ANNO QUINQUAGESIMO TERTIO

GEORGII III. REGIS.

Cap. 173.

An Act for incloſing Lands within the Townſhip of *Undermilbeck*, in the Pariſhes of *Windermere* and *Kirkby in Kendal*, in the County of *Weſtmorland*.

[22d *June* 1813.]

WHEREAS there are within the ſeveral Manors, Diſtricts, or Diviſions of *Undermilbeck*, *Winſter*, and *Crook*, within the Townſhip of *Undermilbeck*, in the Pariſhes of *Windermere* and *Kirkby in Kendal*, in the County of *Weſtmorland*, certain Commons, Moſſes, and Waſte Grounds, containing by Eſtimation Two thouſand Acres or thereabouts: And whereas the Right Honourable *William* Earl of *Lonſdale*, Knight of the Moſt Noble Order of the Garter, is or claims to be Lord of the Manor of *Undermilbeck*, within the ſaid Townſhip of *Undermilbeck*; and *Anthony Garnet* Eſquire, and other the Land Owners of the ſaid Manor, Diſtrict, or Diviſion of *Winſter*, within the ſaid Townſhip, are or claim to be Lords of the ſame Manor, Diſtrict, or Diviſion; and the Right Reverend Father in God *Richard* Lord Biſhop of *Landaff* is or claims to be Lord of the Seigniory or Manor of certain Cuſtomary Tenements ſituate at *Green*, in the ſaid Townſhip of *Undermilbeck*: And whereas Sir *Daniel Fleming* Baronet, and Dame *Anne Frederica Elizabeth le Fleming* his Wife, are Patrons of the Rectory of *Windermere* aforeſaid; and the Reverend *William Barton* Clerk is the Rector thereof, and as ſuch is entitled to the Rectorial Houſe and Glebe Lands in the ſaid Pariſh of *Windermere*, and to all the Tithes ariſing and renewing in and upon the titheable Places thereof: And whereas *John Bolton*, *Anthony Garnett*, *Joſeph Pringle*, Eſquires, the

the Reverend *John Fleming* Clerk, *Robert Birkett* Gentleman, and ſeveral other Perſons are Owners and Proprietors of divers Meſſuages, Lands, and Hereditaments within the ſaid Manors, Diſtricts, or Diviſions of *Undermilbeck*, *Winſter*, and *Crook*, 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 Manors, Diſtricts, or Diviſions, wherein their ſaid 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 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 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 *John Williamſon* of *Kirkby in Kendal*, in the County of *Weſtmorland*, Gentleman, and his Succeſſor for the Time being, to be appointed in Manner herein-after mentioned, ſhall be and he is hereby appointed Commiſſioner for dividing, allotting, and incloſing the ſaid Commons, Moſſes, and Waſte Grounds, and for carrying this Act and the ſaid recited Act into Execution, ſubject to ſuch Directions and Proviſions as are herein-after contained in that Behalf; and alſo with and ſubject to ſuch of the Powers, Authorities, Directions, Clauſes, and Proviſions contained in the ſaid Act of the Forty-firſt Year of the Reign of His preſent Majeſty herein-before mentioned or referred unto, as are not altered, varied, or otherwiſe provided for in and by this Act.

Commiſſioner appointed.

Allowance to the Commiſſioner.

II. And be it further enacted, That the ſaid Commiſſioner ſhall be allowed and paid the Sum of One Guinea and no more for his Trouble and Expences for each Day he ſhall neceſſarily attend or travel in the Execution of this Act.

Commiſſioner may call in any indifferent Perſon to aſſiſt him when he ſees Occaſion.

III. And be it further enacted, That the ſaid Commiſſioner ſhall have the Power, and he is hereby authorized to call in and procure the Aſſiſtance of any indifferent Perſon at any Time, or upon any Occaſion when he ſhall conſider ſuch Aſſiſtance to be neceſſary, in and for the Execution of the Powers hereby or by the ſaid recited Act veſted in him: Provided always, that no ſuch Perſon or Perſons ſo from Time to Time to be called in or procured by the ſaid Commiſſioner, to aſſiſt him as aforeſaid, ſhall be capable of acting as aforeſaid, until he ſhall have taken and ſubſcribed the Oath or Affirmation following; that is to ſay,

Oath.

'I *A. B.* do ſwear (*or*, being one of the Perſons called *Quakers*, do 'ſolemnly affirm), That I will faithfully, impartially, and honeſtly, 'according to the beſt of my Skill and Ability, execute and perform the

'Truſts, Powers, and Authorities veſted and repoſed in me as an Aſſiſtant, 'by virtue of an Act [*here inſert the Title of this Act*], according to 'Equity and good Conſcience, and without Favour or Affection, Pre-'judice or Partiality to any Perſon or Perſons whomſoever.

'So help me GOD.'

Which Oath and Affirmation it ſhall be lawful for the ſaid Commiſſioner to adminiſter, and he is hereby required to adminiſter the ſame; and the ſaid Oath or Affirmation ſo to be taken and ſubſcribed as aforeſaid, and alſo the Inſtrument of Appointment of any new Commiſſioner or Commiſſioners, or Aſſiſtant, with the like Oath to be ſubſcribed as aforeſaid, ſhall be annexed to and enrolled with the Award of the ſaid Commiſſioner, and a Copy of the Inrolment thereof ſhall be admitted as legal Evidence.

For appointing a new Commiſſioner.

IV. And be it further enacted, That if the ſaid *John Williamſon*, or any new Commiſſioner to be elected in the Place or Stead of him or any other ſucceeding Commiſſioner, ſhall die or refuſe or neglect to act, or ſhall be incapable of acting in the Execution of the Powers aforeſaid, that then the ſaid Earl of *Lonſdale* or the Lord or Lords of the ſaid Manor of *Undermilbeck* for the Time being, ſhall within Twenty-one Days after ſuch Refuſal, Neglect, or Incapacity ſhall be known, by Writing under his or their Hand and Seal or Hands and Seals, elect and appoint a new Commiſſioner, not intereſted in the ſaid intended Diviſion, Allotment, and Incloſure, in his Place or Stead.

If the Lord of the Manor neglect to appoint a new Commiſſioner the Land Owners to appoint.

V. Provided always, and be it enacted, That if the Lord or Lords of the ſaid Manor of *Undermilbeck* for the Time being ſhall make Default in nominating and appointing any new Commiſſioner ſo directed to be nominated and appointed by them as aforeſaid, then and in every ſuch Caſe it ſhall and may be lawful to and for the Majority in Value (to be aſcertained by the Land Tax Aſſeſſment) of the Proprietors or Perſons intereſted in the Lands and Grounds directed by this Act to be divided, allotted, and incloſed, or their reſpective Agents (ſuch Agent or Agents to be appointed in Writing) attending at a Meeting or Meetings to be holden for the Election of a new Commiſſioner within Thirty Days next after ſuch Default, or as ſoon as conveniently may be, (public Notice of ſuch intended Meeting or Meetings being firſt given upon ſome *Sunday* before Divine Service, by Writing to be affixed on the principal Outer Door of the ſeveral Pariſh Churches of *Windermere* and *Kirkby in Kendal* aforeſaid, and alſo by Advertiſement to be inſerted in the Newſpaper called *The Weſtmorland Advertiſer*, if that Paper ſhall be then publiſhed, or otherwiſe in ſome other Newſpaper circulating in the ſaid County of *Weſtmorland*, at leaſt Ten Days before every ſuch Meeting), by Writing under their Hands, to appoint a proper Perſon (not intereſted in the ſaid intended Diviſion, Allotment, and Incloſure) to be a Commiſſioner in the Place or Stead of any Commiſſioner ſo dying, refuſing, neglecting, or becoming incapable to act as aforeſaid; which Perſon ſo to be appointed a Commiſſioner in either of the Caſes or Modes aforeſaid, ſhall have the ſame Powers and Authorities for carrying this Act and the ſaid Act of the Forty-firſt Year of the Reign of His preſent Majeſty into Execution, as if he had been originally named and appointed a Commiſſioner in and by this Act; and which ſaid Writing, appointing ſuch new Commiſſioner, ſhall be inrolled in like Manner as the Award of the ſaid Commiſſioner is to be inrolled.

VI. And

Notice of Sittings.

VI. And be it further enacted, That the ſaid Commiſſioner ſhall and may and he is 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 ſeveral Pariſh Churches of *Windermere* and *Kirkby in Kendal* aforeſaid, upon ſome *Sunday* during or immediately before Divine Service, of the Time and Place of his Firſt, Second and Third Sittings for the Purpoſe of putting into Execution the ſeveral Powers veſted in him by this Act, Fourteen Days at the leaſt before ſuch Meetings reſpectively, each of which Meetings ſhall be held in *Bowneſs*, in the ſaid Pariſh of *Windermere*, or in *Kirkby in Kendal*, in the ſaid County of *Weſtmorland*; and the ſaid Commiſſioner ſhall and may after the ſaid Third Meeting from Time to Time appoint ſuch Time and Place for every ſubſequent Sitting as he ſhall think proper, cauſing a Notice in Writing under his Hand, to be affixed upon the principal Door of the ſeveral Pariſh Churches of *Windermere* and *Kirkby in Kendal* aforeſaid, and by Advertiſement as aforeſaid reſpectively, Fourteen Days at the leaſt before every ſubſequent Sitting; and the ſaid Commiſſioner and Clerk to the Commiſſioner, or either 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 Sitting or Sittings by Adjournment for the Execution of this Act, without giving any ſuch Notice as aforeſaid, of any ſuch adjourned Sittings, ſuch adjourned Sittings 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 Commiſſioner, 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*.

Commiſſioner to ſettle Diſputes.

VIII. 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 any Part or Parts of the ſaid Commons and Waſte Lands, 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 Commiſſioner, and he is 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 Commiſſioner to determine the Title to any Meſſuages, Lands, Tenements, or Hereditaments whatſoever.

Commiſſioner not to determine Titles.

May award Coſts.

IX. And be it further enacted, That in caſe the ſaid Commiſſioner ſhall upon the Hearing and Determination of any Claim or Claims, Objection or Objections to be delivered to him in purſuance of the ſaid recited Act or of this Act, ſee cauſe to award any Coſts, it ſhall and may be lawful for the ſaid Commiſſioner, and he is hereby empowered upon Application made to him for that Purpoſe, to ſettle, aſſeſs, and award ſuch Coſts and Charges as he ſhall think reaſonable, to be paid to the Party

Party or Parties in whose Favour any Determination of the said Commissioner 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 Commissioner, and he is hereby authorized and required, by Warrant under his Hand and Seal, directed to any Person whomsoever, to cause such Costs and Charges to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons, Body or Bodies 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.

X. 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 Commissioner touching or concerning any Claim or Claims of Right in or over 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 Commissioner, at the First Assizes to be holden for the said County of *Westmorland*, or for any adjoining County, next after the Expiration of Three Calendar Months from the Time of such Determination, and for that Purpose the Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, so dissatisfied with the Determination of the said Commissioner, shall cause an Action to be brought upon a feigned Issue against the Person or Persons, Body or Bodies Politic, Corporate or Collegiate, in whose Favour such Determination shall have been made, within Two Calendar Months next after such Determination of the said Commissioner, and Notice thereof in Writing given to him, her, or them; and the Defendant or Defendants in such Action or Actions shall, and he, she, or they is and are hereby required to name an Attorney or Attornies who shall appear thereto, or file Common Bail, and accept One or more Issue or Issues, whereby such Claim or Claims, and the Right or Rights thereby insisted on may be tried and determined, (such Issue or Issues to be settled by the proper Officer of the Court in which the said Action or Actions shall be commenced, in case the Parties shall differ about the same); and the Verdict or Verdicts which shall be given in such Action or Actions, shall be final, binding, and conclusive upon all and every Person 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 Commissioner shall and he is hereby required to act in conformity thereto, and to allow or disallow the Claim or Claims thereby determined according to the Event of such Trial or Trials.

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

XI. Provided always, That the Determination of the said Commissioner touching 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, 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.

XII. 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 and defended in their Names.

XIII. 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 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 Commissioner with Process for commencing such Action or Actions, in the same Manner as the Party or Parties might have been served therewith if living; and it shall thereupon be incumbent on the Heir or Heirs, or other Person or Persons who shall claim the Benefit of such Determination as aforesaid, to appear and defend such Action or Actions in the Name or Names of the Person or Persons so dead, and Proceedings shall be had therein, in the same Manner as if such Person or Persons had been actually living, and the Rights of all Parties shall be equally bound and concluded by the Event of such Action or Actions.

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

XIV. Provided also, and be it further enacted, That nothing in this Act shall extend to enable the said Commissioner 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 Commissioner shall be of Opinion against the Right of the Person or Persons so in Possession, he shall forbear to make any Determination thereupon until the Possession shall have been given up by, or recovered from such Person or Persons, by Ejectment or other due Course of Law.

Suits not to impede Execution of the Act.

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

Commissioner empowered to extinguish or suspend Rights of Common at such Times as he shall direct.

XVI. And be it further enacted, That it shall be lawful for the said Commissioner, and he is hereby authorized and empowered, at any Time or Times after he shall have allotted the said Commons and Waste Lands, or at such other Time or Times as he shall think proper, and before the Execution of his Award, by Notice in Writing under his Hand, to be affixed upon One of the principal Outer Doors of each of the several Parish Churches of *Windermere* and *Kirkby in Kendal* aforesaid, to order or direct all or any Parts of the Rights of Common or other Rights in, over, or upon the said Commons, Mosses, and Waste Grounds, or any Part thereof, to be extinguished, or the Exercise thereof to be suspended, for and during such Times as shall be expressed in such Notice or Writing; and that all such Rights as the said Commissioner shall by such Notice or Writing order and direct to be extinguished, or the Exercise thereof to be suspended, shall, from the Time of affixing such Notice or Writing on the said Church Doors, at such other Time or Times as the said Commissioner shall order or direct, cease, determine, and be for ever extinguished, or the Exercise thereof be suspended accordingly, any Law, Usage, or Custom to the contrary notwithstanding; and if during such Suspension, or after the Extinguishment of such Right of Common, any of the Owners or Occupiers of Lands within the said Manors, Districts, or Divisions, or any of them, shall permit his, her, or their Cattle to go, depasture, or feed on any of the Lands or Grounds so exonerated or discharged from Rights of Common, then it shall and may be lawful for any of the said Owners or Occupiers to distrain such Cattle being upon such Lands or Grounds contrary to such Order, and to impound the same, until the Person or Persons so offending shall pay to the Person or Persons so distraining such Sum of Money as the said Commissioner shall, by Writing under his Hand, order and direct, not exceeding the Sum of Forty Shillings for each of the said Cattle so distrained; and in case the same shall not be paid before the next Sitting of the said Commissioner after such distraining or impounding, then the said Commissioner is hereby authorized and empowered, upon Proof of such Offence or Offences having been committed, and of Non-payment of the Penalty hereby imposed, to cause the Cattle so distrained or impounded, or such Part thereof as he shall think necessary, or any other Goods and Chattels of the Person or Persons so offending, to be sold, for raising and paying the Penalty aforesaid, together with the Costs and Charges attending such Distress and Sale, rendering the Surplus (if any) to the Owners of such Cattle.

Turf or Soil not to be cut, digged, or gotten, without the Licence of the Commissioner.

XVII. And be it further enacted, That if any Person or Persons shall, after the passing of this Act, cut, dig, pare, grave, plough, get, or carry away any Turf or Turves or Soil upon or from the said Commons, Mosses, and Waste Grounds, or any Part thereof, without or contrary to the Licence of the said Commissioner, for that Purpose in Writing first had and obtained, (which Licence the said Commissioner is hereby empowered to grant, under such Rules, Orders, Regulations, and Restrictions, as he shall think proper to insert therein), then and in every such Case the said Commissioner, upon due Proof thereof made to him upon Oath, (which Oath the said Commissioner is hereby authorized to administer), shall, and he is required, by Warrant under his Hand and Seal directed to any Person or Persons whomsoever, to cause any Sum or Sums of Money, not exceeding Five Pounds for each Offence, to be levied by Distress and Sale of the Goods and Chattels of every Person so offending

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in the Premiſes, rendering the Surplus, (if any), upon Demand, to the Perſon whoſe Goods and Chattels ſhall have been ſo diſtrained and ſold, after deducting the Coſts and Charges attending ſuch Diſtreſs and Sale; and that the Money ſo to be levied as aforeſaid, ſhall be applied towards defraying the Coſts and Charges of obtaining and executing this Act.

For ſhortening Boundary Fences.

XVIII. And be it further enacted, That in order to ſhorten the Boundary Fences between the Lands by this Act directed to be divided and allotted, it ſhall and may be lawful for the ſaid Commiſſioner, with the Conſent in Writing under the Hand of the Lord of the ſaid Manor of *Undermilbeck*, and of the Majority in Value of the Land Owners intereſted in any Commons or Waſte Lands adjoining to the ſaid Commons, Moſſes, and Waſte Lands by this Act directed to be divided and allotted, and under the Hand of any Owner of any Land upon which ſuch Fence ſhall be intended to be made, to ſet out, aſcertain, and determine the Boundary Fence or Fences to be made between the Lands hereby directed to be divided and allotted, and the Lands lying in ſuch adjoining Manor or Manors, Pariſh or Pariſhes, as he the ſaid Commiſſioner ſhall judge proper for the Purpoſe aforeſaid; and after ſuch Boundary Fences ſhall be ſo ſet out, aſcertained, and determined, the ſame ſhall be made and fenced by ſuch Perſons, in ſuch Manner and at ſuch Times as the ſaid Commiſſioner ſhall direct, and ſhall for ever thereafter be deemed and taken to be the Boundary between the ſaid Diſtricts and Diviſions of *Undermilbeck*, *Winſter*, and *Crook*, or any of them reſpectively, and ſuch adjoining Diſtricts or Diviſions, Pariſh or Pariſhes, any Law, Uſage, or Cuſtom, to the contrary notwithſtanding; and a Deſcription of the Boundaries to be made, ſet out, and determined as aforeſaid, ſhall be inſerted in the Award of the ſaid Commiſſioner, or a Map or Plan to be thereunto annexed.

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 Commiſſioner ſhall aſcertain the Price thereof, or of ſuch Part thereof as ſhall exceed in Value the Allotment or Allotments the Poſſeſſor or Poſſeſſors thereof would be entitled to by virtue of this Act, in reſpect of any other Property as aforeſaid; on aſcertaining of which Price the ſaid Commiſſioner ſhall not value the Buildings or other Improvements thereon, but ſhall value the Land only, and that at ſo much *per* Acre, as the ſame ſhall in his Eſtimation be worth, having Reference to the Waſte next adjoining; and

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 Commissioner, at such Time or Times as he shall appoint for that Purpose, and taking his Receipt or Receipts for the same, every such Encroachment or such Part thereof as shall be so purchased shall be allotted to such Person or Persons, and shall be holden and enjoyed by him, her, or them accordingly; and the said Commissioner shall and he is hereby required to apply such Purchase Money in such and the like Manner as Monies to be raised by Sale of Lands for defraying the Expences of obtaining and passing this Act, and of carrying the same into Execution as herein directed to be applied; and in case any Disputes or Differences shall arise touching any such Encroachments, or to the Extent thereof, such Disputes shall be settled by the said Commissioner.

For setting out Public Bridle and Foot Ways, and Private Ways, &c.

XX. And be it further enacted, That the said Commissioner shall and he is hereby empowered and required to set out and appoint, and cause to be made and completed, such public Bridle Roads, and Foot Ways, and private Roads and Ways, common Watering Places for Cattle, Bridges, Ditches, Gates, Stiles, and other Accommodations, in, over, and upon the said Commons, Mosses and Waste Lands, by this Act intended to be divided and inclosed, as he shall think requisite; and the same shall be made and erected, and at all Times thereafter repaired, cleansed, and maintained by such Persons, and in such Manner as the said Commissioner shall in his Award direct or appoint.

Power to turn and stop Roads.

XXI. And be it further enacted, That the said Commissioner shall and may turn, or abate and stop up, or cause or order to be turned, or abated and stopped up, any ancient public Carriage Road, Bridleway, or Footpath, in, through, upon, over, or between any of the Lands, Grounds, or old Inclosures, within the said Manors, Districts, or Divisions, where he shall judge it requisite or expedient, giving such Notice of a Day to be appointed by him, to receive Objections thereto; as in the said recited Act is directed and required in the Case of setting out the Roads and Ways therein mentioned, and observing the Directions of the said recited Act as to obtaining the Concurrence and Order of Two Justices of the Peace previously thereto, and subject to an Appeal to the Quarter Sessions as in the said recited Act is mentioned; and the Soil of the Roads and Ways so to be stopped up or abated shall be deemed and taken as Part of the Lands and Grounds to be divided and allotted by virtue of this Act.

Allotments for Watering Places, Gravel, &c.

XXII. And be it further enacted, That the said Commissioner shall in the first Place assign, set out, and allot, unto the Surveyors of the Highways within the said several Manors, Districts, or Divisions, such Part or Parts of the said Commons and Waste Grounds, within the said several Manors, Districts, or Divisions, hereby directed to be divided, allotted, and inclosed, as the said Commissioner 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 Manors, Districts, or Divisions, and by the Proprietors of Lands, Tenements, and Hereditaments, within the said several Manors,

Manors, Diſtricts, or Diviſions, and their Tenants for the Time being, in ſuch Manner, and under ſuch Rules, Orders, and Regulations, as the ſaid Commiſſioner ſhall in and by his ſaid Award order and appoint; and that the ſaid Commiſſioner have Power, and is 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 Manors, Diſtricts, or Diviſions, ſhall, from and after the Execution of his ſaid Award, be in future kept in Repair.

Allotments to Moſs Owners.

XXIII. And be it further enacted, That the ſaid Commiſſioner ſhall, in the next Place, ſet out, allot, and appoint unto the Owners and Proprietors of Meered Moſſes, Turbary Grounds, and Brakendales, ſuch Parts of the ſaid Commons and Waſte Grounds, ſituate within ſuch Diviſion wherein ſuch Meered Moſſes, Turbary Grounds, and Brakendales are reſpectively ſituated, as ſhall in the Judgment of the ſaid Commiſſioner 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 Brakendales, 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 Commiſſioner, may and will be moſt convenient for ſuch Owners and Proprietors reſpectively: Provided always, that every ſuch Owner and Proprietor, who ſhall be deſirous to have ſuch Equivalent ſet out and allotted in Moſs or Turbary Ground, ſhall be entitled, on giving Notice in Writing to the ſaid Commiſſioner at or before his Second Sitting, 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 Commiſſioner, that cannot be conveniently done, then in ſuch other Place or reſpective Places as he the ſaid Commiſſioner ſhall, in his 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.

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

Allotments to the Rector for Tithes.

XXIV. And be it further enacted, That the ſaid Commiſſioner ſhall alſo ſet out, allot, and appoint, to and for the ſaid *William Barton* and his Succeſſors, Rectors of the Rectory of *Windermere* aforeſaid for the Time being, one full Eighth Part (Quantity, Quality, and Situation conſidered) of the ſaid Commons and Waſte Grounds, within the Diſtrict or Diviſion of *Undermilbeck*, and belonging to the ſaid Pariſh of *Windermere*, in full Recompence and Satisfaction for all the Predial, Perſonal, and Mixed Tithes, Great and Small (*Eaſter* Offerings, Mortuaries, and Surplice Fees only excepted), which could or might thenceforth ariſe, grow due or payable from and out of, or for or in reſpect of all and every, or any Part of the Commons and Waſte Grounds within the Diſtrict or Diviſion of *Undermilbeck*, in the Pariſh of *Windermere* aforeſaid, the ſaid Allotment being well and ſufficiently ring-fenced according to the uſual and accuſtomed Method of fencing, by and out of the Money ariſing by Sale of the ſaid Commons and Waſte Grounds within the ſaid Pariſh of *Windermere* as hereinafter mentioned.

Allotments to the Lord of Manor in Compenſation for Soil.

XXV. And be it further enacted, That the ſaid Commiſſioner, after the ſaid ſeveral Allotments as aforeſaid ſhall be ſet out and aſcertained, ſhall and may and he is hereby authorized and required to ſet out, allot, and award unto the

the ſeveral Lords of the reſpective Manors within the ſaid Townſhip of *Undermilbeck*, their Heirs and Aſſigns in Severalty and according to their ſeveral and reſpective Rights, Shares, and Intereſts in the ſaid Manors, one full Sixteenth Part (Quantity, Quality, and Situation conſidered) of all and every the Reſidue of the Tracts or Parcels of Commons and Waſte Grounds within the ſaid 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 and Waſte Grounds within the ſaid reſpective Manors.

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

XXVI. And be it further enacted, That the ſaid Commiſſioner 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 his 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 Commiſſioner, his Aſſiſtants and Servants, and all the other neceſſary Expences of the ſeveral Perſons to be employed by the ſaid Commiſſioner in and about the Premiſes, and all the Expences of forming, completing, and repairing the Public and Private Carriage Roads and Highways, to be ſet out and appointed by the ſaid Commiſſioner, and all other Expences of carrying this Act into Execution.

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

XXVII. And be it further enacted, That the ſaid Commiſſioner ſhall and he is hereby required at ſuch convenient Times and Places as to him ſhall ſeem meet, to cauſe the ſaid Part or Parts of the ſaid Commons and Waſte Grounds to be ſet out for Sale by him as aforeſaid to be put up to 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 Commiſſioner 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 and Incloſure.

General Allotments.

XXVIII. And be it further enacted, That after the aforeſaid ſeveral Allotments ſhall have been made and ſet out according to the Directions herein-before contained, the ſaid Commiſſioner ſhall then divide, aſſign, ſet out, and allot all the Reſidue and Remainder of the Commons and Waſte Grounds intended by this Act to be divided and allotted unto and amongſt the ſeveral Owners of Meſſuages and Lands in the ſaid ſeveral Manors, Diſtricts, or Diviſions of *Undermilbeck*, *Winſter*, and *Crook* reſpectively, according to their ſeveral and reſpective Rights and Intereſts, and in ſuch Shares and Proportions as the ſaid Commiſſioner ſhall adjudge and determine to be proportionate to the Value of, and a full Compenſation and Satisfaction to him, her, and them reſpectively, for his, her, and their reſpective Rights and Intereſts in, to, over, or upon the ſaid Commons and Waſte Grounds reſpectively by this Act directed, or intended to be divided and allotted.

Commons in Crook not to be affected.

XXIX. Provided always, and be it further enacted, That nothing herein contained ſhall extend or be conſtrued to extend to affect any of the Commons,

Commons, Moſſes, or Waſte Grounds, lying within the Manor of *Crook*, in the Townſhip of *Crook*, in the ſaid County of *Weſtmorland*, or any Part thereof; but that the ſame ſhall be held and enjoyed by the Perſon or Perſons who is or are entitled thereto as if this Act had not been paſſed, ſubject only to the Determination by the ſaid Act directed to be made, as to the Boundaries of the Commons, Moſſes, and Waſte Grounds, hereby directed to be divided and incloſed, where the ſame or any Part thereof adjoin to that Manor.

Satisfaction for unequal Share of Fencing.

XXX. 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 Commiſſioner, when he ſhall judge it neceſſary and reaſonable, to award, order, aſcertain, and appoint what Sum or Sums of Money, ſuch Proprietor or Proprietors ſhall pay and contribute towards the making of the Mounds and Fences of the Allotment or Allotments of ſuch other Proprietor or Proprietors, who ſhall or may have too great a Share 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.

Allotment to the Rector of Windermere and to the Surveyors of the Highways, to be ring-fenced at the Expence of the other Proprietors.

XXXI. And be it further enacted, That all and every Parcel and Parcels of Land which ſhall be allotted in purſuance of this Act, for the Rights of Common belonging or appertaining to the ſaid Rectory of *Windermere*, and other the Rectories, Vicarages, and Curacies of the ſaid Pariſhes or Townſhips reſpectively, or any Glebe Lands belonging to ſuch Rectories, Vicarages, and Curacies, and all and every Parcel and Parcels of Land which ſhall be allotted to the Surveyors of the Highways as aforeſaid, ſhall be reſpectively well and effectually incloſed and fenced round on the outward Boundaries thereof reſpectively, at ſuch Time and in ſuch Manner as the ſaid Commiſſioner ſhall direct, at the Expence of the ſeveral Owners of and Perſons intereſted in the ſaid Commons and Waſte Lands (except the Rector of *Windermere* aforeſaid, and all other the Rectors, Vicars, Curates, or other Incumbents of the ſaid Pariſhes or Townſhips reſpectively, their Succeſſors, and the ſaid Surveyors of the Highways), in ſuch Shares and Proportions as the ſaid Commiſſioner ſhall order and direct; and after ſuch Fences ſhall have been ſo made, the ſame ſhall for ever thereafter be preſerved, maintained, and kept in Repair by the ſaid Rectors, Vicars, and Curates reſpectively, and their Succeſſors for the Time being, and the ſaid Surveyors for the Time being reſpectively, or by ſuch other Perſons and in ſuch Manner as the ſaid Commiſſioner ſhall in and by his Award order and direct.

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

XXXII. 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 Commiſſioner 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,

thereof, to any other Perſon or Perſons, then and in every ſuch Caſe it ſhall and may be lawful to and for the ſaid Commiſſioner and he is hereby directed, authorized, and required, upon Notice thereof in Writing, to be given to him by the Vendor, (provided the ſame be within the Time before mentioned) to make an Allotment of Land unto the Vendee or Purchaſer in every ſuch Sale, 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.

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

Power to make Exchanges.

XXXIV. And be it further enacted, That it ſhall and may be lawful for the ſaid Commiſſioner 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, Diſtricts, or Diviſions of *Undermilbeck*, *Winſter*, and *Crook* aforeſaid, in lieu of and in Exchange for any other Meſſuages, Buildings, Lands, Tenements, or Hereditaments in the ſaid Pariſhes of *Windermere* and *Kirkby in Kendal*, or either of them, 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 Commiſſioner, or ſome Deed or Deeds executed by him 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 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

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.

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

Vacating Leaſes at Rack Rent.

XXXVI. 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 his Hand order and appoint, the reſpective Leſſors or Landlords in ſuch Leaſes or Agreements having firſt paid or tendered ſuch Satisfaction to the reſpective Leſſee or Leſſees, Tenant or Tenants, as the ſaid Commiſſioner ſhall aſcertain, as reaſonable to be paid to ſuch Leſſee or Leſſees, Tenant or Tenants, on account thereof, or as an Equivalent for the ſame: Provided always, that nothing herein contained ſhall extend, or be conſtrued to extend, to make void any Agreement or Engagement already made between Landlord and Tenant, in Contemplation of a Diviſion or Encloſure 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.

XXXVII. 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 ſeiſed thereof to ſuch and the ſame Uſes, and for ſuch and the ſame Eſtates, and ſubject to ſuch and the ſame Wills, Jointures, Rents, Charges, and Incumbrances, and no other, as the Meſſuages, Buildings, Lands, and Tenements and Hereditaments whereof ſuch Perſons were ſeiſed or poſſeſſed, at or immediately before the Execution of the Award to be made by the ſaid Commiſſioner, or for which or in reſpect whereof ſuch Allotments or Exchanges ſhall be made, would have been ſubject to, charged with, or affected by, in caſe this Act had not been made.

Coſts of the Act.

XXXVIII. 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

for such Purpose) of enclosing the Allotments hereby directed to be made to the Surveyor or Surveyors of the Highways within the said several Manors, Districts, or Divisions, and all the Costs, Charges, and Expences incident to and attending the obtaining of 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 enrolling the Award of the said Commissioner, and all Charges and Expences of the said Commissioner, his Clerk, Assistants, and Servants, and other necessary Expences of the several Persons to be employed by the said Commissioner in and about the Premises, and all the Expences of forming, completing, and repairing the public Carriage Roads and Highways to be set out and appointed by the said Commissioner, 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 Lords of the said Manors, the Surveyor and Surveyors of the Highways within the said several Manors, Districts, or Divisions, and the Rector of the Parish of *Windermere* respectively for the Time being, for and in respect of the Allotment or Allotments hereby directed to be made to him or them as aforesaid); which said Costs, Charges, and Expences, together with the Proportions thereof, to be paid by the several Persons hereby made liable to the Payment thereof, shall be settled and adjudged by the said Commissioner, and shall be paid at such Time and Place, and to such Person or Persons, as the said Commissioner shall appoint.

Application of Overplus Money raised by Sale of Common.

XXXIX. And be it further enacted, That if the Part or Parts of the said Commons or Waste Grounds marked and set out for Sale, and actually sold by the said Commissioner, shall happen to raise more Money than may be requisite for defraying all the Costs, Charges, and Expences of or incident to the obtaining of this Act, and fully carrying the same into Execution in every Respect, the overplus Money shall be by the said Commissioner paid and divided, and he is hereby directed to pay and divide the same to and among the several Proprietors of Allotments of the said Commons and Waste Grounds allotted by him under and by virtue of the Powers contained in this Act, and the said recited Act, or either of them, if 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.

XL. And whereas some of the Owners and Proprietors of and Persons interested in the Lands and Grounds within the said several Manors, Districts or Divisions 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

and alſo to and for the Huſbands, Guardians, Truſtees and Committees of any of the ſaid Owners and 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 Sums of Money for defraying their reſpective Proportions of the ſaid Charges and Expences, and of incloſing and fencing their reſpective Allotments as the ſaid Commiſſioner ſhall think neceſſary, not exceeding Five Pounds for every Acre of the Lands and Grounds ſo to be allotted to them reſpectively, the ſame to be paid to ſuch Perſon or Perſons, and applied for the Purpoſes aforeſaid, in ſuch Manner as the ſaid Commiſſioner ſhall direct and appoint, and for ſecuring the 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 ſeiſed or poſſeſſed of the ſaid Premiſes, ſhall be liable to the Payment of any further or larger Arrear of Intereſt than for One Year preceding the Time that the Title to ſuch Poſſeſſion ſhall have commenced; and every ſuch Grant, Mortgage, Leaſe, or Demiſe of the ſaid Premiſes, ſhall be good, valid and effectual in the Law for the Purpoſes thereby intended.

Proprietors to pay their own Expences.

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

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

XLII. 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,

Execution, the Money ſo paid and advanced ſhall be repaid and ſatisfied by the Direction of the ſaid Commiſſioner, together with lawful Intereſt for the ſame.

Commiſſioner to lay Accounts before a Juſtice once a Year.

XLIII. 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 Commiſſioner ſhall and he is hereby required to make a true and juſt Statement or Account of all Sums of Money by him received and expended, or due to him for his own Trouble and Expences in the Execution of this Act; and ſuch Statement and Account when ſo made, together with the Vouchers relating thereunto, ſhall be by him laid before any Two of His Majeſty's Juſtices of the Peace for the ſaid County of *Weſtmorland*, not intereſted in the ſaid Incloſure, to be by them examined and balanced; and ſuch Juſtices ſhall or may diſallow or 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 Commiſſioner; and no Charges or Item in ſuch Account ſhall be binding on the Parties concerned or valid in Law, unleſs the ſame ſhall have been duly allowed by ſuch Juſtices.

Award where to be depoſited.

XLIV. And be it further enacted, That the Award to be made by the ſaid Commiſſioner ſhall, after the ſame ſhall have been inrolled in Manner directed by the ſaid recited Act, 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 Commiſſioner, ſhall be depoſited and kept in the Pariſh Church of *Windermere* aforeſaid.

Appeal.

XLV. 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 Commiſſioner as is by the ſaid recited Act or this Act declared to be final, binding, or concluſive, and except in ſuch Caſes where an Iſſue at Law ſhall be tried as herein mentioned), then and in every ſuch Caſe he, ſhe, or they may appeal to the General Quarter Seſſions of the Peace which ſhall be holden for the ſaid County of *Weſtmorland*, within Six Calendar Months next after the Cauſe of Complaint ſhall have ariſen, on giving to the ſaid Commiſſioner, and to the Party or Parties concerned, Thirty Days Notice in Writing of ſuch Appeal and of the Matter thereof; and the Juſtices (not intereſted in the Premiſes), in ſuch Seſſion aſſembled, are hereby required to hear and determine the Matter of every ſuch Appeal, and to make ſuch Order therein and award ſuch Coſt 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 upon 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 Lords of Manors to Minerals not to be prejudiced.

XLVI. Provided always, and be it enacted, That nothing in this Act contained ſhall be conſtrued or adjudged to defeat, leſſen, or prejudice the Right, Title, or Intereſt of the ſaid Earl of *Lonſdale*, Lord of the ſaid Manor of *Undermilbeck*, nor of the Lords of the ſaid Manor of *Winſter* for the Time being, or any of the future Lord or Lords, Lady or Ladies, of the ſaid Manors reſpectively 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, within the ſaid Manors intended to be incloſed as aforeſaid (ſave and except the Stones in the public Quarries to be ſet out as aforeſaid), or of, in, or to the Seignories and Royalties, Franchiſes, and Liberties, incident and belonging to the ſaid reſpective Manors; but that the ſaid reſpective Lords of the ſaid Manors, 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 Manor, or to the Lord or Lords, Lady or Ladies thereof for the Time being, incident, appertaining, or belonging, or which have been anciently uſed, exerciſed, and enjoyed by the Lord or Lords, Lady or Ladies of the ſame Manors (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 paſſed; and that the ſaid Lords, Ladies, and Owners, of the ſaid Manors 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 for ſearching for, winning, and working the Mines and Quarries, and leading and carrying away the Coals, Lead, Tin, Copper, Stones, Lime, Slates, 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, Watercourſes, erecting and uſing Fire Engines and other Engines, and all and every other Matters and Things now in

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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 Part of the Purpoſes aforeſaid, in the ſame Manner as if this Act had not been paſſed.

Satisfaction to be made by the Lords of the Manors for working Mines.

XLVII. Provided always, and be it enacted, That in caſe the Lord or Lords, Lady or Ladies of the ſaid Manors, Diſtricts, or Diviſions 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, Diſtricts, or Diviſions 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, Diſtricts, or Diviſions 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 Lime-Stone and other Stone for their own Uſe, to be uſed in the Manors, Diſtricts, or Diviſions.

XLVIII. 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, Diſtricts, or Diviſions of *Undermilbeck*, *Winſter*, and *Crook*, to whom ſuch 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, Diſtricts, or Diviſions, 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, Diſtricts, or Diviſions, 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, Diſtricts, or Diviſions for the Time being, or his, her, or their Stewards, Agents, or Workmen reſpectively.

General Saving.

XLIX. 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 the King's Printers.

L. 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. 1813.