ANNO QUINQUAGESIMO TERTIO

GEORGII III. REGIS.

Cap. 109.

An Act for incloſing Lands within the Townſhips of *Whittington* and *Newton* with *Docker*, in the Pariſh of *Whittington*, in the County Palatine of *Lancaſter*.

[21ſt *May* 1813.]

WHEREAS there are within the Townſhips of *Whittington* and *Newton* with *Docker*, within the ſeveral Manors of *Whittington* and *Tunſtal*, in the Pariſh of *Whittington*, in the County Palatine of *Lancaſter*, certain Tracts or Parcels of Commons, Moors, and Waſte Grounds, called *Whittington Moor*, *Newton Moor*, and *Docker Moor*; and alſo divers other ſmall Parcels of Common and Waſte Lands within the ſaid ſeveral Townſhips of *Whittington* and *Newton* with *Docker*, in the Pariſh of *Whittington* aforeſaid, containing in the Whole by Eſtimation One thouſand three hundred Acres or thereabouts: And whereas *Richard Toulmin North* Eſquire is Lord of the ſaid ſeveral Manors of *Whittington* and *Tunſtal*, and as ſuch is entitled to the Royalties therein, and the Soil of the ſaid Commons and Waſte Grounds: And whereas the ſaid *Richard Toulmin North* and *William Wilſon Carus Wilſon*, Eſquires, *Elizabeth Gathorne* Widow, and *Elizabeth Harriſon* Spinſter, and divers other Perſons, are Owners and Proprietors of divers Meſſuages, Lands, and Hereditaments, within the ſaid ſeveral Townſhips or Manors, or ſome or one of them, and in reſpect thereof or otherwiſe, are entitled to Right of Common in, over, or upon all or ſome or one of the ſaid Commons, Moors, and Waſte Grounds, within the ſaid ſeveral Townſhips or Manors: And whereas by an Act paſſed in the Forty-firſt Year of the Reign of His preſent Majeſty, intituled *An Act for conſolidating in One Act certain Pro-*

viſions 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, Moors, 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, Moors 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 *Thomas Buttle* of *Kirkby Lonſdale*, in the County of *Weſtmoreland* Gentleman, and *Edmund Tatham* of *Cantsfield*, in the County of *Lancaſter*, Gentleman, and their Succeſſors, to be appointed in Manner herein-after mentioned, ſhall be, and are hereby appointed Commiſſioners for dividing and allotting the ſaid Commons, Moors, and Waſte Grounds, and for carrying this Act and the ſaid recited Act into Execution, 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.

Appointment of new Commiſſioner in caſe of Death or Reſignation.

II. And be it further enacted, That in caſe either of the ſaid Commiſſioners, or any Succeſſor to be appointed as herein is provided, ſhall happen to die, or decline to act, or become incapable of acting, before the Execution of all the Powers hereby veſted in him ſhall be fully executed, or ſhall refuſe to qualify and act in the Execution hereof, then, and in every ſuch Caſe, it ſhall be lawful for the major Part in Value (to be aſcertained by the Land Tax Aſſeſſment) of the Proprietors or Perſons intereſted in the Lands and Grounds directed to be divided and incloſed, or their known Agents or Attornies, who ſhall be preſent at a public Meeting to be held for that Purpoſe at *The Roſe and Crown Inn*, in *Kirkby Lonſdale*, in purſuance of a Notice to be given in the Pariſh Church of *Whittington*, or by Writing to be affixed on the principal Door of the ſaid Church; and alſo by Advertiſement to be inſerted in *The Lancaſter Gazette*, or if that Newſpaper ſhall not be publiſhed, in ſome other Newſpaper uſually and generally circulated in the County of *Lancaſter*, at leaſt Twenty-one Days before ſuch Meeting, by Writing under their Hands, to appoint from Time to Time ſome other fit and proper Perſon not intereſted in the ſaid Incloſure, to be a Commiſſioner in the room of any ſuch Commiſſioner ſo dying, declining to act, or becoming incapable to act as aforeſaid, and ſo from Time to Time, as often as any Commiſſioner appointed by the ſaid Proprietors, or the major Part in Value of them preſent at ſuch Meeting as aforeſaid, ſhall die, or become incapable of acting, or ſhall neglect or refuſe to act as aforeſaid; and every ſuch Commiſſioner ſo to be appointed as aforeſaid ſhall (after taking the Oath preſcribed in that Behalf) have the like Powers and Authorities in all Reſpects for carrying this and the ſaid recited Act into Execution, as if he or they had been originally named and appointed a Commiſſioner in and by this Act.

Appointment of Umpire.

III. Provided always, and be it further enacted, That whenever the ſaid Commiſſioners ſhall diſagree or differ in Opinion, touching or concerning any

any Matter or Thing to be by them done and performed in purſuance and by virtue of this Act or of the ſaid recited Act, then, and in every ſuch Caſe, it ſhall be lawful for the ſaid Commiſſioners, and they are hereby authorized and required, with all convenient Speed, after ſuch Diſagreement or Difference in Opinion ſhall happen, to refer the Matter thereof to ſuch diſintereſted Perſon as the ſaid Commiſſioners ſhall think proper to appoint for that Purpoſe as Umpire, whoſe Judgment and Determination thereupon reſpectively ſhall be deemed and conſidered as the Judgment and Determination of the ſaid Commiſſioners: Provided always, that no Perſon ſhall be capable of acting as Umpire in Execution of the Powers by this or the ſaid recited Act given, until he ſhall have taken and ſubſcribed the Oath following; (that is to ſay),

'I do ſwear, [*or, being one of the People called* Quakers, 'I *do ſolemnly affirm*], That I will faithfully, impartially, and honeſtly, 'according to the beſt of my Skill and Ability, execute and perform the 'ſeveral Truſts, Powers, and Authorities, veſted and repoſed in me as an 'Umpire by virtue of an Act made in the Fifty-third Year of the Reign 'of King *George* the Third, intituled [*here inſert the Title of this Act*] 'according to Equity and good Conſcience, and without Favour or Affec-'tion, Prejudice or Partiality, to any Perſon or Perſons whomſoever.

'So help me GOD.'

Which Oath or Affirmation it ſhall be lawful for the ſaid Commiſſioners, or either of them, to adminiſter; and the ſaid Oath or Affirmation 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 Sittings

IV. And be it further enacted, That the ſaid Commiſſioners ſhall, and they are hereby required, to cauſe public Notice to be given upon ſome *Sunday* before or during Divine Service, by Writing to be affixed upon the principal Outer Door of the ſaid Pariſh Church of *Whittington*, and alſo by Advertiſement, in Manner aforeſaid, of the Time and Place of the firſt Sitting, and all other ſubſequent Sittings, for the Execution of this or the ſaid recited Act, Fourteen Days at leaſt before any ſuch Sittings ſhall be held, (Sittings by Adjournment only excepted); and the ſaid Commiſſioners ſhall and may adjourn any and every ſuch Sittings from Time to Time, as they ſhall ſee Occaſion, for the further Execution of this Act, and the ſaid recited Act; and in caſe the ſaid Commiſſioners ſhall not be preſent at ſuch Time and at the Place appointed for ſuch Attendance, then it ſhall be lawful for the Perſon or Perſons who ſhall act as Clerk or Clerks to the ſaid Commiſſioners to adjourn the ſame to any future Day, not exceeding Twenty-eight Days from the Day of ſuch Adjournment: Provided always, that all Sittings of the ſaid Commiſſioners to be had by virtue of this Act ſhall be held at *Kirkby Lonſdale*, or within the Diſtance of Seven Miles thereof.

Other Notices, how to be given.

V. 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 Lancaſter Gazette*, or if that Newſpaper ſhall not then be publiſhed, then in ſome other Newſpaper uſually and generally circulated in the County of *Lancaſter* aforeſaid.

Allowance to the Commiſſioners.

VI. And be it further enacted, That each of the ſaid Commiſſioners and Umpire, who ſhall act in the Execution of this Act, ſhall be allowed the Sum of Two Guineas and no more for his Trouble and Expences, for each and every Day he ſhall neceſſarily attend in the Execution of the Powers of this Act, or the ſaid recited Act, or be employed in travelling to or from the Places of Meeting for that Purpoſe; and at all ſuch Meetings the ſaid Commiſſioners and Umpire ſhall out of ſuch Allowance pay and defray his and their own Charges and Expences, as well as their travelling Expences.

Commiſſioners to ſettle Differences.

VII. 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 reſpective Rights or Intereſts which they or any of them may have or claim to have in or upon, or in any Manner reſpecting or relating to the ſaid Diviſion and Incloſure, it ſhall and may be lawful to and for the ſaid Commiſſioners to hear, adjudge, and determine the ſame: Provided always, that nothing herein contained ſhall authorize and empower the ſaid Commiſſioners to determine the Title to any Meſſuages, Lands, Tenements, or Hereditaments whatſoever.

Power to aſſeſs Coſts.

VIII. And be it further enacted, That in caſe the ſaid Commiſſioners ſhall, upon the Hearing or Determination of any Claim or Claims, Objection or Objections, to be delivered to them in purſuance of this Act or the ſaid recited Act, ſee Cauſe to award any Coſts, it ſhall 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 every ſuch Caſe it ſhall be lawful for the ſaid Commiſſioners, and they are hereby authorized and required, by Warrant under their Hands directed to any Perſon or Perſons 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.

IX. 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, Rights or Intereſts in, over, or upon the ſaid Commons and Waſte Grounds hereby directed to be incloſed, or any Part thereof, then, and in every ſuch Caſe, it ſhall and may be lawful for the Perſon or Perſons ſo diſſatisfied to proceed to a Trial at Law of the Matter ſo determined by the ſaid Commiſſioners or Umpire,

Umpire, at the first Assizes to be holden for the said County of *Lancaster* 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 in such Action or Actions shall, and he, she, and they is and are hereby required to name an Attorney or Attornies, who shall appear thereto and 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 and 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: Provided also, that the Determination of the said Commissioners or Umpire, touching such Claim or Claims, Right of Common, or other Rights or Interests, in, over, or upon the Lands and Grounds hereby directed to be divided 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 and proceeded in as aforesaid, shall be final and conclusive upon all Parties.

If Parties die Actions not to abate.

X. 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 such Event had not happened.

In case of Death of Parties before Actions brought, the same to be carried on and defended in their Names.

XI. Provided always, and be it further enacted, That if any Person or Persons in whose Favour any such Determination as aforesaid shall have been made, and against whom any such Action or Actions might have been brought if living, shall die before the Expiration of the Time hereinbefore 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 such 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 upon 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 and 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.

XII. Provided alſo, and be it further enacted, That nothing in this Act contained ſhall extend to enable the ſaid Commiſſioners to determine any Right between any Parties, contrary to the Poſſeſſion of any ſuch Parties, (except in Caſes of Encroachment made within the Period of Twenty Years); 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.

Suits not to impede the Execution of the Act.

XIII. 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 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 or taken by the Perſon or Perſons who, upon the Determination of ſuch Suit or Suits, ſhall become entitled to the ſame.

Commiſſioners may appoint Surveyor and Aſſiſtants.

XIV. And be it further enacted, That the ſaid Commiſſioners may, and they are hereby authorized and empowered, when and as to them ſhall ſeem meet, to appoint any competent Perſon or Perſons not intereſted in the ſaid intended Incloſure, and not being the Steward or Agent of any Perſon ſo intereſted, to be a Surveyor or Surveyors, for the Purpoſe of the ſaid intended Diviſion and Incloſure, or to be an Aſſiſtant to the ſaid Commiſſioners in executing the ſeveral Powers and Authorities in them veſted by this and the ſaid recited Act, and from Time to Time to diſplace and remove any ſuch Perſon or Perſons ſo to be appointed, and to appoint any other competent Perſon or Perſons not intereſted as aforeſaid, in the Room and Stead of any ſuch Surveyor or Surveyors, Aſſiſtant or Aſſiſtants, ſo to be diſplaced or removed, and to pay, ſatisfy, and diſcharge to each and every ſuch Surveyor and Aſſiſtant ſo to be appointed as aforeſaid, from and out of the Monies to be provided for the Purpoſes of this Act, all ſuch Remuneration for Labour, Recompence, and incidental Expences as to the ſaid Commiſſioners ſhall ſeem juſt and reaſonable.

Surveyor to take an Oath.

XV. Provided always, and be it further enacted, That no Perſon or Perſons ſo to be appointed Surveyor as aforeſaid, ſhall be capable of acting in the Execution of this or the ſaid recited Act as a Surveyor, until he or they ſhall have taken and ſubſcribed the Oath or Affirmation following; (that is to ſay),

'I Do ſwear, [or, *being one of the People called* Quakers, *do ſolemnly declare and affirm*], That I will faithfully, impartially, and honeſtly, according

'according to the beſt of my Skill and Ability, execute and perform the 'ſeveral Duties incumbent on me as a Surveyor, by virtue of an Act 'paſſed in the Fifty-third Year of the Reign of His Majeſty King *George* 'the Third, intituled, [*here ſet forth the Title of the 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 or Affirmation it ſhall be lawful for the ſaid Commiſſioners, or either of them, to adminiſter to each and every Surveyor as aforeſaid, and ſuch Oath ſo taken and ſubſcribed ſhall be annexed to and depoſited with the Award of the ſaid Commiſſioners.

Survey to be made.

XVI. And for the more juſt and regular Diviſion of the Lands and Grounds hereby directed to be divided and incloſed; be it further enacted, That the ſaid Surveyor ſhall make, or cauſe to be made, a Survey, Admeaſurement, and Plan of the ſaid Commons, Moors, and Waſte Grounds, and ſuch Survey, Admeaſurement, and Plan, ſhall be reduced into Writing, and the Number of Acres, Roods, and Perches, in Statute Meaſure, contained in the ſaid Commons, Moors, and Waſte Grounds ſhall be ſet forth and aſcertained, and delivered to the ſaid Commiſſioners, and ſhall be verified on Oath or Affirmation of the Perſon making the ſame, (which Oath or Affirmation the ſaid Commiſſioners, or either of them, or any other Commiſſioner to be appointed as aforeſaid, or any Juſtice of the Peace for the ſaid County of *Lancaſter*, is hereby authorized and required to adminiſter): Provided nevertheleſs, that if any Plan or Plans, Survey or Surveys already made, of the ſaid Commons, Moors, and Waſte Grounds, or any Part or Parts thereof, ſhall be produced and laid before the ſaid Commiſſioners, of the Authenticity of which they ſhall be ſatisfied, it ſhall be lawful for the ſaid Commiſſioners to make uſe of the ſame, without cauſing ſuch new Survey or Plan to be made thereof.

Rights of Common to be ſuſpended.

XVII. And be it further enacted, That it ſhall and may be lawful to and for the ſaid Commiſſioners, and they are hereby authorized at any Time or Times before the Execution of the ſaid Award, by Notice in Writing under their Hands, to be given and publiſhed as 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 ſuch Writing ceaſe, determine, and be for ever extinguiſhed, or the Exerciſe thereof be ſuſpended accordingly; any Law, Uſage, or Cuſtom to the contrary thereof notwithſtanding.

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, any 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 they 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 ſhall 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.

For ſhortening Boundary Fences.

XIX. And be it further enacted, That if the ſaid Commiſſioners ſhall deem it expedient or proper to ſhorten the Boundary Fences between the Lands and Grounds by this Act directed to be divided and allotted, and the Lands and Grounds of any Pariſh or Townſhip adjoining thereto, or to make the ſaid Boundary Fences regular, it ſhall be lawful for the ſaid Commiſſioners, with the Conſent in Writing, under the Hand or Hands of the Lord or Lords, Lady or Ladies, of the Manor or Manors in which the Lands are ſituate, and of the Owner or Owners of the Lands upon which any Fence or Fences ſhall or may be intended to be made, to ſet out, aſcertain, and determine the Boundary Fences to be made between the Lands and Grounds by this Act directed to be divided and allotted, and the Lands lying in ſuch adjoining Pariſh or Townſhip, Pariſhes or Townſhips reſpectively, in ſuch Manner as they ſhall judge proper for the Purpoſes aforeſaid; and after ſuch Boundaries ſhall be ſet out and aſcertained as aforeſaid, the ſame ſhall be fenced by ſuch Perſon or Perſons in ſuch Manner and at ſuch Time or Times as the ſaid Commiſſioners ſhall direct, and ſhall for ever thereafter be deemed and be taken to be the Boundaries between the ſaid Townſhips of *Whittington* and *Newton* with *Docker*, or either of them, and ſuch adjoining Pariſh or Townſhip, Pariſhes or Townſhips reſpectively; any Law, Uſage, or Cuſtom to the contrary thereof notwithſtanding.

Encroachments.

XX. 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, without any legal Grant or Authority for that Purpoſe, ſhall be deemed Part of the Commons and Waſte Lands to be divided and incloſed by virtue of this Act, and the ſame ſhall be divided and incloſed accordingly: Provided nevertheleſs, that all and every ſuch Encroachments ſhall be allotted to the Perſon or Perſons who ſhall at the Time of making the Allotments be in Poſſeſſion of ſuch Encroachments, or in the Receipt of the Rents and Profits thereof, 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 Improvement made thereon; and if any ſuch Perſon or Perſons ſhall not be entitled to any Allotment, or not to an 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

perty 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 their 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 an Acre, to the said Commissioners, and at such Time or Times as they shall appoint for that Purpose, and taking their Receipt or Receipts for the same, every such Encroachment, or such Part or Parts thereof as shall be so purchased, and also all Buildings and Improvements thereon, shall be allotted to such Person and Persons, and shall be holden and enjoyed by him, her, or them accordingly; and the said Commissioners shall, and they are hereby required to apply such Purchase Money as Part of the Monies to be raised for defraying the Expences of obtaining and passing this Act, and of carrying the same into Execution; and in case any Disputes or Differences shall arise touching any such Encroachments, or the Extent thereof, such Disputes shall be settled by the said Commissioners; and if any Surplus shall remain after Payment of such Expences as aforesaid, such Surplus shall be divided between the several Persons interested in the said Lands and Grounds, in Proportion to their respective Interests and Property therein; and the Shares of such of the said Persons as shall be Tenants thereof in Fee Simple, shall be paid to them respectively; and the Shares of the others of the said Persons shall respectively 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 other Hereditaments, or of any Timber or Wood growing thereon, where any such last-mentioned Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments, to be settled to the same Uses.

Commissioners may make Drains, &c.

XXI. And be it further enacted, That the said Commissioners shall and may scour out, deepen, and widen all such Brooks, Streams, Ditches, Water-courses, Watering-places, Tunnels, and Bridges in the said several Townships or Divisions of *Whittington*, *Newton*, and *Docker*, and each of them; and also shall and may set out, order, and direct such new Ditches, Drains, Water-courses, Watering-places, Tunnels, Water-gates, Flood-gates, Banks, and Bridges, to be made of such Depth, Breadth, and Extent, and in such Situations and Directions as the said Commissioners shall think proper, as well in, through, over, and upon the Lands and Grounds hereby intended to be divided and inclosed as aforesaid, as also in, through, and over any ancient Inclosures, or other Lands or Grounds, in the said several Townships or Divisions of *Whittington*, *Newton*, and *Docker* respectively, or any Part or Parts thereof, making such Satisfaction to the Owners and Proprietors of such ancient Inclosures, or other Lands or Grounds not hereby intended to be divided and inclosed, for the Damage done thereby, as the said Commissioners shall judge reasonable; and they shall and may, and they are hereby directed, in and by their Award, to order and direct by whom, at whose Expence, at what Time, and in what Manner the said Brooks, Ditches, Drains, Water-courses, Watering-places, Tunnels, Water-gates, Banks, and Bridges, shall be thereafter repaired, cleansed, scoured, and maintained: Provided always, that no such Brook or Stream shall be diverted or turned without the Consent in Writing of the Owner or Owners, Proprietor or Proprietors, of the Lands and Grounds, from which any such

Brook ſhall be diverted, or through or into which any ſuch Brook or Stream ſhall be turned.

Commiſſioners may diſcontinue Roads, &c.

XXII. And be it further enacted, That the ſaid Commiſſioners may, and they are hereby empowered to divert, turn, or ſtop up, and by their Award or any other Writing under their Hands, order and direct to be diſcontinued ſuch of the preſent public and private Carriage, Bridle, and Foot Roads and Highways, paſſing or leading through or over the ſaid ſeveral Commons or Waſte Grounds, or any of them, or through or over any of the old incloſed Lands within the ſeveral Townſhips or Diviſions of *Whittington*, *Newton*, and *Docker*, or any of them, as they ſhall think uſeleſs and unneceſſary, with the Concurrence of Two Juſtices of the Peace, and ſubject to appeal in Manner directed by the ſaid recited Act.

Allotments for Watering-places, Gravel, &c.

XXIII. 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 Stone and 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 ſaid 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 Award, order and appoint; and that the ſaid Commiſſioners ſhall 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 Award, be in future kept in Repair; and every ſuch Pieces or Parcels of Land, and Places ſo to be appointed and ſet out as aforeſaid, ſhall from and after ſuch ſetting out and Appointment as aforeſaid, be and remain, and is and are hereby declared to be and remain veſted in the Lord for the Time being of the ſaid Manors of *Whittington* and *Tunſtal*, in Truſt only for the Purpoſes of this Act.

Allotments to Moſs Owners.

XXIV. 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 and Turbary Grounds, and Brackendales, ſuch Parts of the ſaid Commons and Waſte Grounds ſituate within ſuch Diviſion, wherein ſuch Meered Moſſes and 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 and 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

ſaid Commiſſioners may and will be moſt convenient for ſuch Owners and Proprietors reſpectively.

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

XXV. Provided always, That every ſuch Owner and Proprietor who ſhall be deſirous to have ſuch Equivalent ſet out and allotted in Moſs and 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 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 Rents and Services as the ſaid ſeveral Meered Moſſes and Turbary Grounds are now reſpectively ſubject.

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

XXVI. And be it further enacted, That the ſaid Commiſſioners ſhall in the next Place, if they ſhall think proper, mark and ſet out ſuch Part and Parts of the ſaid Commons and Waſte Grounds, as will by Sale thereof be in their Judgment 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 other incidental Charges and Expences whatſoever, for or by reaſon of, or preparatory to the ſaid Diviſion and Incloſure, and for carrying this and the ſaid recited Act into Execution, ſo as a proportionate Part, in the Judgment of the ſaid Commiſſioners, or as nearly ſo as may be, ſhall be ſet out in each Townſhip or Diviſion, for defraying ſuch Parts of the ſaid Charges and Expences as ſhall be payable in reſpect of the Allotments within the ſame; and ſuch Allotment or Allotments ſhall be ſold and diſpoſed of by Public Auction, or otherwiſe, in the Manner directed by the ſaid recited Act; and if there ſhall remain any Overplus of the Monies to be produced by Sale of the Land hereby directed to be ſold as aforeſaid, (after Payment and Satisfaction of the ſaid Coſts, Charges, and Expences,) then ſuch ſurplus Money ſhall be paid by the ſaid Commiſſioners unto the ſeveral Perſons intereſted in the ſaid Commons and Waſte Lands, in ſuch Shares and Proportions as they ſhall appoint, or otherwiſe ſuch ſurplus Money ſhall be paid into the Bank of *England*, according to the Directions of the ſaid recited Act with reſpect to Money which is thereby directed to be paid into the Bank of *England*, for the Purchaſe or Exchange of Lands, Tenements, or Hereditaments, to be ſettled to the ſame Uſes, or of any Timber or Wood growing thereon, and which ought to be laid out in the Purchaſe of other Lands, Tenements, or Hereditaments, as therein mentioned.

Allotment to Richard Toulmin North for Right of Soil.

XXVII. And be it further enacted, That the ſaid Commiſſioners ſhall, and they are hereby authorized and required, as ſoon as conveniently may be, after ſetting out ſuch Parts of the ſaid Commons and Waſte Lands, for the ſeveral Purpoſes herein and in the ſaid recited Act mentioned, to ſet out, allot, and award to 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 ſaid 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.

General Allotments.

XXVIII. 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 reſpectively hereby intended to be divided and incloſed, unto and amongſt the ſaid *Richard Toulmin North*, and the ſeveral Owners and Proprietors of Meſſuages, Lands, Tenements, and Hereditaments, having Right of Common in or upon the ſeveral Commons, Moors, and Waſte Grounds reſpectively, or any Part thereof, in Proportion to the annual Value of their reſpective ancient incloſed Lands, entitled to Common Right within the ſaid ſeveral Townſhips or Diviſions of *Whittington* and *Newton* with *Docker*, or either of them.

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

XXIX. Provided always, That if any Perſon or Perſons hath or have ſold, or ſhall at any Time before the Meeting to be appointed by the ſaid Commiſſioners for reading over the Draft of their Award, 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 Lands 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.

XXX. And be it further enacted, That all ſuch Lands and Grounds, or other Hereditaments, by this Act directed to be divided, allotted, and incloſed, ſhall (after the Execution of the ſaid Commiſſioners Award), be held by the ſeveral and reſpective Proprietors, and other Perſon and Perſons, to whom the ſame ſhall be allotted, as Freehold, and are hereby declared to be Freehold Lands and Grounds.

Power to Commiſſioners to allot from the Lords Allotment to any other Lord within Newton with Docker.

XXXI. Provided always, and be it further enacted, That in caſe any Perſon or Perſons, Body or Bodies Politic, Corporate or Collegiate, (beſides the ſaid *Richard Toulmin North*,) ſhall in Right of any Lordſhip within the ſaid Townſhip of *Newton* with *Docker*, or either of them, be entitled to the Soil and Freehold of any Part of the ſaid Commons and Waſte Grounds within the ſame Townſhip, it ſhall and may be lawful for the ſaid Commiſſioners, and they are hereby authorized and required, from and out of the ſaid Allotment herein-before directed to be made to the ſaid *Richard Toulmin North*, his Heirs and Aſſigns, to ſet out and allot ſuch Part or Parts thereof, to and among the ſaid Perſon or Perſons, Body or Bodies

Bodies Politic, Corporate or Collegiate, (who may be ſo entitled as aforeſaid,) as ſhall be equivalent to his, her, or their Intereſt in the Soil and Freehold of the ſaid Commons and Waſte Grounds.

Power to make Exchanges.

XXXII. And be it further enacted, That it ſhall and may be lawful to and for the ſaid Commiſſioners to aſſign, ſet out, allot, and award any of the Lands or Grounds hereby directed to be divided and allotted, or any Meſſuages, Buildings, incloſed Lands or Grounds, or any other Hereditaments within the ſeveral Townſhips or Diviſions of *Whittington*, *Newton*, and *Docker* aforeſaid, in lieu of and in exchange for any other Meſſuages, Buildings, Lands, Tenements, or Hereditaments in the ſaid Pariſh of *Whittington*, or within any adjoining Pariſh, Townſhip, or Place, ſo as every ſuch Exchange be ſet forth and aſcertained by the Award of the ſaid Commiſſioners, and 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 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 by 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 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.

XXXIII. And be it further enacted, That all Coſts, Charges, and Expences attending the making any Exchanges or 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.

XXXIV. 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 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, 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 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 when any Land ſhall have been taken in Exchange, which Land ſhall be under Leaſe, and wholly ſituated in an adjoining Townſhip, the Leaſe of ſuch laſt-mentioned Land ſhall not be vacated.

Wills, &c. not to be affected.

XXXV. 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 to 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, 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 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, (except ſuch Leaſes or Agreements as ſhall be determined by virtue of this Act).

Not to affect Tithes, &c.

XXXVI. Provided always, and be it further enacted, That nothing in this Act or the ſaid recited Act contained, ſhall prejudice, leſſen, defeat, or in anywiſe affect the Right, Title, or Intereſt of the Tithe Owner or Tithe Owners for the Time being reſpectively, in or to any Tithes, Moduſes, Dues, Payments, Mortuaries, *Eaſter* Offerings, Surplice or other Fees, happening, ariſing, and renewing out of or payable in reſpect of any Lands, Tenements, or Hereditaments, within the ſaid Townſhips of *Whittington*, *Newton*, and *Docker*, reſpectively, but that ſuch Tithes, Moduſes, Dues, Payments, Mortuaries, *Eaſter* Offerings, Surplice and other Fees, ſhall be payable and paid at all Times hereafter, in the ſame Manner as if this Act or the ſaid recited Act had not been paſſed.

No Sheep to be kept in Incloſures, unleſs, &c. for the firſt Ten Years.

XXXVII. And be it further enacted, That no Sheep or Lambs ſhall be depaſtured or kept in any of the Allotments to be made by virtue of this Act, where Quick Fences ſhall be planted, during the Space of Ten Years next after the Execution of the Award of the ſaid Commiſſioners, unleſs the Perſons reſpectively keeping the ſame ſhall firſt at his, her, or their own Expence make and maintain a Fence ſufficient to guard the young Quick Fences round ſuch Allotment from being cropped, hurt, or damaged by ſuch Sheep or Lambs, whether ſuch Quick Fences be planted or ſet by, or belong to, the Owner or Occupier, Owners or Occupiers, of

of such Allotments as aforesaid, or the Owner or Occupier, Owners or Occupiers, of the Allotment or Allotments adjoining thereto.

Costs of the Act.

XXXVIII. And be it further enacted, That as well the Fees and Payments of the said Commissioners, as also the Charges and Expences incident to and attending the soliciting, obtaining, and passing of this Act, and of surveying, planning, dividing, and allotting the said Commons and Waste Grounds, and of preparing and enrolling the Award of the said Commissioners, 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 Owners and Proprietors of Messuages, Lands, Tenements, and Hereditaments within the several Townships or Divisions of *Whittington*, *Newton*, and *Docker* respectively, in such Proportion, and in such Manner, and at such Time and Times, either before or after the Execution of the Award of the said Commissioners, as the said Commissioners shall direct or appoint: Provided the Money directed to be raised by Sale of Part of the said Commons and Waste Grounds, as herein-before mentioned, shall be found insufficient to the Payment of such Costs, Charges, and Expences.

Commissioners may sell Allotments of incapacitated Persons on certain Conditions.

XXXIX. And be it further enacted, That it shall and may be lawful for the said Commissioners, on Application being made to them in Writing by the Husbands, Guardians, Trustees, Committees, or Attornies of any of the said Owners or Proprietors, being under Coverture, Minors, Lunatics, Persons beyond the Seas, or under any other Disability, or by any of the said Owners or Proprietors, being Tenant in Tail, or for Life or Lives, or for any other Contingency, to sell and absolutely dispose of any Part or Parts of the said Allotments belonging to such incapacitated Persons, for the Purpose of defraying his, her, or their Proportion of the Charges and Expences of passing this Act and carrying the same and the said recited Act into Execution, or of the Expences such Owner or Proprietor as last aforesaid may be put to in fencing, inclosing, and subdividing his, her, or their Allotment or Allotments: Provided always, that it shall not be lawful to raise by such Sale any further or greater Sum of Money than the Person or Persons' Part of whose Allotment or Allotments may be sold or disposed of as aforesaid would have been empowered or authorized to borrow upon, or charge his, her, or their Estate or Estates with, under, or by virtue of the said recited Act.

Parties from or of whose Allotments Sales made not to borrow also.

XL. Provided always, and be it enacted, That in all Cases where any such Sale of any such Allotment or Allotments, or of any Part or Parts thereof, shall have been made for the Payment of such Costs, Charges, and Expences as aforesaid, it shall not be lawful for the Person or Persons, or Body or Bodies Politic, or Corporate or Collegiate, from whose Allotment or Allotments, or of any Part thereof, such Sale shall have been made in Manner aforesaid, to charge the Lands and Grounds allotted to him, her, or them, or any Part or Parts thereof, by virtue of this or the said recited Act, with any Money towards defraying such Costs, Charges, and Expences.

XLI. Provided

Proprietor to pay their own Expences.

XLI. Provided always, That the ſaid Proprietors, their Attornies and 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.

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, 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.

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 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 Trouble and Expences in the Execution of this and the ſaid recited Act; and ſuch Statement and Account, when ſo made out, 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 *Lancaſter*, 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 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.

XLIV. And be it further enacted, That the Award to be made by the ſaid Commiſſioners purſuant to the ſaid recited Act, and the Maps or Plans explanatory of the ſame, ſhall at the Aſſizes to be holden at *Lancaſter* aforeſaid, and next enſuing the Execution of the ſaid Award, be by them delivered to and depoſited with the Prothonotary of His Majeſty's Court of Common Pleas at *Lancaſter*, or his Deputy, to be by him kept amongſt the Records of the ſaid Court at *Lancaſter* aforeſaid; and the ſaid Prothonotary or his Deputy is hereby required and empowered to receive and keep the ſame accordingly, for and in reſpect of which depoſiting and keeping ſuch Award, Maps, and Plans, the Sum of Twenty Shillings ſhall be paid and no more; and for every Inſpection thereof, after the ſame ſhall have been ſo depoſited, the Sum of Five Shillings and no more ſhall be paid to the ſaid Prothonotary or his Deputy; and ſuch Award, and the Maps or Plans to be annexed thereto as aforeſaid, or a true Copy of ſuch Award, Maps, or Plans, or any Part thereof, on Papers ſtamped according to Law for Copies of Records, and ſigned by the ſaid Prothonotary or his Deputy, purporting to be a true Copy, ſhall be admitted and allowed as legal Evidence in all Courts whatſoever; and the ſaid Prothonotary or his Deputy is hereby required to make and deliver unto any Perſon or Perſons, Bodies Politic or Corporate, requeſting and offering to pay for the ſame, a true Copy of the ſaid Award, Maps, or Plans, or any of them, or any Part thereof, for which he ſhall be paid by the Perſon or Perſons, Bodies Politic or Cor-

porate, requeſting the ſame, after the Rate of Two-pence for every Sheet of the ſaid Award ſo copied, counting Seventy-two Words in each Sheet, and a reaſonable Allowance ſhall alſo be paid to him beſides for a Copy or Copies of ſuch Maps or Plans, or any Part thereof; and if any Diſpute or Difference ſhall happen or ariſe between the ſaid Prothonotary or his Deputy, and the Perſon or Perſons, Bodies Politic or Corporate, requeſting a Copy of any ſuch Maps or Plans, or of any Part thereof, touching ſuch Allowance, then and in ſuch Caſe the ſame ſhall be ſettled and aſcertained by One of the Judges of the ſaid Court of Common Pleas at *Lancaſter* for the Time being; and the ſame being ſo ſettled and aſcertained, ſhall be final, binding, and concluſive to all Parties; and that a Duplicate of the ſaid Award, Maps, or Plans, ſhall be lodged in the Pariſh Church of *Whittington* aforeſaid, with the Pariſh Regiſters.

Appeal.

XLV. And be it further enacted, That if any Perſon or Perſons ſhall think himſelf, herſelf, or themſelves aggrieved by any Thing done in purſuance of the ſaid recited Act or this Act, (other than and except ſuch Determination of the ſaid Commiſſioners as are herein or by the ſaid recited Act directed to be final, binding, and 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, and they may appeal to the General Quarter Seſſions of the Peace, which ſhall be holden for the ſaid County of *Lancaſter*, within Three Calendar Months next after the Cauſe of Complaint ſhall have ariſen, on giving to the ſaid Commiſſioners, and to the Party or Parties concerned, Ten Days Notice in Writing of ſuch Appeal, and of the Matter thereof; and the Juſtices (not intereſted in the Premiſes) in ſuch Seſſions aſſembled, are hereby required to hear and determine the Matter of every ſuch Appeal, and to make ſuch Order therein, and 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 removeable 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.

XLVI. Provided always, and be it further enacted, That nothing in this Act ſhall be conſtrued or adjudged to defeat, leſſen, or prejudice the Right, Title, and Intereſt of the ſaid *Richard Toulmin North*, or any future Lord or Lords, Lady or Ladies, of the ſaid Manors of *Whittington* and *Tunſtal*, or either of them, for the Time being, of, in, and to the Seigniories and Royalties, incident and belonging to the ſaid ſeveral Manors, or either of them, (ſave and except the Stones in the public Quarries ſo to be ſet out as aforeſaid,) but that the ſaid *Richard Toulmin North*, and all and every Perſon and Perſons claiming by, from, under, or in Truſt for him,

him, as Lord of the ſaid Manors or Townſhips, ſhall and may at all Times, for ever hereafter, have, hold, take, and enjoy all Rents, Services, Courts, Perquiſites, and Profits of Courts, Hunting, Hawking, Fiſhing, 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 the ſame in caſe this Act had not been made; and that the ſaid *Richard Toulmin North*, and all the future Lords, Ladies, or 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, Wayleaves, and Liberties, in, over, and along the ſame, or any Part thereof, and ſhall have full Power of ſearching for, winning, and working the ſaid Mines and Quarries, and leading and carrying away the Coals, Lead, Tin, Copper, Stones, Lime, Slate, Metals, and Minerals to be gotten thereout, and of making Pit Shafts, Pit Rooms, Heap Rooms, Drifts, Levels, and Watercourſes, 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.

XLVII. 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 ſuch 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 Waggon Ways, or other Ways, or any other Matters or Things, according to the Powers herein reſerved or granted to the ſaid *Richard Toulmin North*, 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: Provided always, that nothing herein contained ſhall extend or be conſtrued to extend to prevent the ſeveral Owners and Occupiers to whom Allotments ſhall be made as aforeſaid, from digging, taking, and carrying away, within, from, or under their reſpective Allotments, any Quantity of Lime or other Stone, for their own Uſe only, but not for Sale.

General Saving.

XLVIII. Saving always to the King's moſt Excellent Majeſty, His Heirs and Succeſſors, in Right of His Crown, and alſo in Right of His Duchy of *Lancaſter*, and to all and every other Perſon and Perſons, Body or Bodies Politic, Corporate or Collegiate, his, her, or their Heirs, Succeſſors, Executors, Adminiſtrators, and Aſſigns, (other than and except the ſeveral Perſons, Bodies Politic, Corporate or Collegiate, 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.

This Act may be given in Evidence.

XLIX. 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.

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Printers to the King's moſt Excellent Majeſty. 1813.