ANNO QUINQUAGESIMO SECUNDO

GEORGII III. REGIS.

Cap. 101.

An Act for incloſing Lands within the Townſhips of *Scalthwaite-rigg*, *Hay*, and *Hutton-'ith-Hay*, in the Pariſh of *Kirkby*, in *Kendal*, in the County of *Weſtmorland*. [5th *May* 1812.]

WHEREAS there are within the ſeveral Townſhips, Diviſions or Manors of *Scalthwaite-rigg*, *Hay*, and *Hutton-'ith-Hay*, in the Pariſh of *Kirkby*, in *Kendal*, in the County of *Weſtmorland*, certain Commons, Moſſes, and Waſte Grounds, containing by Eſtimation Nine Hundred Acres, or thereabouts: And whereas the Right Honourable *William* Earl of *Lonſdale* is Lord of the ſaid ſeveral Manors or Townſhips, and as ſuch is entitled to the Royalties therein, and the Soil of the ſaid Commons and Waſte Grounds: And whereas *Chriſtopher Wilſon*, *Arthur Shepherd*, *Ralph Fiſher*, *William Sleddal*, Eſquires, *John Atkinſon* Gentleman, and ſeveral other Perſons, are Owners and Proprietors of divers Meſſuages, Lands, and Hereditaments, within the ſaid ſeveral Townſhips, Diviſions or Manors, and in reſpect thereof, or otherwiſe, are entitled to Right of Common in, over, or upon all the ſaid Commons, Moſſes, and Waſte Grounds, within the ſaid ſeveral Townſhips, Diviſions or Manors, wherein their ſeveral Lands and Tenements are reſpectively ſituated, and are alſo Owners and Proprietors of the Turbary or Right of digging and getting Turf and Peat, in and upon divers meered Moſſes and Turbary Grounds, Parcel of the ſaid Commons and Waſte Grounds, and to certain Brackendales upon the ſaid Commons: 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 the said Commons, Mosses, and Waste Grounds, in their present State, are of very little Value to the Land-owners having the principal Right thereon, and it would be of the greatest Advantage, not only to them, but to the Public in general, if the said Commons, Mosses, and Waste Grounds, were divided, allotted, and inclosed; yet the same cannot be established and carried into Effect 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 *Robert Lumb* of *Lowther*, in the County of *Westmorland*, Gentleman, and *Thomas Wakefield* of *Yealand*, in the County Palatine of *Lancaster*, Gentleman, and their Successors, to be elected in Manner herein-after mentioned, shall be, and they are hereby appointed Commissioners for dividing and allotting the said Commons, Mosses, and Waste Grounds, and for carrying this Act into Execution, in such Manner, and subject to such Regulations as are herein-after contained, and with such of the Powers, and subject to such of the Rules, Orders, Directions, Regulations, Restrictions, and Provisions contained in the said recited Act, as are not varied, altered, repealed, or otherwise provided for by this Act.

Commissioners appointed.

II. And be it further enacted, That in case either of said Commissioners herein-before named, or any other Commissioner to be appointed by virtue of this Act, shall, before the Execution of all the Powers and Authorities hereby in them respectively vested, die or refuse to act, or without some unavoidable 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 of this Act, and requiring him to attend as a Commissioner, a new Commissioner or Commissioners 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 and may be lawful to and for the said Earl of *Lonsdale*, or the Lord or Lords of the said Manors or Townships of *Scalthwaite-rigg*, *Hay* and *Hutton-'ith-Hay*, for the Time being, by any Writing under his or their Hand or Hands, to appoint another 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, to be appointed by the said Earl of *Lonsdale*, or the Lord or Lords of the said Manors or Townships of *Scalthwaite-rigg*, *Hay*, and *Hutton-'ith-Hay*, for the Time being, shall die, refuse to act, or neglect to attend as aforesaid; and in case the said *Thomas Wakefield* 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 Amount of the Land-tax,) of the Proprietors or Persons interested in the Lands and Grounds directed by this Act to be divided, allotted, and inclosed, or their Agent, to be appointed by Writing under their respective Hands, for such Purpose, or their known Agents or Attornies, (except the said Earl of *Lonsdale*, or the Lord or Lords of the said Manor for the Time being,) who shall be present at a Public Meeting to be held for that Purpose, at the Parish Church of *Kirkby Kendal* aforesaid, in pursuance of a Notice to be given in the said Church, or by Writing to be affixed upon the principal Door of the said Church, and also by Advertisement to be inserted in the *Westmorland Advertiser*, or if that

Commissioners to be appointed upon Vacancies.

Newspaper

Newſpaper ſhall not be publiſhed, in ſome other Newſpaper uſually and generally circulated in the County of *Weſtmorland*, at leaſt Twenty-one Days before ſuch Meeting, by Writing under their Hands, to appoint One other Commiſſioner not intereſted in the ſaid Incloſure, in the Room of the ſaid *Thomas Wakefield*; 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 Default ſhall be made in appointing any new Commiſſioner in Manner aforeſaid, for the Space of Two Calendar Months after the Death of any Commiſſioner, or his Refuſal to act or Neglect of Attendance ſhall be known, then the ſurviving or remaining 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 them reſpectively as aforeſaid, to appoint One other Commiſſioner, not intereſted in the ſaid Incloſure, in the room of the Commiſſioner ſo dying or refuſing to act, or neglecting to attend; and every Perſon who ſhall be nominated and appointed a Commiſſioner in Manner aforeſaid, ſhall, after taking the Oath preſcribed in that Behalf, have the like Powers and Authorities for putting the ſaid recited Act, and this Act, into Execution, as if he had been named and appointed a Commiſſioner in and by this Act.

Inſtruments appointing Commiſſioners to be enrolled, and Copies thereof to be Evidence.

III. Provided always, That the Writing or Inſtrument of the Nomination and Appointment of every Commiſſioner, to be nominated and appointed by virtue of this Act, ſhall be annexed to, and enrolled with the Award of the ſaid Commiſſioners, and a Copy of ſuch Writing or Inſtrument, atteſted by the proper Officer of the Court where the ſame ſhall be enrolled, ſhall be, and be allowed to be full and ſufficient Evidence thereof in all Courts whatſoever.

Appointing an Umpire.

IV. 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 Forty Days next after ſuch Difference ſhall ariſe, neglect to appoint an Umpire as aforeſaid, (not intereſted in the ſaid Diviſion or Incloſure), or if ſuch Umpire ſhall die, or being appointed, ſhall refuſe or become incapable of acting; then, and in every ſuch Caſe, an Umpire ſhall be nominated and appointed by the major Part in Value (ſuch Value to be aſcertained by the Land-Tax Aſſeſſment) of the ſaid Proprietors of Lands, after the like Notice given, in ſuch Manner as is herein-before directed; and as often as any Umpire ſhall die, or refuſe to act, or become incapable of acting, and the Judgment and Determination of the ſaid 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.

V. Provided

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 following Oath, (that is to ſay):

The Oath.

'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 Fifty-ſecond Year of the Reign of King *George* the Third, intituled [*here ſet forth 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 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 enrolled with the Award of the ſaid Commiſſioners, and a Copy of the Enrolment thereof ſhall be admitted as legal Evidence.

Notice of Meetings.

VI. And be it further enacted, That the ſaid Commiſſioners ſhall and may and they are hereby required to cauſe public Notice by Advertiſement to be inſerted in the *Weſtmorland Advertiſer*, or if that Newſpaper ſhall not then be publiſhed, in ſome other Newſpaper uſually circulated in the ſaid County of *Weſtmorland*, and alſo by Writing to be fixed on the principal Door of the Pariſh Church of *Kirkby Kendal* aforeſaid, upon ſome *Sunday* during, or immediately before Divine Service, of the Time and Place of holding their Firſt, Second, and Third Meetings, for the Purpoſe of putting into Execution the ſeveral Powers veſted in them by this Act, Fourteen Days at the leaſt before ſuch Meetings reſpectively, each of which Meetings ſhall be held in *Kirkby Kendal*, in the ſaid County of *Weſtmorland*; and the ſaid Commiſſioners ſhall and may, after the ſaid Third Meeting, from Time to Time, appoint ſuch Time and Place for every ſubſequent Meeting as they ſhall think proper, cauſing a Notice in Writing under their Hands to be affixed upon the principal Door of the Pariſh Church of *Kirkby Kendal* aforeſaid, and by Advertiſement as aforeſaid reſpectively, Fourteen Days at the leaſt before every ſubſequent Meeting; and the ſaid Commiſſioners, and Clerk to the Commiſſioners, or any of them, ſhall have full Power and Authority from Time to Time, as they ſhall think it convenient, to continue ſuch Firſt, Second, Third, or any ſubſequent Meeting or Meetings by Adjournment, for the Execution of this Act, without giving any ſuch Notice as aforeſaid, of any ſuch adjourned Meetings, ſuch adjourned Meetings, nevertheleſs, to be held within Twenty-eight Days from the Time of Adjournment.

Other Notices how to be given.

VII. Provided always, and be it further enacted, That all other Notices requiſite or neceſſary to be given by the ſaid Commiſſioners, ſhall be ſo made and given by Advertiſement in the *Weſtmorland Advertiſer*, or if that Newſpaper ſhall not then be publiſhed, then, in ſome other Newſpaper uſually and generally circulated in the ſaid County of *Weſtmorland*.

Commiſſioners' Allowance.

VIII. And be it further enacted, That out of the Money that ſhall be raiſed for defraying the Expences of obtaining and executing this Act, there

there ſhall be paid to each of the ſaid Commiſſioners the Sum of Two Pounds and Two Shillings, and no more, for each and every Day by them ſeverally employed in travelling to, or returning from, and attending on the Execution of this Act; and the ſaid Commiſſioners ſhall defray their travelling Expences, and alſo their own Expences, at all Meetings to be held in purſuance of this Act.

Commiſſioners to ſettle Diſputes.

IX. And be it further enacted, That if any Diſpute or Difference ſhall ariſe between any of the Parties intereſted, or claiming to be intereſted in the ſaid Diviſion and Incloſure, touching or concerning the Right to the Soil of the ſaid Commons and Waſte Lands, or any Part or Parts thereof, or touching or concerning the reſpective Rights and Intereſts which they or any of them ſhall have, or claim to have in the ſame, or touching or concerning any other Matter or Thing relating to the ſaid Diviſion or Incloſure, it ſhall and may be lawful to and for the ſaid Commiſſioners, and they are hereby authorized and required, upon proper and ſufficient Enquiry and Evidence, to examine into, hear, and determine the ſame: Provided always, that nothing in this Act contained ſhall authorize the ſaid Commiſſioners to determine the Title to any Meſſuages, Lands, Tenements or Hereditaments whatſoever.

Commiſſioners not to determine Titles.

May award Coſts.

X. And be it further enacted, That in caſe the ſaid Commiſſioners ſhall, upon Hearing and Determination of any Claim or Claims, Objection or Objections, to be delivered to them in purſuance of the ſaid recited Act or of this Act, ſee Cauſe to award any Coſts, it ſhall and may be lawful for the ſaid Commiſſioners, 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 of the ſaid Commiſſioners ſhall be made, by the Perſon or Perſons, Body or Bodies Politic, Corporate or Collegiate, whoſe Claim or Claims, Objection or Objections, ſhall be thereby diſallowed or over-ruled; and in caſe the Perſon or Perſons, Body or Bodies Politic, Corporate or Collegiate, who ſhall be liable to pay ſuch Coſts and Charges, ſhall neglect or refuſe to pay the ſame 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, by Warrant under their Hands and Seals, directed to any Perſon whomſoever, to cauſe ſuch Coſts and Charges to be levied by Diſtreſs and Sale of the Goods and Chattels of the Perſon or Perſons, Body or Bodies Politic, Corporate or Collegiate, ſo neglecting or refuſing to pay the ſame, rendering the Overplus (if any) upon Demand, to the Perſon or Perſons, Body or Bodies Politic, Corporate or Collegiate, whoſe Goods and Chattels ſhall have been ſo diſtrained and ſold, after deducting the Coſts and Charges attending ſuch Diſtreſs and Sale.

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

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

in every ſuch Caſe, it ſhall and may be lawful to and for any Perſon or Perſons, Body or Bodies Politic, Corporate or Collegiate, to proceed to a Trial at Law of the Matter ſo determined by the ſaid Commiſſioners or Umpire, at the Firſt Aſſizes to be holden for the ſaid County of *Weſtmorland*, or for any adjoining County, next after the Expiration of Three Months from the Time of ſuch Determination; and for that Purpoſe the Perſon or Perſons, Body or Bodies Politic, Corporate or Collegiate, ſo 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, Body or Bodies Politic, Corporate or Collegiate, in whoſe Favour ſuch Determination ſhall have been made, within Two Calendar Months next after ſuch Determination of the ſaid Commiſſioners or Umpire, and Notice thereof in Writing, given to him, her or them; and the Defendant or Defendants in ſuch Action or Actions, ſhall, and he, ſhe or they is and are hereby required to name an Attorney or Attornies, who ſhall appear thereto, or file common Bail, and accept one or more Iſſue or Iſſues, whereby ſuch Claim or Claims, and the Right and Rights thereby inſiſted on, may be tried and determined (ſuch Iſſue or Iſſues to be ſettled by the proper Officer of the Court in which the ſaid Action or Actions ſhall be commenced, in caſe the Parties ſhall differ about the ſame;) and the Verdict or Verdicts which ſhall be given in ſuch Action or Actions ſhall be final, binding, and concluſive upon all and every Perſon and Perſons whomſoever, Body or Bodies Politic, Corporate or Collegiate, unleſs the Court wherein ſuch Action or Actions ſhall be brought ſhall ſet aſide ſuch Verdict or Verdicts, and order a new Trial or Trials to be had therein, which it ſhall be lawful for the Court to do, in caſe the ſaid Court ſhall think proper; and after ſuch Verdict or Verdicts ſhall be obtained, and not ſet aſide by the ſaid Court, the ſaid Commiſſioners ſhall, and they are hereby required to act in Conformity thereto, and to allow or diſallow the Claim or Claims thereby determined, according to the Event of ſuch Trial or Trials.

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

XII. Provided always, That the Determination of the ſaid Commiſſioners or Umpire, touching ſuch Claim or Claims of Right to the Soil of the ſaid Commons or Waſte Lands, or Right of Common, or other Rights or Intereſts in, over or upon the Lands and Grounds hereby directed to be divided, allotted, and incloſed, or any Part thereof, which ſhall not be objected to, or being objected to, the Party or Parties objecting, not cauſing ſuch Action or Actions at Law to be brought or proceeded in as aforeſaid, ſhall be final and concluſive upon all Parties whatſoever.

If Parties die, Actions not to abate.

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

In caſe of Death of Parties before Actions brought, the ſame to be carried on,

XIV. 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 the Expiration of the Time herein-before limited for bringing ſuch Action or Actions, it ſhall be lawful for the Perſon or

or Perſons, Body or Bodies Politic, Corporate or Collegiate, 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.

and defended in their Names.

XV. Provided alſo, and be it further enacted, That nothing in this Act ſhall extend to enable the ſaid Commiſſioners to determine any Right between any Parties contrary to the Poſſeſſions of any ſuch Parties, except in Caſes of Encroachments made within the Period of Twenty Years, as herein mentioned; 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 by, or recovered from ſuch Perſon or Perſons by Ejectment or other due Courſe of Law.

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

XVI. And be it further enacted, That if any Suit or Suits ſhall be commenced or proſecuted, touching or concerning the Title of any Perſon or Perſons, in or to any Meſſuages, Lands, Tenements or Hereditaments, for or in reſpect of which any Right of Common, or other Right or Intereſt, in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and incloſed, or any Part thereof ſhall be claimed, ſuch Suit or Suits ſhall not delay, impede or hinder the ſaid Commiſſioners from proceeding in the Powers veſted in them by this Act; but the ſaid Allotments ſhall be proceeded in, notwithſtanding any Suit or Suits, and may be had and taken by the Perſon or Perſons, who, upon the Determination of ſuch Suit or Suits, ſhall become entitled to the ſame.

Suits not to impede Execution of the Act.

XVII. And be it further enacted, That it ſhall and may be lawful to and for the ſaid Commiſſioners, and they are hereby authorized and empowered, at any Time or Times before the Execution of the ſaid Award, by Notice in Writing under their Hands, to be affixed upon the principal Door of the Pariſh Church of *Kirkby Kendal* aforeſaid, to order and direct from what Time or Times all or any Part of the Rights of Common in, over or upon the ſaid Commons and Waſte Grounds, or any Part thereof, ſhall be extinguiſhed, or the Exerciſe thereof ſuſpended for and during ſuch Time as ſhall be expreſſed in ſuch Writing, and that all ſuch Rights of Common as the ſaid Commiſſioners ſhall, by ſuch Writing order and direct to be extinguiſhed, or the Exerciſe thereof to be ſuſpended as aforeſaid, ſhall, from the Time to be ſpecified in the Notice to be affixed on the Church Door, ceaſe, determine, and be extinguiſhed, or the Exerciſe thereof ſuſpended accordingly, any Law, Uſage or Cuſtom to the contrary thereof notwithſtanding.

Rights of Common to be ſuſpended.

XVIII. And

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

XVIII. And be it further enacted, That if any Perſon or Perſons ſhall, after the paſſing of this Act, cut, dig, pare, grave, flay or carry away Peat, Turf Sods, Soil, Flags, Whins or Furze, in, upon or from the ſaid Commons and Waſte Grounds, or any Part thereof, without or contrary to the Licence of the ſaid Commiſſioners, firſt had and obtained in Writing for that Purpoſe, (which Licence the ſaid Commiſſioners are hereby empowered to grant, under ſuch Orders, Regulations, and Reſtrictions as to them ſhall ſeem right and proper to inſert therein), then, and in every ſuch Caſe, the ſaid Commiſſioners, upon due Proof made before them upon Oath, (which Oath the ſaid Commiſſioners are hereby authorized to adminiſter), ſhall, and they are hereby required by Warrant under their Hands and Seals, directed to any Perſon or Perſons whomſoever, to cauſe any Sum of Money not exceeding Ten Pounds, to be levied by Diſtreſs and Sale of the Goods and Chattels of any Perſon or Perſons ſo offending in the Premiſes, rendering the Overplus (if any) upon Demand to the Perſon or Perſons whoſe Goods and Chattels have been ſo diſtrained and ſold, after deducting the Coſts and Charges attending ſuch Diſtreſs and Sale, and the Money ſo to be levied as aforeſaid, ſhall be applied towards defraying the Coſts and Charges of obtaining and executing this Act.

Encroachments.

XIX. And be it further enacted, That all Encroachments which ſhall have been made upon any Part of the Commons and Waſte Lands intended by this Act to be divided and incloſed, within the Space of Twenty Years next before the paſſing of this Act, ſhall be deemed Part of the Commons and Waſte Lands to be divided and incloſed by virtue of this Act, and the ſame ſhall be divided and incloſed accordingly, except ſuch as may have been made with the Conſent of the Lord or Juries of the cuſtomary Courts held within, or for the different Manors: 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, as the Whole or Part of the Share or Proportion of the Commons or Waſte Lands to which ſuch Perſon or Perſons will be entitled by virtue of this Act, without conſidering the Value of any Erection or other Improvements made thereon; and if any ſuch Perſon or Perſons ſhall not be entitled to any Allotment equal to the Value of ſuch Encroachment, but ſhall be willing to purchaſe the ſame, then the ſaid Commiſſioners ſhall aſcertain the Price thereof, or of ſuch Part thereof as ſhall exceed the Rights of ſuch Poſſeſſor or Poſſeſſors thereof, in reſpect of any other Property as aforeſaid, on aſcertaining of which Price the ſaid Commiſſioners ſhall not value the Buildings or other Improvements thereon, but ſhall value the Land only, and that at ſo much Money *per* Acre, as the ſame ſhall in his Eſtimation be worth, having Reference to the Waſte next adjoining; and upon ſuch Perſon or Perſons paying ſuch Price *per* Acre, and ſo in Proportion for any leſs Quantity than One Acre, to the ſaid Commiſſioners at ſuch Time or Times as they ſhall appoint for that Purpoſe, and taking his Receipt or Receipts for the ſame, every ſuch Encroachment, or ſuch Part thereof, as ſhall be ſo purchaſed, ſhall be allotted to ſuch Perſon or Perſons, and ſhall be holden and enjoyed by him, her or them accordingly, and the ſaid Commiſſioners ſhall, and they are hereby required

quired to apply such Purchase Money, in such and the like Manner as Monies to be raised by Sale of Lands for defraying the Expences of obtaining and passing this Act, and of carrying the same into Execution, as herein directed to be applied; and in case any Disputes or Differences shall arise, touching any such Encroachments, or to the Extent thereof, such Disputes shall be settled by the said Commissioners.

Allotments for Watering Places, Gravel, &c.

XX. And be it further enacted, That the said Commissioners shall, in the First Place, assign, set out, and allot, unto the Surveyors of the Highways, within the said several Townships, Divisions, or Manors, such Part or Parts of the said Commons and Waste Grounds, within the said several Townships, Divisions or Manors, hereby directed to be divided, allotted, and inclosed, as the said Commissioners shall think necessary, as and for public Quarries, and also as and for public Watering Places for Cattle, and for getting Gravel for the Repairs of the Roads to be made over the said Commons and Waste Grounds, hereby directed to be divided, allotted, and inclosed, and the same Allotments, when so set out, shall, for ever thereafter, be used by the Surveyors of the Highways for the Time being of the said several Townships, Divisions or Manors, and by the Proprietors of Lands, Tenements, and Hereditaments, within the said several Townships, Divisions, or Manors, and their Tenants for the Time being, in such Manner, and under such Rules, Orders, and Regulations, as the said Commissioners shall, in and by their said Award order and appoint, and that the said Commissioners have Power, and they are hereby authorized to order and direct how and in what Manner, and by whom the new Roads to be set out, by virtue of this Act, or of the said recited Act, within the said several Townships, Divisions, or Manors, shall, from and after the Execution of their said Award, be in future kept in Repair.

Allotments to Mos Owners.

XXI. And be it further enacted, That the said Commissioners shall, in the next Place, set out, allot, and appoint unto the Owners and Proprietors of meered Mosses, Turbary Grounds, and Brackendales, such Parts of the said Commons and Waste Grounds, situate within such Division wherein such meered Mosses, Turbary Grounds, and Brackendales are respectively situated, as shall, in the Judgment of the said Commissioners, be a full Equivalent, and equal in Value to the present Interest of such respective Owners and Proprietors in such meered Mosses, Turbary Grounds, and Brackendales, the same to be set out in such Places and Parts of the said Commons and Waste Grounds, as, in the Judgment of the said Commissioners, may and will be most convenient for such Owners and Proprietors respectively.

Mos Owners may have their Allotments set out from their own Mos, on giving Notice.

XXII. Provided always, That every such Owner and Proprietor who shall be desirous to have such Equivalent set out and allotted in Mos or Turbary Ground, shall be entitled, on giving Notice in Writing to the said Commissioners, at or before their Second Meeting, to have such Equivalent set out and allotted from his or their own several meered Mosses or Turbary Grounds, or if in the Judgment of the said Commissioners, that cannot be conveniently done, then in such other Place or respective Places as they the said Commissioners

shall, in their Discretion, think fit and deem most convenient, such last mentioned Allotments respectively to be, and for ever hereafter remain, subject to such Lord's Rents as the said several meered Mosses and Turbary Grounds are now respectively subject.

Allotment to the Earl of Lonsdale for Right of Soil.

XXIII. And be it further enacted, That the said Commissioners, after the said several Allotments as aforesaid shall be set out and ascertained, shall, and may, and they are hereby authorized and required to set out, allot, and award, unto the said *William* Earl of *Lonsdale*, or the Lord or Lords, Lady or Ladies, of the said several Townships, Divisions, or Manors, for the Time being, one full Sixteenth Part, (Quantity, Quality, and Situation considered), of all and every the Residue of the Tracts or Parcels of Commons, Moors, and Waste Grounds, within the said several Townships, Divisions, or Manors, in Compensation and Satisfaction for his and their several Rights, (except as herein-after mentioned), to the Soil of the Residue of the Commons, Moors, and Waste Grounds, within the said respective Townships, Divisions, or Manors.

Commissioners to set out Part of the Commons, to defray the Expences of this Act.

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

Lands set out for paying Expences, to be sold to the highest Bidder.

XXV. And be it further enacted, That the said Commissioners shall, and they are hereby required, at such convenient Times and Places as to them shall seem meet, to cause the said Part or Parts of the said Commons and Waste Grounds to be set out for Sale by them as aforesaid, to be put up to public Sale or Auction in Manner by the said recited Act directed, first causing at least Six Weeks previous Notice to be given in the *Westmorland Advertiser*, or such other Newspaper as aforesaid, of the Time and Place to be appointed for that Purpose: Provided always, that the said Commissioners shall not set out any Part of the Commons and Waste Lands to be sold, which ought, on account of Contiguity, or Conveniency, to be allotted to any of the Parties concerned in the said Division or Inclosure.

General Allotments.

XXVI. And be it further enacted, That the said Commissioners shall and do, in the next Place, set out, assign, and allot all the Residue of the said Commons, Moors, and Waste Grounds, hereby intended to be divided and inclosed, unto and amongst all and every the Owners and Proprietors of the said Lands and Tenements having Right of Common in and upon the said several Commons, Moors, and Waste Grounds,

within the ſaid ſeveral Townſhips, Diviſions, or Manors, in lieu of their reſpective Rights of Common, within ſuch Townſhips, Diviſions, or Manors, in ſuch Shares or Proportions as the ſaid Commiſſioners ſhall adjudge and determine to be proportionate to, and a full Satisfaction and Compenſation to him, her, or them reſpectively, for his, her, or their reſpective Rights of Common, and other Rights and Intereſts in, over, or upon the Commons, Moors, and Waſte Grounds, hereby directed to be divided, allotted, and incloſed, or any Part thereof.

Satisfaction for unequal Share of fencing.

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

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

XXVIII. Provided always, That if any Perſon or Perſons hath or have ſold, or ſhall at any Time within Six Calendar Months next after ſuch Notice given by the ſaid Commiſſioners, for extinguiſhing the Right of Common as aforeſaid, ſell his, her, or their Right, Intereſt, or Property, in, over, or upon the ſaid Commons and Waſte Grounds, or any Part thereof, to any other Perſon or Perſons, then, and in every ſuch Caſe, it ſhall and may be lawful to and for the ſaid Commiſſioners, and they are hereby directed, authorized, and required, upon Notice thereof in Writing to be given to them by the Vendor, provided the ſame be within the Time before mentioned, to make an Allotment of Land unto the Vendee, or Purchaſer, in every ſuch Sale, or to his or her Heirs or Aſſigns, for or in reſpect of ſuch Right, Intereſt, and Property ſo ſold as aforeſaid, and ſuch Vendee or Purchaſer, or his or her Heirs or Aſſigns, ſhall and may, from and after the Execution of the ſaid Award, hold and enjoy the Land ſo to be allotted to him, her, or them, as aforeſaid, in the ſame Manner, to all Intents and Purpoſes, as the Vendor in every ſuch Sale, might, could, or ought to have, hold, and enjoy the ſame, in caſe ſuch Sale had not been made, or ſuch Rights, Intereſts, or Property, had been veſted in ſuch Vendor at the Time of making ſuch Allotment as aforeſaid.

Allotments to be Freehold.

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

XXX. And

Power to make Exchanges.

XXX. And be it further enacted, That it ſhall be lawful for the ſaid Commiſſioners for the Time being reſpectively to aſſign, ſet out, and allot any of the Lands or Grounds hereby directed to be divided and allotted, or any Meſſuages, Buildings, incloſed Lands, or Grounds, or other Hereditaments within the Manors or Townſhips of *Scalthwaite-rigg*, *Hay*, and *Hutton-'ith Hay* aforeſaid, in lieu of and in Exchange for any other Meſſuages, Buildings, Lands, Tenements, or Hereditaments in the ſaid Pariſh of *Kirkby Kendal*, or within any adjoining Pariſh, Hamlet, Townſhip, or Place, ſo as every ſuch Exchange be ſet forth and aſcertained by the Award of the ſaid Commiſſioners, or ſome Deed or Deeds executed by them at any Time before the Date of the ſaid Award, and ſo alſo as every ſuch Exchange be made with the Conſent of the Owner or Owners, Proprietor or Proprietors of the Lands, Tenements, or Hereditaments which ſhall be ſo exchanged, whether ſuch Owner or Owners, Proprietor or Proprietors ſhall be a Body or Bodies Politic, 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 Life or Lives, or poſſeſſed of any Eſtate of Inheritance leſs than an Eſtate in Fee-ſimple, or with the Conſent of the Guardians, Truſtees, Feoffees for charitable or other Uſes, Huſbands, Committees, or Attornies of, or acting for any ſuch Owners or Proprietors as aforeſaid, who, at the Time of making any 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 diſabled to act for themſelves, himſelf, or herſelf, 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 or Exchanges ſo to be made, ſhall be good, valid, and effectual in 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 in Writing, teſtified as aforeſaid, of the Patron thereof, and of the Lord Biſhop of the Dioceſe in which ſuch Lands, Tenements, or Hereditaments ſo to be exchanged ſhall lie and be ſituate.

Coſts of Exchanges how to be paid.

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

Vacating Leaſes at Rack Rent.

XXXII. And be it further enacted, That all and every Leaſe or Leaſes and other Agreements at Rack Rent, affecting all or any Part of the Commons or Waſte Grounds, by virtue of this Act intended to be divided and incloſed or exchanged, as in the ſaid Act mentioned, ſhall ceaſe, determine, and be void as to ſuch Commons or Waſte Grounds, on ſuch reſpective Days and Times as the ſaid Commiſſioners ſhall, by Writing under their Hands, order and appoint, the reſpective Leſſors or Landlords in ſuch Leaſes or Agreements having firſt paid or tendered ſuch Satisfaction to the reſpective Leſſee or Leſſees, Tenant or Tenants, as the ſaid Commiſſioners ſhall aſcertain as reaſonable to be paid to ſuch Leſſee or Leſſees, Tenant or Tenants, on Account thereof, or as an Equivalent for the ſame: Provided always,

always, that nothing herein contained ſhall extend, or be conſtrued to extend, to make avoid any Agreement or Engagement already made between Landlord and Tenant, in Contemplation of a Diviſion or Incloſure of the ſaid Commons and Waſte Grounds, or relating thereto: Provided always, that if there ſhall be any Leaſe or Leaſes of any Land, Part of which ſhall be within the ſaid ſeveral Townſhips, or any of them, and Part in any adjoining Townſhip, all and every ſuch Leaſe or Leaſes upon Rack Rent, now ſubſiſting, may be vacated, but where any Land ſhall have been taken in Exchange, which Land ſhall be under Leaſe, and wholly ſituate in an adjoining Townſhip, the Leaſe of ſuch laſt-mentioned Land ſhall not be vacated.

Wills, &c. not to be affected.

XXXIII. Provided always, and be it further enacted, That nothing in this Act contained ſhall extend, or be conſtrued to extend, ſo as 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, Rents, or Incumbrances, out of, upon, or affecting any of the Meſſuages, Buildings, Lands or Grounds to be divided, allotted, incloſed, or exchanged as aforeſaid, or any Part or Parts thereof reſpectively; but the reſpective Perſons to whom any Lands, Tenements, or Hereditaments ſhall be allotted, or given in Exchange, by virtue of this Act, ſhall be ſeized thereof to ſuch and the ſame Uſes, and for ſuch and the ſame Eſtates, and ſubject to ſuch and the ſame Wills, Jointures, Rents, Charges, and Incumbrances, and no other, as the Meſſuages, Buildings, Lands, and Tenements, and Hereditaments, whereof ſuch Perſons were ſeized or poſſeſſed, at or immediately before the Execution of the Award to be made by the ſaid Commiſſioners, or for which, or in reſpect whereof ſuch Allotments or Exchanges ſhall be made, would have been ſubject to, charged with, or affected by, in caſe this Act had not been made.

To fence againſt Sheep.

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

Coſts of the Act.

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

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

Application of overplus Money raiſed by Sale of Common.

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

Power to borrow Money.

XXXVII. And whereas ſome of the Owners and Proprietors of, and Perſons intereſted in the Lands and Grounds within the ſaid ſeveral Townſhips, Diviſions, or Manors, may have Occaſion to borrow Money to defray their reſpective Shares and Proportions of the Charges and Expences of obtaining and carrying this Act into Execution; be it further enacted, That it ſhall and may be lawful to and for the Proprietors and Owners of, and all other Perſons whomſoever, intereſted in ſuch Lands and Grounds, being a Tenant or Tenants for Life, with or without Impeachment of Waſte, or Tenant or Tenants in Fee-tail, general or ſpecial, or by the Courteſy of *England*, or for Years determinable on any Life or Lives, and alſo to and for the Huſbands, Guardians, Truſtees, and Committees of any of the ſaid Owners or Proprietors, being under Coverture, Minors, Idiots, Lunatics, or beyond the Seas, or labouring under any other Diſability whatſoever; and alſo to and for all Perſons acting as Guardians, Truſtees, or Committees of any Owners or Proprietors, being under any Diſability or Incapacity whatſoever, whether ſuch Owners or Proprietors reſpectively be Tenants for Life, with or without Impeachment of Waſte, Tenants in Fee-tail, general or ſpecial, or Tenants by the Courteſy of *England*, or for Years determinable on any Life or Lives, by any Deed or Deeds, Writing or Writings, under their reſpective Hands and Seals, to be duly executed in the Preſence of, and atteſted by Two or more credible Witneſſes, to charge the Lands and Grounds which ſhall be allotted to them reſpectively, by virtue and in purſuance of this Act, with any Sum

or

or Sums of Money for defraying their reſpective Proportions of the ſaid Charges and Expences, and of incloſing and fencing their reſpective Allotments, as the ſaid Commiſſioners ſhall think neceſſary, not exceeding Five Pounds for every Acre of the Lands and Grounds ſo to be allotted to them reſpectively, the ſame to be paid to ſuch Perſon or Perſons, and applied for the Purpoſes aforeſaid, in ſuch Manner as the ſaid Commiſſioners ſhall direct and appoint; and for ſecuring the Re-payment of ſuch Sum or Sums of Money, with Intereſt for the ſame, to grant, mortgage, leaſe, demiſe, or otherwiſe ſubject the ſaid Premiſes, or any Part thereof, unto any Perſon or Perſons who ſhall advance and lend ſuch Sum or Sums of Money reſpectively, his, her, or their Heirs, Executors, Adminiſtrators, or Aſſigns, for any Term or Number of Years, ſo that every ſuch Grant, Mortgage, Demiſe, or Security be made with a Proviſo or Condition to ceaſe and be void, or with an expreſs Truſt, to be ſurrendered when ſuch Sum or Sums of Money thereby to be ſecured, and the Intereſt thereof ſhall be fully paid and ſatisfied; and ſo that in every ſuch Grant, Mortgage, Demiſe, or Security, which ſhall be made by any Perſon or Perſons intereſted in, or entitled unto the Premiſes for the Term of their natural Lives only, or by his, her, or their Guardian or Guardians, Truſtee or Truſtees, Committee or Committees, there be contained a Proviſo or Covenant that the Owner or Proprietor of the ſaid Premiſes ſhall duly pay and keep down the Intereſt of any Sum or Sums of Money to be thereby ſecured during their reſpective Lives, and no Perſon afterwards becoming ſeized or poſſeſſed of the ſaid Premiſes, ſhall be liable to the Payment of any further or larger Arrear of Intereſt than for One Year preceding the Time that the Title to ſuch Poſſeſſion ſhall have commenced; and every ſuch Grant, Mortgage, Leaſe, or Demiſe of the ſaid Premiſes ſhall be good, valid, and effectual in the Law for the Purpoſes thereby intended.

Proprietors to pay their own Expences.

XXXVIII. Provided always, That the ſaid Proprietors, their Attornies or Agents, ſhall pay their own Expences when they, or any of them, ſhall attend the ſaid Commiſſioners at any of the Meetings to be holden in purſuance of this Act.

Money advanced for the Purpoſes of this Act to be repaid with Intereſt

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

Commiſſioners to lay Accounts before Juſtices once a Year

XL. And be it further enacted, That once at leaſt in every Year, during the Execution of this Act, (ſuch Year to be computed from the 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; and ſuch Statement and Account when ſo made, together with the Vouchers relating thereto, ſhall be by them laid before any Two of His Majeſty's Juſtices of the Peace for the ſaid County of *Weſtmorland*, not intereſted in the ſaid Incloſure, to be by them examined and balanced; and ſuch Juſtices ſhall or may diſallow or

reduce

reduce any of the Sums or Items charged in the ſaid Accounts which they may think unjuſt or unreaſonable; 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 Charges or Item in ſuch Account ſhall be binding on the Parties concerned, or valid in Law, unleſs the ſame ſhall have been duly allowed by ſuch Juſtices.

Award where to be depoſited.

XLI. And be it further enacted, That the Award to be made by the ſaid Commiſſioners, ſhall, after the ſame ſhall have been inrolled in Manner directed by the ſaid recited Act, be depoſited with the Clerk of the Peace of the County of *Weſtmorland*, and a true Copy thereof, with a Plan thereunto annexed, atteſted by the ſaid Commiſſioners, ſhall be depoſited and kept in the Pariſh Church of *Kirkby* in *Kendal* aforeſaid.

Appeal.

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

Right of the Lord of the Manors to Minerals not to be prejudiced.

XLIII. Provided always, and be it enacted, That nothing in this Act contained, ſhall be conſtrued or adjudged to defeat, leſſen, or prejudice the Right, Title, or Intereſt of the ſaid Earl of *Lonſdale*, Lord of the ſaid Manors or Townſhips of *Scalthwaite-rigg*, *Hay*, and *Hutton-'ith-Hay*, his Heirs or Aſſigns, or any of the future Lord or Lords, Lady or Ladies of the ſaid Manors or Townſhips for the Time being, of, in, and to the Coal, Lead, Tin, Copper, Stone or Slate, Minerals or Metals, within or under the ſaid Commons and Waſte Grounds intended to be inclоſed as aforeſaid (ſave and except the Stones in the public Quarries to be ſet out as aforeſaid);

ſaid), or of, in, or to the Seigniories and Royalties, Franchiſes and Liberties, incident and belonging to the ſaid Manors or Townſhips; but that the ſaid Earl of *Lonſdale*, and all and every Perſon and Perſons claiming by, from, or under, or in Truſt for him as Lord of the ſaid Manors or Townſhips, and all ſucceeding Lord and Lords, Lady and Ladies, and Owners thereof, for the Time being, ſhall and may, at all Times for ever hereafter, have, hold, take, and enjoy all Rents, Services, Courts, Perquiſites, and Profits of Courts, hunting, fiſhing, hawking, and fowling, Goods and Chattels of Felons and Fugitives, Felons of themſelves, and thoſe put in exigent, Deodands, Waifs, Eſtrays, Forfeitures, Eſcheats, and other Royalties, Liberties, Franchiſes, Privileges, Pre-eminences, Juriſdictions, and Appurtenances whatſoever, to the ſaid Manors or Townſhips, or to the Lord or Lords, Lady or Ladies thereof, for the Time being, incident, appertaining, or belonging, or which have been anciently uſed, exerciſed, and enjoyed by the Lord or Lords, Lady or Ladies of the ſame Manors or Townſhips, (other than and except ſuch Right of Soil, and Right of Common and Paſture, and ſuch other Rights and Intereſts as is and are by this Act meant and intended to be barred, deſtroyed, and extinguiſhed), as could or might be claimed by him, her, or them, as Owner or Owners of the Soil of the ſaid Commons and Waſte Grounds, in as full, ample, and beneficial a Manner, to all Intents and Purpoſes, as he, ſhe, or they could or might have held and enjoyed the ſame, in caſe this Act had not been made; and that the ſaid Earl of *Lonſdale*, and all the future Lords, Ladies, and Owners of the ſaid Manors or Townſhips reſpectively, for the Time being, ſhall and may, from Time to Time, and at all Times hereafter, have, hold, work, and enjoy all Mines, Minerals, and Quarries, of what Nature or Kind ſoever, within or under the ſaid Commons and Waſte Grounds intended to be divided and incloſed as aforeſaid, as well thoſe not opened as thoſe already opened, (ſave and except the ſaid public Quarries of Stone to be ſet out as aforeſaid), and to have, enjoy, and be veſted with all convenient and neceſſary Ways, Way Leaves, and Liberties of laying, making, and repairing Waggon Ways, and other Ways in, over, and along the ſame or any Part thereof; and of ſearching for, winning, and working the Mines and Quarries, and leading and carrying away the Coals, Lead, Tin, Copper, Stones, Lime, Slate, Metals, and Minerals to be gotten thereout, or out of any other of his Lands or Grounds, and making Pits, Shafts, Pit-rooms, Heap-rooms, Drifts, Levels, Water-courſes, erecting and uſing Fire Engines, and other Engines, and all and every other Matters and Things now in uſe, or hereafter to be invented for the Purpoſes aforeſaid, or any of them, in, upon, through, over, or along the ſaid Commons and Waſte Grounds, or any of them, or any Part or Parts thereof, and all other Powers, Privileges, and Authorities for all or any of the Purpoſes aforeſaid, in the ſame Manner as if this Act had not been made.

Satisfaction to be made by the Lord of the Manor for working Mines.

XLIV. Provided always, and be it enacted, That in caſe the Lord or Lords, Lady or Ladies of the ſaid Manors or Townſhips for the Time being, or any Perſon or Perſons claiming under him, her, or them, ſhall, after ſuch Incloſure be made as aforeſaid, ſearch for, win, work, or lead away Coal, Lead, Tin, Copper, Stones, Lime, Slate, Metal, or Minerals, lying within or under any of the ſaid Allotments or Incloſures ſo to be made as aforeſaid, or Lands or Tenements in reſpect whereof ſuch Allotments ſhall be made; then, and in every ſuch Caſe, the Lord or Lords,

Lady or Ladies, of the ſaid Manors or Townſhips for the Time being, or ſuch Perſon or Perſons ſo ſearching for, winning, working, or leading away the ſame, ſhall make full and reaſonable Satisfaction for the Damage and Spoil of Ground occaſioned thereby, or in making or uſing of Waggon Ways or other Ways, or any other Matters and Things according to the Powers herein reſerved or granted to the ſaid Earl of *Lonſdale*, and the Lord or Lords, Lady or Ladies of the ſaid Manors or Townſhips for the Time being, to the Perſon or Perſons, Bodies Politic, Corporate, or Collegiate, who ſhall be in the Poſſeſſion of ſuch Ground at the Time or Times of ſuch Damage or Spoil.

Owners of Allotments may get Limeſtone and other Stone for their own Uſe, to be uſed in the Manors or Townſhips.

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

General Saving.

XLVI. Saving always to the King's moſt Excellent Majeſty, His Heirs, and Succeſſors, and to all and every other Perſon and Perſons, Body or Bodies Politic, Corporate, or Collegiate, his, her, and their Heirs, Succeſſors, Executors, and Adminiſtrators, (except the Perſon to whom any Allotment or Allotments ſhall be made in purſuance of this Act, for and in reſpect of ſuch Rights and Intereſts as are hereby meant and intended to be barred, deſtroyed, and extinguiſhed, and all Perſons reſpectively claiming under them, or in Remainder after them), all ſuch Eſtate, Right, Title, and Intereſt, as they, every, or any of them, could, or ought to have had or enjoyed, in, to, or out of the Lands and Grounds hereby directed to be divided, allotted, and incloſed, before the paſſing of this Act, or could or might have held or enjoyed, in caſe the ſame had not been made.

Act to be printed by King's Printer.

XLVII. And be it further enacted, That this Act ſhall be printed by the ſeveral Printers to the King's moſt Excellent Majeſty, duly authorized to print the Statutes of the United Kingdom, and a Copy thereof ſo printed by any of them, 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. 1812.