



ANNO QUADRAGESIMO TERTIO

GEORGI II. REGIS.

Cap. 44.

An Act for amending an Act, passed in the Forty-second Year of the Reign of His present Majesty, intituled, *An Act for dividing, allotting, and inclosing the Commons and Waste Grounds within the Township of Oldham, in the Parish of Prestwich cum Oldham, in the County Palatine of Lancaster.* [17th May 1803.]

WHEREAS an Act was passed in the Forty-second Year of the Reign of His present Majesty, intituled, *An Act for dividing, allotting, and inclosing the Commons and Waste Grounds within the Township of Oldham, in the Parish of Prestwich cum Oldham, in the County Palatine of Lancaster*: And whereas the said Act recites (amongst other Things) that there were within the Township of Oldham, in the Parish of Prestwich cum Oldham, in the County Palatine of Lancaster, certain Commons or Waste Grounds called *Green Acres Moor, North Moor, and Hollingwood*, and other Commons and Waste Grounds, containing in the Whole Three hundred Acres (after Seven Yards to the Rod or Perch) commonly called *Lancashire Measure*, or thereabouts; and that *John Lees* of Oldham, in the Parish of Prestwich cum Oldham aforesaid, Esquire, was Lord of the Manor or Lordship or reputed Manor or Lordship of *Oldham cum Werneth*, in the said Parish, and was entitled to the Soil of the said Commons and Waste Grounds, and the Mines and Minerals within and under

42 Geo. 3.

[Loc. & Per]

the

the same, and to the Royalties within the said Manor or Lordship or reputed Manor or Lordship; and that the said *John Lees* and several other Persons were Owners and Proprietors of several Lands, Tenements, and Hereditaments, within the said Township, and had for and in respect of their several Estates, Rights of Common of Pasture, and Turbary, and other Rights upon and in the said Commons and Waste Grounds; and the said Act recites an Act passed in the Forty-first Year of the Reign of His present Majesty, intituled, *An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts*: And whereas it is by the said first mentioned Act enacted, that *William Chippindale* of *Oldham* aforesaid, Gentleman, *Ralph Fletcher* of *Bolton-le-Moors*, in the said County, Esquire, and *John Clegg* of *Manchester*, in the said County, Timber Merchant, should be Commissioners for setting out, dividing, and allotting all the said Commons and Waste Grounds, and for putting the said Act into Execution, subject to the Rules, Orders, and Directions therein contained, and also subject to the Powers and Provisoes of the said therein recited Act, except where the same were thereby varied or altered; and it is by the same Act of the Forty-second Year of His present Majesty's Reign amongst other Things further enacted, that the said *John Lees*, and all and every other the Lord and Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, and his and their Lessee and Lessees, should for ever thereafter have, take, hold, and enjoy all Mines of Coal and Cannel, and other Mines, Minerals, and Metals, within, upon, and under all and every or any Part of the said Commons and Waste Grounds, notwithstanding the said Division and Inclosure, in such and the same Manner to all Intents and Purposes, as he and they might have done if the said Act had not been made, (other than and except the Stone, Slate, and Flags) subject nevertheless as therein-after is mentioned; and that it should and might be lawful to and for the said *John Lees*, and all and every the Lord and Lords of the said Manor or Lordship or reputed Manor or Lordship for the Time being, and his and their and every of their Lessees, Agents, Servants, and Workmen, from Time to Time and at all Times thereafter, at his and their and every of their free Will and Pleasure, by all necessary or convenient Ways and Means, to search for, discover, get, raise, lead, drain, convey, and carry away such Mines, Minerals, and Metals (except as aforesaid), and for that Purpose to sink, bore, dig, sough, and trench, in, upon, under, or through the said Commons and Waste Grounds so intended to be inclosed, or any Part or Parts thereof, and to make, erect, use, continue, and repair any Gins, Engines, Coes, Huts, Pits, Shafts, Drifts, Gutters, Watercourses, Roads, Ways, Railways, Soughs, Levels, Sluices, or other Machines, Devices, Erections, Matters or Things therein or thereupon, and to convey Water in, to, from, or through the same, and to lay Earth, Stone, Timber, Lime, Rubbish, and all other Materials and Things to be produced from, or used in or about the same, upon such Part or Parts of the said Lands as should be most convenient; and also from Time to Time and at all Times for ever thereafter, to use, repair, and keep open all such Soughs, Drains, Levels, Pits, Shafts, Drifts, Gutters, Roadways, and Sluices so to be made, not only for the Purposes aforesaid, but also for the searching for, discovering, getting, raising, landing, draining, conveying, bringing to, and carrying away any other the like Coal and Cannel and other Mines, Minerals, and Metals, which the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship for the Time being, his or their

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Lessee or Lessees then had, or should or might at any Time or Times there- after be entitled unto or have a Right to convey to the same, in as full, ample, and beneficial a Manner to all Intents and Purposes as they or any of them might or could have done if the said Act had not been made, doing as little Damage as possible to the Owners and Occupiers of the Soil; and in the same Act is contained a Proviso that nothing therein contained should extend or be construed to extend to enable the said *John Lees*, or the Lord or Lords of the said Manor for the Time being, his or their Lessee or Lessees, or any of them, to enter into any House or Building, or break the Surface of the Soil within any Yard or Garden which might be erected or made upon any Part or Parts of the said Commons and Waste Grounds: And whereas it is fit that the said *John Lees*, and all and every the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, and his and their Lessee and Lessees, should make Satisfaction for the Damage and Spoil of Ground occasioned by the working of the said Mines, Minerals, and Metals, and the Exercise of the said several other Powers, Privileges, or Authorities given to or vested in the said *John Lees*, and the Lord or Lords of the said Manor or Lordship of *Oldham* aforesaid for the Time being, and his and their Lessee or Lessees, in and by the said Act; but no sufficient Provision to that Effect has been made in the said Act: And whereas the said *John Lees* is willing and desirous that such Provisions should be made for the Benefit of the several Persons who shall have or be entitled to Allotments respectively under or by virtue of the said Act, and all Persons claiming or to claim by, from, or under them respectively under the said Act, who shall sustain any Loss or Damage or Spoil in their Allotments respectively, by the working of the said Mines, Minerals, and Metals, or the Exercise of all or any of the said several other Powers, Privileges, or Authorities; but it is apprehended that no sufficient Security can be given to such Persons against such Loss, Damage, or Spoil as they may respectively sustain by the working of the said Mines, Minerals, and Metals, or the Exercise of all or any of the said several other Powers, Privileges, or Authorities as aforesaid without the Aid and Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said *John Lees*, and all and every the Lord and Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, and his and their Lessee and Lessees, shall make Satisfaction for the Damage and Spoil of Ground occasioned by the working of the said Mines, Minerals, and Metals, and the Exercise of the said several other Powers, Privileges, or Authorities given to or vested in the said *John Lees*, and the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, and his and their Lessee and Lessees, to the Person or Persons respectively who shall have or be entitled to Allotments under or by virtue of the said Act, and all Persons claiming or to claim by, from, or under them respectively or under the said Act, who shall sustain any Loss, Damage, or Spoil in their Allotments respectively, by the working of the said Mines, Minerals, and Metals, or the Exercise of all or any of the said several other Powers, Privileges, or Authorities; and that the said Powers, Privileges, and Authorities so given to or vested in the said *John Lees*, and the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, and his

The Lord of the Manor willing that Provision should be made for Satisfaction for Damage done in getting Coals.

The Lord of the Manor to make Satisfaction for Damage done in getting Coal, under the Allotments.

his and their Lessee and Lessees as aforesaid, in and by the said Act, shall be exercised by him or them or by any of them upon this express Condition only; and that he the said *John Lees*, and all and every the Lord and Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, and his and their Lessee and Lessees, shall and do make sufficient Satisfaction and Compensation to the Person or Persons respectively who shall have or be entitled to Allotments under or by virtue of the said Act; and all Persons claiming or to claim by, from, or under them respectively, or under the said Act, who shall sustain any Loss, Damage, or Spoil in their Allotments respectively, by working of the said Mines, Minerals, and Metals, or the Exercise of all or any of the said several other Powers, Privileges, or Authorities, such Satisfaction and Compensation to be recovered as herein-after is mentioned.

Manner of determining Differences respecting Satisfaction for Damages.

II. And be it further enacted, That all and every Dispute and Disputes which shall from Time to Time arise between the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, or his or their Lessee or Lessees, and the Person or Persons entitled or claiming to be entitled to such Satisfaction and Compensation as aforesaid, touching or concerning such Loss, Damage, or Spoil as aforesaid; shall be heard and determined in a summary Way, either before the Justices of Assize for the County Palatine of *Lancaster*, at their Assizes to be holden in and for the said County, or the Justices of the Peace acting in and for the same County, at their General Quarter Sessions of the Peace to be holden in and for the same County, at the Election of the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, or his or their Lessee or Lessees; such Election to be testified as herein-after mentioned.

Notice of Cause of Complaint to be given to the Lord of the Manor.

III. And be it further enacted, That in case such Satisfaction and Compensation shall not be agreed upon by and between the Parties respectively entitled thereto, and the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, his or their Lessee or Lessees, within the Space of Two Calendar Months next after Demand thereof shall have been made, by the Party or Parties respectively entitled thereto; or in case the Amount thereof, or of any Part thereof, shall not be paid before or at the Expiration of the Time or Times agreed upon between them for the Payment of the same, or in case no Time or Times shall be agreed upon for such Payment, then within the Space of Two Calendar Months next after the making of such Agreement, that then and in every such Case the Person or Persons entitled or claiming to be entitled to such Compensation or Satisfaction as aforesaid, shall by his or their Attorney or Agent within the Space of Three Calendar Months next after such Demand as aforesaid, in case such Agreement shall not have been made; but in case such Agreement shall have been made, then within the Space of Two Calendar Months next after Default of Payment thereof, at the Time or Times agreed upon as aforesaid, or next after the Time above mentioned for the Payment thereof, in case no Time or Times shall have been agreed upon for such Payment as aforesaid, give Notice in Writing to the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, or his or their Lessee or Lessees, or leave the same at his or their usual Place or Places

Places of Abode; in which Notice shall be clearly and explicitly contained the Cause of Complaint of such Person or Persons, his or their Name and Place of Abode, and the Name and Place of Abode of such Attorney or Agent, and in which also shall be declared his or their Intention of applying for Relief, according to the Directions in this Act contained; and it shall and may be lawful to and for the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, or his or their Lessee or Lessees, within the Space of Two Calendar Months next after such Notice shall have been so given or left as aforesaid, to tender such Satisfaction and Compensation as aforesaid, to the Person or Persons so complaining as aforesaid; and also within the Space of Two Calendar Months next after such Notice shall have been given or left as aforesaid, in case such Tender shall not be accepted, to give Notice in Writing to the Person or Persons making such Complaint as aforesaid, or to leave the same at his or their usual Place or Places of Abode; declaring his or their Election to have such Complaint brought before the Justices of Assize for the said County Palatine of *Lancaster*; and in case no such Notice of Election as aforesaid shall be given or left by the said *John Lees*, or the Lord or Lords of the said Manor or Lordship, or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, or his or their Lessee or Lessees, then and in every such Case such Complaint shall be brought before and preferred to the said Justices of the Peace only, at their General Quarter Sessions of the Peace to be holden in and for the said County Palatine of *Lancaster*, and not elsewhere.

IV. Provided always, and be it further enacted, That in case such Satisfaction and Compensation shall not be agreed upon by and between the Parties respectively entitled thereto, and the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, or his or their Lessee or Lessees, or in case the Amount thereof shall not be paid as aforesaid, then and in every such Case it shall and may be lawful to and for the Person or Persons so entitled or claiming to be entitled to such Compensation or Satisfaction as aforesaid, from and after the Expiration of Two Calendar Months next after Notice of his or their Complaint shall have been given or left as aforesaid, and within the Space of Twelve Calendar Months next after the Cause of such Complaint shall have arisen, to prefer his or their Complaint or Complaints to the Justices of Assize for the said County Palatine of *Lancaster*, at their Assizes to be holden in and for the said County, in case the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, his or their Lessee or Lessees, shall have then determined his or their Election, by having given or left such Notice as aforesaid to have such Complaint or Complaints brought before the said Justices of Assize; but if no such Notice shall have been given by the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, his or their Lessee or Lessees, then to the Justices of the Peace acting in and for the said County, at their General Quarter Sessions of the Peace to be holden in and for the said County; and the said Justices of Assize, or Justices of the Peace, as the Case may happen, upon Proof of such Notice of the Complaint preferred to them having been given as aforesaid, shall hear and determine such Complaint in a summary Way by a Jury as herein-after mentioned; and if any Tender or Satisfaction or Compensation shall be alledged on the Part of the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, his

Manner of
recovering
Satisfaction
for Damages

or their Lessee or Lessees, and denied on the Part of the Person or Persons preferring such Complaint or Complaints as aforesaid, then and in every such Case the Amount of such Tender shall be brought into Court; and for the hearing and determining the said Complaint and Complaints, and the Matters in Dispute between the Parties thereupon, the Justices of Assize or Justices of the Peace, as the Case may happen, shall and may charge Twelve of the Persons summoned as Jurors for the Trial of any Issue or Traverse, and in Default thereof, or of any of them, then so many of them as shall then appear, together with such of the Bystanders as shall make up that Number, so to be thereupon immediately returned by the Sheriff or other proper Officer to try the same Complaint, and the Matters in Dispute between the same Parties, and to inquire of and assess the Amount of the Damages sustained by the Party complaining, and the Party in whose Favour Judgement shall be thereupon given, shall recover his or their full Costs of Suit; and in case Judgement shall be in favour of the Party complaining, he or they shall also recover the Damages so assessed as aforesaid.

What shall be done if Tender of Amends hath been made.

V. And be it further enacted, That if such Tender shall be alledged and denied as aforesaid, and a sufficient Tender in that Behalf shall be found to have been made, then Judgement shall be given for the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, his or their Lessee or Lessees, with his or their full Costs, to be paid by or out of the Money so to be paid or brought into Court as aforesaid, if the same shall be sufficient to satisfy such Costs, and the Overplus of such Money (if any) to be paid to the Party so complaining; but if the Money paid into Court shall be insufficient to satisfy the Whole of such Costs, then the Whole of such Money shall be paid towards Satisfaction of such Costs, so far as the same Money shall extend, and the Deficiency shall be paid by the Party so preferring such Complaint as aforesaid; but in case no sufficient Tender shall be found, then Judgement shall be given for the Complainant or Complainants for the Damages assessed by the Jury, or the Difference beyond the Sum brought into Court.

What shall be done in case Complaints are not proceeded in.

VI. And be it further enacted, That if any Person or Persons who shall have given Notice of his or their Intention to prefer any Complaint, and shall not have proceeded to prefer and prosecute such Complaint according to such Notice, in consequence whereof the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, or his or their Lessee or Lessees shall have necessarily or reasonably been put to, or incurred any Costs for or concerning their Defence against such Complaint, then and in every such Case all such necessary and reasonable Costs on Proof thereof made by Affidavit, to be sworn before a Magistrate for the County Palatine of *Lancaster*, or a Commissioner in the same County Palatine, which Oath such Magistrate or Commissioner is hereby authorized to administer, shall be awarded to him or them so incurring the same as aforesaid, by the said Justices of Assize, or by the said Justices of the Peace at their Quarter Sessions, as the Case may happen.

Costs to be taxed.

VII. And be it further enacted, That all the Costs which shall be adjudged or awarded as aforesaid, shall be taxed and ascertained by the proper Officers of the respective Courts wherein the same shall be adjudged or awarded; and the said Justices of the Assize, or the said Justices of the Peace at their Quarter Sessions, as the Case may happen, shall and may from Time to Time by their Order or Warrant, levy and recover or cause to

to be levied and recovered all Costs and Damages which shall be so adjudged or awarded as aforesaid, by Distress and Sale of the Goods and Chattels of the Party or Parties who shall be adjudged to pay the same, in whatever County or Place such Goods and Chattels can be found, together with the reasonable Costs and Charges of such Distress and Sale, rendering the Overplus (if any) on Demand, to the Owner or Owners of such Goods and Chattels; and all Judgements, Orders, and Determinations so to be given and made as aforesaid by the said Justices of Assize, or Justices of the Peace, as the Case may happen, shall in all Cases be final and conclusive to all Parties concerned, and shall not be removed by *Certiorari* or any other Writ or Process whatsoever, into any of His Majesty's Courts of Record at *Westminster* or elsewhere.

VIII. And be it further enacted, That in case of the Death of either of the said Parties before such Satisfaction or Compensation has been made as aforesaid, the Proceedings aforesaid shall not abate, but shall and may be proceeded in or had by and against the Executors and Administrators of the Party so dying, except that such Executors and Administrators shall not be liable to the Payment of Damages or Costs to the other Party, otherwise than in a due Course of Administration, unless the said Justices of Assize, or the said Justices of the Peace at their Quarter Sessions shall for special Cause think fit otherwise to adjudge, order, or direct.

Proceedings not to be stopped by Death of Parties.

IX. And be it further enacted, That Writs of Subpœna shall and may be issued out of the Court of Common Pleas at *Lancaster*, in and for the County Palatine of *Lancaster*, at the Instance of the said Parties, for the Attendance of Witnesses, at the Hearing of the said Complaints at the Assizes, in like Manner as in Suits and Causes depending in that Court; and all Persons disobeying the same shall be subject to the like Punishments, Penalties, and Damages for such Disobedience to any Subpœna issued out of that Court, in any Suit or Cause there depending; and the said Justices of the Peace at their Quarter Sessions shall have like Power to issue Subpœnas for the Attendance of Witnesses at the Hearing of the said Complaints before them, and all Persons disobeying such last mentioned Subpœna shall be subject to the like Punishments, Penalties, and Damages as aforesaid, for such Disobedience.

For summoning Witnesses.

X. Provided always, and be it further enacted, That no such Complaint shall be heard by or before any such Justices of Assize or Justices of the Peace at their Quarter Sessions, unless Notice of such Hearing at such Assizes or Quarter Sessions shall have been given by or on Behalf of the Complainant or Complainants Fourteen Days at least before the Commencement of such Assizes or Sessions.

Notice to be given of Time for hearing Complaints.

XI. And be it further enacted, That the said Justices of Assize at the said Assizes, and the said Justices of the Peace at their said Quarter Sessions, shall have Power to adjourn the Hearing of the said Complaint, or any Proceedings thereon, to the next Assizes or Quarter Sessions respectively; and the Justices of Assize for the said County Palatine of *Lancaster* for the Time being, and the Justices of the Peace at the Quarter Sessions held in and for the said County Palatine, at their respective Assizes or Quarter Sessions to which such Complaint or Proceedings shall have been adjourned, shall have Power in like Manner, and *so tōties quoties* to adjourn the same or any Part thereof again to the next Assizes or Quarter Sessions as they shall think just and expedient.

Hearings may be adjourned.

XII. And

Proceedings
not to be
quashed for
Want of
Form.

XII. And be it further enacted, That no Proceeding to be had or Order made, or any other Matter or Thing to be done under or by virtue of the Powers herein contained shall be vacated or quashed for want of Form only.

Empowering
Justices to
act in the
Execution of
this Act.

XIII. And be it further enacted, That all and every or any of the said Powers and Authorities herein-before vested, or intended to be vested in the Events aforesaid, in the said Justices of Assize for the said County Palatine of *Lancaster*, shall and may be lawfully exercised by any One or more of the same Justices, as effectually to all Intents and Purposes whatsoever as if all the same Justices concurred therein.

Act not to
hinder Per-
sons from
pursuing
their Remedy
at Common
Law.

XIV. Provided always, and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to preclude or prevent any Person or Persons from pursuing his or their ordinary Remedy at common Law against the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, or his or their Lessee or Lessees, for any unnecessary or wilful Damage or Spoil of Ground which shall arise or be occasioned to him or them by or in consequence of the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, his or their Lessee or Lessees, exceeding or not conforming to the several Powers, Privileges, and Authorities so given to or vested in him and them as aforesaid; but such Person or Persons so aggrieved may nevertheless, if he or they shall so think proper, proceed against the said *John Lees*, or the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, his or their Lessee or Lessees, for such last mentioned Damage or Spoil of Ground, according to the Directions of this Act; any Thing herein-before contained to the contrary thereof in anywise notwithstanding.

All Persons
claiming un-
der the Lord
of the Manor
to be deemed
Lessees for
the Purposes
of this Act.

XV. And be it further enacted, That for all and every the Purposes of this Act, and of the said herein-before in Part recited Act, all and every Person and Persons claiming or to claim any Estate, Right, Title, or Interest in, to, or out of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid, or to or in the said Mines, Minerals, and Metals, or any of them, or any Part of them, or of any of them, shall be deemed and taken to be Lessee and Lessees of the said *John Lees*, or of the Lord or Lords of the said Manor or Lordship or reputed Manor or Lordship of *Oldham* aforesaid for the Time being, and be liable as such Lessee and Lessees to all and every the Provisions in this and the said herein-before in Part recited Act respectively contained and referred to.

Declaring the
the Act
publick.

XVI. And be it further enacted, That this Act, and the said herein-before recited Act, shall be printed by the Printer to the King's most Excellent Majesty; and when so printed may be given in Evidence in all Courts of Justice, and before all Judges and Justices whomsoever, who shall take judicial Notice thereof in like Manner as if the same had been declared to be a publick Act.