



ANNO QUADRAGESIMO SEXTO

GEORGII III. REGIS

Cap. 109.

An Act for inclosing Lands in the Manor of *Cliburn*
in the County of *Westmorland*. [3d July 1806.]

WHEREAS there are within the Manor or Township of *Cliburn*, in the County of *Westmorland*, several Open Commons and Waste Grounds; also certain Parcels of Land now mired or staked out, and uninclosed, called *Cliburn Ling*, containing together by Estimation Five hundred Acres or thereabouts; and also a certain Common Stinted Pasture, called *Cliburn Shaw*, containing by Estimation One hundred and fifty Acres, be the same more or less: And whereas the Right Honourable *William* Viscount *Lowther* is Lord of the Manor of *Cliburn* aforesaid, and Owner of the Soil of the said Open Commons and Waste Grounds, uninclosed Lands, and of the said Common Stinted Pasture, and of the Coal Mines, Veins, and Seams of Coals, and all other Mines and Minerals therein: And whereas the Honourable and Right Reverend *Edward* Lord Bishop of *Carlisle*, in Right of his See, is Patron of the Rectory Parish and Parish Church of *Cliburn* aforesaid, whereof the said Manor or Township of *Cliburn* is Parcel; and *John Pool*, Clerk, is the present Rector and Incumbent thereof: And whereas an Act was passed in the Forty-first Year of the Reign of His present Majesty, intituled, *An Act for consolidating in one Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts*: And whereas it would be of great
[Loc. & Per.] 245 Advantage

Advantage to the several Owners and Proprietors of and Persons interested in the said Commons, Moors, and Waste Grounds, and uninclosed Lands, and the said Common Stinted Pasture, if the same were divided and inclosed, and specific Parts thereof allotted unto and amongst the several Persons interested therein, according to their respective Rights, Shares, and Interests: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That *Robert Lamb*, of *Lodsworth* in the County of *Westmorland*, *Ralph Bird*, of *Birdby* in the Parish of *Morland* in the said County, and *John Todd*, of *Kendal* in the said County, Gentlemen, and their Successors to be nominated in Manner herein-after mentioned, shall be and they are hereby appointed Commissioners for letting out, dividing, allotting, and inclosing the said Commons, Moors, and Waste Grounds, uninclosed Lands, and also the said Common Stinted Pasture, and for carrying this Act into Execution, subject to the Rules, Orders, and Directions in the said recited Act contained, except in such Cases where the same are by this Act varied or altered; and that all Acts, Matters, or Things hereby directed to be done by the said Commissioners, may be done and executed by any Two of them, and the same shall be as valid and effectual as if done and executed by all the said Commissioners.

Appointment
of Commis-
sioners.

Other Com-
missioners how
to be ap-
pointed.

II. And be it further enacted, That if any of the said Commissioners appointed by this Act, or who shall be nominated in Manner herein-after mentioned, shall, before the Execution of all the Powers and Authorities hereby in them respectively vested, die, or refuse to act, or without some reasonable Cause neglect to attend a Meeting for putting this Act into Execution for the Space of Two Calendar Months after he shall have received Notice from any Person interested in the said Inclosure of the passing of this Act, or requiring him to attend as a Commissioner, a new Commissioner or Commissioners shall be nominated in Manner following; (that is to say), if the said *Robert Lamb* shall die, or refuse to act, or neglect to attend as aforesaid, it shall be lawful for the said *William Viscount Lodsworth*, his Heirs or Assigns, by any Writing under his or their Hand or Hands to appoint one other Commissioner (not interested in the said Inclosure) in the Room of the said *Robert Lamb*, and so from Time to Time as often as any Commissioner so to be appointed by the said *William Viscount Lodsworth*, his Heirs or Assigns; and in case the said *Ralph Bird* shall die, or refuse to act, or neglect to attend as aforesaid, it shall be lawful for the said *John Pool*, and his Successor or Successors Rectors of *Cliburn* aforesaid, by any Writing under his or their Hand or Hands to appoint one other Commissioner (not interested in the said Inclosure) in the Room of the said *Ralph Bird*, and so from Time to Time as often as any Commissioner so to be appointed by the said *John Pool*, or his Successor or Successors Rectors as aforesaid; and in case the said *John Todd* shall die, or refuse to act, or neglect to attend as aforesaid, it shall and may be lawful for the Majority in Value (to be ascertained by the Rate for the Relief of the Poor) of the Proprietors or Persons interested in the Lands and Grounds hereby directed by this Act to be divided and inclosed, or their Agents, to be appointed by Writing under their respective Hands for such Purpose, or their known Agents or Attornies

Attornies who shall be present at a publick Meeting to be held for that Purpose at the Parish Church of *Cliburn* aforesaid, in pursuance of a Notice to be given in the said Church, or by Writing to be affixed upon the most publick outer Door of the said Church, and also in the Newspaper called *The Cumberland Pacquet, Carlisle Journal*, or some other Newspaper usually circulated in the said County of *Westmorland*, at least Twenty-one Days before such Meeting, by Writing under their Hands to appoint one other Commissioner (not interested in the said Inclosure) in the Room of him the said *John Todd*, and so from Time to Time as often as any Commissioner to be appointed by the said Proprietors as aforesaid shall die, refuse to act or neglect to attend as aforesaid; and in case the said *William Viscount Lowther*, his Heirs or Assigns, the said *John Pool*, or his Successor or Successors Rectors of *Cliburn* aforesaid, or the said Proprietors, either or any of them respectively, shall make Default in appointing any new Commissioner so directed to be appointed by him and them as aforesaid, within Two Calendar Months after the Death of any Commissioner, or his Refusal to act, or neglect of Attendance shall be known, then the surviving or remaining Commissioner or Commissioners shall, and they and he are and is hereby required from Time to Time, by Writing under their or his Hands or Hand, within One Calendar Month next after the Expiration of the said Two Calendar Months allowed to the respective Parties and Persons for naming such new Commissioner or Commissioners by them respectively as aforesaid, to appoint one other Commissioner (not interested in the said Inclosure) in the Room of every such Commissioner so dying, refusing to act or neglecting to attend; and every Commissioner so to be appointed shall have the like Power and Authority as the Commissioner in whose Place he shall be appointed was vested with by virtue of this Act.

III. And be it further enacted, That the said Commissioners shall be each respectively paid the Sum of One Pound Eleven Shillings and Sixpence and no more, for all their Trouble and the Expences which they shall incur on each and every Day they shall be employed in travelling to, returning from, and attending on the Execution of this Act; and also the further Sum of One Pound Eleven Shillings and Sixpence, unto each and every Commissioner for his Trouble and Expence on each and every Day that he shall attend or be engaged or employed for the Purpose of enquiring into, examining Witnesses, and settling and determining any objected or disputed Claims, or any other Disputes or Differences which shall or may arise or happen, touching or concerning the said Division and Inclosure, and hereby referred to the said Commissioners, the said Sum of One Pound Eleven Shillings and Sixpence, to be paid by the Person or Persons against whom the Award of the said Commissioners shall be made in case of a Reference to them as herein-before expressed: Provided always, that the said Proprietors or Persons interested in the said Division and Inclosure, their Agents and Attornies, shall pay their own Expences when they or any of them shall attend the said Commissioners in the Execution of this Act.

Allowance to
Commission-
ers.

Parties to pay
their own Ex-
pences.

IV. And be it further enacted, That it shall be lawful for the said Commissioners, and they are hereby authorized and empowered, when and as to them shall seem meet, to appoint such and so many Persons as they shall think proper or necessary to be Surveyors, or Assistants to such Surveyors, for the Purposes of the said intended Division and Inclosure, or to survey and admeasure the same themselves, and from Time to Time to displace

Appointment
of Surveyors
and Assistants.

displace and remove any such Person or Persons so to be appointed, and to appoint any other Person or Persons in the Room, Place, and Stead of any such Surveyor or Surveyors, Assistant or Assistants, so to be displaced and removed, and to make such Surveyor or Surveyors, Assistant or Assistants, such Recompence for their respective Labour, Skill, and incidental Expences, as to the said Commissioners shall appear just and reasonable.

Notice to be given of the First Meeting of the Commissioners.

V. And be it further enacted, That the said Commissioners shall and they are hereby required to cause publick Notice to be given in some Newspaper usually circulated in the said County of *Westmorland*, and also in the said Parish Church of *Cliburn*, or by affixing a Notice in Writing upon the principal outer Door of the said Church of *Cliburn*, upon some *Sunday* during or immediately before or after Divine Service, of the Time and Place of their First Meeting for beginning to put this Act into Execution, and also of all such other Times and Places as they shall appoint, for the Purpose of receiving, adjusting, and settling the Claims, Rights, Shares, and Proportions of any Person or Persons interested in the said Commons, Moors, and Waste Grounds, uninclosed Lands, and also in the said Common Stinted Pasture hereby directed to be divided and inclosed, or for any other Purpose whatsoever, which shall or may require the Attendance of any Person or Persons interested in the said intended Division and Inclosure, so as that the Place of every such Attendance or Meeting be within Five Miles of *Cliburn* aforesaid, and that Fourteen Days previous Notice be given thereof (Meetings by Adjournment only excepted).

Other Notices.

VI. Provided always, and be it further enacted, That all other Notices of Meetings of the said Commissioners requisite or necessary to be given, and not herein otherwise directed, shall be so given by them in some Newspaper usually published or circulated in the said County of *Westmorland*.

Encroachments within Twenty Years to be deemed Part of the Common.

VII. And be it further enacted, That all Encroachments which within Twenty Years now last past have been made upon or taken from the said Commons, Moors, and Waste Grounds, shall be deemed Part of the Lands and Grounds to be divided and allotted by virtue of this Act; and in case any Dispute shall arise touching any such Encroachments, or the Extent thereof, such Disputes shall be finally determined by the said Commissioners: Provided always, that all such Encroachments which shall have been made or taken by any Person or Persons entitled to Right of Common on the said Commons, Moors, and Waste Grounds, or a sufficient Part thereof, shall be considered as the Share or Allotment, or Part of the Share or Allotment to be made to the Person or Persons who shall then be in Possession or entitled to the improved Rents and Profits thereof, without considering the Improvements made thereto, and shall be allotted to and accepted by such Person or Persons, as the Whole or Part or Share of the Allotment or Allotments to be assigned or allotted to him, her, or them respectively.

Commissioners to settle Differences.

VIII. And be it further enacted, That if any Dispute or Difference shall arise between any of the Parties interested, or claiming to be interested, in the said Division and Inclosure hereby directed to be made, touching or concerning the Right to the Soil of the said Commons, Moors, and Waste Grounds, or any Part or Parts thereof, or touching or concerning the respective Rights and Interests therein, which they or any

any of them shall have or claim to have in or to such Commons, Moors, and Waste Grounds, or touching or concerning any other Matter or Thing relating to the said Division and Inclosure, it shall be lawful for the said Commissioners to examine into, hear, and determine the same; provided that no Determination of the said Commissioners shall exclude any Person from trying and asserting his Right at Law or in Equity, in respect of the Title to any of the Shares or Allotments of the said Commons, Moors, or Waste Grounds, intended to be divided by virtue of this Act, so that no such Trial, or any Judgement thereupon, shall suspend or impede the Execution of this Act: Provided always, that nothing in this Act contained shall authorize or empower the said Commissioners to determine the Title to any Messuages, Cottages, Lands, or Hereditaments whatsoever.

IX. And be it further enacted, That in case the said Commissioners shall, upon the Hearing and Determination of any Claim or Claims, Objection or Objections, to be delivered to them in pursuance of this or the said recited Act, see Cause to award any Costs, it shall and may be lawful to and for the said Commissioners and they are hereby empowered, upon Application made to them for that Purpose, to settle, assess, and award such Costs and Charges as they shall think reasonable, to be paid to the Party or Parties in whose Favour any Determination of the said Commissioners shall be made, by the Person or Persons whose Claim or Claims, Objection or Objections, shall be thereby disallowed or over-ruled; and in case the Person or Persons 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 so neglecting or refusing to pay the same, rendering the Overplus (if any) upon Demand to the Person or Persons whose Goods and Chattels shall have been so distrained and sold, after deducting the Costs and Charges attending such Distress and Sale.

Commissioners
empowered to
award Costs.

X. Provided always, and be it further enacted, That in case any Person or Persons interested or claiming to be interested in the said intended Division and Inclosure, shall be dissatisfied with any Determination of the said Commissioners touching or concerning any Claim or Claims to the Right to the Soil of the said Commons, Moors, and Waste Grounds, or of any Rights of Common, or other Rights or Interests in, over, or upon the said Commons, Moors, and Waste Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, it shall and may be lawful to and for the Person or Persons so dissatisfied to proceed to a Trial at Law of the Matter so determined by the said Commissioners, at the next or at the following Assizes to be holden for the said County of *Westmorland*, and for that Purpose the Person or Persons who shall be dissatisfied with the Determination of the said Commissioners, shall cause an Action to be brought upon a feigned Issue against the Person or Persons in whose Favour such Determination shall have been made, within Two Calendar Months next after such Determination of the said Commissioners; 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

Parties dis-
satisfied may
try their
Rights by
Issue at Law

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Claim

Claim or Claims, and the Right or Rights thereby insisted on may be tried and determined (such Issue or Issues to be settled by the proper Officer of the Court in which such 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 binding upon all Persons, and Bodies Politick and Corporate whomsoever, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, and order a new Trial or new Trials to be had therein, which it shall be lawful for the Court to do, and also upon sufficient Cause shewn, to put off the Trial of such Issue, as is usual in other Cases; and that after such Verdict or Verdicts shall be obtained, and not set aside by the Court, the said Commissioners shall and they are hereby empowered to act in conformity thereto: Provided always, that if any of the Parties in any Action to be brought in pursuance of this Act shall die pending the same, such Action shall not abate by reason thereof, but shall be proceeded in as if such Event had not happened.

If any of the Parties die, Proceedings not to abate.

No Person shall dig Sods or Turves under a Penalty.

XI. And be it further enacted, That from and after the passing of this Act, no Person, shall pare, dig, or take away any Sods, Turves, or Soil, in upon, or from any Part of the said Commons, Moors, or Waste Lands and inclosed Grounds, until the same shall be set out and allotted as aforesaid, under a Penalty not exceeding Forty Shillings for every such Offence, the same to be recovered and levied by the said Commissioners, and applied in defraying the Expences of carrying this Act into Execution.

Allotment for Watering Places for Cattle, and for getting Gravel for Roads, &c.

XII. And be it further enacted, That the said Commissioners shall in the first Place assign, set out, and allot unto the Surveyors of the Highways within the said Township, such Parts of the said Common and Waste Grounds not exceeding Four Acres, hereby directed to be divided, allotted, and inclosed, as the said Commissioners shall think necessary, as and for publick Stone Quarries, Watering Places for Cattle, and for getting Gravel for the Repairs of the Roads to be made over the said Common and Waste Grounds, the Common Stinted Pasture and Lands called *The Ling*, hereby directed to be divided, allotted, and inclosed; and the same Allotments, when set out, shall for ever thereafter be used by the Surveyors of the Highways for the Time being of the said Township, and by the Proprietors of Lands, Tenements, and Hereditaments, within the said Township, and their Tenants for the Time being, in such Manner, and under such Rules, Orders, and Regulations, as they the said Commissioners shall in and by their said Award order and appoint; the Herbage and Pasturage of such Allotment or Allotments, when so set out, to belong exclusively to the Person or Persons in whose Allotment or Allotments the same shall be situated or adjoining; and that the said Commissioners have Power, and are hereby authorized to order and direct, how and in what Manner, and by whom, as well all new Roads to be set out by virtue of this Act or by the said recited Act, as all or any ancient publick Roads, not being Turnpike Roads, within the said Township, shall, from and after the Execution of the said Award, be in future amended and kept in Repair.

Allotment to Trustees for the Use of the School.

XIII. And be it further enacted, That it shall and may be lawful for the said Commissioners to set out and allot so much of the said Commons and Waste Ground, as will in their Judgement, at the Time of making such Allotment, be worth to be let for the clear yearly Rent of Twenty Pounds; and after such Allotment shall be set out as aforesaid, then the said Com-

Commissioners shall, by Indentures of Lease and Release, convey and assure the same, and the Freehold and Inheritance thereof, unto and to the Use of such Persons being Land Owners or Inhabitants within the said Manor or Township of *Cliburn*, their Heirs and Assigns, as the major Part in Value of the Land Owners and Inhabitants of the said Manor or Township (such Value to be ascertained by the said Commissioners) assembled personally or by Proxy at a Meeting to be convened by the said Commissioners for that Purpose (whereof Fourteen Days previous Notice shall be given in Manner herein-before directed) shall nominate and appoint, and the Allotment so conveyed, or expressed and intended so to be, shall immediately thereupon become legally vested in the said Trustees, their Heirs and Assigns, according to the said Conveyance, upon Trust and to and for the Intent and Purpose herein-after expressed and directed of and concerning the same, (that is to say) upon Trust to receive and apply the Rents, Issues, and Profits thereof for ever (all their reasonable and necessary Charges in the Execution of the Trusts reposed in them being first deducted) for and towards the Support and Maintenance (as far as the same will extend) of the Schoolmaster for the Time being of the Grammar School of *Cliburn* aforesaid; and in case there should not be any Grammar School within *Cliburn* aforesaid, then of such other Schoolmaster as may be teaching within *Cliburn* aforesaid for the Time being, for teaching and instructing the Children of the Land Owners, Farmers, and other Inhabitants of the said Manor and Township.

XIV. And be it further enacted, That when and as often as any Three or more of the said Trustees to be named and appointed as aforesaid, or to be appointed in Manner herein-after mentioned, shall die or refuse to act as Trustees for the Purposes before expressed, then and in every such Case from Time to Time for ever, as often as the same shall happen, it shall and may be lawful for the major Part in Value of the Land Owners and Inhabitants of the said Manor or Township of *Cliburn* paying Poor Rates within the same (such Value to be fixed as aforesaid) assembled personally or by Proxy appointed under the Hand Writing of such Proprietors at a Meeting to be convened by the surviving Trustee or Trustees for the Time being for that Purpose (whereof Fourteen Days previous Notice shall be given as aforesaid) to nominate and appoint in Writing so many more Persons, being Land Owners or Inhabitants of the same Manor or Township, to be Trustees in the Place and Stead of the Trustees so dying or refusing to act as aforesaid, as together with the surviving Trustees or Trustee will make up the Number of Seven Trustees, and so that the said Trustees shall be perpetually kept up to the Number of Seven; and immediately after such Nomination and Appointment the surviving Trustees or Trustee from Time to Time shall, by Indenture of Lease and Release, convey and assure the said Allotment so made as aforesaid, in such Manner as that the same may become legally vested in such new and surviving Trustees upon the Trusts before mentioned; and that all and every Person and Persons so appointed a Trustee or Trustees shall from thenceforth have the same Powers and Authorities in Execution of the Trusts to be reposed in him or them, as if he or they had been originally appointed a Trustee or Trustees as aforesaid; and all and every Act, Matter, and Thing which shall be executed, done, and performed by any Four of the said Trustees for the Time being, in pursuance and Execution of this Act, shall be as valid and effectual to all Intents and Purposes as if all the said Trustees, for the

Appointment
of other Trust-
tees.

Time

Time being had been present, and had executed, done, and performed the same.

Commissioners empowered to sell Common for purchasing Lands to widen the Road.

XV. And whereas it would be of much Advantage to the respective Land Owners and other Inhabitants of the said Manor and Township of *Cliburn*, and also to the Publick at large, if the said Commissioners were authorized and empowered to raise Money for purchasing Lands for the Purpose of widening the ancient Road leading from the Lands called *Cliburn Ling*, through the Village of *Cliburn*, to the said Common Stinted Pasture called *Cliburn Shaw*; be it therefore enacted, That it shall be lawful for the said Commissioners, and they are hereby authorized and required to raise such and so much Money by Sale of the Commons and Waste Grounds as herein-after mentioned, as in their Judgement will be sufficient for the Purchase of so much of the Lands and Grounds adjoining the ancient publick Carriage Road leading from the Lands called *Cliburn Ling*, through the Village of *Cliburn*, to the said Common Stinted Pasture called *Cliburn Shaw*, as will enable them to make the said Road wider and more commodious; and the said Land Owners do hereby consent and agree to accept such Recompence for the Lands and Grounds so to be laid to the said publick Highway as shall be deemed by the said Commissioners to be a sufficient Equivalent and full Recompence and Satisfaction for the same.

One-eighth Part of the Common to be allotted to the Rector for the Tythe of the Common.

XVI. And be it further enacted, That the said Commissioners are hereby authorized and empowered, in the next Place, to set out, allot, and appoint unto and for the said *John Pool*, and his Successors, Rectors of *Cliburn*, One-eighth Part in Value of the Residue and Remainder of the said Commons, Moors, and Waste Grounds, and uninclosed Lands, so to be divided and inclosed as aforesaid, as and for a full Equivalent and Compensation for the Tythe of Corn, Hay, Wool, Lambs, Calves, Agistment, Tythe Modusses, Payments, and all Tythes, both Great and Small, whatsoever, arising, renewing, growing due or payable, or which would, could, or might become due or payable, or to which he or his Successors is, are, can, might, or could be entitled, unto, from, and out of, or for and in respect of all and every or any Part of the said Commons, Moors, and Waste Grounds, and uninclosed Lands, the same being well and sufficiently fenced with a Ring or Out-fence, and planted with Quicksets, by and under the Direction and at the Discretion of the said Commissioners.

Commissioners to sell Lands for Payment of Expences.

XVII. And be it further enacted, That the said Commissioners shall and they are hereby empowered, from Time to Time, when they shall think proper, to sell in the Manner directed and prescribed by the said recited Act, such Part or Share of the said Commons and Waste Grounds, uninclosed Lands, and Common Stinted Pasture, so to be divided and inclosed, as shall be necessary to raise a sufficient Sum for defraying the Charges for obtaining this Act, and attending the Division of the said Commons, Moors, and Waste Grounds, uninclosed Lands, and Common Stinted Pasture, and also for purchasing such Lands and Grounds as may be necessary for widening and repairing the ancient Road leading from *Cliburn Ling*, through the Village of *Cliburn*, to the said Common Stinted Pasture called *Cliburn Shaw*, and of casting, ring-fencing, and planting with Quicksets, the Allotments by this Act directed to be set out and allotted to the said *John Pool*, as Rector of *Cliburn* aforesaid, in lieu of Tythes, and carrying this Act

Act into full Execution, agreeable in all Respects to the Rules and Regulations in the said recited Act mentioned; but if the Money to be raised by such Sale or Sales shall not be sufficient to answer the Purposes aforesaid, then the Deficiency therein shall be raised and paid by the Proprietors of the several Allotments of the said Commons and Waste Grounds, uninclosed Lands, and Common Stinted Pasture, to be made by the said Commissioners (except the said *John Pool*, as Rector of the said Parish of *Cliburn*, and his Successors) in Proportion to the Value of such their respective Allotments, to be ascertained by an Assessment or Assessments to be made for that Purpose by the said Commissioners.

XVIII. And be it further enacted, That the said Commissioners shall, and they are hereby authorized and required, in the next place, out of the Residue and Remainder of the Commons and Waste Grounds hereby intended to be divided and inclosed, to set out, allot, and appoint, unto and for the said *William Viscount Lowther*, and his Heirs and Assigns, One-sixteenth Part in Value of the said Commons, Moors, and Waste Grounds, for his Right to the Soil of the said Commons, Moors, and Waste Lands hereby intended to be divided and inclosed.

Allotment to the Lord of the Manor for his Seignory.

XIX. And be it further enacted, That the said Commissioners shall, in the next Place, set out, allot, and appoint unto and for the said *John Pool* Rector of the said Parish and Parish Church of *Cliburn*, and his Successors, One-eighth Part in Value of the said Common Stinted Pasture called *Cliburn Shaw*, as and for a full and just Equivalent and Compensation for all the Tythe of Corn, Hay, Wool, Lambs, Calves, Agistment, Tythe Moduses, and all other Tythes, both Great and Small, whatsoever arising, renewing, growing due or payable, or which would, could, or might become due or payable, or to which he or his Successors is, are, can, might, or could be entitled unto, from, and out of, or for and in respect of all and every or any Part of the said Common Stinted Pasture called *Cliburn Shaw*, the Ring-fence of such Allotment being well and sufficiently cast and fenced, and planted with Quicksets, by and at the Expence of the Owners and Proprietors of Cattle Gates in the said Common Stinted Pasture, by and under the Direction and at the Discretion of the said Commissioners.

One-eighth Part of the Common Stinted Pasture to be allotted to the Rector for Tythes.

XX. And be it further enacted, That the said Commissioners shall, in the next Place, set out, allot, and appoint unto and for the said *John Pool*, and his Successors, such Parcel of the said Common and Waste Grounds as shall in the Judgement of the said Commissioners (in case the same were inclosed and ring-fenced) be altogether of the full Yearly Value of Eighty Pounds of lawful Money of *Great Britain*, which said Allotment so to be made to the said Rector and his Successors shall be in lieu of and a full Compensation for all Tythes of Corn, Hay, Wool, Lambs, Calves, Agistment, and all and all Manner of other Tythes, as well Great as Small, Moduses, Payments, Claims, and Demands whatsoever, arising, renewing, due or payable, or which would, could, or might become due or payable, or to which he or his Successors is, are, may, can, might, or could be entitled to, from, and out of, or for or in respect of all and every or any of the Messuages, Tenements, inclosed Lands and Grounds, and all other Hereditaments and Premises within the said Township or Manor of *Cliburn*, all which said several Allotments, Parts, Shares, and Portions of

Allotment to the Rector in lieu of the Tythes of the ancient inclosed Lands

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the said Commons, Moors, and Waste Grounds, Lands called *Cliburn Ling*, and Common Stinted Pasture, when so allotted, set out, and assigned, and ring-fenced and planted with Quicksets as herein-before directed and appointed, shall be accepted by and vested in the said *John Pool*, and his Successors Rectors of *Cliburn* aforesaid, for ever, in lieu of and as a full Compensation and Satisfaction for all the Tythes of Corn, Grain, and Hays, Wool, Lambs, Calves, Agistment, and all and all Manner of other Tythes, as well Great as Small, Moduses, Payments, Claims and Demands whatsoever arising, renewing, due or payable to the said *John Pool*, or his Successor or Successors, within and throughout the whole Manor or Lordship of *Cliburn* aforesaid.

of the
Allotment of
the Residue of
the Common.

XXI. And be it further enacted, That immediately after the said Commissioners shall have deducted Lands for the Roads, and for Ways and Drains, and made the several Allotments herein-before mentioned, they shall in the next Place set out and allot all the Residue and Remainder of the said Commons, Moors, and Waste Grounds, by this Act directed to be divided and inclosed, unto and amongst the several Persons who, at the Time of making such Allotments, shall be entitled to any Estate, Property, Right, or Interest in the said Commons, Moors, and Waste Grounds, according to the actual Value of their respective Estates lying within the said Manor or Township of *Cliburn*, such Value to be ascertained and fixed by the said Commissioners; and also shall and will set out and allot the Residue and Remainder of the said Common Stinted Pasture called *Cliburn Shaws*, unto and amongst the several Persons who at the Time of making such Allotment shall be entitled to any Estate, Property, Right, or Interest, in the said Common Stinted Pasture, according to the Number of Cattle Gates each Proprietor shall be possessed of or entitled unto; and the said Commissioners shall and will, and they are hereby authorized and empowered, in the next Place, to set out and allot all the Residue and Remainder of the said Lands called *The Ling*, unto and amongst the several Persons who at the Time of making such Allotments shall be entitled to any Estate, Property, Right or Interest in the said Lands called *The Ling*, according to the actual Value of their respective Interests therein, in such Quantities, Shares, and Proportions, and in such Parts and Places, as by the said Commissioners shall be adjudged and determined to be a Compensation and Satisfaction for the several and respective Lands and Grounds, Rights of Common, and other Rights and Interests of each of the said Proprietors, after such Deductions as aforesaid, such Commons, Moors, and Waste Grounds, when inclosed, shall be vested in the several Persons who shall be entitled to the same, as Freehold Estates of Inheritance in Fee Simple, the Allotments upon the Lands called *Cliburn Ling*, and the Common Stinted Pasture remaining of the same Tenure, and subject to the Payment of the same Rents, Fines, Dues, Duties, Suits, Services, and Customs as the same were subject and liable unto previous to the passing of this Act, and shall allot the Share or Shares of each Party as near to the Homesteads, or some other of the present inclosed Lands or Tenements belonging to such Party respectively as conveniently may be.

Allotments to
to be inclosed
and fenced.

XXII. And be it further enacted, That the several Allotments to be made as aforesaid, shall, within such Time either before or after the Execution of the said Award as the said Commissioners shall direct, be

be inclosed and fenced, and such Fences shall for ever afterwards be maintained, repaired, and supported by and at the Expence of the respective Proprietors, in such Manner, Shares, and Proportions as the said Commissioners shall by their said Award direct.

XXIII. And be it further enacted, That until the Division and Allotments shall be made and finished in pursuance of this Act, the said *John Pool*, Rector as aforesaid, and his Successor or Successors, or such other Person or Persons entitled to such Tythes as aforesaid, shall be entitled to, and shall receive and enjoy such and the same Tythes, as he or they could, might, or ought to have done in case this Act had not been made.

Tythes to be paid as heretofore until Allotments made

XXIV. Provided also, and be it further enacted, That it shall be lawful for any of the Persons entitled to Right of Common upon the said Commons, Moors, and Waste Grounds hereby directed to be inclosed, to sell and dispose of his, her, or their Right, Share, or Interest in such Commons, Moors, and Waste Grounds, separate and apart from the Property to which such Right or Interest is appurtenant, and that the said Commissioners shall and may award the Allotments to be made in lieu of the Right of Common so sold and disposed of to the Purchaser or Purchasers thereof respectively, having received a Request in Writing so to do, signed by the Owners or Proprietors of such Rights of Common, in the Presence of One or more credible Witnesses or Witnesses; and that such Purchaser or Purchasers shall hold and enjoy the same unto him, his Heirs, and Assigns for ever, any Law to the contrary thereof notwithstanding.

Proprietors may sell their Common Right, and Commissioners award same to the Purchaser.

XXV. And be it further enacted, That it shall be lawful for the said Commissioners to set out, allot, and award any Messuages, Lands, Tenements, or Hereditaments whatsoever, within the said Manor or Township of *Cliburn*, in lieu of and in exchange for any other Messuages, Lands, Tenements, and Hereditaments whatsoever, within the said Manor or Township, or within any adjoining Manor, Parish, Hamlet, Township, or Place; provided that all such Exchanges be ascertained, specified, and declared in the said Award of the said Commissioners, and be made with the Consent of the Owner or Owners, Proprietor or Proprietors of the Messuages, Lands, Tenements, or Hereditaments which shall be so exchanged, whether such Owner or Owners, Proprietor or Proprietors, shall be a Body or Bodies Politick, Corporate, or Collegiate, 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, or with the Consent of the Guardians, Trustees, Feoffees for charitable or other Uses, Husbands, Committees, or Attornies of or acting for any such Proprietors or Owners as aforesaid, who at the Time of making such Exchange or Exchanges, shall be respectively Infants, Females 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 Politick, Corporate, or Collegiate, and under the Hands of the other consenting Parties respectively; and all and every such Exchange and Exchanges so to be made, shall be good, valid, and effectual in the Law to all Intents and Purposes whatsoever: Provided nevertheless, that no Exchange shall be made of any Lands, Tenements, or Hereditaments held in right of any Church, Chapel, or other Ecclesiastical Benefice, without the

Exchanges may be made.

the Consent testified as aforesaid, of the Patron thereof, and of the Bishop of the Diocese in which such Messuages, Lands, Tenements, or Hereditaments so to be exchanged shall lie and be situate.

Costs of Exchanges and Partitions to be paid by Persons interested.

XXVI. And be it further enacted, That all Costs, Charges, and Expences attending the making and completing of any Exchanges and Partitions, 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 by their said Award or other separate Deed or Instrument, order or direct.

No Sheep or Lambs to be turned upon the Allotments for 14 Years.

XXVI. And be it further enacted, That if any Person shall, during the Space of Fourteen Years from the Execution of the said Award, keep or depasture, or permit to be kept or depastured, any Sheep or Lambs in the Allotments to be made in pursuance of this Act, unless he, she, or they shall first effectually fence and guard the adjoining Allotment or Allotments belonging to any other Proprietor or Proprietors, from any Injury or Damage to their Quicksets or new planted Fences, or shall wilfully turn or put, or cause to be turned or put, any Sheep or Lambs, Horses, Asses, or other Beasts or Cattle, into any of the Lanes, Ways, or Roads, on either Side whereof any new growing Fence shall be planted, every Person so offending shall forfeit and pay for every such Offence any Sum of Money not exceeding Five Pounds, at the Discretion of the Justice before whom such Offender shall be convicted, to be levied by Distress and Sale of the Goods and Chattels of the Person subject to the Payment of the said Penalty, by Warrant of such Justice, together with the Costs and Charges of such Distress and Sale; and every such Penalty, when so levied, shall be paid to the Person or Persons injured.

Commissioners to make out yearly Accounts.

XXVIII. And be it further enacted, That once at least in every Year during the Execution of this Act (such Year to be computed from the Day of passing thereof) the said Commissioners shall and they are hereby required to make a true and just Statement or Account of all Sums of Money by them received and expended, or due to them for their own Trouble or Expences in the Execution of this Act; and such Statement or Account when so made, together with the Vouchers relating thereto, shall be by them laid before one of His Majesty's Justices of the Peace for the said County of *Westmorland*, to be by him examined and balanced, and such Balance shall be by such Justice stated in the Book of Accounts, to be kept in the Office of the Clerk to the said Commissioners; and no Charge or Item in such Accounts shall be binding on the Parties concerned, or valid in Law, unless the same shall have been duly allowed by such Justice.

Wills, &c. not to be affected.

XXIX. Provided nevertheless, and be it further enacted, That nothing in this Act contained shall extend, or be deemed or taken to revoke, make void, alter, or annul any Settlement, Deed, Will, or Limitation, or to prejudice any Person having or claiming any Jointure, Dower, Portion, Reversion, Interest, Service, Debt, Charges, or Incumbrance, of, in, out of, upon, or affecting any of the Lands and Grounds so intended to be divided and inclosed, or which shall be exchanged in pursuance of this Act; or any Part thereof respectively; but that the several Lands and Grounds to be assigned and allotted upon such Division and Inclosure, to the several Parties concerned,

or

or their Trustees, and which shall be taken in exchange in pursuance of this Act, shall immediately after such Allotments or Exchanges shall be made, be remain and enure, and the several Persons to whom the same shall be allotted and assigned, or given in Exchange as aforesaid, shall from thenceforth stand and be seised thereof, to and for such and the same Uses and Estates, and subject to such and the same Wills, Settlements, Limitations, Remainders, Charges, and Incumbrances, as the said several Lands, Grounds, Tenements, or Hereditaments, in lieu or in respect whereof such Allotments or Exchanges shall be made or would have been subject to, charged with, or affected by, in case this Act had not been made.

XXX. And be it further enacted, That if any of the said Proprietors, or any other Person or Persons, shall advance and pay any Money in discharge of Fees, or other Expences of obtaining, passing, and executing this Act, the Money so paid and advanced shall be repaid and satisfied by the Direction of the said Commissioners, together with lawful Interest for the same.

Persons advancing Money to be repaid with Interest.

XXXI. And be it further enacted, That the said Commissioners shall make and execute Two Parts of their Award, and that one Part thereof shall be deposited in the Chest of the Parish Church of *Cliburn* aforesaid, and the other Part thereof shall, within Two Calendar Months next after the Execution thereof, be deposited with the Clerk of the Peace for the said County of *Westmorland*; and for which a Fee of One Guinea shall be paid, and a true Copy of such Award, or of any Part thereof, signed by the Clerk of the Peace or his Deputy, for which no more than Four-pence *per* Sheet shall be paid, each Sheet to contain Seventy-two Words, and also each Part of the said original Award shall be allowed as good and legal Evidence; and the said Clerk of the Peace and his Deputy shall permit and suffer any Person or Persons whomsoever, from Time to Time and at all Times, within the Office Hours of Attendance, to peruse or inspect the Part of the said Award or Instrument so deposited in the Office of the said Clerk of the Peace, upon paying for every such Perusal or Inspection One Shilling, and no more.

Two Parts of Award to be made.

XXXII. Provided always, and be it further enacted, That nothing in this Act contained shall be construed to defeat, lessen, or prejudice the Right, Title, or Interest of the said *William Viscount Lowther*, as Lord of the said Manor of *Cliburn*, his Heirs or Assigns, of, in, and to the Seigniories and Royalties incident and belonging to the said Manor; but that the said *William Viscount Lowther*, and all succeeding Lord or Lords, Lady or Ladies of the said Manor, shall and may from Time to Time and at all Times, hold and enjoy all Quit Rents, Free Rents, Reliefs, Duties, Customs, and Services, and all Courts, and Perquisites and Profits of Courts, within the said Manor, Goods and Chattels of Felons and Fugitives, Felons of themselves and put in Exigent, Deodands, Treasure Trove, Waifs, Estrays, Forfeitures, Royalties, Jurisdictions, Franchises, Matters, and Things whatsoever to the said Manor, or to the Lord or Lords, Lady or Ladies thereof, incident, belonging, or appertaining, (other than and except such Common Right as could or might be claimed by him, her, or them as Owners of the Soil and Inheritance of the said Commons, Moors, and Waste Grounds), in as full, ample, and beneficial a Manner, to all Intents and Purposes, as he, she, or they might have held and enjoyed the

Saving the Rights of the Lord of the Manor.

same if this Act had not been made; and that the said *William Viscount Lowther*, his Heirs and Assigns, shall and may, from Time to Time and at all Times hereafter, have, hold, win, work, and enjoy all Mines of Coal, Iron-stone, and Minerals, of what Nature or Kind soever, within and under the said Commons, Moors, and Waste Grounds, uninclosed Lands, and Common Stinted Pasture hereby directed to be divided, allotted, and inclosed, together with all convenient and necessary Ways, Wayleaves, Roads, and Passages, already made and hereafter to be made through, over, or upon the said Lands and Grounds, and Liberty of laying, making, and repairing Waggon Ways and other Ways in, over, and along the same or any of them, or any Part thereof, and of searching for, winning and working the said Mines and Minerals, and leading and carrying away the Coal, Ironstone, Lead, Minerals, Things, and other Produce thereof, making Pits, Shafts, Pit Rooms and Heap Rooms, Drifts, Levels, Soughs, Drains, Ways, and Watercourses, and of erecting and raising Fire Engines and other Engines, and of altering, changing, and pulling down and carrying away the same, or any of the Materials thereof, in, through, over, and upon the said Lands and Grounds hereby directed to be inclosed, and to have and use any Stone got in the course of sinking Pits or Shafts, or working or getting the said Minerals so reserved as aforesaid, at his her, and their own free Will and Pleasure, and to do all such other Works, Acts, and Things, now in use or hereafter to be invented, as may be necessary or convenient for the full and complete Enjoyment thereof in and upon the said Commons, Moors, and Waste Grounds, uninclosed Lands, and Common Stinted Pasture, in as full, ample, and beneficial a Manner, to all Intents and Purposes, as he, she, or they could or might have done in case this Act had not been made: Provided nevertheless, that nothing in this Act contained shall give to the said *William Viscount Lowther*, or to any future Lord or Lords, Lady or Ladies of the Manor of *Cliburn* aforesaid, any greater, further, or other Authority, Power, Privilege, or Liberty whatsoever, touching or concerning the sinking, searching for, winning, carrying away, and disposing of the Mines of Coal, Ironstone, and other Materials contained in the said several Commons, Moors, and Waste Grounds, uninclosed Lands, and Common Stinted Pasture hereby directed to be divided, allotted, and inclosed, than he the said *William Viscount Lowther* was by Law entitled to immediately before the passing of this Act.

Satisfaction to
be made for
Damages.

XXXIII. Provided also, and be it further enacted, That if any Person or Persons shall suffer or sustain any Loss or Damage in his, her, or their respective Allotments by the sinking, searching for, winning or working of any Mines of Coal, Ironstone, or other Mines therein; or the laying or repairing Waggon Ways or other Ways, or by leading or carrying away the Coals, Ironstone, or other Ore or Minerals to be gotten thereout, or making Drifts, Levels, or Watercourses, erecting or raising Fire or other Engines, Pit Room, or other the Liberties and Powers hereby given and reserved to the Lord or Lords, Lady or Ladies of the Manor of *Cliburn* aforesaid, for the Time being, that then and in every such Case the Lord or Lords, Lady or Ladies of the said Manor, his, her, or their Heirs, Executors, Administrators, or Assigns, shall pay full Satisfaction for all such Damages, Spoil of Ground, and other Loss to be occasioned thereby, to the Person or Persons who shall be in the Possession of such Ground or Allotment at the Time of doing such Damage, Spoil, or Loss.

XXXIV. And

XXXIV. And be it further enacted, That if any Person or Persons shall think himself, herself, or themselves aggrieved by any Thing done in pursuance of this or the said recited Act, then and in every such Case (except where the Orders and Determinations of the said Commissioners are by this or the said recited Act directed to be final, binding, or conclusive, and except in such Cases wherein an Issue at Law shall be tried as herein-before mentioned) such Person or Persons may appeal to any General Quarter Sessions of the Peace to be holden for the said County of *Westmorland*, within Six Calendar Months after the Cause of Complaint shall have arisen, and giving Twenty-one Days Notice to the Commissioners of such his, her, or their Intention of appealing; and the Justices at such Sessions are hereby required to hear and determine the Matter of every such Appeal, and to make such Order therein, and to award such Costs, as to them in their Discretion shall seem reasonable; and by their Order or Warrant to levy the Costs and Charges which shall be so awarded, by Distress and Sale of the Goods and Chattels of the Party 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 Distress and Sale; which Determination of the said Justices shall be final and conclusive on all Parties, and shall not be removed or removable by *Certiorari*, or any other Writ or Process whatsoever, into any of His Majesty's Courts at *Westminster* or elsewhere; and in case such Appeal shall appear to the said Justices to be frivolous, vexatious, or without Foundation, then the said Justices shall and may, and they are hereby authorized and empowered to award such Costs to be paid by the Appellant or Appellants, as to them in their Discretion shall seem reasonable, and to be levied in Manner aforesaid.

Appeal to the
General
Quarter Ses-
sions.

XXXV. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and to all and every other Person and Persons, Bodies Politick and Corporate, his, her, or their Heirs, Successors, Executors, Administrators, and Assigns (other than and except the respective Persons to whom any Allotment or Allotments of Lands or other Compensation shall be made or provided by virtue of this Act, in respect of the Interest or Property for which such Allotment or Compensation shall be made, and except such other Rights and Interests as the Intent and Purposes of the Inclosure hereby authorized shall absolutely require to be barred, destroyed, or extinguished by this Act) all such Estates, Rights, and Interests as they, every, or any of them had or enjoyed of, in, to, or in respect of the Commons and Wastes hereby directed to be divided and inclosed, before the passing of this Act, or could or might have had or enjoyed if this Act had not been made.

General
Saving.

XXXVI. And be it further enacted, That this Act shall be printed by the Printer to the King's most Excellent Majesty, and a Copy thereof, so printed, shall be admitted as Evidence thereof by all Judges, Justices, and others.

Act to be
printed and
declared
Evidence.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN,
Printers to the King's most Excellent Majesty. 1806.

