ANNO SEPTIMO

GULIELMI IV. REGIS.

Cap. 6.

An Act for inclosing Lands within the Townships or Divisions of *Mansergh*, *Lupton*, *Old Hutton*, and *Holme Scales* and *New Hutton*, in the Parishes of *Kirkby Lonsdale*, *Burton-in-Kendal*, and *Kirkby-in-Kendal*, in the County of *Westmorland*.

[21st *April* 1837.]

WHEREAS there are within the several Townships or Divisions of *Mansergh*, *Lupton*, *Old Hutton*, and *Holme Scales* and *New Hutton*, in the Parishes of *Kirkby Lonsdale*, *Burton-in-Kendal*, and *Kirkby-in-Kendal*, in the County of *Westmorland*, several Commons, Mosses, and Waste Lands or Grounds, containing in the whole by Estimation Five thousand Acres or thereabouts: And whereas the Right Honourable *William* Earl of *Lonsdale*, Knight of the Most Noble Order of the Garter, is Lord of the Two Manors of *Lupton* and *New Hutton* in which the said Townships of *Lupton* and *New Hutton* are situate; and *Christopher Wilson* Esquire, of *Rigmaden Park* in the said County of *Westmorland*, is Lord of the Manor of *Mansergh*, in which the said Township of *Mansergh* is situate, and the several Landowners in the Township of *Old Hutton* and *Holme Scales* are or claim to be entitled to the Soil of the Commons and Waste Lands or Grounds within such last-mentioned Township or Division: And whereas *Christopher Wilson*, *William Thompson*, *James Yeats*, *John Wakefield*, *Edmund Hornby*, *Robert Baynes Armstrong*, *John Addison*, Esquires,

Esquires, *Samuel Satterthwaite*, *Richard Simpson*, *Matthew Hopkin Simpson*, *John Briggs*, and *John Sleddall*, Gentlemen, and several other Persons, are Owners and Proprietors of divers Messuages, Lands, and Hereditaments within the said several Townships or Divisions, or some or one of them, and in respect thereof or otherwise are or claim to be severally entitled to Right of Common, of Pasturage, and Turbary in, over, or upon the said Commons, Mosses, and Waste Lands or Grounds, or some or one of them: And whereas an Act was passed in the Forty-first Year of the Reign of King *George* the Third, 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 another Act was passed in the First and Second Years of the Reign of His late Majesty King *George* the Fourth, intituled *An Act to amend the Laws respecting the inclosing of Open Fields, Pastures, Moors, Commons, and Waste Lands in* England: And whereas the said Commons, Mosses, and Waste Lands or Grounds in their present State are of very little Value to the Landowners or Persons interested therein, and it would be a great Advantage to them if the said Commons, Mosses, and Waste Lands or Grounds were divided, allotted, and inclosed; but such Division, Allotment, and Inclosure cannot be effected 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 *Anthony Battersby Tomlinson* of *Biggins* near *Kirkby Lonsdale* in the County of *Westmorland*, Gentleman, and *William Talbot* of *Hollins* in the Township of *Preston Patrick* in the said County, Gentleman, shall be and they are hereby appointed Commissioners for setting out, dividing, and allotting the said Commons, Mosses, and Waste Lands or Grounds, and for carrying this Act and the said recited Acts into execution, subject to such Directions and Provisions as are herein-after contained in that Behalf, and also with such of the Powers and Authorities, and subject to such of the Directions, Clauses, and Provisions, contained in the said recited Acts, as are not varied or altered by or repugnant to any of the Directions, Powers, Regulations, and Provisions of this Act.

41 G. 3. c. 109.

1 & 2 G. 4. c. 23.

Commissioners appointed.

Commissioners to make a Declaration.

II. Provided always, and be it further enacted, That no Person shall be capable of acting as a Commissioner in the Execution of this Act until he shall have made and subscribed the following Declaration; (that is to say,)

Form of Declaration.

'I *A. B.* do solemnly declare, 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 a Commissioner by virtue of an Act passed in the Seventh Year of the Reign of King *William* the Fourth, intituled [*here set forth the Title of this Act*], according to Equity and good Conscience, and without Favour or Affection, Prejudice or Partiality, to any Person or Persons whomsoever.'

And such Declaration shall be in lieu of the Oath or Affirmation required by the said recited Act of the Forty-first Year of the Reign of King *George* the Third to be taken and subscribed by Persons acting as

Commissioners in the Execution of an Act for dividing, allotting, or inclosing any Lands or Grounds, and such Declaration shall be to all Intents and Purposes as valid and effectual as the Oath or Affirmation in lieu whereof it shall be so made and subscribed.

If Commissioner appointed by Lords of Manors die, resign, or refuse to act, they may appoint another.

III. And be it further enacted, That in case the said *Anthony Battersby Tomlinson*, or any Successor to be appointed in his Place as herein-after is provided, shall die, or neglect or refuse to act, or become incapable of acting in the Execution of this Act and the said recited Acts, it shall be lawful for the Lords of the said Manors for the Time being by Writing under their Hands to nominate and appoint from Time to Time some other fit and proper Person, not interested in the said intended Division and Allotment, to be a Commissioner in the Room of the said *Anthony Battersby Tomlinson*, or of the Commissioner who shall be appointed in his Place, and who shall so die, or shall neglect or refuse to act, or shall become incapable of acting as aforesaid, and so from Time to Time as often as the same shall happen; but in case a new Commissioner shall not be nominated and appointed by the Lords of the said Manors as aforesaid within the Space of Three Calendar Months next after the Death of the said *Anthony Battersby Tomlinson*, or of any Commissioner who shall be appointed in his Place, or after his Neglect or Refusal to act or Incapacity for acting shall be known, then it shall and may be lawful for the major Part in Value (such Value to be ascertained by or according to the Poor's Rate Assessment) of the Proprietors of Messuages, Farms, Lands, or Tenements within the said several Townships, who shall attend by themselves or their Agents, or Persons duly authorized in Writing, at a Meeting to be called by or by the Order of One or more of the said Proprietors for that Purpose, and to be held at some convenient Place in one of the said Townships, in pursuance of a Notice in Writing to be affixed at least Fifteen Days before such Meeting on the principal outer Door of the Parish Churches of *Kirkby-in-Kendal* and *Kirkby Lonsdale* aforesaid, and to be published in some public Newspaper usually circulated in the said County of *Westmorland* at least Fifteen Days before such Meeting, by Writing under their Hands to elect and appoint some fit and proper Person to be a Commissioner in the Room of the said *Anthony Battersby Tomlinson*, or of the Commissioner who shall be appointed in his Place so dying, refusing or becoming incapable to act, and so from Time to Time as often as the Case shall happen; and every such Commissioner so to be appointed, either by the Lords of the said Manors, or in case of their Default by the said Landowners, shall have the like Powers and Authorities in all respects as if he had been named and appointed a Commissioner by this Act.

If Commissioner named by Landowners die, resign, or refuse to act, they may appoint another.

IV. And be it further enacted, That in case the said *William Talbot*, or any Successor to be appointed in his Place as herein-after is provided, shall die, or neglect or refuse to act or become incapable of acting in the Execution of this Act and the said recited Acts, it shall be lawful for the major Part in Value (such Value to be ascertained by the Poor's Rate Assessment) of the Proprietors of Messuages, Farms, Lands, or Tenements within the said Townships, who shall attend by themselves, or their Agents or Proxies duly authorized in Writing, at a Meeting to be called by or by the Order of One or more of the said Proprietors for that Purpose, and to be held at some convenient Place in One of the said Townships, in pursuance

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of Notice in Writing to be affixed at least Fifteen Days before such Meeting on the principal outer Doors of the Parish Churches of *Kirkby-in-Kendal* and *Kirkby Lonsdale* aforesaid, and to be published in some public Newspaper usually circulated in the said County of *Westmorland*, at least Fifteen Days before such Meeting, by Writing under their Hands, to elect and appoint from Time to Time some other Person, not interested in the said intended Division and Allotment, in the Room and Stead of the said *William Talbot*, or of any Person to be from Time to Time appointed a Commissioner by virtue of this Act in the Place of the said *William Talbot*, so often as any such Commissioner shall die, neglect or refuse to act, or become incapable of acting as aforesaid; but in case a new Commissioner shall not be elected and appointed by the Proprietors in manner aforesaid within the Space of Three Calendar Months next after the Death of the said *William Talbot*, or of any Commissioner who shall be appointed in his Place, or after his Neglect or Refusal to act or Incapacity for acting shall be known, then it shall be lawful for the Lords of the said Manors, by Writing under their Hands and Seals, to nominate and appoint some other Person, not interested in the said intended Division and Allotment, to be a Commissioner in the Room of the said *William Talbot*, or of the Commissioner who shall be appointed in his Place so dying, refusing or becoming incapable to act; and every such Commissioner so to be appointed, either by the said Proprietors, or in case of their Default by the Lords of the said Manors, shall have the like Powers and Authorities in all respects as if he had been named a Commissioner in and by this Act.

Umpire to be appointed.

V. And be it further enacted, That the said Commissioners shall, immediately after making and subscribing the said Declaration choose, nominate, and appoint as an Umpire some fit and proper Person, not interested in the said intended Division and Allotment, who shall be willing and consent to act as Umpire; and such Umpire is hereby authorized to hear and determine any Difference or Dispute that shall or may arise between the said Commissioners touching any Matter or Thing to be done, performed, or decided by the said Commissioners in pursuance of this Act; and the Judgment and Determination of the said Umpire, so far only as relates to the Matter in dispute, shall be deemed and considered to be the Judgment and Determination of the said Commissioners, and shall be final and conclusive upon the said Commissioners, and upon all other Persons concerned in the said intended Division and Allotment, so far as the Judgment and Determination of the said Commissioners would in such Case have been final and conclusive: Provided always, that in case the Person so nominated and appointed by the said Commissioners shall die, or refuse to act or become incapable of acting in the Execution of this Act, it shall be lawful for the said Commissioners to nominate and appoint some other fit and proper Person not interested as aforesaid, and not being concerned as Agent or Steward as aforesaid, as Umpire in the Room or Stead of the Person so dying, refusing, or becoming incapable of acting in the Execution of this Act, and so from Time to Time as often as the Case shall happen; and in case any such Umpire shall neglect to settle and determine any such Difference within Thirty Days next after the same shall have been referred to him by the said Commissioners, such Neglect shall be deemed and taken as a Refusal to act within the Intent and Meaning of this Act.

VI. Pro-

VI. Provided always, and be it further enacted, That every Person who shall be appointed Umpire for the Purposes of this Act as aforesaid shall, before he proceeds to act as such Umpire, make and subscribe the following Declaration; (that is to say,) Umpire to make a Declaration.

'I *A. B.* do solemnly declare, That I will faithfully, impartially, and honestly, according to the best of my Skill and Ability, execute and perform the Power and Authority vested and reposed in me as the Umpire by virtue of an Act passed in the Seventh Year of the Reign of His Majesty King *William* the Fourth, intituled [*here set forth the Title of this Act*], according to Equity and good Conscience, and without Favour or Affection, Prejudice or Partiality, to any Person or Persons whomsoever.' Form of Declaration.

And this Declaration shall be in lieu of the Oath or Affirmation required by the said recited Act of the Forty-first Year of the Reign of King *George* the Third to be taken and subscribed by Persons acting as Commissioners in the Execution of an Act for dividing, allotting, or inclosing any Lands or Grounds; and such Declaration shall be to all Intents and Purposes as valid and effectual as the Oath or Affirmation in lieu whereof it shall have been so made and subscribed, which Declaration it shall be lawful for the said Commissioners or either of them to administer; and such Declaration so made and subscribed shall be annexed to and deposited with the Award of the said Commissioners.

VII. And be it further enacted, That the said Commissioners shall, within Three Calendar Months after the passing of this Act, call a Meeting of the Proprietors of Messuages, Lands, and Tenements in each of the said Townships or Divisions, of which Ten Days previous Notice, specifying the Purpose of and the Time and Place of Meeting, shall have been given, at which Meeting the Majority in Value of the Proprietors then and there present, and the Agent or Agents of any absent Proprietor or Proprietors who shall attend any such Meeting in pursuance of a written Authority for that Purpose given to him or them, such Value to be ascertained by the Poor's Rate Assessment in such Township or Division, shall then and there nominate and appoint some fit and proper Person or Persons not interested in the said Inclosure to be a Surveyor or Surveyors for the Purposes of this Act and the said recited Acts in such Township or Division; and at any Meeting or Meetings to be held from Time to Time for the Purpose of nominating and appointing a Surveyor or Surveyors the major Part in Value of the Proprietors present, and the Agent or Agents of such of the Proprietors who shall be absent, and who shall attend such Meeting or Meetings in pursuance of a written Authority or Authorities to him or them for that Purpose given, shall determine and fix the Allowance to be made to such Surveyor or Surveyors, whether the same shall be a Payment by the Acre, by the Day, or by a Sum in gross, and also the Terms upon which such Allowance shall be made, and any other Matter or Matters connected with such Appointment or Appointments, and shall also determine the Period within which the Duty or Duties undertaken by such Surveyor or Surveyors shall be completed; and every such Determination of any such Meeting shall be reduced into Writing, and signed by the Chairman of such Meeting and by the Person or Persons to be appointed Surveyor or Surveyors, and shall be binding upon the said Commissioners and upon such Surveyors Landowners to appoint Surveyors.

veyor or Surveyors: Provided always, that in case all or any of the Person or Persons to be nominated and appointed a Surveyor or Surveyors shall die, or refuse to act or become incapable of acting in the Execution of this Act, it shall be lawful for such Majority in Value of the Proprietors of Messuages, Lands, and Tenements in any Township or Division where such Vacancy shall arise, and the Agent or Agents of such Proprietor or Proprietors who shall attend in pursuance of an Authority in Writing from such Proprietor or Proprietors for that Purpose given, present at a Meeting to be called by the said Commissioners in the Manner herein-before directed, within One Calendar Month after such Vacancy shall become known to them to appoint some other fit and proper Person or Persons, not interested or concerned as Agent or Steward as aforesaid, as Surveyor or Surveyors in the Room or Stead of the Person or Persons so dying, refusing or becoming incapable of acting in the Execution of this Act, and so from Time to Time as often as the Case shall happen.

Neglect deemed to be a Refusal to act.

VIII. And be it further enacted, That in case the said *Anthony Battersby Tomlinson* and *William Talbot*, or either of them, or any Commissioner or Commissioners or Surveyor or Surveyors to be appointed by virtue of this Act, shall neglect to act in the Execution of this Act for the Space of Thirty Days after Notice in Writing shall have been given to him or them, or left at his or their last or usual Place of Abode, signed by the accredited Agents of the Lords of the said Manors, or by any Two or more of the Owners of Messuages, Farms, Lands, or Tenements in the said several Townships, or in case the said Commissioners shall neglect or not agree to appoint an Umpire for the Space of Fourteen Days next after any such Vacancies of an Umpire as aforesaid, then and in every such Case such Neglect shall be deemed and taken to be an absolute Refusal on the Part of such Commissioner or Commissioners to act within the Intent and Meaning of this Act.

If Proprietors neglect to appoint a Surveyor, Commissioners may appoint one.

IX. And be it further enacted, That in case the Proprietors of Messuages, Lands, and Tenements in any of the Townships or Divisions shall neglect to appoint a Surveyor or Surveyors at any such Meeting or Meetings to be held from Time to Time, then and in that Case it shall be lawful for the said Commissioners and they are hereby authorized to appoint some fit and proper Person or Persons not interested as aforesaid to be a Surveyor or Surveyors for the Purposes of this Act and the said recited Acts, and from Time to Time to displace and remove any such Person or Persons so to be appointed, and to appoint any other Person or Persons not interested as aforesaid in his or their Room.

Surveyor to make a Declaration.

X. Provided always, and be it further enacted, That no Person shall be capable of acting as Surveyor until he shall have made and subscribed a Declaration to the Effect following; (that is to say,)

Form of Declaration,

'I *A. B.* do solemnly and sincerely declare, That I will faithfully, impartially, and honestly do, execute, and perform the several Duties and Trusts reposed in me as a Surveyor under and by virtue of an Act passed in the Seventh Year of the Reign of King *William* the Fourth, intituled [*here set forth the Title of this Act*], according to the best of my Skill and Judgment, and according to Equity and good Conscience, and without Partiality, Favour, or Affection, Prejudice or Malice, to any Person or Persons whomsoever.'

Which Declaration it shall be lawful for the said Commissioners or either of them to administer, and he and they is and are hereby required to administer the same, and such Declaration so made shall be written upon Parchment, and subscribed by the Person making the same, and shall be annexed to and deposited with the Award of the said Commissioners.

Penalty on making a false Declaration.

XI. And be it further enacted, That any Person making and subscribing a Declaration under the Authority of this Act, and who shall wilfully and corruptly make and subscribe such Declaration, knowing the Allegations thereof or any of them to be untrue, shall be subject to the like Pains and Penalties to which Persons guilty of wilful and corrupt Perjury are or may be liable.

Appointment of Clerk.

XII. And be it further enacted, That the said Commissioners shall and may appoint some fit and proper Person to be their Clerk to assist them in the Execution of the Powers of this Act, and it shall be lawful for the said Commissioners from Time to Time to remove such Clerk, and to appoint some other fit and proper Person to be Clerk in the Stead of the Person so removed, as to them shall seem meet.

Allowance to Surveyor not to exceed One Shilling per Acre.

XIII. And be it further enacted, That out of the Monies which shall be raised for defraying the Expences of obtaining and passing this Act, and of executing the same and the said recited Acts, it shall be lawful for the said Commissioners to allow the Surveyor or Surveyors to be appointed by them as herein-before directed, in case the said Proprietors shall not make any such Appointment or Appointments, any Sum not exceeding the Sum of One Shilling *per* Acre for his and their Time and Trouble in surveying, measuring, mapping, or planning the Lands and Grounds necessary to be surveyed for the Purposes of this Act, including qualifying the Commons, and for setting and staking out the Roads to be set and staked out by virtue of this Act the Sum of One Guinea *per* Day for every Day he shall be really and wholly employed therein; which said Sums of One Shilling *per* Acre and One Guinea *per* Day shall be in full Satisfaction for his Time and Trouble, and for travelling and other Expences of every Description to be incurred by him as such Surveyor for the Purposes of this Act and the said recited Acts.

Allowance to Commissioners and Clerk not to exceed Two Guineas each Day, including all Expences whatsoever.

XIV. And be it further enacted, That out of the Monies which shall be raised for defraying the Expences of obtaining and passing this Act, and executing the same and the said recited Acts, the said Commissioners, Umpire and Clerk to be appointed by the said Commissioners as by this Act directed, shall respectively be paid for each and every Day they shall travel or be employed in any Business relating to the Execution of this Act or the said recited Acts as Commissioners, Umpire and Clerk respectively, during the first Two Years next after the passing of this Act, each the Sum of Two Pounds and Two Shillings, and no more, and after the Expiration of the said Two Years, until the Powers granted by this Act shall be fully executed and performed, the Sum of One Pound and One Shilling, and no more, for each and every Day they shall be respectively employed as such Commissioners, Umpire and Clerk respectively as aforesaid, in full Satisfaction for their and each of their Time and Trouble,

Trouble, and for the several Expences during their several Journies and Attendances in the Execution of this Act or the said recited Acts, other than and except the Expences for the Use of the Room in which the Meetings shall be holden for carrying this Act and the said recited Acts into execution, and the Costs and Expences of drawing, preparing, copying, ingrossing, and enrolling the Award of the said Commissioners, and of Advertisements.

Regulating the Duration of Meetings or Sittings.

XV. And for regulating the Duration of all Meetings to be held for the Purposes of this Act, be it enacted, That a Day shall be deemed to consist of Eight Hours in all Meetings to be held between the Twenty-fifth Day of *March* and the Twenty-ninth Day of *September*, and of Six Hours between the Twenty-ninth Day of *September* and the Twenty-fifth Day of *March*, and that any Meeting to be holden for the Purposes of this Act of a less Duration than Eight Hours or Six Hours, as the Case may be, shall be charged as only Half a Day, and the said Commissioners and Umpire and the said Clerk shall be paid accordingly; and a Book shall be kept by the said Commissioners or their Clerk in which shall be entered the several Days on which the said Commissioners shall hold their Meetings, and in such Book shall also be entered at what Hour the said Commissioners, Umpire, and Clerk were respectively present at such Meeting, and at what Hour they respectively left the same; and such Book shall be signed by such Commissioners, Umpire and Clerk as shall be present at the same at the Termination of each Meeting, and shall be open to the Inspection of all Persons interested in the said Inclosure, or his, her, or their Agents or Attornies, during all the Meetings to be held in pursuance of this Act, and all such Persons shall and may take Copies of or Extracts from such Book without paying any thing for the same: Provided also, that it shall not be lawful for the said Commissioners or Umpire to retain or to pay themselves or himself or such Clerk, out of any Monies to be received by them or over which they may have any Control in the Execution of this Act, any Sum or Sums of Money on account of the Allowance by this Act directed to be made to such Commissioners, Umpire and Clerk respectively, beyond One Third of such Allowance as they shall be entitled to as aforesaid, until after the Expiration of Six Calendar Months from the Day of the depositing of the Award herein-after directed to be made and deposited with the Clerk of the Peace of the County of *Westmorland*, or in case the Accounts of the said Commissioners shall be appealed against, then not until such Appeal shall have been heard and decided: Provided nevertheless, that in case of the Decease of the said Commissioners or Umpire or of the said Clerk previous to the Execution of the said Award, the Commissioners for the Time being shall, after the Expiration of the Period allowed for Appeal against the Accounts herein-after directed to be made and stated, pay to the Executors or Administrators of such deceased Commissioner, or of such deceased Umpire, or of such deceased Clerk, such Sum of Money as shall appear by the said Accounts to be due to the said Commissioners, Umpire or Clerk.

Commissioners to give Notice of Meetings.

XVI. And be it further enacted, That the said Commissioners shall and they are hereby required to cause public Notice by Advertisement to be inserted in the *Westmorland Gazette*, or in some Newspaper usually circulated in the County of *Westmorland*, and also by Writing under their Hands to be affixed on the principal Doors of the Parish Churches of *Kirkby Lonsdale* aforesaid

aforesaid and *Kirkby-in-Kendal* aforesaid, upon some *Sunday* during or immediately before Divine Service, of the Time and Place of holding their First, Second, and Third Sittings for the Purpose of putting into execution the several Powers vested in them by this Act and the said recited Acts, Ten Days at the least before such Sittings respectively, each of which Sittings shall be held at *Kirkby Lonsdale* or at *Kendal* in the said County of *Westmorland*; and the said Commissioners shall and may after the said Third Sitting from Time to Time appoint such Time and Place for every subsequent Sitting as they shall think proper, causing a Notice in Writing under their Hands to be affixed upon the principal Door of the Parish Churches of *Kirkby Lonsdale* and *Kirkby-in-Kendal* aforesaid on a *Sunday* during or immediately before Divine Service, and by Advertisement as aforesaid respectively, Ten Days at the least before every subsequent Sitting; and the said Commissioners 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, provided such adjourned Sittings be held within Twenty-one Days from the Time of Adjournment: Provided always, that all Sittings of the said Commissioners in the Execution of this Act shall be held in One of the said Townships, or within Eight Miles of One of such Townships.

Other Notices how to be given.

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

Commissioners to settle Disputes.

XVIII. 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 or Inclosure touching or concerning any Part or Parts of the said Commons and Waste Lands or Grounds and other Commonable 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 and Inclosure, it shall and may be lawful to and for the said Commissioners, and they are hereby authorized and required, upon proper and sufficient Inquiry and Evidence, to examine into, hear, and determine the same.

Not to determine Matters of Title.

XIX. Provided always, and be it further enacted, That nothing in this Act contained shall authorize or empower the said Commissioners to determine the Title to any Messuages, Cottages, Lands, Tenements, or Hereditaments whatsoever, nor to determine any Right between any Parties contrary to the Possession of any such Parties (except in respect of Encroachments made within Twenty Years, as herein-after mentioned); but in case the said Commissioners shall be of opinion against the Right of the Person or Persons so in Possession, they shall forbear to make any Determination thereon until the Possession shall have been given up by such Person or Persons, or recovered from such Person or Persons by Ejectment or other due Course of Law.

Commissioners may award Costs.

XX. And be it further enacted, That in case the said Commissioners shall, upon the hearing or determining of any Claim or Claims, Objection or Objections, to be delivered to them in pursuance of the said recited Acts or of this Act, see Cause to award any Costs, it shall and may be lawful for the said Commissioners and they are hereby empowered, upon Application made to them for that Purpose, to settle, assess, and award such Costs and Charges as they shall think reasonable to be paid by 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 overruled; and in case the Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, who shall be liable to pay such Costs and Charges, shall neglect or refuse to pay the same on Demand, then and in such Case it shall and may be lawful to and for the said Commissioners, and they are hereby authorized and required, by Warrant under their Hands and Seals directed to any Person whomsoever, to cause such Costs and Charges to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, so neglecting or refusing to pay the same, rendering the Overplus (if any), upon Demand, to the Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, whose Goods and Chattels shall have been so distrained or sold, after deducting the Costs and Charges attending such Distress and Sale.

Parties dissatisfied may try their Rights by an Issue at Law.

XXI. 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 touching or concerning any Claim or Claims of Right in or over the said Commons, Mosses, and Waste Lands or Grounds, or any Right of Common thereon, or other Rights or Interests in the same or any Part thereof, or in the said intended Division, Allotment, and Inclosure, 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, so dissatisfied with the Determination of the said Commissioners, to 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 Three Calendar Months next after such Determination of the said Commissioners shall have been notified in Writing to the Party or Parties against whom such Determination shall have been so made, or to his, her, or their known Agent or Attorney; and the Person or Persons, or Body or Bodies Politic, Corporate, or Collegiate, so dissatisfied as aforesaid, shall proceed to a Trial at Law of the Matter so determined by such Commissioners at the then next or at the Second Assizes to be holden for the said County of *Westmorland* after such Action or Actions shall have been commenced; 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, Objection or Objections, 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 Court, the said Commissioners shall and they are hereby required to act in conformity thereto, and to allow or disallow the Claim or Claims, Objection or Objections, thereby determined, according to the Event of such Trial or Trials: Provided always, that the Determination of the said Commissioners 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 which being objected to the Party or Parties objecting shall not cause such Action or Actions at Law to be brought or proceeded in as aforesaid, shall be final and conclusive upon all Parties whatsoever.

Death of Parties not to abate Actions.

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

XXIII. Provided always, and be it further enacted, That if any Person or Persons in whose Favour any such Determination as aforesaid shall have been made, and against whom any such Action or Actions might have been brought if living, shall die before any such Action or Actions shall have been brought, and before the Expiration of the Time herein-before limited for bringing such Action or Actions, it shall be lawful for the Person or Persons, 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 said Commissioners or the Clerk of such Commissioners with Process for commencing such Action or Actions, in the same Manner as the Party or Parties so dying 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.

Suits respecting Titles not to delay the Execution of the Act.

XXIV. 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 for which any Right of Common or other Right or Interest in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, shall be claimed, such Suit or Suits shall not delay, impede, or hinder the said Commissioners from proceeding in the Powers vested in them by this Act, but the said Allotments shall be proceeded

ceeded 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.

Commissioners may extinguish or suspend Rights of Common.

XXV. And be it further enacted, That it shall and may be lawful for the said Commissioners, and they are hereby authorized and empowered, at any Time or Times before or after they shall have allotted the said Commons, Mosses, and Waste Lands, or any Part thereof, as they shall think proper, and before the Execution of their Award, by Notice in Writing under their Hands, to be affixed on the principal outer Doors of the Parish Churches of *Kirkby Lonsdale* and *Kirkby-in-Kendal* aforesaid, to order and direct all or any Part of the Rights of Common, of Pasturage or Turbary, 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 Time as shall be expressed in such Notice in Writing; and that all such Rights as the said Commissioners shall by such Notice in Writing order or direct to be extinguished, or the Exercise thereof to be suspended, shall, from the Time of affixing such Notice in Writing on the Doors of the said Churches, or at such other Time or Times as the said Commissioners shall order or direct, cease, determine, and be for ever extinguished, or the Exercise thereof 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 Land within the said Townships 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 Owners or Occupiers of Lands within the said Townships or Divisions, or any of them, to distrain such Cattle being on 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 Commissioners shall by Writing under their Hands order and direct, not exceeding the Sum of Forty Shillings for each of the Cattle so distrained; and in case the same shall not be paid before the next Sitting of the said Commissioners after such distraining and impounding, then the said Commissioners are hereby authorized and empowered, upon Proof of such Offence or Offences having been committed, and of Nonpayment of the Penalty hereby imposed, to cause the Cattle so distrained or impounded, or such Part thereof as they 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 impounding, Distress, and Sale, rendering the Surplus, if any, to the Owners of such Cattle.

In case of afterwards stocking Land, Cattle may be distrained.

Turf not to be cut without Leave of the Commissioners.

XXVI. And be it further enacted, That it shall not be lawful for any Person or Persons after the passing of this Act to 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 Commissioners for that Purpose in Writing first had and obtained (which Licence the said Commissioners are hereby empowered to grant under such Rules, Orders, Regulations, and Restrictions as they shall think proper to insert therein); and in case any Person

Person or Persons shall cut, dig, pare, grave, plough, get, or carry away any such Turf or Soil, then and in every such Case any Justice of the Peace of the said County, upon due Proof thereof made upon Oath (which Oath such Justice is hereby authorized to administer), shall and he is hereby 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 Ten Pounds for such Offence to be levied by Distress and Sale of the Goods and Chattels of every Person so offending in the Premises, rendering the Surplus, 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; and for Want of such Distress it shall and may be lawful to and for such Justice, by Warrant under his Hand and Seal, to commit such Offender or Offenders to the Common Gaol of the County of *Westmorland*, or to any House of Correction in and for the said County, there to remain without Bail or Mainprize for any Time not exceeding Three Calendar Months, at the Discretion of such Justice, as the Case may be, unless such Offender or Offenders shall pay the Penalties or Forfeitures and Costs.

Power to straighten and shorten Boundary Fences.

XXVII. And be it further enacted, That in order to shorten the Boundary Fences between the Lands and Grounds by this Act directed to be divided and allotted, and any adjoining Lands and Grounds, it shall and may be lawful for the said Commissioners, with the Consent in Writing nevertheless of the Lord or Lords of the Manors in which the said respective Townships or Divisions of *Lupton*, *Mansergh*, and *New Hutton* ares ituate, and of the Lord or Lords of any Manor or Manors in which any such adjoining Lands shall be situate, and of the Majority in Value (according to the Poor's Rate Assessment) of the Landowners interested in any such adjoining Lands and Grounds, and also under the Hand of the Owner or Proprietor of any Land upon which any 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 any adjoining Lands or Grounds lying in the said Manors or any of them, or lying in any adjoining Manor or Manors, Parish or Parishes, or Place or Places, as they the said Commissioners shall judge proper for the Purpose aforesaid; and after such Boundary Fences shall be so set out, ascertained, and determined as aforesaid the same shall be made and fenced by such Person, in such Manner, and at such Time as the said Commissioners shall direct, and shall for ever thereafter be deemed and taken to be the Boundary between the said respective Townships or Divisions of *Mansergh*, *Lupton*, *Old Hutton*, *Holme Scales*, and *New Hutton*, or any of them, and such adjoining Manor or Manors, Parish or Parishes, or Place or Places, 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 Commissioners, or a Map or Plan to be thereunto annexed.

For ascertaining Boundaries without fencing same.

XXVIII. And whereas it may be of Advantage to the Proprietors not to be obliged to fence or inclose certain Parts of the said several Commons, Mosses, and Waste Grounds, although it may be of Advantage that the

the exterior Boundaries of the whole, as against the adjoining Manors, Townships, and Divisions, and the interior Boundary of such intended Allotment, and of each Portion to be sold as herein-after directed, should be ascertained and fixed; be it therefore further enacted, That the said Commissioners, with respect to such Part or Parts of the said several Commons, Mosses, and Waste Grounds as they in their Discretion shall be of opinion would not be an Advantage to the Proprietors thereof to be obliged to inclose and ring-fence, shall and may only divide, apportion, and separate the same, and shall and may, if they shall so find it expedient, not require the same to be inclosed and ring-fenced, but merely to ascertain the same by Boundary Stones or other Marks of Partition, for the Purpose only of better ascertaining and fixing the Boundaries of the said several Commons, Mosses, and Waste Grounds.

Encroachments.

XXIX. And be it further enacted, That all Encroachments which shall have been made on any Part of the Commons, Mosses, and Waste Lands intended by this Act to be divided and inclosed within the Space of Twenty Years before the passing this Act shall be deemed Part of the Commons, Mosses, and Waste Lands to be 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 Lords and Juries of the Customary Courts held within or for the said 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 Receipt of the Rents and Profits as the Whole or Part of the Share or Proportion of the Commons, Mosses, or Waste Lands to which such Person or Persons will be entitled by virtue of this Act, without considering the Value of any Erection or other Improvements made thereon; and if any such Person or Persons shall not be entitled to any Allotment equal to the Value of such Encroachment, but shall be willing to purchase the same, then the said Commissioners shall ascertain the Price thereof, or of such Part thereof as shall exceed the Value of the Allotment or Allotments the Possessor or Possessors whereof would be entitled to by virtue of this Act in respect of any other Property as aforesaid; on ascertaining of which Price the said Commissioners shall not value the Buildings or other Improvements thereon, but shall value the Land only, and that at so much *per* Acre as the same shall in their Estimation be worth, having reference to the Common or 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, 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 thereof as shall be so purchased, shall be allotted to such Person or Persons, and shall be holden and enjoyed by him, her, or them accordingly; and the said Commissioners shall and they are hereby required 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 are herein directed to be applied; and in case any Dispute or Difference shall arise touching any such Encroachments or the Extent thereof, such Dispute shall be settled by the said Commissioners.

Commissioners may con-

XXX. And be it further enacted, That in setting out and appointing the several public Carriage Roads, Highways, Bridle Roads, and Footways, in

in pursuance of this Act or of the said first-recited Act, the said Commissioners shall and they are hereby authorized and empowered, if they shall think necessary or proper, to continue such public Carriage Roads, Highways, Bridle Roads, and Footways, or any of them, through and over any of the old inclosed Lands or Grounds within the said Townships of *Mansergh*, *Lupton*, *Old Hutton*, and *Holme Scales*, and *New Hutton*, and also to divert, turn, or stop up any of the old public Carriage Roads, Highways, Bridle Roads, and Footways passing or leading through or over any of such old inclosed Lands or Grounds, and the Soil of the Roads and Ways so to be stopped up shall be deemed and taken to be Part of the Lands and Grounds to be divided, allotted, and inclosed by virtue of this Act.

Commissioners may continue or stop up Roads over the Inclosures

XXXI. Provided always, and be it further enacted, That before any such public Carriage Road, Highway, Bridle Road, or Footway shall be discontinued, stopped up, diverted, or altered by the said Commissioners, the said Commissioners shall cause to be affixed at each End of the said public Carriage Road, Highway, Bridle Road, or Footway so proposed to be discontinued, stopped up, diverted, or altered, a Notice to the Effect that such public Carriage Road, Highway, Bridle Road, or Footway is intended to be discontinued, stopped up, diverted, or altered, as the Case may be, by the Commissioners acting under or by virtue of this Act; and the said Commissioners shall also cause the same Notice to be inserted in some Newspaper usually circulated in the said County of *Westmorland* for Four successive Weeks, and shall also cause a like Notice to be affixed on the Doors of the Parish Churches of *Kirkby Lonsdale* and *Kirkby in Kendal* aforesaid on the Four *Sundays* of the said Four successive Weeks, and shall cause a like Notice to be lodged with the Clerk of the Peace for the County of *Westmorland* within Ten Days after the Date of such Notice; and the said Clerk of the Peace shall, at the General or Quarter Sessions which shall be holden for the said County of *Westmorland* next after such Notice shall be lodged with him as aforesaid, file and enrol the same amongst the Records or Proceedings of the said Court of General or Quarter Sessions; and after the said several Notices shall have been so affixed, published, filed, and enrolled as aforesaid, the said public Carriage Road, Highway, Bridle Road, or Footway shall be and shall be deemed to be discontinued, stopped up, diverted or altered, as the Case may be, subject however to such Appeal to the Court of General or Quarter Sessions for the County of *Westmorland* as is herein-after mentioned.

Proceedings previous to diverting and stopping up Highways.

XXXII. Provided also, and be it further enacted, That it shall be lawful for any Person who may think that he would be injured or aggrieved if any such Carriage Road, Highway, Bridle Road, or Footway should be discontinued, stopped up, diverted, or altered, to make his Complaint thereof by Appeal to the Justices at any General or Quarter Sessions of the Peace to be holden for the said County of *Westmorland* within Four Calendar Months next after the Date of such Notice, giving to the said Commissioners or their Clerk Twenty-one Days Notice in Writing of such Appeal, together with a Statement in Writing of the Grounds thereof: Provided also, that it shall not be lawful for the Appellant to be heard in support of such Appeal unless such Notice and Statement shall have been so given as aforesaid, nor on any hearing of Appeal to go into or give

Persons who may think themselves aggrieved if such Highway should be ordered to be stopped up or diverted may appeal.

give Evidence of any other Grounds of Appeal than those set forth in such Statement as aforesaid.

In case of Appeal, Jury at Sessions to determine whether old Highway may be discontinued.

XXXIII. And be it further enacted, That in case of such Appeal the Justices at the said General or Quarter Sessions shall, for the Purpose of determining whether the public Carriage Road, Highway, Bridle Way, or Footway so intended to be discontinued, stopped up, diverted, or altered, or whether the said Party appealing would be injured or aggrieved, impannel a Jury of Twelve disinterested Men out of the Persons returned to serve as Jurymen at such General or Quarter Sessions; and if after hearing the Evidence produced before them the said Jury shall return a Verdict that the public Carriage Road, Highway, Bridle Road, or Footway so discontinued, stopped up, diverted, or altered is wholly unnecessary, or may beneficially to the Public be discontinued, altered, or diverted, and that the Party appealing would not be injured or aggrieved, then the said Court of General or Quarter Sessions shall dismiss such Appeal, and in that Case the said Court of General or Quarter Sessions shall award the Costs and Expences of resisting the said Appeal to be paid by the Party appealing to the said Commissioners, and the same shall be recoverable from the said Party in such and the same Manner as any Penalties and Forfeitures are recoverable under the said recited Act passed in the Forty-first Year of the Reign of King *George* the Third; but if the said Jury shall return that the Highway so discontinued or stopped up is not unnecessary, or that the Highway so diverted or altered could not beneficially to the Public be so diverted or altered, or that the Party appealing would be injured or aggrieved by the said Highway being discontinued, stopped up, diverted, or altered, as the Case may be, the said Court of General or Quarter Sessions shall allow such Appeal, and shall make an Order for restoring the said Highway so discontinued, stopped up, diverted, or altered by the Order of the said Commissioners to its original State, and in that Case the said Court of General or Quarter Sessions is hereby authorized and required to award to the Party or Parties giving Notice of Appeal such Costs and Expences as shall be incurred in prosecuting such Appeal, and such Costs and Expences shall be paid by the said Commissioners, and shall be raised by the said Commissioners in such and the same Manner as they are hereby directed or empowered to raise the Money necessary for discharging the Costs, Charges, and Expences of this Act.

If Appeal dismissed, Order of Commissioners to be final.

XXXIV. Provided always, and be it further enacted, That from and after the Dismissal of any such Appeal as aforesaid the Order or Award of the said Commissioners for discontinuing, stopping up, diverting, or altering any such public Carriage Road, Highway, Bridle Road, or Footway shall be final and conclusive, and be of full Force and Effect, any thing in this Act or in the said recited Acts contained to the contrary notwithstanding.

For setting out public Bridle and Foot Ways, and private Ways, &c.

XXXV. And be it further enacted, That the said Commissioners shall and they are hereby empowered and required to set out and appoint, and cause to be made and completed, such public Bridle Roads and Footways and private Roads and Ways, Bridges, Ditches, Fences, Gates, and 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 they shall think requisite; and such Bridges, Ditches, Fences, Gates, and Stiles shall be made and erected, and at all Times thereafter repaired, cleansed,

and maintained, by such Persons and in such Manner as the said Commissioners shall in their Award direct and appoint; and it shall be lawful for the said Commissioners 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 first-recited Act within the said respective Manors, Townships, or Divisions shall from and after the Execution of their said Award be kept in repair.

Allotments for Watering Places, Gravel, &c.

XXXVI. And be it further enacted, That the said Commissioners shall, before setting out the Allotments herein-after mentioned, assign, set out, and allot unto the Surveyors of the Highways within the said Townships or Divisions of *Mansergh*, *Lupton*, *Old Hutton*, and *Holme Scales* and *New Hutton* respectively, such Part or Parts of the said Commons, Mosses, and Waste Grounds hereby directed to be divided, allotted, and inclosed as the said Commissioners shall think necessary 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, Mosses, and Waste Grounds hereby directed to be divided, allotted, and inclosed; and the said Allotment when so set out shall for ever thereafter be used by the Surveyors of the Highways for the Time being of the said respective Townships, and by the Proprietors of Lands, Tenements, and Hereditaments within the said respective Townships or Divisions, 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 direct.

Allotment of One Sixteenth Part to the Lords of the Manors of Mansergh, Lupton, and New Hutton.

XXXVII. And be it further enacted, That the said Commissioners shall and they are hereby authorized and required, in the next place, to set out, allot, and award unto the Lord or Lords of the said Manors of *Mansergh*, *Lupton*, and *New Hutton* respectively for the Time being, and according to his or their several or respective Rights, Shares, Estates, and Interests, One full Sixteenth Part (Quantity, Quality, and Situation considered,) of all and every the Residue of the Tracts or Parcels of Commons, Mosses, and Waste Grounds within the said respective Townships or Divisions of *Mansergh*, *Lupton*, and *New Hutton*, in compensation and satisfaction for the Right and Interest of such Lord or Lords of the said Manors in and to the Soil and Freehold of the said Commons and Waste Grounds, but without Prejudice to any other Right or Interest which they or either of them may have or claim in or upon the said Commons and Waste Grounds.

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

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

separately, and a Share of such Costs, Charges, and Expences as shall apply to the said Township or Division jointly and in conjunction with the others of such Townships or Divisions, rateably and in proportion to the Value of the Commons or Waste Lands in such Township to the Commons or Waste Lands in such other Townships or Divisions, such Value to be ascertained by the said Commissioners; and the said Commissioners shall and they are hereby required, at such convenient Times and Places as to them shall seem meet, to cause the said Part or Parts of the said Commons, Mosses, and Waste Grounds to be set out for Sale by them as aforesaid to be put up to public Sale or Auction in manner by the said first-recited Act directed, first causing at least Three Weeks previous Notice to be given in some Newspaper usually circulated in the said County of *Westmorland* of the Time and Place to be appointed for that Purpose: Provided always, that the said Commissioners shall not set out any Part of the Commons, Mosses, and Waste Grounds to be sold which ought, on account of Contiguity or Convenience, to be allotted to any of the Parties concerned in the said Division or Inclosure; and in case the Part or Parts of the said Commons, Mosses, and Waste Lands marked or set out for Sale and actually sold by the Commissioners shall happen to raise more Money than, together with the Money to be paid for Encroachments as herein-before mentioned, may be requisite for defraying all the Costs, Charges, and Expences of or incident to the obtaining of this Act, and fully carrying the same into execution in every respect, the overplus Money shall be by the said Commissioners paid and divided, and they are hereby directed to pay and divide the same to and amongst the several Proprietors of Allotments of the said Commons, Mosses, and Waste Grounds allotted by them under or by virtue of the Powers contained in this Act and the said recited Act of the Forty-first Year of the Reign of King *George* the Third, 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 Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments to be settled to the same Uses.

Any existing Valuations may be adopted in lieu of new Valuations of ancient inclosed Lands.

XXXIX. And be it further enacted, That it shall be lawful for the said Commissioners, if they shall think proper, to call any Meeting or Meetings to be held after Ten Days previous Notice, specifying the Purpose of the Meeting, shall have been given by the said Commissioners in the Manner other Notices are by this Act required to be given, for the Purpose of ascertaining the Mode of Valuation to be adopted as herein-after mentioned; and if at any such Meeting Three Fourths in Value of the Landowners in any One or more of the said Townships present at such Meeting, or who shall have authorized by Writing any other Person to attend for that Purpose (such Value to be ascertained by the Poor's Rate Assessment), shall determine to adopt the Poor's Rate or any other existing Rate, or Assessment or Valuation, applicable to such Township, in lieu of the Valuation directed to be made by the Commissioners by the said first-recited Act, then and in every such Case such Valuation so agreed to in any one of the said Townships shall, so far as the Messuages, Lands, and Tenements in such Townships are concerned, be deemed and taken to be the Valuation of the said Commissioners for the Purpose of allotting and apportioning the said Commons,

Mosses, and Waste Grounds to and amongst the Proprietors in such Township, and for all the Purposes of the said Act.

Open Spaces to be left for Recreation.

XL. Provided always, and be it further enacted, That the said Commissioners shall and they are hereby required to set out a Portion of the Lands or Grounds hereby directed to be inclosed to be for ever left open for the Purposes of Exercise and Recreation of the Inhabitants of the said several Townships or Divisions of *Mansergh*, *Lupton*, *Old Hutton*, and *Holme Scales*, and *New Hutton*, and the neighbouring Population; and such Portion of Land shall be vested in the Overseers of the Poor of the said several Townships or Divisions for the Time being, and not being less in the whole than Sixteen Acres of Land; or in case the said Commissioners shall think it more advantageous or convenient for the Inhabitants of such several Townships or Divisions that such Portion of Land or Ground should be set out in Two or more separate Portions, then it shall be lawful for them so to do, provided the Quantity of Land or Ground so to be set out shall not be less than Four Acres in any One of such Portions; and such several Portions of Land or Ground shall be vested in the Overseers of the Poor of the Township or Division or Townships or Divisions (as the Case may be) for the Exercise and Recreation of the Inhabitants and neighbouring Population, whereof such particular Portion or Portions shall be so set out.

General Allotments of Residue.

XLI. And be it further enacted, That after the aforesaid several Allotments shall have been made and set out according to the Directions hereinbefore contained, the said Commissioners shall then divide, assign, set out, and allot all the Residue and Remainder of the Commons, Mosses, and Waste Lands intended by this Act to be divided and allotted unto and amongst the several Owners of Lands and Tenements having Right of Common, Pasturage, or Turbary upon the several Commons, Mosses, and Waste Grounds within the said several Manors, Townships, or Divisions, according to their several and respective Rights and Interests, and in such Shares and Proportions as the said Commissioners shall adjudge and determine to be proportionate to the Value of, and a full Compensation and Satisfaction to him, her, or them respectively for his, her, or their respective Rights and Interests in, to, over, or upon the said Commons, Mosses, and Waste Grounds respectively by this Act directed or intended to be divided and allotted; nevertheless any thing herein contained shall not be construed so as to give the Landowners any Right upon the Commons, Mosses, or Waste Grounds in those Townships or Divisions in which their Lands or Tenements are not situated, unless they shall have lawfully acquired the same at the Time of the passing of this Act.

In case any Person sell his Common Right or his Allotment before Execution of the Commissioners Award, the same to be awarded to the Purchaser.

XLII. Provided always, and be it further enacted, 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, and upon the said Commons, Mosses, and Waste Grounds, or any Part thereof, to any other Person or Persons, or of or in any Allotment or Allotments which may have been set out and allotted to such Person or Persons in lieu of any such Right, Interest, or Property, or which he, she, or they may have bought and purchased from any other Person or Persons to whom the same may have been so set out and allotted, or from the said Commissioners under the Provisions herein-before contained, then and in every

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 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 and 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 held and enjoyed the same in case such Sale had not been made, or such Rights, Interests, or Property had vested in the Vendor at the Time of making such Allotment as aforesaid; and in case of the Sale or Sales of any such Allotment or Allotments as shall have been first set out and allotted to the Person or Persons making such Sale or Sales, or shall have been purchased by the Person or Persons making such Sale or Sales from the said Commissioners, in pursuance of the Provisions herein-before contained, the said Commissioners are hereby authorized and required, in and by their said Award, to award the same Allotment or Allotments to the Purchaser or Purchasers in such last-mentioned Sale or Sales.

Tenure of Allotments.

XLIII. And be it further enacted, That all and every the Allotments of the said Commons to be made by virtue of this Act, from and immediately after the same shall be so set out and allotted by the said Commissioners as aforesaid, shall be and be deemed and taken to be of Tenure of Free and Common Socage, and shall be so held and enjoyed accordingly.

Power to make Exchanges.

XLIV. And be it further enacted, That it shall and may be lawful for the said Commissioners to assign, set out, and allot any of the Lands or Grounds hereby directed to be divided and allotted, or any Lands, Tenements, or Hereditaments whatsoever within the Townships or Divisions of *Mansergh*, *Lupton*, *Old Hutton*, and *Holme Scales*, and *New Hutton* aforesaid, in lieu of and in exchange for any other Lands, Tenements, or Hereditaments within the same Townships or Divisions, 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, Corporations Aggregate or Sole, or Tenant or Tenants in Fee Simple or for Life, or in Fee Tail, General or Special, or by the Courtesy of *England*, or for Years determinable on any Life or Lives, (by and with the Consent of the Lessor or Lessors thereof, but not otherwise,) or possessed of any Estate of Inheritance less than an Estate in Fee Simple, or with the Consent of 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, and under the Hands of the other consenting Parties respectively; and all and every such Exchange or Exchanges so to be

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 mesne or immediate Patron thereof, and of the Bishop of the Diocese in which such Lands, Tenements, or Hereditaments so to be exchanged shall lie and be situate.

Costs of Exchanges how to be paid.

XLV. And be it further enacted, That all Costs, Charges, and Expences attending the making any Exchanges or Partitions under the Authority of this Act or the said first-recited Act shall be paid and borne by the several Persons making such Exchanges and Partitions, in such Manner and in such Proportions as the said Commissioners shall order and direct.

Vacating Leases at Rack Rent.

XLVI. 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, Mosses, and Waste Grounds by virtue of this Act intended to be divided and inclosed or exchanged, shall cease, determine, and be void, as to such Commons, Mosses, or Waste Grounds, on such Days and Times as the said Commissioners shall by Writing under their Hands order and appoint, the respective Lessors and Landlords in such Leases and 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, Mosses, and Waste Grounds, or relating thereto.

Wills, &c. not to be affected.

XLVII. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to revoke, make void, alter, or annul any Will or Settlement, or to prejudice any Person or Persons having any Right or Claim of Dower, Jointure, Portion, Debts, 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, 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 passed.

Allotments to Proprietors having Lands under different Titles to be distinguished.

XLVIII. And be it further enacted, That in case any Proprietor or Proprietors of any Messuages, Lands, or Tenements in respect whereof any Allotment shall be made of any Lands or Grounds by this Act authorized to be divided, allotted, or inclosed, shall hold the same by different Tenures, or for different Estates, or in different Rights, or subject to different Trusts, Charges, or Incumbrances, the said Commissioners shall, upon the Request in

in Writing of any such Proprietor or Proprietors, ascertain and distinguish the Messuages, Lands, and Tenements so held, and shall accordingly by their said Award set out and make distinct and several Allotments by distinct and several Descriptions for such respective Messuages, Lands, and Tenements, and shall in their said Award also declare in right of what Estate or Estates such Allotments respectively shall have been made; and in case the said Commissioners, for Want of necessary Information or from any other Cause, shall not discriminate and distinguish such different Rights or Titles, different Estates and different Tenures in their Award, and within Twelve Calendar Months after the Execution of the said Award Request shall be made to the said Commissioners by any Person or Persons interested, by Writing under his, her, or their Hand or Hands, to have such Omission supplied, then and in every such Case it shall be lawful for the said Commissioners, and they are hereby authorized and empowered, to do or cause to be done all proper and necessary Acts for the Purpose of enabling them to make such Discrimination and Distinction as aforesaid, in the same Manner as they might or could have done by their said Award if the same had not been executed; and when and so soon as the said Commissioners shall have obtained sufficient Information in their Judgment for the Purpose they are hereby authorized and required, by any Deed or Instrument in Writing under their Hands and Seals, to ascertain and distinguish the Difference of such Tenures, Estates, Rights, and Titles respectively, and to make distinct and several Allotments, in the same Manner as they are authorized to do by their said Award; and every such Deed or Instrument shall have the same Force and Effect as if the same were contained in the said Award, and shall be delivered to the Person or Persons to whom the Custody of the Deeds and Writings concerning the Title to the Premises in question shall in the Opinion of the said Commissioners properly belong for the Time being; and all the Costs and Charges which shall be occasioned by the Proceeding of the said Commissioners in making such Discrimination, Distinction, and Allotment or Allotments, and of preparing and executing any such Deed or Instrument, or in anywise relating thereto, shall be ascertained and settled by the said Commissioners, and shall be paid by the Person or Persons who shall make such Request as aforesaid, or by his, her, or their Heirs, Executors, or Administrators, to such Persons and at such Time and Place as the said Commissioners shall by Writing under their Hands appoint; and in case such Costs, Charges, and Expences shall not be so paid, it shall be lawful for the said Commissioners and they are hereby required to raise and levy the same by such Ways and Means as the Costs, Charges, and Expences of obtaining and executing this Act can and may be raised and levied.

For defraying the Deficiency of the Expences of obtaining and executing this Act.

XLIX. And be it further enacted, That in case the Money arising by Sale of the said Lands and Grounds herein-before authorized and directed to be sold as aforesaid shall not be sufficient to pay, satisfy, and discharge the whole of the Costs and Charges herein-before directed to be paid, then and in such Case the Residue of such Costs, Charges, and Expences shall be borne and paid by the Person and Persons, and Body or Bodies Politic, Corporate, or Collegiate, to whom any Allotment or Allotments shall be made by virtue of this Act or the said recited Acts, in proportion to the Value of the Allotment or Allotments so to be set out and allotted to such Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, in such Manner, and at such Time or Times, either before or after the Execution of the said Award, and at such Place and to such Person and Persons,

as the said Commissioners shall in and by their Award, or by any Writing or Writings under their Hands, order, direct, or appoint (save and except the said Lord or Lords for the Time being in respect of the Allotments to be made to them as Lord or Lords of the said Manors respectively, and except the Surveyors of the Highways and the Overseers of the Poor within the said Townships for the Time being, for or in respect of the Allotment or Allotments hereby directed to be made to them as aforesaid); and in case any Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, shall refuse or neglect to pay his, her, or their Proportions of such Costs, Charges, and Expences as aforesaid, within the Time and at the Place and to such Person or Persons as the said Commissioners shall in manner aforesaid direct or appoint, then and in such Case the said Commissioners shall cause the same to be levied and recovered in the Manner directed by the said first-recited Act.

Land may be deducted from Allotments in lieu of and equivalent to the Expences of inclosing.

L. And be it further enacted, That it shall be lawful for the said Commissioners, where they shall deem it expedient, to deduct from any Allotment or Allotments to be set out by virtue of this Act so much Land as in the Judgment of the said Commissioners shall be equivalent to the Part or Proportion of the Expences of inclosing, hedging, ditching, and fencing such Allotment or Allotments, and the Land so deducted shall be allotted to or amongst the Proprietor or Proprietors who shall pay such Expences in proportion to the Sums they shall respectively pay or contribute thereto: Provided always, that no such Deduction shall be made by the said Commissioners without the previous Consent in Writing of the respective Proprietors or Persons seised or entitled to the first Estate of Freehold in Possession less than an Estate in Fee Simple, or the Husbands, Guardians, Trusteees, Committees, or Attornies of any such Proprietors being Femes Covert, Infants, Lunatics, beyond the Seas, or under any other legal Disability or Incapacity of acting for themselves: Provided always, that the Deduction to be made from such Allotment or Allotments as aforesaid shall not exceed in Value the Sums of Money that the Person or Persons from whose Allotment or Allotments such Deductions shall have been made as aforesaid would have been empowered or authorized to borrow or charge upon his, her, or their Allotment or Allotments, reckoning Five Pounds for each and every Acre thereof: Provided also, that in case the Land deducted from such Allotment or Allotments shall not be equal in amount to the Sum of Money that such Proprietor or Proprietors is or are by the said first-recited Act or this Act empowered to borrow or charge upon his, her, or their Allotment or Allotments, then and in such Case it shall be lawful for the Proprietor or Person from whose Allotment Land shall be deducted as aforesaid to charge his, her, or their Allotment or Allotments with any Sum of Money not exceeding the Excess or Difference towards Payment of such Expences.

Application of Compensation Money when amounting to 200*l.*

LI. And be it further enacted, That whenever any Sum of Money is, under the Provisions of the said recited Act of the Forty-first Year of the Reign of King *George* the Third or this Act, to be paid for the Purchase or Exchange of any Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, which shall belong to any Body Politic, Corporate, or Collegiate, Ecclesiastical or Civil, Corporation Aggregate or Sole, Tenant for Life or in Tail, or to any Feoffee in Trust, Executor, Administrator, Husband, Guardian, Committee, or other Trustee for or on behalf of any Infant, Idiot, Lunatic, Feme Covert, or other Cestuique Trust, or

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to any Person or Persons whose Lands, Tenements, or Hereditaments are limited in strict or other Settlement, or to any Person under any other Disability or Incapacity whatsoever, and which Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments to be settled to the same Uses, it shall and may be lawful to and for the said Commissioners out of such Sum to defray such Proportion of the Expence of passing this Act, and of carrying the same and the said recited Acts into execution, as shall, if any, be charged upon any of the Lands, Tenements, or Hereditaments of the Person or Persons, Body or Bodies Politic, Corporate, or Collegiate, Ecclesiastical or Civil, Corporation Aggregate or Sole, Tenant for Life or in Tail, Feoffee, Executor, Administrator, Husband, Guardian, Committee, or Trustee in Possession of the Lands, Tenements, or Hereditaments so purchased or exchanged, or on which such Timber or Wood actually grew, and also the Expence of any permanent Improvement, such as building, subdividing, draining, or planting, and the like, which shall in the Judgment of the said Commissioners be proper to be made, and shall be made, under their Direction, upon any Lands to be by virtue of this Act allotted to such Person or Persons, Body Politic, Corporate, or Collegiate, Ecclesiastical or Civil, Corporation Aggregate or Sole, Tenant for Life or in Tail, Feoffee, Executor, Administrator, Husband, Guardian, Committee, or Trustee respectively; and in case the Surplus of such Money shall amount to or exceed the Sum of Two hundred Pounds, the same shall with all convenient Speed be paid into the Bank of *England* in the Name and with the Privity of the Accountant General of the Court of Exchequer, to be placed to his Account there *ex parte* the Commissioners for executing this Act, pursuant to the Method prescribed by an Act passed in the First Year of the Reign of His late Majesty King
1 G. 4. c. 35. *George* the Fourth, intituled *An Act for the better securing Monies and Effects paid into the Court of Exchequer at* Westminster *on account of the Suitors of the said Court, and for the Appointment of an Accountant General and Two Masters of the said Court, and for other Purposes*, and the General Orders of the said Court, and without Fee or Reward; and shall when so paid in there remain until the same shall, by Order of the said Court, made upon a Petition to be preferred to the said Court in a summary Way by the Person or Persons who would have been entitled to the Rents and Profits of the said Lands, Tenements, or Hereditaments, be applied either in the Purchase or Redemption of the Land Tax, or in or towards the Payment or Discharge of any Debt or Debts or other Incumbrances affecting the same Lands, Tenements, or Hereditaments, or affecting other Lands, Tenements, or Hereditaments standing settled therewith, or to the same or the like Uses, Trusts, Intents, or Purposes, as the said Court of Exchequer shall authorize to be purchased or redeemed, or paid or discharged, or such Part or Parts thereof as shall be necessary; or until the same shall, upon the like Application, be laid out, in a summary Way, by Order of the said Court, in the Purchase of other Lands, Tenements, or Hereditaments, which shall be conveyed, limited, and settled to, for, and upon such and the like Uses, Trusts, Intents, and Purposes, and in the same Manner as the afore-mentioned Lands, Tenements, or Hereditaments stood settled or limited, or such of them as at the Time of making such Conveyance and Settlement shall be existing undetermined or capable of taking effect; and in the meantime and until such Order can be made the said Money may, by Order of the said Court upon Application thereto, be invested by the said Accountant General in his Name in the Purchase of Three Pounds *per Centum* Consolidated or Three Pounds *per Centum* Reduced

Reduced Bank Annuities or Government or Real Securities; and in the meantime, and until the said Bank Annuities or Government or Real Securities shall be ordered by the said Court to be sold for the Purposes aforesaid, the Dividends or Interest and annual Produce of the said Consolidated or Reduced Bank Annuities or Government or Real Securities shall from Time to Time be paid, by Order of the said Court, to the Person or Persons who would for the Time being have been entitled to the Rents and Profits of such Lands, Tenements, or Hereditaments so to be purchased, conveyed, and settled.

When under 200*l.* and amounting to 20*l.*

LII. Provided always, and be it further enacted, That in case the Surplus of such Money shall be less than the Sum of Two hundred Pounds, and shall exceed or amount to the Sum of Twenty Pounds, then and in all such Cases the same shall, at the Option of the Person or Persons for the Time being entitled to the Rents and Profits of the Lands, Tenements, or Hereditaments so purchased or exchanged, or of his, her, or their Guardian or Guardians, Committee or Committees, in case of Infancy, Idiotcy, Lunacy, or other Incapacity, with the Approbation of the said Commissioners, to be signified in Writing under their Hands, be paid into the Bank of *England* in the Name and with the Privity of the said Accountant General of the Court of Exchequer, and be placed to his Account as aforesaid, in order to be applied in manner herein-before directed; or otherwise the same may be paid, at the like Option and with the like Approbation, to Two Trustees, to be nominated by the Person or Persons who for the Time being would be entitled to the Rents and Profits of the said Lands, Tenements, and Hereditaments, such Nomination to be approved of by the said Commissioners, and such Nomination and Approbation to be signified in Writing under the Hands of the nominating and approving Parties; and the Money so paid to such Trustees, and the Dividends and Produce arising thereon and therefrom, shall be by them applied in like Manner as is herein-before directed with respect to the Money so to be paid into the Bank in the Name of the Accountant General of the Court of Exchequer, but without obtaining or being required to obtain any Order of the said Court touching the Application thereof.

When under 20*l.*

LIII. Provided also, and be it further enacted, That in case the Surplus of such Money shall be less than Twenty Pounds, then and in all such Cases the same shall be paid to the Person or Persons who would for the Time being have been entitled to the Rents and Profits of the Lands, Tenements, or Hereditaments so purchased or exchanged, for his, her, or their own Use and Benefit; or, in case of Infancy, Idiotcy, Lunacy, or other Incapacity, then such Money shall be paid to his, her, or their Guardian or Guardians, Committee or Committees, Trustee or Trustees, to and for the Use and Benefit of such Person or Persons so entitled respectively.

Proprietors to pay their own Expences at Meetings.

LIV. And be it further enacted, That the said Proprietors, their Attornies or Agents, shall pay their own Expences when they or any of them shall attend the said Commissioners at any of the Sittings to be holden in pursuance of this Act.

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

LV. And be it further enacted, That if any of the Proprietors or Persons interested in the Lands or Grounds hereby directed to be divided, allotted, and inclosed, or any other Person or Persons whomsoever, shall advance and pay any Sum of Money for defraying the Expences of obtaining

taining this Act, the Money so paid and advanced shall be repaid and satisfied by the said Commissioners, together with lawful Interest for the same, out of the first Monies which shall come to their Hands under the Authority of this Act.

Commissioners to lay Accounts before Justices every Three Calendar Months.

LVI. And be it further enacted, That once at least in every Three Calendar Months during the Execution of this Act, to be computed from the Day of passing this Act, the said Commissioners shall and they are hereby required to make a true and just Statement or Account of all Sums of Money by them received and expended, or due to them, for their own Trouble and Expences in the Execution of this Act or the said recited Acts, and in such Statement or Account shall be particularly stated and specified the several Items and Articles for which each particular Sum has been paid and disbursed; and such Statement or Account when so made, together with the Vouchers relating thereunto, shall be by them laid before any One of His Majesty's Justices of the Peace for the said County of *Westmorland*, not interested in the said Inclosure, to be by him examined and balanced; and such Justice shall or may disallow or reduce any of the Sums or Items charged in the said Account which he may think unjust or unreasonable; and such Balance shall be by such Justice stated in the Books of Accounts to be kept in the Office of the Clerk to the said Commissioners, and an Abstract of such Accounts so examined and balanced shall be published in some Newspaper usually circulated in the said County of *Westmorland*; and no Charges or Items in such Accounts shall be binding on the Parties concerned unless the same shall have been allowed by such Justice, or until such Accounts, or the Abstract thereof, shall have been published in such Newspaper as aforesaid, subject nevertheless to the Power of Appeal herein-after contained.

Award where to be deposited.

LVII. And be it further enacted, That the Award to be made by the said Commissioners, together with the Map or Plan thereunto annexed, shall, after the same shall have been executed by the said Commissioners, be deposited with the Clerk of the Peace for the said County of *Westmorland*, who is hereby required to receive, keep, and deposit the same amongst the Records of the said County, for the depositing of which the Sum of Two Pounds Two Shillings, and no more, shall be paid or demanded, and that the depositing of the said Award in manner aforesaid shall be sufficient without the same being enrolled according to the Directions of the said first-recited Act; and a true Copy of the said Award, with a Plan thereunto annexed, attested and signed by the said Commissioners, shall be deposited and kept in the Parish Church of *Kirkby-in-Kendal* aforesaid.

Appeal.

LVIII. And be it further enacted, That if any Person or Persons shall think himself, herself, or themselves aggrieved by any thing done or omitted to be done in pursuance of this Act or of the said recited Act of the Forty-first Year of the Reign of King *George* the Third, other than and except such Determinations of the said Commissioners as in and by this Act or the said recited Act are 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 or Quarter Sessions of the Peace which shall be holden for the said County of *Westmorland* within Four Calendar Months next after the Cause of Complaint shall have arisen, on giving to the said Commissioners and to the Party or Parties concerned Twenty-one Days

Notice in Writing of such Appeal and of the Matter thereof, except with respect to the Accounts of the said Commissioners, which, notwithstanding the same shall have been examined and balanced and published as aforesaid, may be appealed against at any Time within Six Calendar Months after the depositing of the said Award in manner aforesaid, on giving to the said Commissioners and their Clerk such Notice as last aforesaid; 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 Costs and Charges as to them in their Discretion shall seem reasonable, and by their Order and Warrant to levy the Costs and Damages which shall be so awarded by Distress and Sale of the Goods and Chattels of the Party or Parties 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 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.

Rights of the Lords of Manors to Minerals not to be prejudiced.

LIX. Provided always, and be it further enacted, That nothing in this Act contained shall be construed or adjudged to defeat, lessen, or prejudice the Right, Title, or Interest of the Lord or Lords of the Manors within which the said Townships or Divisions of *Lupton*, *New Hutton*, and *Mansergh* are situated for the Time being of, in, and to the Seigniories and Royalties, Franchises and Liberties, incident and belonging to the said Manors (save and except sufficient Stones and Stone and Quarries of Stone in the several Allotments to be set out under and by virtue of this Act for the Proprietors of such Allotments own Use), but that the Lord or Lords of such Manors within which the said Townships or Divisions are situated for the Time being shall and may at all Times for ever hereafter have, hold, take, and enjoy all Rents, Services, Courts, Perquisites and Profits of Courts, Hunting, Fishing, Hawking, and Fowling, Goods and Chattels of Felons and Fugitives, Felons of themselves and those put in Exigent, Deodands, Waifs, Estrays, Forfeitures, Escheats, and other Royalties, Liberties, Franchises, Privileges, Pre-eminences, Jurisdictions, and Appurtenances whatsoever to the said Manors or the Lord or Lords thereof for the Time being incident, appertaining, or belonging, or which have been anciently used, exercised, and enjoyed by the Lord or Lords of the same Manors within which the said Townships or Divisions are situate, (other than and except such Rights 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 them as Owners of the Soil of the said Commons, Mosses, and Waste Grounds, in as full, ample, and beneficial a Manner to all Intents and Purposes as he or they could or might have held and enjoyed the same in case this Act had not been passed; and that the said Lords and Owners of the Manors within which the said Townships or Divisions are situated 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

Nature or Kind soever, within or under the said Commons, Mosses, 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 Quarry to be set out as aforesaid, and save and except sufficient Stones and Stone and Quarries of Stone in the several Allotments aforesaid for the Use of the respective Proprietors,) and to have and exercise all such Rights, Privileges, and Powers for searching for, working, and winning the Mines and Quarries, and leading and carrying away the Coals, Lead, Tin, Copper, Metals, and Minerals in, through, upon, over, or along the said Commons, Mosses, and Waste Grounds, or any of them, or any Part or Parts thereof, as the said Lords or Lord had or was entitled to previously to the passing of this Act, or might or could have had or exercised therein or thereon if this Act had not been passed.

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

LX. Provided always, and be it further enacted, That in case the Lord or Lords of the said Manors within which the said Townships or Divisions are situated for the Time being, or any Person or Persons claiming under him or them, shall, after such Inclosure be made as aforesaid, search for, win, work, or lead away Coal, Lead, Tin, Copper, Metals, 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 Allotment shall be made, then and in every such Case the Lord or Lords of the said Manors, Townships, or Divisions for the Time being, or such Person or Persons so searching for, winning, working, or leading away the same, shall make a full and reasonable Satisfaction for the Damage and Spoil of the Ground occasioned thereby, or in making or using of Waggonways, or any other Matters or Things, according to the Powers herein reserved or granted to the Lord or Lords of the said Manors 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.

General Saving.

LXI. 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, or their Heirs, Successors, Executors, and Administrators, (except the Person or Persons 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 he, 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 passed.

Act to be printed by the King's Printers.

LXII. 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 SPOTTISWOODE,
Printers to the King's most Excellent Majesty. 1837.