



ANNO. QUINQUAGESIMO SECUNDO

GEORGI II. REGIS.

Cap. 130.

An Act for inclosing Lands in *Thurlstone*, in the Parish of *Penistone*, and County of *York*. [20th May 1812.]

WHEREAS there are within the Manor of *Thurlstone* in the Parish of *Penistone*, in the West Riding of the County of *York*, several Commons, Waste Lands, and Moors, or Heaths: And whereas the Honourable and Reverend *John Lumley Savile* is Lord of the said Manor of *Thurlstone*, and as such is also Owner of the Soil of all the said Commons, Waste Lands, and Moors or Heaths, and the Coal Mines, Veins, and Seams of Coal, and all other Mines and Minerals therein, and is likewise Owner of certain Lands, Tenements, and Hereditaments within the said Manor of *Thurlstone*: And whereas the Trustees of the Hospital of *Gilbert Earl of Shrewsbury*, long since deceased, situate at *Sheffield*, in the said County of *York*, are or claim to be entitled to the Small Tythes arising or renewing within the said Manor of *Thurlstone*, and are also entitled to an Annual Payment of Five Pounds Sixteen Shillings, or some other Sum or Sums of Money, and which is or are paid by the Owners of Lands and Tenements within the said Manor, in lieu of and as a full Compensation for all Great Tythes arising from ancient inclosed Lands and Grounds within the said Manor; and they are or claim to be

The Honourable and Reverend *John Lumley Savile*, Lord of the Manor. Proprietors of the Tythes.

[*Loc. & Per.*] 31 E entitled

Commissioner
appointed.

entitled to Great Tythes which may arise or renew from the said Commons, Moors, and Waste: And whereas *Robert Pemberton Milnes* Esquire, *Walter Spencer Stanhope* Esquire, *Gamaliel Milner* Esquire, and several other Persons, are Proprietors of the said Commons and Wastes, and Moors or Heaths, and Open Fields, subject to the Claims in right of the Seigniories and for Tythes; and it would be of Advantage to them if the same were divided among them in Proportion to their respective Rights; but such Division cannot be effectually established 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 *Thomas Gee*, of *Little Houghton* in the County of *York*, Gentlemen, shall be and he is hereby appointed the Commissioner for dividing and allotting the said Commons and Waste Lands and Moors, or Heaths and Open Fields, and for putting this Act into Execution, according to the Directions herein contained, and with such of the Powers, and subject to such of the Directions contained in an Act, passed in the Forty-first Year of His present Majesty's Reign, 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*, as are not varied or controuled, or otherwise provided for by this Act.

In case of
Commissioner's
Death,
&c.

II. And be it further enacted, That if the said *Thomas Gee* shall die, or neglect to act for the Space of Three Months when Occasion shall require his Attendance on the Business of the said Inclosure, or shall become incapable of acting before all the Powers and Authorities hereby vested in him shall be carried into Execution, then, and in such Case, it shall be lawful for the Majority in Value of the Proprietors of the said uninclosed Lands (to be ascertained by the Land Tax Assessment), or their respective Agents, present at a Meeting to be holden for that Purpose, (of which Meeting Ten Days previous Notice shall be given by any Five or more of the said Proprietors, in like Manner as is hereinafter directed, with respect to the First Sitting of the Commissioner), by Writing under their Hands, to appoint One fit Person to be a Commissioner in the Room of the said *Thomas Gee*; provided, that before such Commissioner to be appointed as aforesaid, shall act in the Execution of this Act, the said *John Lumley Savile*, his Heirs or Assigns, shall by Writing under his or their Hand or Hands, signify his or their Approbation of such Appointment, and all future Vacancies shall be supplied in like Manner.

Notice to be
given of Com-
missioner's
first Meeting.

III. And be it further enacted, That the Commissioner shall cause a Notice, specifying the Time and Place of his first Meeting for executing this Act, to be affixed on the principal outer Door of the Church at *Penistone* aforesaid, on some *Sunday* before Divine Service, Ten Days at least before such Meeting; and it shall be lawful for the Commissioner to adjourn his Meetings (without giving any public Notice), as he shall see Occasion; and that all Meetings to be held in pursuance of this Act shall be held within Five Miles of the said Parish of *Penistone*.

Proprietors
to pay their

IV. And be it further enacted, That the said Proprietors, their Attornies and Agents, shall pay their own Expences when they or any of them shall attend

attend the said Commissioner or Surveyor on any Business relating to the Execution of this or the said recited Act. own Expences.

V. And be it further enacted, That the Notices by the said recited Act required to be given in some public Newspaper, shall be given in the *Sheffield Mercury*, or if that Newspaper shall not then be published, in some other Newspaper then published, in *Sheffield*, or at *Wakefield* in the said County. How other Notices are to be given.

VI. 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 Lands or Grounds hereby directed to be divided and allotted, touching or concerning the respective Shares and Proportions which they or any of them shall have or claim to have therein, or touching or concerning any other Matter or Thing relating to the said Division, Allotment, or Inclosure, it shall be lawful for the said Commissioner, and he is hereby authorized and required, upon proper and sufficient Inquiry and Evidence, to examine into, hear, and determine the same; provided that nothing herein contained shall authorize the said Commissioner to determine the Title to any Lands, Tenements, or Hereditaments whatsoever, nor any Right between any Parties, contrary to the Possession of any such Parties (except in Cases of Inclosures or Encroachments as herein mentioned); but in case the said Commissioner shall be of Opinion against the Right of the Person or Persons so in Possession, he shall forbear to make any Determination thereupon until the Possession shall have been given up by such Person or Persons, or recovered from such Person or Persons by Ejectment or other due Course of Law. Commissioners empowered to determine Differences.

VII. And be it further enacted, That in case the said Commissioner shall upon the Hearing and Determination of any Claim or Claims, Objection or Objections, to be delivered to him in pursuance of the said recited Act or of this Act, see cause to award any Costs, it shall be lawful for the said Commissioner, and he is hereby empowered, upon Application made to him for that Purpose, to settle, assess, and award such Costs and Charges as he shall think reasonable, to be paid to the Party or Parties in whose Favour any Determination of the said Commissioner shall be made, by the Person or Persons, Body or Bodies Politic or Corporate, whose Claim or Claims, Objection or Objections shall be thereby disallowed or overruled; and in case the Person or Persons, Body or Bodies Politic or Corporate, 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 be lawful to and for the said Commissioner, and he is hereby authorized and required, by Warrant under his Hand and Seal, directed to any Person whomsoever, to cause such Costs and Charges to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons, Body or Bodies Politic or Corporate, so neglecting or refusing to pay the same, rendering the Overplus (if any), upon Demand, to the Person or Persons, Body or Bodies Politic or Corporate, whose Goods and Chattels shall have been so distrained and sold, after deducting the Costs and Charges attending such Distress and Sale. Power to award Costs.

VIII. Provided always, and be it further enacted; That if any Person or Persons, Body or Bodies Politic or Corporate, making any Claim or Claims Persons dissatisfied with the Commission.

Commissioner's Determination may try their Right at Law.

Claims to any Lands or Hereditaments intended to be divided or affected by this Act, or any Right or Interest therein, or objecting to any such Claim or Claims, shall be dissatisfied with the Determination of the said Commissioner, and shall be desirous of having such Claim or Claims, Rights and Interests respectively tried at Law, and the Person or Persons, Body or Bodies Politic or Corporate, so desirous to have the same tried at Law, shall and do by themselves or their respective Stewards, Receivers, Attornies, or Agents, give or cause to be given Notice thereof in Writing to the said Commissioner, within Two Months next after such Determination shall have been so made by the said Commissioner (of which Notice the said Commissioner is hereby required immediately on the Receipt thereof, or as soon afterwards as conveniently may be done, to give Information to the adverse Party or Parties, or his, her, or their respective Stewards, Receivers, Attornies, or Agents, by Writing under their respective Hands, to be delivered to or left at the usual Place of Abode of such Party or Parties, Stewards, Receivers, Attornies, or Agents as aforesaid), then it shall be lawful for the Person or Persons, Body or Bodies Politic or Corporate giving such Notice as aforesaid, their respective Heirs, Successors, or Assigns, and he, she, or they is and are hereby required to proceed to a Trial or Trials at Law of the same at the first Assizes to be holden for the County of *York*, next after the Expiration of Two Calendar Months from the Time when such Notice as aforesaid shall have been given, in a feigned Action or Actions for that Purpose, to be commenced in His Majesty's Court of King's Bench or Common Pleas at *Westminster*, by the Person or Persons, Body or Bodies Politic or Corporate giving such Notice as aforesaid, against any Person or Persons, Body or Bodies Politic or Corporate, interested in the said Division, in whose Favour such Determination of the Commissioner shall have been made; and the Defendant or Defendants in such Action or Actions shall forthwith name an Attorney or Attornies, who shall file Common Bail, or appear and accept one or more Issue or Issues, whereby the Claim or Claims, Rights and Interests in question, may be properly tried and determined (such Issue or Issues to be settled by the proper Officer of the Court wherein such Action shall be brought, if the Parties shall differ about the same); and if at the Trial of any such Issue or Issues it shall appear that the Party claiming is entitled to any qualified or less Right or Rights, or Interests, than was or were claimed by such Party, then it shall and may be lawful for the Jury by whom such Issue or Issues shall be tried, to find and declare the same by their Verdict, which shall be indorsed on the Postea in addition to the Verdict given on the Issue or Issues joined; but nevertheless, the Costs of such Action or Actions shall abide and be determined by the Verdict given upon the Issue or Issues joined, as if no such Special Finding had been made; and the Verdict or Verdicts which shall be given in such Action or Actions upon the Issue or Issues therein joined, in case there shall be no such Special Finding and Indorsement, or such Special Finding or Indorsement. if any such shall be made, shall be binding upon all and every Body or Bodies Politic and Corporate, and Person and Persons whomsoever, unless the Court wherein such Action or Actions shall be brought, shall set aside such Verdict or Verdicts, or Finding and Indorsement, and order a new Trial or Trials to be had thereupon (which it shall be lawful for the Court to do as usual in other Cases); and after

such Verdict or Verdicts, or Special Finding or Indorsement shall be obtained (the same not being set aside by the Court), the said Commissioner shall and he is hereby required to act in Conformity thereto, and to allow or disallow the Claim or Claims, Right or Rights, or Interest or Interests thereby determined, according to such Verdict or Verdicts, or Finding and Indorsement as aforesaid; Provided always, that it shall be lawful for the Court in which any Action commenced in pursuance of this Act shall be depending, upon sufficient Cause shewn, to put off the Trial of such Action, although the Time hereinbefore limited for the Trial of such Action may be thereby exceeded; but if no such Action or Actions shall be brought or commenced by the Person or Persons, Body or Bodies Politic or Corporate, giving such Notice within the Time aforesaid, or if such Action or Actions shall not be proceeded in to a Trial or Trials at the First Assizes which shall be holden for the said County of *York*, after the Expiration of Two Calendar Months from the Day of giving such Notice, by or on account of the Neglect or Default of the Plaintiff or Plaintiffs therein, then, and in such Case, the Determination of the said Commissioner shall be final, binding, and conclusive unto and upon all Parties whomsoever.

IX. Provided always, and be it enacted, That if any of the Parties in any Action or Actions to be brought and prosecuted in pursuance of this Act, shall die pending the same, such Action or Actions shall not abate by reason thereof, but shall be proceeded in as if no such Event had happened; and 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 hereinbefore limited for bringing such Action or Actions, it shall be lawful for the Person or Persons, Bodies Politic or Corporate respectively, who might have brought such Action against the Person or Persons so dying, to bring the same within the Time so limited as aforesaid, against such Person or Persons as if actually living, and to serve the Clerk of the said Commissioner with Process for commencing such Action or Actions, in the same Manner as the Party or Parties might have been served therewith if living; and it shall thereupon be incumbent on the Heir or Heirs, or other Person or Persons who shall claim the Benefit of such Determination as aforesaid, to appear and defend such Action or Actions in the Name or Names of the Person or Persons so dead, and Proceedings shall be had therein in the same Manner as if such Person or Persons had been actually living; and the Rights of all Parties shall be equally bound and concluded by the Event of such Action or Actions.

Actions not to abate by the Death of a Party.

Allowing Actions to be brought after Deaths of Parties.

X. And be it further enacted, That *Samuel Gawthorpe* of *Wakefield* in the County of *York*, and *William Bingley* of *Woodhead*, in *Woombwell*, in the said County, Land Surveyors, shall be and they are hereby appointed Surveyors of the said Commons, Waste Lands, Open Fields, and Moors, and also of such of the Ancient Inclosed Lands within the said Manor as the said Commissioner shall think necessary to be surveyed for the Purposes of this Act; and in case both of them shall die before they shall have completed all the Business required of them, or in case

Surveyors appointed.

[*Loc. & Per.*]

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they

they shall refuse or neglect to do the Business of a Surveyor pending the Execution of this Act, the said Commissioner shall have Power to appoint some other fit and competent Person or Persons, not interested in the said Lands and Grounds, to be the Surveyor or Surveyors for the Purposes of this Act.

Encroachments.

XI. And be it further enacted, That all Encroachments taken from the said Commons, Wastes, and Moors, within Twenty Years now last past, shall be deemed Part of the Lands to be divided by virtue of this Act.

Roads.

XII. And be it further enacted, That it shall be lawful for the said Commissioner to stop up, discontinue, divert, or alter any Carriage-road, Bridle-way, or Foot-path leading through or over the Lands and Grounds intended to be divided or allotted by virtue of this Act, or passing or leading through any of the inclosed Lands within the said Manor and Township of *Thurlstone*; and the Soil of the Roads and Ways so to be stopped up or discontinued, shall be deemed and taken as Part of the Lands and Grounds to be divided and allotted by virtue of this Act; provided that no Carriage-road, Bridle-way, or Foot-path passing or leading through any of the inclosed Lands in the said Manor, shall be stopped or discontinued, diverted or altered, without the Concurrence and Order of Two Justices of the Peate for the said West Riding, not interested in the Repair of such Roads, and which Order shall be subject to Appeal to the Quarter Sessions for the said Riding, in like Manner as if the same had been originally made by such Justices.

Roads may be widened.

XIII. And be it further enacted, That the said Commissioner shall and may and he is hereby authorized and empowered to widen the public Roads, not exceeding the statutable Width or Breadth, where he shall think requisite and necessary, within the said Manor of *Thurlstone* in the Parish of *Penistone* aforesaid; and for that Purpose to take a sufficient Quantity of the Ancient Inclosed Lands or Grounds adjoining to such Roads, the same not being a Yard, Garden, Orchard, Park, Paddock, Plantation, or Avenue to any House; and the said Commissioner shall and may and he is hereby authorized and empowered to make a full Compensation for the Value of the Land or Ground so to be taken for the widening of such public Road, by allotting and awarding unto the Person or Persons from whom any such Ancient Inclosed Land or Ground shall be so taken, an adequate Part or Parts of the said Commons and Waste Grounds within the same Manor wherein such widened Road shall be situate; and that the said Commissioner shall and may and he is hereby authorized and empowered to make good and substantial Fences on each Side of all such widened Roads, for and in lieu of the Fences which shall be injured or destroyed by Means of such widening; and that the Charges and Expences attending the widening of such Roads, and the making such Fences as aforesaid, shall be raised and paid in such and the like Manner as the Expences of and attending this Act are hereby directed to be raised within the said Manor wherein any such Road shall be so widened.

Allotments for Stone Quarries.

XIV. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required to set out and appoint, in such a Situation

ation or Situations as he shall judge most convenient and think fit, one or more Piece or Parcels of Ground, not exceeding in the whole Twenty Acres, as and for public Stone Quarries, or a public Stone Quarry, for the Purpose of digging and getting Stone, Slate, Gravel, and other Materials for the making or forming and repairing the Highways and Roads public and private, to be set out and appointed and continued upon, through or over the said Commons, Moors, and Waste Grounds hereby directed to be divided, inclosed, assigned, and allotted, and for the Purpose of repairing all other public and private Highways or Roads within the said Manor and Township of *Thurlstone*, and also for the Use and Benefit of all and every the Owners and Proprietors for the Time being, and his, her, and their Tenants and Occupiers of Estates situate within the said Manor and Township, for the Purpose of building or repairing any Messuages or Tenements, Out-houses or other Buildings and Erections, Walls or Fences, or otherwise improving their said Estates within the said Manor and Township of *Thurlstone*, but not to be given away, sold, exchanged, or elsewhere or otherwise used, applied, or disposed of; and that the Grass and Herbage, and Right of improving the Soil and Surface of the Lands and Grounds to be set out for public Stone Quarries aforesaid, (but without Prejudice to the Rights and Privileges hereby given and allowed therein respectively), shall, from and after the Execution of the Award of the said Commissioner, be vested in the Surveyor or Surveyors of the Highways for the Time being within the said Township of *Thurlstone*, in Trust, to let the same for the most Money that can be made thereof, and to apply the Rents and Profits arising from the same towards the Repairs of the public Roads or Highways within the said Township; and the said Surveyor or Surveyors shall account for such Rents and Profits, in the same Manner as he or they are accountable for any other Money that shall come to his or their Hands as Surveyor or Surveyors of the Highways, and shall be under and subject to the like Penalties for the Neglect thereof.

XV. And be it further enacted, That the said Commissioner shall set Allotment for out, allot, and award unto the Trustees of the said Hospital at *Sheffield* for Tithes. the Time being, and their Heirs, in Right of the said Hospital, such Part or Parts of the said Commons and Wastes to be divided, inclosed, and fenced, as in the Judgment of the said Commissioner shall be equal in Value to One full Tenth Part of all the said Commons and Wastes to be divided, inclosed, and fenced, and of the said Moors and Heaths to be divided, and of all the Encroachments which have at any Time or Times heretofore been made therefrom, or from any Part or Parts thereof; and the said Commissioner shall also set out, allot, and award unto the Trustees of the said Hospital for the Time being, and their Heirs, in Right of the said Hospital, such further Part of the said Commons and Wastes as in the Judgment of the said Commissioner shall be worth, to be let or demised, and be equal to, the Annual Rent or Value of Seventy Pounds (when ring-fenced), clear of all Deductions and Out-payments (except the Landlord's Property Tax), which said Allotments hereinbefore directed to be made to the Trustees of the said Hospital, shall be laid together, and set out from such Parts as come within the Description or Denomination of *Green Commons* (Part of the Lands to be divided and inclosed), and not from the *Moors* or *Black Heath*.

XVI. And

In case Tythe
Owners be
dissatisfied.

XVI. And be it further enacted, That as soon as the said Commissioner shall have staked out the Allotments hereinbefore directed to be made to the Trustees of the said Hospital, and before he shall proceed to stake or set out any other Allotments, he shall give Notice to the said Trustees, or their Agent of the same, under his Hand, describing the Situations and Quantities of the said Allotment or Allotments; and in case the said Trustees shall feel dissatisfied with the Quantity, Quality, Value, or Situation of the same, they may within Three Months after the Delivery of such Notice, nominate some competent and disinterested Person to act as a Referee in respect to the Matter in Dispute; and the said Commissioner and such Person, so to be appointed by the Trustees of the said Hospital, shall in the first place, and within Twenty Days from the Time of naming such Person, nominate One other competent and disinterested Person to act with them in the Premises, and such Persons so named by the said Trustees and by the said Commissioner, shall, as to the Matter in Dispute; but no further, be Referees, and they are hereby invested with full Powers to act in the Premises with the said Commissioner; and they and the said Commissioner shall have Power to make such Alterations, in respect to the disputed Allotment or Allotments, either as to the Quantity, Quality, Value, or Situation thereof, as they or a Majority of them shall think proper, so that the Question in Difference may be decided by them or a Majority of them; and the Determination of the said Referees, and the said Commissioner, or of any Two of them, shall, so far as shall respect such Dispute so to be referred to them (whether such Determinations shall increase or diminish the disputed Allotment), be final and conclusive upon all Parties and Persons interested; and the Commissioner for executing this Act shall by his Award confirm such Determination, and such Determination shall be considered and be as valid and effectual to all Intents and Purposes, as if the same had been the sole Act of the said Commissioner; and such Determination of the said Referees and Commissioner, or the Majority of them, shall be reduced into Writing, and signed by such of them as shall acquiesce therein, and shall be left with the said *Thomas Gee*, or the Commissioner who may be appointed in his Stead as aforesaid; and unless such Determination shall be so reduced into Writing, and signed and delivered to the said *Thomas Gee*, or such Commissioner as aforesaid, within Three Months after the Nomination of such Referees, the original Determination of the said Commissioner shall be binding and conclusive upon all Persons concerned; or in case the said Trustees of the said Hospital, after receiving such Notice and Description of their Allotments as aforesaid, shall not appoint such Person as aforesaid, within the Time hereby limited for that Purpose, then the Act of the said *Thomas Gee*, or other the Commissioner who may be elected in his Room, shall be conclusive, and shall be made Part of his Award accordingly; and One-half of all the Charges and Expences of the said Persons so to be nominated and appointed as Referees as aforesaid, shall be paid by the Trustees of the said Hospital, and the other Half out of the Monies to be raised for defraying the Expences of this Act.

Allotment to
the Honour-
able and
Reverend
John Lumley

XVII. And be it further enacted, That after the said Commissioner shall have set out the Allotments hereinbefore directed, and adjusted and settled all Claims and Disputes, and made such Valuation as aforesaid, and set out such Piece or Pieces of Ground for getting Stone, Gravel, and Sand as
afore-

aforesaid, and public and private Roads, Ways, Watercourfes and Drains, and other Requisites, according to the Directions aforesaid, he the said Commissioner shall and he is hereby authorised and required to set out, allot, and award, previous to any other Allotment, in One or more Plot or Plots, unto and for the said *John Lumley Savile*, as Lord of the Manor of *Thurlstone* aforesaid, and as a Compensation for his Right and Interest in and to the Soil of the said Commons and Waste Grounds within the said Manor of *Thurlstone* aforesaid, and for his Consent to the Division and Inclosure thereof, one full Sixteenth Part (Quantity, Quality, and Situation considered), of the Remainder of the said Commons and Waste Grounds, over and above and exclusive of such Shares, Proportions, and Allotments of the said Commons and Waste Grounds hereinafter directed to be allotted to him the said *John Lumley Savile*, in respect of the Messuages, Cottages, Lands and Grounds, in Right whereof he is entitled to Allotments in and upon the said Commons and Waste Grounds of *Thurlstone* aforesaid; and also to set out and allot, unto the said *John Lumley Savile*, his Heirs and Assigns, such further Allotment as he the said Commissioner shall deem equal in Value and a full Compensation for his working Stone Quarries.

Savile, for his Right of Soil;

also Allotments in lieu of working.

XVIII. And be it further enacted, That the said Commissioner shall cause the Allotments to be set out for the said *John Lumley Savile*, his Heirs or Assigns, under and by virtue of this Act, to be well and sufficiently Ring-fenced of a proper Height, with good and sufficient Stone Walls, and also pay and defray the Expence of making thereof, and also the Part or Share of the Expence of the said *John Lumley Savile* in obtaining and putting into Execution this Act, by and out of the Monies to be raised for the Purpose of defraying the Expences of obtaining and executing this Act; but the same Fences shall for ever afterwards be repaired by the said *John Lumley Savile*, his Heirs and Assigns; and it shall be lawful for the said Commissioner to deduct from the said Allotments to be made to the said *John Lumley Savile* as aforesaid, so much as shall in the Judgment of the said Commissioner be equal in Value to the said *John Lumley Savile's* Proportion of the Expence of obtaining and putting into Execution this Act, and the Expences of Ring-fencing the Allotment or Allotments so to be made to him as aforesaid; and the said Commissioner shall allot and award the Land so to be deducted, unto and equally amongst the Proprietors and Owners of Estates within the Manor of *Thurlstone*.

Allotments to be fenced, and paid for by Commissioner, but the Expences thereof deduct from his Allotment.

XIX. And be it further enacted, That the said Commissioner shall and he is hereby required, in the next place, to set out and allot the whole or any Part or Parts of the Moors, Commons, and Waste Grounds called *Thurlstone Bank* and *Thornthwaite Moor*, and the *Upper* or *Black Moors*, and shall sell and dispose of the same by public Auction, and either in One Lot or separate Parcels, or otherwise, in the Manner and subject to the Directions and Regulations prescribed and contained in the said recited Act, to any Person or Persons willing to become or be the Purchaser or Purchasers thereof, for the best Price or Prices that can be obtained for the same, and One-seventh Part at least of the Money for which such Land shall be sold shall at the Time of such Sale by the Purchaser or Purchasers be deposited in the Hands of the said Commissioner, and the Remainder of the Purchase Money shall be paid to the said Commissioner within Twelve Calendar Months next after such Sale, or in Default of such Pay-

Allotments for paying Expences.

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ment, the Money deposited as aforesaid shall be forfeited, and shall be applied towards carrying this Act into Execution, and the Allotment or Allotments shall be again put up to Sale in Manner aforesaid; and after Payment of the full Purchase Money for any such Allotment, the said Commissioner shall and he is hereby required to sign and give to such Purchaser or Purchasers a Receipt or Receipts in Writing for his or their Purchase Money; and the Piece or Pieces, Lots or Parcels of the said Commons and Waste Lands which shall be so sold, shall by virtue of this Act, on Payment of such Purchase Money, be vested and is and are hereby declared to be vested in Fee Simple in the Purchaser or Purchasers thereof respectively, and shall be assigned and allotted to him or them in and by the said Award; and the Receipt or Receipts of the said Commissioner shall be a sufficient Discharge to such respective Purchasers for the Payment of his or their Purchase Money, free from any Obligation of seeing to the Application thereof.

Allotment of
Common
Field, and
Residue of the
Commons.

XX. And be it further enacted, That the said Commissioner shall and he is hereby authorized and required to set out, allot, and award the Residue of all the said Commons, Moors, and Waste Grounds hereby directed to be inclosed, unto and amongst the several Persons having Right of Common in or upon the said Commons, Moors, and Waste Grounds, according and in Proportion to their several Estates and Interests in the old Inclosures within the said Manor and Township of *Thurlstone*, such Value to be ascertained and estimated by the said Commissioner, in which Allotments no regard shall be had to the Size or Value of any House, nor any Distinction made between Messuages and Toststeads; and in making the several Allotments hereinbefore directed, the said Commissioner shall have due Regard to the Quality, Situation, and Convenience for maintaining in Winter the Cattle or Sheep depastured on the Commons in Summer, as well as to the Quantity of Lands so to be allotted as aforesaid; and the said several Allotments shall be laid as contiguous and near to the respective Estates of the several Persons entitled to the same as conveniently may be, and shall be in full Bar of and Compensation for their several and respective Rights and Interests in and upon the said Commons, Moors, and Waste Grounds; provided also, that in case the said Commissioner shall not think proper to sell the *Upper or Black Moors* for defraying the Expences of this Act, any Proprietor or Proprietors being desirous of having his, her, or their Allotment or Allotments set out and allotted wholly or in Part upon that Part of the said Commons, Moors, or Waste Grounds, deemed or called *Upper or Black Moors*, or otherwise require them to be set out and allotted upon any other Part of the said Commons or Moors, called *Green Commons or Moors*, it shall be lawful for the said Commissioner to set out, allot, and award the Allotment or Allotments agreeable to the Desire of such Proprietor or Proprietors, or as near as Circumstances will admit, so as all such Persons being desirous of having their Allotments set out as aforesaid shall communicate such their Desire to the said Commissioner in Writing under their Hands, within the Space of Three Months after the first Meeting of the said Commissioner for receiving the Claims of the Parties.

Allotments to
the Hospital
be fenced.

XXI. And be it further enacted, That the said Commissioner shall cause the said Allotments to be set out and allotted to the Trustees of the said Hospital,

Hospital, to be Ring-fenced with good and sufficient Wall-fences, Six Feet high adjoining Roads, or being any outward Boundary, and Five Feet Three Inches high adjoining private Property; and the Expence of making such Fences shall be paid by the said Commissioner out of the Monies to be raised for the Purpose of defraying the Expences of obtaining and executing this Act; but the same Fences shall for ever afterwards be repaired by the Trustees of the said Hospital.

XXII. And be it further enacted, That the Commissioner shall have Power to give such Directions, either by his Award or any Writing under his Hand, about fencing the several Allotments upon the said Commons and Wastes, as he shall think proper, and such his Directions shall be observed and carried into Execution. Other Allotments to be fenced.

XXIII. Provided always nevertheless, That the several Owners of Allotments on such Part and Parts of the said Commons, Moors, and Waste Grounds as the said Commissioner shall deem *Black Moors*, shall not be obliged to fence and inclose the same, but that the said Allotments shall be marked with Boundary Stones, and held in Severalty as a stinted Pasture or Sheepwalk, subject to such Rules, Orders, and Regulations touching the future Using, Stocking, and Enjoyment thereof, as the said Commissioner shall think of the greatest Advantage to the several Owners thereof, and shall in and by his said Award for that Purpose order and direct; provided nevertheless, that the said Commissioner shall and he is hereby required in and by the said Award, to direct and appoint how much of such Fence or Fences, and what Part or Parts thereof any such Proprietors shall make and maintain in respect of the same Allotments, in case they shall at any Time or Times after the Execution of the said Award choose to inclose the same; provided also, that any Two or more Persons entitled to any other of the Allotments to be made by virtue of this Act requesting the same, shall and may have such Allotments laid out and allotted in One entire Plot of Ground, giving Notice thereof in Writing to the said Commissioner, any Time before he shall begin to divide and allot the said Commons, Moors, and Waste Grounds; provided also, that it shall be lawful for the several Persons who shall be entitled to Allotments on the said *Black Moors*, to inclose and fence the same at their own Expence, at such Time as they shall think proper, and in such Manner as the said Commissioner shall have directed by his said Award, making and repairing the Out-fences of the adjoining Allotments on such Allotments; and that from and after such Inclosure, all such Right of Depasturage thereon by the Cattle of any other of the said several Proprietors as the same shall have been subjected to by such Rules, Orders, and Regulations as aforesaid, shall cease and determine; and in case any of the adjoining Allotments, the Out-fences whereof shall have been made in the Whole or in Part by the Proprietor or Proprietors of any other of the said Allotments as hereinbefore mentioned, shall thereby become entirely inclosed, so that the Owner or Owners thereof for the Time being shall have the Benefit of such Fences without having contributed towards the Expence thereof, it shall be competent for the Jury sworn at the then next Court Baron to be holden in and for the said Manor of *Thurstone*, and they are hereby authorized and directed to view and ascertain the then true Value of such of Allotments on Black Moors not to be fenced.

of the Out-fences thereof as shall have been so made by virtue of this Act, and to order the Sum of Money at which such Out-fences as aforesaid shall be so valued, to be paid by the then Owner or Owners of such Allotment or Allotments which shall have become so entirely inclosed as aforesaid, to the then Owner or Owners of the Allotment or Allotments belonging or which did belong to the Person or Persons who made such Out-fences, such Payment to be made at such Time and Place as shall be mentioned by Notice in Writing, to be signed by the Foreman of the said Jury, and personally delivered to the Party liable to pay such Money, at least Three Months before the Day of Payment, and in Default of Payment thereof, agreeable to such Notice, the same shall and may be recovered by Distress and Sale of any Goods and Chattels which shall be found upon the said Allotment or Allotments, by Warrant under the Hand and Seal of any Justice of the Peace for the West Riding of the said County, rendering the Overplus (if any), upon Demand, to the Owner or Owners of such Goods and Chattels, after deducting the Charges of such Distress and Sale.

Power to sell,
&c. before the
Execution of
the Award.

XXIV. And be it further enacted, That it shall be lawful for any Person or Persons entitled to any Allotment, to sell, mortgage, dispose of, and convey his Estate and Interest therein, before the Execution of the Commissioner's Award, separate and distinct from the Estate in Right of which he, she, or they is or are entitled to the same, in the same Manner as he, she, or they might have done at any Time after the Execution of the said Award; and also to sell, mortgage, dispose of, and convey the Estate in Right of which he, she, or they may be entitled to any Allotment, separate and apart from, and retaining to himself, herself, or themselves, such Allotments, Common Right, and Interest; and the said Commissioner is hereby required to award such Allotment or Allotments accordingly.

Allotments to
enure to the
same Uses as
the Estates in
right of which
they shall be
made.

XXV. And be it further enacted, That the several Lands and Hereditaments which shall be allotted or exchanged by virtue of the said Act of the Forty-first Year of His present Majesty, or of this Act, shall go to the same Persons, and be held for and upon the same Estates, Uses, and Trusts, and be subject to the same Charges and Incumbrances of every Kind, as the Hereditaments in respect whereof the same shall be respectively allotted or exchanged shall at the Time of making such Allotment or Exchange, be limited or subject to or effected by.

Exchanges.

XXVI. And be it further enacted, That it shall be lawful for the said Commissioner to set out or allot any of the Lands or Grounds hereby directed to be divided and allotted, or any Messuages, Buildings, Inclosed Lands, Grounds, or Hereditaments in the said Parish of *Penistone*, in Lieu of and in Exchange for any other Messuages, Buildings, Lands, or Hereditaments in the same Parish, or any adjoining Parish, so as every such Exchange be set forth and ascertained by the Award of the said Commissioner, and so also as every such Exchange be made with the Consent of the respective Proprietors or Persons seised or entitled in Possession of or to the Hereditaments so to be exchanged, for any Life or Lives, or for Years determinable on any Life or Lives, or for some Estate of Inheritance less than an Estate in Fee Simple, or with the Consent of the Huf-

bands, Guardians, Trustees, Committees, or Attornies of any such Proprietors, who shall at the Time of making such Exchange be Femes Covert, Infants, Lunatics, beyond the Seas, or under any other legal Disability or Incapacity of acting for themselves; and so as that every such Exchange of any Lands, Tenements, or Hereditaments holden in Right of any Church, Chapel, or other Ecclesiastical Benefice, be made with the Consent of the Patron thereof, and the Lord Bishop of the Diocese within which the same shall lie or be situate, and that all such Consents as aforesaid be respectively signified by Writing under the Hands of the consenting Parties, or under the Seals of any of them, being Corporations Aggregate; and every Exchange which shall be so made and declared, shall, as well in respect of the Hereditaments within the Manor and Township of *Thurlstone* aforesaid, as in respect of the Hereditaments within any other Township, Parish, or Place within or adjoining, or near to the Parish of *Penistone* aforesaid, be for ever good, valid, and effectual in the Law to all Intents and Purposes.

XXVII. Provided always, 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 Commissioner shall by his Award or other separate Deed or Instrument order and direct.

Expences of Exchanges and Partitions how to be made.

XXVIII. And be it further enacted, That the Allotments hereinbefore directed to be made to the said Trustees of the said Hospital shall be accepted and taken by them in lieu of and as a full Compensation for, and to extinguish and bar their Right to all and all Manner of Tythes both Great and Small, and of the said Moduses, and all other Payments and Compositions in lieu thereof, arising or becoming due and payable for all Times to come after the Allotments shall be fenced and in a State to be let and to produce Rent, out of, or from, or in respect of all and singular the said Commons and Wastes, Moors, and Heaths, and all Encroachments therefrom, and all and every or any of the Ancient Inclosed Lands and Grounds within the said Manor and Township of *Thurlstone*; but *Easter Offerings*, Mortuaries, and Surplice Fees, shall not be prejudiced or affected.

Allotment to the Hospital to be in lieu of all Tythes, &c.

XXIX. And be it further enacted, That in case any of the Proprietors of the said Commons, Moors, Wastes, and uninclosed Lands, shall be in the Possession of or in the Receipt of the Rents and Profits of any Encroachment or Encroachments from the same, of which Encroachment or Encroachments under the Directions of this Act, the Owners of the said Tythes shall be entitled to One-tenth Part in Value, the said *Thomas Gee*, or his Successors, shall diminish such Person's Share or Proportion of the Commons, Moors, and Wastes hereby directed to be inclosed, so much in Value as will be equal to One-tenth Part of the Value of the same Encroachment or Encroachments (considering the same in the unimproved State); so that the Burthen of exonerating such Encroachments from the Tythe may fall upon the Proprietors individually and not upon the Proprietors at large.

As to Tythes of Encroachments.

[*Loc. & Per.*]

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XXX. And

XXX. And be it further enacted, That the said Commissioner shall, previous to the setting out of the Allotments of the said Commons, ascertain whether any and what Part or Parts of the Old Inclosed Lands are subject to the Payment of Tythes in Kind; and shall also ascertain out of what particular Lands and Grounds, Moduses or other Payments in lieu of Tythes are payable; and when he has so ascertained the same, he is hereby required to make such Reduction from the Allotments to be made for or in respect of such Lands, as shall be equivalent in Value to the Tythes and Moduses payable out of or for the same respectively, so that the Allotment or Allotments of the Owner or Owners of such Lands shall be less and abate in due and equal Proportion to make up the Allotment to be set out to the said Trustees of the said Hospital as aforesaid.

Expences of
the Act.

XXXI. And be it further enacted, That the Money to arise by Sale of such Part or Parts of the Moors, Commons, and Waste Grounds called *Thurlstone Bank*, and *Hornthwaite Moor*, and the *Upper or Black Moors*, as hereinbefore mentioned, shall be applied by the said Commissioner for or towards paying the Costs, Charges, and Expences incident to and attending the obtaining of this Act, and of surveying, measuring, planning, valuing, dividing, and allotting the Lands, Grounds, and Hereditaments to be divided and allotted by virtue of this or the said recited Act, and of preparing and inrolling the Award of the said Commissioner, and of the Copy or Copies thereof, and the Charges and Expences of the said Commissioner, his Assistants, and Servants, and the Charges of fencing the Allotment or Allotments to the Lord of the Manor, and the Tythe Owners, and all other necessary Expences of the several Persons to be employed by the said Commissioner in and about the Premises, either before or after the Execution of the said Award, and all the Expences of forming, completing, and repairing the public Carriage Roads and Highways to be set out and appointed by the said Commissioner, and all other incidental Charges and Expences whatsoever, for or by reason of or preparatory to the laid intended Division and Inclosure, and carrying this Act into Execution.

And the De-
ficiency to be
raised by
Rate.

XXXII. Provided always, and be it further enacted, That in case the Money arising by the Sale of such Allotment or Allotments as hereinbefore mentioned, shall not be sufficient to defray all the Charges and Expences aforesaid, then the Deficiency shall be made up, paid, borne, and defrayed by the several and respective Owners and Proprietors of Estates within the said Manor and Township of *Thurlstone*, to whom any Allotment or Allotments shall be made by virtue of this or the said recited Act, in proportion and according to the Value of their respective Rights, Shares, and Interests in the said Lands and Grounds hereby directed to be divided and inclosed; which said Costs, Charges, and Expences, together with the Proportion thereof to be paid by the several Persons hereby made liable to the Payment thereof, shall be settled, ascertained, and adjusted by the said Commissioner, and shall be paid at such Time and Place, and to such Person or Persons as the said Commissioner shall appoint; and the said Commissioner shall and he is hereby authorized and required to make a Rate or Assessment thereof accordingly under his Hand, and the same Rate or Assessment so made and signed, shall be binding and conclusive on
all

all Persons thereby charged and made liable, and their several and respective Heirs, Executors, and Administrators; and in case any Person or Persons shall refuse or neglect to pay his, her, or their Share or Proportion of such Costs, Charges, and Expences as aforesaid, within such Time, and to such Person or Persons as the said Commissioner shall appoint, then and in such Case, the said Commissioner shall cause the same to be levied and recovered in Manner directed by the said recited Act; provided always, that no Charge whatsoever shall be made upon the said *John Lumley Savile*, his Heirs or Assigns, or upon the Trustees of *Sheffield Hospital*, or the Person or Persons to whom any Allotment shall be made in Right of any College, Chapel, School, Hospital, or any other public Use or Charity, save and except so far as relates to the Trustees of *Sheffield Hospital*, with respect to their calling in or employing a Commissioner on their Behalf for the Ascertainment of the Value of their Tythes, as by this Act they are authorized to do.

XXXIII. And be it further enacted, That if the said *Thomas Gee* or his Successor shall happen to raise by the Sale of Land as aforesaid, more Money than will be required to defray such Costs, Charges, and Expences as aforesaid, then and in such Case, such Surplus Money shall be divided and apportioned between the several Proprietors and Persons interested in the Lands hereby directed to be divided and inclosed, in such Shares as shall be in proportion to such their respective Property and Interests; and the Shares of such of them as shall be Tenants thereof in Fee simple shall be paid to them respectively, and the Shares of such other Proprietors or Persons of and in such Surplus Money, shall be applied and disposed of in Manner directed by the said recited Act, in Cases wherein any Money is to be paid for the Purchase or Exchange of any 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, and Hereditaments, to be settled to the same Uses.

Application
of Surplus
Money.

XXXIV. And be it further enacted, That if any Person or Persons shall advance any Money towards defraying the Expences of obtaining this Act, or carrying the same into Execution by the said Commissioner, the same shall be repaid with lawful Interest out of the first Monies to be raised by the said Commissioner by virtue of this Act.

Money ad-
vanced to be
repaid with
Interest.

XXXV. And be it further enacted, That the said Commissioner shall be paid or allowed by the said Proprietors the Sum of Three Guineas, and no more, for every Day he shall attend and be employed at any Meeting or Meetings, or going to or returning from thence or otherwise howsoever, in executing the Powers and Authorities hereby given to him, including his Expences; and the Surveyor or Surveyors shall be paid such Sum or Sums of Money for Plans, Maps, Survey, and Attendances, as the said Commissioner shall order and direct.

Allowance to
the Commis-
sioner and
Surveyors.

XXXVI. 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 the passing thereof), the said Commissioner shall make and he is hereby required to make a true and just Statement or Account of all Sums of

Commissioner
to lay Ac-
counts before
One Justice.

of

of Money by him received and expended, or due to him for his own Trouble and Expences in the Execution of this Act, and such Statement or Account when so made, together with the Vouchers relating thereto, shall be by him laid before some Justice of the Peace for the said Riding (not interested in the said Inclosure), 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 Commissioner; 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 Justices.

Award where deposited.

XXXVII. And be it further enacted, That the Award to be made by the said Commissioner, when inrolled in the Manner directed by the said recited Act, shall be deposited in the Church Chest of the Parish of *Penistone* aforesaid.

Persons dissatisfied may appeal to Quarter Sessions.

XXXVIII. 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 the said recited Act or of this Act (except as to such Acts, Determinations, or Proceedings of the said Commissioner as are by the said recited Act or this Act directed to be final, binding, or conclusive, and also except as to such Claims, Objections, Matters, and Things as by this Act are directed or authorized to be ascertained, settled, tried, or determined by the Verdict of a Jury), he, she, or they may appeal to the General Quarter Sessions of the Peace to be held for the West Riding of the County of *York*, within Four Calendar Months next after the Cause of Complaint shall have arisen; and the said Court of Quarter Sessions are hereby authorized to determine such Appeal, and to award such Costs, as to them shall seem reasonable; which Determination shall be final and conclusive, and shall not be removed by *Certiorari*, or any other Writ or Process whatsoever.

Mines, &c. reserved to the Lord.

XXXIX. Provided always, and be it further enacted, That nothing in this Act contained shall defeat, lessen, or prejudice the Right, Title, or Interest of the said *John Lumley Savile*, as Lord of the said Manor, his Heirs or Assigns, of or to the Mines, Beds, and Seams of Coal, or any Mines of Iron, Ironstone, or other Mines or Minerals in or under the said Commons hereby intended to be inclosed, or to any Seigniories or Royalties incident and belonging to the said Manor, the same being hereby reserved to him the said *John Lumley Savile*, his Heirs and Assigns, as Lord or Lords of the said Manor, with full Power for him and them at all Times to hold and enjoy all Quit Rents, Free Rents and other Rents, Reliefs, Duties, Customs, and Services, and all Courts, Perquisites, and Profits of Courts, and Liberty of hawking, hunting, fishing, and fowling within the said Manor, and all Goods and Chattels of Felons and Fugitives, Felons of themselves, Persons outlawed, waived, and put in Exigent, Deodands, Treasure Trove, Waifs, Estrays, Forfeitures, Royalties, Jurisdictions, Franchises, and Privileges whatsoever, to the said Manor incident or appertaining (other than and except such Common Right and Rents of Cottages and Encroachments as could or might be claimed

claimed by him as Owner of the Soil and Inheritance of the said Commons and the Quarries of Stone therein), in as full, ample, and beneficial a Manner to all Intents and Purposes as if this Act had not been made; with Powers and that the said *John Lumley Savile*, his Heirs and Assigns, shall and may at all Times hereafter, have, hold, win, work, and enjoy all Mines of Coal, Iron, Stone, and Minerals, of what Nature or Kind soever (Quarries or common Stone only excepted) under the said Commons, and the Encroachments, Allotments, and Improvements made and to be made therefrom, together with all convenient and necessary Ways, Roads, and Passages, already made and hereafter to be made, 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 searching for, winning, and working the said Mines and Minerals, and loading and carrying away the Coal, Iron, Stone, Lead, Minerals, and other Produce thereof, and of making Pits, Shafts, Pit Rooms, Air Pits, Heap Rooms, Stand Yards, Drifts, Levels, Ways, and Watercourses (as well as using and continuing those already made), and of erecting and using Fire Engines and other Engines, and necessary Buildings, and of altering, changing, pulling down, and carrying away the same, or any of the Materials thereof, at his and their own free Will and Pleasure, and doing all such other Acts and Things, either now in Use or hereafter to be invented, as may be necessary or convenient for the full and complete Enjoyment thereof, in as full, ample, and beneficial a Manner to all Intents and Purposes, as he or they could or might have done in case this Act had not been made; yet nevertheless, that the said *John Lumley Savile*, his Heirs and Assigns, shall be obliged to pay and shall annually pay to the respective Owners and Occupiers of such Allotments respectively, a reasonable or adequate Recompence and Satisfaction for all such Damages as shall from Time to Time be thereby done thereto, in proportion to the Loss sustained by such Owners and Occupiers respectively, according to their respective Rights and Interests therein.

XL. Saving always to the King's most Excellent Majesty, his Heirs and Successors, as well in Right of his Crown as in Right of his Duchy of *Lancaster*, and also to all Persons, Bodies Politic and Corporate, their respective Heirs, Successors, Executors, Administrators, and Assigns (other than and except the several Persons, Bodies Politic and Corporate, to whom any Allotment 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, their respective Heirs, Successors, Executors, Administrators, and Assigns, and except such other Rights and Interests as the Intent and Purpose of the Inclosure hereby authorized shall absolutely require to be barred, destroyed, or extinguished by virtue of this Act), all such Estates, Rights, Titles, and Interests, as they, every, or any of them had or enjoyed, of, in, to, or out of the said Commons, Wastes, and Open Fields hereby directed to be inclosed, before the passing of this Act, or could or might have had and enjoyed if this Act had not been made.

Evidence
Clause

XLI. 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 by all Judges, Justices, and others.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN,
Printers to the King's most Excellent Majesty. 1812.