by Law entitled to immediately before the paſſing of the Act.

Satisfaction to be made by the Lord for Damage done in working Mines.

XXXII. Provided alſo, and be it further enacted, That if any Perſon or Perſons ſhall ſuffer or ſuſtain any Loſs or Damage in his, her, or their reſpective Allotments by the ſinking, ſearching for, winning or working of any Mines of Coal, Ironſtone, or other Mines therein, or the laying or repairing Waggon Ways or other Ways, or by leading or carrying away the Coals, Ironſtone, or other Ore or Minerals to be gotten thereout, or making Drifts, Levels, or Watercourſes, erecting or uſing Fire or other Engines, Pit Room, or other the Liberties and Powers hereby given and reſerved to the Lord or Lords, Lady or Ladies of the Manor of *Newby* aforeſaid, for the Time being, that then and in every ſuch Caſe the Lord or Lords, Lady or Ladies of the ſaid Manor, his, her, or their Heirs, Executors, Adminiſtrators, or Aſſigns, ſhall pay full Satisfaction for all ſuch Damages, Spoil of Ground, and other Loſs to be occaſioned thereby, to any Perſon or Perſons who ſhall be in the Poſſeſſion of ſuch Ground or Allotment at the Time of doing ſuch Damage or occaſioning ſuch Spoil or Loſs.

Appeal to the General Quarter Seſſions.

XXXIII. 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 or the ſaid recited Act, then and in every ſuch Caſe (except where the Orders and Determinations of the ſaid Commiſſioners are by the ſaid recited Act or this Act directed to be final, binding, or concluſive, and except in ſuch Caſes wherein an Iſſue at Law ſhall be tried as herein-before mentioned) ſuch Perſon or Perſons may appeal to any General Quarter Seſſions of the Peace to be holden for the ſaid County of *Weſtmorland*, within Six Calendar Months after the Cauſe of Complaint ſhall have ariſen, and giving Twenty Days Notice to the Commiſſioners of ſuch his, her, or their Intention of appealing; and the Juſtices at ſuch Seſſions are hereby required to hear and determine the Matter of every ſuch Appeal, and to make ſuch Order therein, and to award ſuch Coſts, as to them in their Diſcretion ſhall ſeem reaſonable, and by their Order and Warrant to levy the Coſts and Charges which ſhall be ſo awarded, by Diſtreſs and Sale of the Goods and Chattels of the Party liable to pay the ſame, rendering the Overplus (if any) on Demand, to the Owner or Owners of ſuch Goods and Chattels; which Determination of the ſaid

Juſtices ſhall be final and concluſive on all Parties, and ſhall not be removed or removable by *Certiorari*, or any other Writ or Proceſs whatſoever, into any of His Majeſty's Courts at *Weſtminſter* or elſewhere; and in caſe ſuch Appeal ſhall appear to the ſaid Juſtices to be frivolous, vexatious, or without Foundation, then the ſaid Juſtices ſhall and may, and they are hereby authorized and empowered to award ſuch Coſts to be paid by the Appellant or Appellants, as to them in their Diſcretion ſhall ſeem reaſonable, and to be levied in Manner aforeſaid.

General Saving.

XXXIV. Saving always to the King's moſt Excellent Majeſty, His Heirs and Succeſſors, and to all and every other Perſon and Perſons, Bodies Politick and Corporate, his, her, or their Heirs, Succeſſors, Executors, Adminiſtrators, and Aſſigns (other than and except the reſpective Perſons to whom any Allotment or Allotments of Lands or other Compenſation ſhall be made or provided by virtue of this Act, in reſpect of the Intereſt or Property for which ſuch Allotment or Compenſation ſhall be made, and except ſuch other Rights and Intereſts as the Intent and Purpoſes of the Incloſure hereby authorized ſhall abſolutely require to be barred, deſtroyed, or extinguiſhed) all ſuch Eſtates, Rights, and Intereſts as they, every, or any of them had or enjoyed of, in, to, or in reſpect of the Commons and Waſtes hereby directed to be divided and incloſed, before the paſſing of this Act, or could or might have had or enjoyed if this Act had not been made.

Act to be printed.

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 STRAHAN, Printers to the King's moſt Excellent Majeſty. 1806.