ANNO QUINQUAGESIMO TERTIO

GEORGII III. REGIS.

Cap. 141.

An Act for inclosing Lands in *Dundraw*, in the County of *Cumberland*. [3d *June* 1813.]

WHEREAS there are within the Township of *Dundraw*, in the Parish of *Brumfield*, in the County of *Cumberland*, several Commons and Waste Grounds, containing in the Whole, by Estimation, Six hundred Acres, or thereabouts: And whereas Sir *Wastel Brisco*, Baronet, claims to be Lord of the Manor of *Dundraw*, and claims to be seised of or entitled to the Soil and Royalties of the Whole of the said Commons and Waste Grounds as Part and Parcel of the said Manor, and to all Mines and Minerals within and under the same; and the said Sir *Wastel Brisco* Baronet, is also Owner of several Messuages, Lands, Tenements, and other Hereditaments within the said Manor, and in respect thereof the said Sir *Wastel Brisco*, his Lessees or Tenants, is or are entitled to Right of Common upon the said Commons and Waste Grounds: And whereas the Right Honourable *George Obrien* Earl of *Egremont* is Lord of the Barony or Lordship of *Wigton*, in the said County of *Cumberland*, and also is or claims to be seised of or entitled to the Soil and Royalties of the Whole of the said Commons and Waste Grounds, and to the Mines and Minerals within and under the same, as being Part and Parcel of the said Barony: And whereas Sir *Henry Fletcher*, Baronet, is or claims to be entitled to the Great Tythes which may hereafter arise and grow due from and out of the

ſaid Commons and Waſte Grounds; and alſo to the Great Tythes of certain incloſed Lands entitled to Right of Common thereon: And whereas the Right Reverend *Samuel* Lord Biſhop of *Carliſle*, in right of his See, is Patron of the Vicarage of the ſaid Pariſh of *Brumfield*; and the Reverend *Walter Fletcher*, Clerk, is Vicar of the ſame Vicarage, and, as ſuch Vicar, is entitled to certain Tythes, Moduſes, Compenſations for Tythes, and other Vicarial and Eccleſiaſtical Dues ariſing or becoming due within the ſaid Pariſh: And whereas the ſaid Sir *Waſtel Briſco*, and *John Barnes*, Gentleman, and divers other Perſons, are or claim to be entitled to certain Great and Small Tythes ariſing and growing due from and out of certain ancient Lands, Tenements, and Hereditaments, entitled or claiming to be entitled to Right of Common upon the ſaid Commons and Waſte Grounds: And whereas the ſaid *John Barnes*, *Joſeph Sandert*, *John Fell*, and divers other Perſons, are or claim to be entitled to Right of Common upon the ſaid Commons and Waſte Grounds in reſpect of certain Meſſuages, Tenements, Lands, or other Hereditaments within the ſaid Pariſh; and the ſaid Commons and Waſte Grounds in their preſent State are of little Uſe, and incapable of any conſiderable Improvement, and it would be of great Advantage to the Perſons intereſted therein, and of public Utility, if the ſaid Commons and Waſte Grounds were to be divided and incloſed, and ſpecific Parts and Shares thereof allotted to the ſeveral Proprietors according to their reſpective Rights and Intereſts therein; and if the ſaid Commons and Waſte Grounds, and the ſaid ancient incloſed Lands were exonerated from the Payment of all Tythes whatſoever; but ſuch Purpoſes cannot be effected without the Authority of Parliament: 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*: 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 *John Norman* of *Kirkandrews-upon-Eſk*, *John Hudleſton* of *Gosforth*, and *Richard Atkinſon* of *Baſſenthwaite*, all in the ſaid County of *Cumberland*, Gentlemen, and their Succeſſors to be appointed as hereafter mentioned, ſhall be and are hereby appointed Commiſſioners for ſetting out, dividing, allotting, and incloſing the ſaid Commons and Waſte Grounds, in Manner and according to the Rules, Orders, Powers, and Directions contained in this Act and the ſaid recited Act, ſo far as the Powers, Regulations, Directions and Proviſions in the ſaid recited Act are not altered or controlled by or repugnant to this preſent Act; and that all Acts, Matters, and Things done by any Two of the Commiſſioners, appointed or to be appointed by virtue of this Act, ſhall to all Intents and Purpoſes be as valid and effectual as if the ſame were done and performed by all the ſaid Commiſſioners.

Appointment of Commiſſioners.

Power of chooſing new Commiſſioners.

II. And be it further enacted, That if any of the ſaid Commiſſioners appointed by this Act, or to be ſubſtituted in Manner hereinafter mentioned, ſhall, before the Completion of the ſaid Diviſion and Incloſure, die, or neglect, refuſe, decline, or become incapable to act for the

Space of Forty Days, when Occaſion ſhall require his or their Attendance for carrying this and the ſaid recited Act into Execution, it ſhall be lawful from Time to Time to elect and appoint a new Commiſſioner or Commiſſioners in the Stead of him or them ſo dying, neglecting, refuſing, declining, or becoming incapable to act as aforeſaid, in the Manner following; that is to ſay, in caſe the ſaid *John Norman*, or any future Commiſſioner to be appointed in his Stead, ſhall die, or neglect, refuſe, decline, or become incapable to act as aforeſaid, the Lord of the ſaid Barony of *Wigton*, and the Lord of the ſaid Manor of *Dundraw* reſpectively for the Time being, ſhall and may, by Writing under his or their Hand or Hands, appoint another Perſon (not intereſted in the ſaid Diviſion and Incloſure) to be a new Commiſſioner in the Stead of the ſaid *John Norman*, or of any future Commiſſioner to be appointed in his Stead as aforeſaid; and in caſe the ſaid *John Hudleſton*, or any future Commiſſioner to be appointed in his Stead, ſhall die, or ſhall neglect, refuſe, decline, or become incapable to act for the Space of Forty Days as aforeſaid, then the major Part in Value (according to the Land Tax Aſſeſſment) of the ſeveral Owners of Meſſuages, Lands, Tenements, and Hereditaments for the Time being entitled to Rights of Common upon the ſaid Commons and Waſte Grounds (other than and except the ſaid Lords of the ſaid Barony of *Wigton* and Manor of *Dundraw* reſpectively for the Time being) ſhall, by Writing under their reſpective Hands, appoint a new Commiſſioner (not intereſted in the ſaid Diviſion and Incloſure) in the Stead of the ſaid *John Hudleſton* and his Succeſſors reſpectively, from Time to Time as Occaſion may require; and in caſe the ſaid *Richard Atkinſon*, or any future Commiſſioner to be appointed in his Stead, ſhall die, or ſhall neglect, refuſe, decline, or become incapable to act for the Space of Forty Days as aforeſaid, the ſaid Sir *Henry Fletcher*, his Heirs and Aſſigns, ſhall and may, by Writing under his or their Hand or Hands, appoint a new Commiſſioner (not intereſted in the ſaid Diviſion and Incloſure) in the Stead of the ſaid *Richard Atkinſon* and his Succeſſors reſpectively, from Time to Time as Occaſion may require; and in caſe ſuch new Commiſſioner or Commiſſioners ſhall not be appointed by the Party or Parties hereinbefore reſpectively authorized to make ſuch Appointment, within Sixty Days after the happening of any ſuch Vacancy as aforeſaid, and Notice thereof by the then ſurviving and acting Commiſſioners or Commiſſioner, then, and in every ſuch Caſe, a new Commiſſioner or Commiſſioners, to fill up ſuch Vacancy or Vacancies from Time to Time, ſhall and may be appointed by the other ſurviving and acting Commiſſioners or Commiſſioner for the Time being, by Writing under their or his Hands or Hand, at any Meeting of ſuch ſurviving Commiſſioners or Commiſſioner, of the Time and Place whereof Fourteen Days previous Notice ſhall have been given in Manner hereinafter mentioned; and that every ſuch new Commiſſioner ſo to be appointed ſhall have the ſame Powers and Authorities for carrying the Purpoſes of this Act and the ſaid recited Act into Execution, as if he had been expreſsly named and appointed by this Act.

In caſe the Parties do not nominate in time, the Commiſſioners may.

III. And be it further enacted, That the ſaid Commiſſioners ſhall have Power, and they are hereby authorized to appoint ſome fit and proper Perſon to be their Clerk for aſſiſting them in carrying this and the ſaid recited Act into Execution; and ſuch Clerk from Time to Time

Appointment of Clerk.

Time to remove, and to nominate and appoint some other fit and proper Person to succeed him in such Office, as to the said Commissioners shall seem meet.

Appointment of Surveyors and Assistants.

IV. And be it further enacted, That the said Commissioners shall have Power, and they are hereby authorized, to appoint some fit and proper Person or Persons to be a Surveyor or Surveyors, and Assistant or Assistants to such Surveyor or Surveyors, for the Purposes of the said intended Division and Inclosure, and from Time to Time to displace and remove any such Person or Persons so to be appointed, and to appoint any other Person or Persons in his or their Room, and to make such Surveyor or Surveyors, Assistant or Assistants, such Recompense for his and their Labour, Skill, and incidental Expences, as to the said Commissioners shall appear just and reasonable.

Appointment of Meetings.

V. And be it further enacted, That the said Commissioners shall cause Notice, in Writing, to be given in Manner hereinafter mentioned, of the Time and Place of holding their First, Second, and Third Meetings for the Purpose of putting this and the said recited Act into Execution, at least Fourteen Days before such respective Meetings; and the said Commissioners shall and may, after their said Third Meeting, from Time to Time appoint such special or other subsequent Meetings for carrying into Execution the Trusts, Powers and Authorities hereby and by the said recited Act vested in them, as they shall think proper, in like Manner giving Fourteen Days Notice in Writing of the Time and Place where each such special or subsequent Meeting is to be holden; but the said Commissioners are hereby authorized and empowered, if they shall see cause, without giving any public Notice, to adjourn and continue their said First, Second, and Third Meetings, or any of them, or any such special or other subsequent Meeting or Meetings as aforesaid, from Time to Time, as they shall see convenient, provided that all Meetings of the said Commissioners shall be holden within the said Parish of *Brumfield*, or within Eight Miles thereof.

Notices.

VI. And be it further enacted, That in all Cases where Notices are required to be given to any Person or Persons under this Act or the said recited Act, the Delivery of the same, so far as concerns the said Commissioners, at the usual Place of Abode of each of the said Commissioners, or at the Office or usual Place of Abode of their Clerk, and so far as concerns all other Persons, the Delivery of the same at the usual Places of Abode of such Persons respectively, shall be deemed good Service of the same; and that Notices of the Meetings (except those by Adjournment) of the said Commissioners, and of the Perambulations of the said Commons and Waste Grounds hereby directed to be divided, allotted, and inclosed; and all other public Notices directed by this Act or the said recited Act to be given, shall be in Writing, and shall be given, by affixing the said Notices respectively, on some *Sunday* in the Forenoon before or during Divine Service, on the Principal Door of the Parish Church of *Brumfield* aforesaid, and also by causing the same to be inserted in some One or more Newspaper or Newspapers published at *Carlisle* or *Whitehaven* in the

said

said County of *Cumberland*, or in some other Newspaper or Newspapers usually circulated in the said County.

Survey to be made of the Commons, but not of ancient Inclosures.

VII. And be it further enacted, That the said Commissioners shall at their Discretion cause a fair, correct, and particular Plan and Valuation of the said Commons and Waste Grounds hereby directed to be divided, allotted and inclosed, to be made and reduced into Writing by them, or such Person or Persons as they shall direct or appoint, or shall use any Map or Survey of the said Commons and Waste Grounds, made at or before the passing of this Act, which shall in their Judgment and to their Satisfaction be a just and true Map or Survey thereof; but that it shall not be necessary or incumbent on the said Commissioners to cause any Admeasurement, Plan or Valuation, to be made of the Messuages, Cottages, Gardens, Homesteads, or ancient inclosed Lands or Grounds, entitled to Right of Common upon the Commons and Waste Grounds hereby directed to be divided and inclosed, but only of such Part or Parts thereof (if any) as the said Commissioners shall judge expedient or necessary; any Thing in the said recited Act contained to the contrary notwithstanding.

Commissioners to settle Disputes.

VIII. And be it further enacted, That if any Dispute or Difference shall, before the making of the Award of the said Commissioners, arise between any Person or Persons touching or concerning the Soil and Royalties, or other the Rights or Interests which they may have or claim of, in, over or upon the said Commons and Waste Grounds, or any Part or Parts thereof, or the Boundaries thereof, or any Part thereof, or the Boundaries of the said Manor or Township, or between the said Commons and Waste Grounds, or Manor or Township, or any Part thereof respectively, and any adjoining Barony, Manor, Parish, Township, District, Quarter, Hamlet or Place, or touching or concerning the respective Shares, Rights or Proportions, which any Person or Persons hath or have, or shall or may claim to have, of, in, or to the said Commons and Waste Grounds, or any Part thereof, or otherwise relating to the Division and Inclosure hereby directed and authorized to be made, then the said Commissioners shall, and they are hereby impowered and required to hear, inquire into and determine all such Disputes and Differences, and all Claims and Objections which shall be thereupon raised and brought forward to them, and to fix and ascertain the Nature and Extent of the several Rights of the Person or Persons, Body or Bodies Politic or Corporate, making such Claim or Claims, Objection or Objections as aforesaid; provided that nothing in this Act contained shall authorize the said Commissioners to determine the Title to any Messuages, Cottages, Lands, Tenements or Hereditaments whatsoever; provided also, that in case the said Commissioners shall see cause, upon the Hearing and Determination of any Claim or Claims, Objection or Objections, to award any Costs, it shall be lawful for the said Commissioners, and they are hereby impowered to settle, assess and award such Costs 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 such Costs shall be levied and recovered in such Manner as by the

and assess Costs.

said recited Act any Penalties are authorized to be levied or recovered.

Allowing Parties dissatisfied with the Commissioners' Determination, to try their Rights at Law.

IX. Provided always, and be it further enacted, That in case any Person or Persons, Body or Bodies Politic or Corporate, interested or claiming to be interested in the said intended Division or Inclosure, shall be dissatisfied with any Determination of the said Commissioners touching or concerning the Boundaries of the said Commons and Waste Grounds, or the said Manor or Township, or of any adjoining Manor, Parish, Barony, Township, District, Quarter, Hamlet or Place, or touching or concerning the Right of Soil and Royalties, or any Right of Common, or other Right or Interest in, over, and upon the Commons and Waste Grounds hereby directed to be divided, allotted and inclosed, or any Part or Parts thereof, and shall by Writing under the Hand of him or them, or of his or their known Agent or Attorney, or under their Common Seal respectively, give Notice of such Dissatisfaction to the said Commissioners, or One of them, or their Clerk, within One Calendar Month next after every such Determination shall have been made or signified by Writing under the Hands of the said Commissioners, to the Party or Parties against whom such Determination shall have been so made, or to his or their known Agent or Attorney, it shall be lawful for the Person or Persons, Body or Bodies Politic or Corporate so dissatisfied, to proceed to a Trial at Law of the Matter so determined by the said Commissioners at the then next or second Assizes to be holden for the said County of *Cumberland*, and for that Purpose the Person or Persons, Body or Bodies Politic or Corporate, who shall be so dissatisfied with the Determination of the said Commissioners, shall cause an Action to be brought upon a feigned Issue against the Party or Parties in whose Favour such Determination shall have been made, within Two Calendar Months next after such Determination of the said Commissioners having been so signified as aforesaid; and the Defendant or Defendants in such Action or Actions shall, and he, she, or they is and are hereby required to name an Attorney or Attornies, who shall appear thereto, or file Common Bail, and accept One or more Issue or Issues, whereby such Claim, and the Right or Rights thereby insisted on, may be tried and determined (such Issue or Issues to be settled by the proper Officer of the Court in which the said Action or Actions shall be brought, in case the Parties differ about the same); and the Verdict or Verdicts which shall be given in such Action or Actions shall be final, binding, and conclusive upon all and every Person and Persons whomsoever, unless the Court wherein such Action or Actions shall be brought shall set aside such Verdict or Verdicts, and order a new Trial to be had therein, which it shall be lawful for the Court to do, as is usual in other Cases; and also, upon sufficient Cause shewn, to put off the Trial of such Issue or Issues; and after such Verdict or Verdicts shall be given, and final Judgment obtained thereon, the said Commissioners shall, and they are hereby required to act in Conformity thereto, and to allow or disallow the Claim or Claims thereby determined according to the Event of such Trial or Trials; and that the Costs attending such Action or Actions shall abide the Event of the respective Trials of such Issue or Issues: Provided always, that the Deter-

Determination of the ſaid Commiſſioners touching ſuch Claim or Claims, Objection or Objections as aforeſaid, which ſhall not be objected to by ſuch Notice to be given to the ſaid Commiſſioners, or being ſo objected to, and the Party or Parties objecting not cauſing ſuch Action or Actions at Law to be brought and proceeded in as aforeſaid, ſhall be final, binding, and concluſive upon all Perſons and Bodies Politic or Corporate; and if any of the Parties, Plaintiffs or Defendants in any Action to be brought in purſuance of this or the ſaid recited Act, ſhall die pending the ſame, ſuch Action ſhall not abate by reaſon thereof, but ſhall be proceeded in as if no ſuch Death had happened; and in caſe any Perſon or Perſons in whoſe Favour any 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 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 Party or Parties who might have brought ſuch Action or Actions againſt the Perſon or Perſons ſo dying, to bring the ſame within the Time ſo limited as aforeſaid, againſt ſuch Perſon or Perſons as if actually living; and to ſerve the Clerk of the ſaid Commiſſioners with Proceſs for commencing ſuch Action or Actions in the ſame Manner as the Party or Parties might have been ſerved therewith if living; and it ſhall thereupon be incumbent on the Heir or Heirs of the Perſon or Perſons ſo dead, 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 ſuch Proceedings ſhall be had therein, and the Coſts ſhall follow the Event, and be recoverable 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.

Death of Parties not to ſtay Proceedings.

Proviſion in caſe of Parties dying before Actions brought.

X. Provided alſo, and be it further enacted, That nothing in this Act contained ſhall extend to enable the ſaid Commiſſioners to determine the Right between any Parties contrary to the Poſſeſſion of any ſuch Parties (except in Caſes of Encroachments made within Thirty Years, as hereinafter mentioned); but if the ſaid Commiſſioners ſhall be of opinion againſt the Right of the Perſon or Perſons ſo in Poſſeſſion, they ſhall forbear to make any Determination thereupon until the Poſſeſſion ſhall have been given up or recovered from ſuch Perſon or Perſons by Ejectment, or other due Courſe of Law.

Right of Poſſeſſion not to be determined by Commiſſioners.

XI. And be it further enacted, That the Coſts and Charges of every Action, whether the ſame ſhall be brought by or againſt the ſaid Sir *Waſtel Briſco*, his Heirs or Aſſigns, or the ſaid Earl of *Egremont*, his Heirs or Aſſigns, or by or againſt any other Perſon or Perſons making any Claim or Objection to, or relating to the Boundary or Soil of the ſaid Commons and Waſte Grounds, or any Part thereof, and which in its Conſequences ſhall or may extend to the common and general Intereſt of the Parties concerned in the ſaid Diviſion and Incloſure of the ſaid Commons and Waſte Grounds, or any Part or Parts thereof, ſhall be deemed and conſidered to be Part of, and ſhall be raiſed in the ſame Manner as the general Expences of the Diviſion and Incloſure of the ſaid Commons and Waſte Grounds, and ſhall be repaid and reimburſed by

Coſts in determining Right of Soil to be paid by the Parties intereſted.

by the said Commissioners to the Party or Parties to such Action, from and out of the Money to be raised in Manner hereinafter mentioned, for paying and discharging the Costs, Charges and Expences of carrying into Execution the Powers and Authorities in this and the said recited Act contained; and the said Commissioners are hereby authorized and required to adjudge and determine whether such Question or Questions, although the same is or are solely confined to Right of Soil, would or would not also tend to increase the Right of Common, or other Interest, of the Parties claiming Right of Common upon the said Commons and Waste Grounds, or any Part thereof; and if it shall appear to the said Commissioners that the same would affect only the Party or Parties claiming the Soil or Royalties, and that the Right of Common, or Extent of the said Commons and Waste Grounds, or any Part thereof, would not be increased or extended thereby, then the said Costs shall be paid, borne or reimbursed, by the Party or Parties who shall appear to the said Commissioners to be absolutely interested therein, and in such Proportions, Manner, and Form, as they the said Commissioners shall by Writing under their Hands direct or appoint, and shall not be deemed or considered as Part of the said general Expences; and such of the said Costs as shall be adjudged and determined by the said Commissioners to be paid, borne or reimbursed by any Person or Persons, other than the Party or Parties to such Action or Actions, or as shall not be recoverable against such Party or Parties by Execution or Attachment, shall be levied or recovered in the same Manner as by the said recited Act any Penalties or Forfeitures are authorized to be levied or recovered.

For extinguishing or suspending Rights of Common.

XII. And be it further enacted, That it shall be lawful for the said Commissioners, and they are hereby authorized, at any Time or Times before the Execution of their Award, by Notice in Writing to be affixed upon the principal outer Door of the Parish Church of *Brumfield* aforesaid, to order and direct all or any Part of the Rights of Common in, over, and upon the said Commons and Waste Grounds hereby directed to be inclosed, or any Part thereof, to be extinguished, or the Exercise thereof to be suspended for and during such Time as shall be expressed in such Notice; and that all such Rights of Common as the said Commissioners shall by such Notice order and direct to be extinguished, or the Exercise thereof to be suspended as aforesaid, shall, from the Time of affixing such Notice upon the principal Door of the Parish Church of *Brumfield* aforesaid, cease, determine, and be extinguished, or the Exercise thereof suspended accordingly; any Law, Usage or Custom to the contrary thereof notwithstanding.

No Turf to be dug.

XIII. And be it further enacted, That from and immediately after the passing of this Act, no Person or Persons whomsoever shall pare, dig, or take away any Sods, Turves or Flacks, or any Part of the Soil or Surface in, upon, of, or from the said Commons and Waste Grounds, or any Part thereof, so long as the same shall lay open and uninclosed, (except the Lords for the Time being of the said Barony of *Wigton* and Manor of *Dundraw* respectively, their Lessees or Tenants, in the Exercise of the Liberties and Privileges herein mentioned and reserved, and the several Persons entitled thereto, in the Use and Enjoyment of the Public and Common Quarries, and Places for getting Gravel, to be

be set out under the Authority and Directions of this Act,) or make or burn any Mound or Mounds of Earth or Soil, or mix any Earth or Soil with Lime or other Thing upon the said Commons and Waste Grounds, or any Part thereof, until the said Commissioners shall have divided and set out the same, without the License of the said Commissioners in Writing under their Hands first had and obtained, under a Penalty of Forty Shillings for every such Offence; the same to be recovered and levied by the said Commissioners in the same Manner as any Assessments, Penalties or Forfeitures are, by the said recited Act, directed to be recovered and levied; and the Money arising therefrom to be applied in defraying the Expences of carrying this Act into Execution.

Encroachments to be deemed Part of the Common.

XIV. And be it further enacted, That all Encroachments taken or made from or on any Part or Parts of the said Commons and Waste Grounds hereby directed to be divided and inclosed, within Thirty Years before the passing of this Act, shall be deemed Part and Parcel of the said Commons and Waste Grounds respectively from or on which the same were respectively taken in or made, and shall be divided, allotted and inclosed, by virtue of this Act; provided nevertheless, that all such Encroachments shall be allotted to the Person or Persons who shall at the Time of making the Allotments be in Possession of such Encroachments, or in Receipt of the Rents and Profits thereof, in lieu of the Whole, if sufficient for that Purpose; or if not, then in Part of the Share or Allotment of the said Commons or Waste Grounds to which such Person shall be respectively entitled by virtue of this Act; and which Encroachments, in making such Allotment or Allotments, shall be estimated according to the Value of the Land or Ground so taken in or encroached, and without considering the Value of any Erections or Buildings thereon; and if the Person or Persons who shall be in Possession of such Encroachments respectively, or in the Receipt of the Rents and Profits thereof, shall be entitled to no Allotment, or to an Allotment not equal to the Value of such respective Encroachments, but shall be willing to purchase the same, then the said Commissioners shall ascertain the Price thereof, or of such Part thereof as shall exceed the Value of the Allotment to be made to such Possessor or Possessors thereof, in respect of his or their other Property; in ascertaining which Value the said Commissioners shall not estimate the Buildings or other Improvements thereon; and upon such Person or Persons paying such Price thereof to the said Commissioners at such Time or Times as they shall for that Purpose direct, the said Commissioners shall give and sign their Receipt or Receipts for the same, and shall thereupon allot to the Purchaser or Purchasers every such Encroachment, or such Part thereof, as shall be so purchased; and the same shall, on such Payment, be and become vested in such Purchaser or Purchasers thereof, and his and their respective Heirs and Assigns, in Fee Simple; and the said Commissioners shall apply the Purchase Money to arise thereby, as Part of the Monies to be raised for defraying the general Expences of this Act; and if any Surplus Money shall remain, such Surplus shall be divided and apportioned between the several Proprietors and Persons interested in the said Commons and Waste Grounds, in such Manner and Proportions as is hereinafter directed concerning the Surplus to arise from the Sale of such Part of the said Commons and Waste Grounds as shall be

ſold for the Purpoſes of this Act; provided, that if the Perſon or Perſons who ſhall be in Poſſeſſion of, or entitled to, the Rents and Profits of ſuch Encroachment or Encroachments, ſhall not be willing to purchaſe the ſame, or ſo much thereof as ſhall be offered for Sale as aforeſaid, on the Terms aforeſaid, then the ſaid Commiſſioners ſhall allot the Part thereof which was ſo to be ſold to ſome other Perſon or Perſons, as Part of his, her, or their Allotment or Allotments, as to the ſaid Commiſſioners ſhall ſeem proper; or the ſaid Commiſſioners ſhall and may ſell the ſame in ſuch Manner and ſuch Regulations as they are authorized to ſell any Part or Parts of the ſaid Commons and Waſte Grounds for defraying ſuch Expences as hereinafter mentioned; provided alſo, that all Encroachments made upon the ſaid Commons and Waſte Grounds within the Space of Five Years immediately before the paſſing of this Act, ſhall be thrown open, without any Recompence whatſoever to be made to the Poſſeſſor or Poſſeſſors thereof; and if any Queſtion or Diſpute ſhall ariſe touching the ſaid Encroachments, or which of them ſhall be ſo deemed to be Part or Parcel of the ſaid Commons or Waſte Grounds, ſuch Diſputes ſhall be referred to the Determination of the ſaid Commiſſioners; but no ſuch Determination ſhall prevent any of the Parties from trying their Rights at Law in reſpect of any Matter of Title to the ſaid Encroachments.

Power to ſtop up old Roads.

XV. And be it further enacted, That it ſhall be lawful for the ſaid Commiſſioners to ſtop up any old or accuſtomed Roads paſſing or leading through any Part of the old Incloſures in the ſaid Manor or Townſhip, and to ſet out and appoint, make, repair and widen any new or other Road or Roads in, upon, or over any of the ſaid old Incloſures; nevertheleſs as to public Roads, with the Concurrence of Two Juſtices of the Peace, acting in and for the ſaid County of *Cumberland*, and ſubject to the Rules, Orders, and Reſtrictions contained in, and in Manner directed by the ſaid recited Act.

Commiſſioners to ſcour out Brooks, &c.

XVI. And be it further enacted, That the ſaid Commiſſioners ſhall and may ſcour out and widen all ſuch Brooks, Streams, Ditches, Watercourſes, Tunnels and Bridges within the ſaid Manor or Townſhip, and alſo ſhall and may ſet out, order and direct ſuch new Ditches, Drains, Watercourſes, Tunnels, Water-Gates, Banks and Bridges to be made, of ſuch Depth and Breadth, and in ſuch Situations and Directions as they the ſaid Commiſſioners ſhall think proper, as well in, through, over and upon the Commons and Waſte Grounds hereby directed to be divided and incloſed as aforeſaid; as alſo in, through, and over any ancient Incloſures, or other Lands and Grounds within the ſaid Manor or Townſhip, or any Part or Parts thereof (making or ordering to be made ſuch Satisfaction to the Owners, Leſſees or Tenants of ſuch ancient Incloſures, or other Lands or Grounds, for the Damage, if any done thereby, as they ſhall judge reaſonable); and the ſaid Commiſſioners ſhall and may, and they are hereby authorized and required, in and by their general Award, to order and direct by whom, and at whoſe Expence, and at what Times, and in what Manner the ſaid Brooks, Ditches, Drains, Watercourſes, Tunnels, Water-Gates, Banks and Bridges ſhall be thereafter repaired, cleanſed, ſcoured, and maintained: Provided always, that no ſuch Brook or Stream ſhall be diverted or turned without the Conſent of the Owner or Owners of the ancient incloſed

incloſed Lands and Grounds from which any ſuch Brook or Stream ſhall be diverted, or into which any ſuch Brook or Stream ſhall be turned.

XVII. And be it further enacted, That the ſaid Commiſſioners, after ſetting out the public Roads and Highways in Manner directed by the ſaid recited Act, ſhall aſſign, ſet out and allot ſuch Parts of the ſaid Commons and Waſte Grounds hereby directed to be divided, allotted and incloſed, as the ſaid Commiſſioners ſhall think neceſſary, as and for public Quarries, and Gravel, Sand, and Clay Pits, and Places for getting Gravel for the Repair of the Roads to be made over the ſaid Commons and Waſte Grounds, and alſo as and for public Watering Places for Cattle; and the ſame Allotment, when ſo ſet out, ſhall for ever thereafter be uſed reſpectively by the Surveyors of the Highways for the Time being of the Diſtricts or Quarters entitled to Right of Common upon the ſaid Commons and Waſte Grounds, and by the Owners of Lands, Tenements, and Hereditaments within the ſame, and their Tenants and Leſſees for the Time being, and within the ſaid ſeveral Townſhips, Diſtricts or Quarters, in ſuch Manner, and under ſuch Rules and Regulations, as the ſaid Commiſſioners ſhall by their Award direct, but not to be elſewhere or otherwiſe diſpoſed of. Allotment for public Quarries, Watering-places, Places for getting Gravel, &c.

XVIII. And be it further enacted, That the ſaid Commiſſioners ſhall, and they are hereby authorized and required to ſet out unto and for the Lord of the ſaid Barony of *Wigton* for the Time being, and the Lord of the ſaid Manor of *Dundraw* for the Time being, reſpectively, eſtabliſhing their Right and Title to the Soil of the ſaid Commons and Waſte Grounds, or any Part or Parts thereof, or either of them ſo eſtabliſhing ſuch his Right or Title, and unto and for the future Lords, for the Time being, of the ſaid Barony and Manor, reſpectively, or either of them ſo eſtabliſhing their or his Right and Title, for ever, ſo much and ſuch Part and Parts of the ſaid Commons and Waſte Grounds, to which they or he ſhall reſpectively ſo eſtabliſh their or his Right or Title as aforeſaid, as ſhall in the Judgment of the ſaid Commiſſioners be equal to One-fourteenth Part or Share of the ſaid Commons and Waſte Grounds, or ſuch Part or Parts thereof as ſhall remain after the Allotments hereinbefore mentioned and directed to be made, for the public Highways and Quarries, and Places for watering Cattle, and getting Gravel and Sand, and other the public Purpoſes aforeſaid, and the Allotment and Allotments to the ſaid Sir *Henry Fletcher* and *Walter Fletcher* reſpectively, in lieu of the Tythes of the ſaid Commons and Waſte Grounds (but not of the old Incloſures) ſhall have been ſet out and aſcertained according as the Lords of the ſaid Barony and Manor reſpectively, ſhall reſpectively eſtabliſh their Claims or Titles as aforeſaid, in lieu of and as a full Compenſation for his or their reſpective Right of Soil therein, over and beſides any Allotments to be made to them, or either or any of them, for Right of Common. Allotment to the Lord or Lords.

XIX. And be it further enacted, That the ſaid Commiſſioners ſhall alſo ſet out, allot, and appoint ſo much and ſuch Part of the ſaid Commons and Waſte Grounds as ſhall in the Judgment of the ſaid Commiſſioners be equal to One-eighth Part of the ſaid Commons and Waſte Grounds remaining after the ſetting out of the public Highways, Watering Places, Quarries, and Sand, Gravel, and Clay Pits, which ſaid Eighth Allotment for Tythes of the Commons.

Eighth Part the ſaid Commiſſioners ſhall divide, allot, and apportion unto and between the ſaid Sir *Henry Fletcher* and *Walter Fletcher*, and the future Owners of the ſaid Great Tythes, and the Vicars of the ſaid Vicarage reſpectively, for the Time being, for ever, in Shares proportionate to their reſpective Intereſts, as and for a full Recompenſe and Satisfaction for all Tythes, Moduſes, Preſcriptions, Vicarial and Eccleſiaſtical Dues, (*Eaſter* Offerings, Mortuaries, and Surplice Fees only excepted) which could or might thenceforth ariſe out of or from the ſeveral Allotments of the ſaid Commons and Waſte Grounds to be made to the Perſons entitled thereto, and who would have been liable to the Payment of Tythes in reſpect thereof; provided, that all ſuch outermoſt or Ring Fences as ſhall incloſe the ſaid Allotment or Allotments to be ſet out in lieu of the Tythes, Preſcriptions, Moduſes, and Vicarial and Eccleſiaſtical Dues of the ſaid Commons and Waſte Grounds hereby authorized and directed to be incloſed (but not of the old Incloſures), and as ſhall not be liable or directed to be repaired by the Owners of the Lands adjoining thereto, ſhall by the ſaid Commiſſioners be firſt made well and ſufficiently, and in ſuch a Manner as the ſaid Commiſſioners ſhall direct, the Charges and Expences whereof ſhall be raiſed and paid in the ſame Manner as the public Charges and Expences of carrying this Act into Execution are hereby directed to be raiſed and paid; but that all the ſaid Fences, after the firſt making and erecting thereof, ſhall at all Times for ever thereafter be repaired, maintained, preſerved, and kept in good and ſufficient Repair, by and at the Expence of the Owners of the ſaid Great Tythes, and Vicars of the ſaid Vicarage for the Time being, reſpectively, in ſuch Shares and Proportions as the ſaid Commiſſioners ſhall direct; provided, that if any Perſon or Perſons, other than the ſaid Sir *Henry Fletcher* and *Walter Fletcher* reſpectively, and their reſpective Sequels in Right, ſhall be lawfully entitled to any Tythes or Preſcriptions in lieu thereof, which do now or might henceforth ariſe from any Part or Parts of the ſaid Commons and Waſte Grounds, then, and in ſuch Caſe, the ſaid Commiſſioners ſhall allot to ſuch Perſon or Perſons ſo much of the ſaid Commons and Waſte Grounds as they ſhall deem equivalent to and a full Recompenſe and Satisfaction for all ſuch Tythes and Preſcriptions, which Allotment ſhall be taken, and deducted in a due and fair Proportion from the aforeſaid Eighth Part of the ſaid Commons and Waſte Grounds hereinbefore directed to be allotted to the ſaid Sir *Henry Fletcher* and *Walter Fletcher* reſpectively, and their reſpective Sequels in Right, in Compenſation as aforeſaid.

Allotment for Tythes of ancient Incloſures.

XX. And be it further enacted, That the ſaid Commiſſioners ſhall alſo ſet out and allot unto and for the ſaid Sir *Henry Fletcher*, Sir *Waſtel Briſco*, *Walter Fletcher*, *John Barnes*, and the ſeveral other Perſons Proprietors of Tythes, Moduſes, Preſcriptions, or other Eccleſiaſtical Dues, ariſing and payable from and out of the ſeveral ancient Incloſures, or other the ancient Meſſuages, Lands, and Tenements entitled to Right of Common upon the ſaid Commons and Waſte Grounds, or any Part thereof, and to their Sequels in Right reſpectively, in ſeparate Allotments proportionate to the reſpective Intereſts of the ſaid Proprietors, ſo much of the ſaid Commons and Waſte Grounds as ſhall in the Judgment of the ſaid Commiſſioners be deemed equivalent to and a full Recompenſe and Satisfaction for all Tythes, Moduſes, Preſcriptions,

and

and other Vicarial and Eccleſiaſtical Dues (*Eaſter* Offerings, Mortuaries, and Surplice Fees only excepted,) due and payable to the ſaid Sir *Henry Fletcher*, Sir *Waſtel Briſco*, *Walter Fletcher*, *John Barnes* and others, the Proprietors of Tythes as aforeſaid, for and in reſpect of the ſeveral old Incloſures and other the ancient Meſſuages, Lands, and Tenements already incloſed, and intitled to Right of Common upon the ſaid Commons and Waſte Grounds, and which are now liable and ſubject to the Payment of ſuch Tythes in kind, or of any ſuch Moduſes, Preſcriptions, or Vicarial or Eccleſiaſtical Dues as aforeſaid; provided that the ſaid ſeveral Allotments ſo to be given in exchange for the ſaid Tythes, Moduſes, Preſcriptions, and other Vicarial and Eccleſiaſtical Dues (except as before excepted), payable in reſpect of the ſaid ancient Incloſures, Meſſuages, and Tenements, ſhall be deducted from the ſeveral Shares of Common to which the ſaid Premiſes reſpectively would be intitled in Proportion to the Value of the Tythes, Moduſes, Preſcriptions, and other Vicarial and Eccleſiaſtical Dues to which ſuch Premiſes are reſpectively liable and ſubject; provided alſo, that the ſeveral Allotments to be made in reſpect of the ſaid Tythes, Moduſes, Preſcriptions, and other Eccleſiaſtical Dues, due and payable to the ſaid Proprietors as aforeſaid, ſhall in caſe they reſpectively require the ſame, be laid contiguous either to the ancient Incloſures or to the new Allotments of the ſaid Proprietors; provided alſo, that the Allotment to be made to the ſaid *Walter Fletcher*, in Recompenſe and Satisfaction for all the Tythes, Moduſes, Preſcriptions, and Dues, (except as aforeſaid,) payable in reſpect of the ſaid ancient Incloſures, Meſſuages, and Tenements, ſhall be well and ſufficiently ring-fenced by the ſaid Commiſſioners, at the proportionable Expence and Charges of the ſaid reſpective Proprietors of ſuch Meſſuages, Lands, and Tenements as are liable to pay the ſaid Tythes, Moduſes, Preſcriptions, or Dues, to the ſaid *Walter Fletcher*, and that ſuch Expence and Charges ſhall be levied and recovered in the ſame Manner as by the ſaid recited Act any Penalties or Forfeitures are authorized to be levied or recovered.

Allotment of the Reſidue.

XXI. And be it further enacted, That after the ſeveral Allotments hereinbefore directed ſhall have been made, the ſaid Commiſſioners ſhall and they are hereby empowered to ſet out, aſſign, and allot all the Reſidue of the ſaid Commons and Waſte Grounds intended to be divided and incloſed, unto and amongſt the ſaid Sir *Waſtel Briſco*, *John Barnes*, *Joſeph Sandert*, *John Fell*, and all and every other the Owners and Proprietors of Meſſuages, Lands, and Tenements, having Right of Common or other Rights in or upon the ſaid Commons and Waſte Grounds, in lieu of their reſpective Rights thereon, according and in Proportion to ſuch Rights and Intereſts, in ſuch Manner as the ſaid Commiſſioners ſhall in their Judgment think juſt and equitable, but ſubject to the Exceptions, Rules, Orders, and Directions, in this Act contained.

Directions reſpecting Peat-Moſſes.

XXII. And whereas ſeveral of the Perſons entitled to Right of Common upon the ſaid Commons and Waſte Grounds are or claim to be entitled unto and have enjoyed the ſole Right of digging Peat upon certain Peat Moſſes particularly appropriated for that Purpoſe; be it therefore enacted, That the ſaid Peat Moſſes ſhall be deemed Part and Parcel of the ſaid Commons and Waſte Grounds hereby directed to be divided, allotted, and incloſed, and ſhall be divided, allotted, and incloſed by the ſaid Commiſſioners accordingly; but in caſe it

it ſhall appear to the ſaid Commiſſioners that any Perſon or Perſons is or are entitled to the excluſive Right of digging Peats in any ſuch Peat Moſſes, the ſaid Commiſſioners ſhall and they are hereby required to ſet out and allot to ſuch Perſon or Perſons ſo much or ſuch Part of the ſaid Commons and Waſte Grounds as they ſhall deem equivalent to and a full Recompenſe and Satisfaction for ſuch excluſive Right.

Allotments to be Freehold.

XXIII. And be it further enacted, That all Allotments to be made of the ſaid Commons and Waſte Grounds ſhall be and become Eſtates of Freehold in the ſeveral and reſpective Perſons, Bodies Politic and Corporate, to or for whom the ſame ſhall be ſet out, allotted, and aſſigned reſpectively as aforeſaid, (ſubject and without Prejudice nevertheleſs to the Rights of the Lords of the ſaid Barony and Manor reſpectively to the Mines, Minerals, Stones, Slates, Clay, Royalties, Liberties, Privileges, Powers, and Authorities, or any of them, hereby reſerved to them,) but ſo as that the ſaid ſeveral Allotments of the ſaid Commons and Waſte Grounds ſhall be, enure, and remain; and the ſeveral Perſons to and for whom the ſame Allotments ſhall be ſo made as aforeſaid ſhall thenceforth ſtand and be ſeiſed of the ſaid Allotments to and for ſuch and the ſame Uſes, Truſts, Eſtates, Intents, and Purpoſes, and ſubject to ſuch and the ſame Powers, Proviſoes, Agreements, Mortgages, Charges, Debts, Payments, and Incumbrances, as the ſeveral Eſtates, Lands, Grounds, and Premiſes, in lieu whereof ſuch new Allotments ſhall be made as aforeſaid now are or would have been ſubject and liable to or charged with or affected by in caſe this Act had not been made.

Proprietors, with the Conſent of the Commiſſioners, may incloſe their Allotments before the Whole are ſtaked out, paying a Rent.

XXIV. And be it further enacted, That it ſhall and may be lawful to and for the ſaid Commiſſioners, if they ſhall think it proper and expedient ſo to do, immediately, or at any Time or Times after the paſſing of this Act, and before all the Allotments to be made by virtue thereof are ſtaked out, and the Rights and Intereſts of all the Proprietors fully aſcertained, to ſet out and allot to any ſuch Proprietors, upon Application in Writing made to the ſaid Commiſſioners for that Purpoſe, any Parcel or Parcels of Land as Part of the Allotments to be made to ſuch Proprietors reſpectively, and by Writing under their Hands to authorize and empower ſuch Proprietors reſpectively to fence, occupy, and enjoy the ſame, in Severalty, paying ſuch Annual Rents in reſpect thereof, until the Whole of the Allotments to be made by virtue of this Act ſhall be aſcertained and ſtaked out, as the ſaid Commiſſioners ſhall fix and appoint, which Rents ſhall be applied by the ſaid Commiſſioners towards the Payment of the Expences of obtaining this Act and carrying the ſame into Execution; and the ſaid Commiſſioners ſhall have all ſuch Remedies for Recovery thereof as Landlords now have or ſhall at any Time hereafter be entitled to for the Recovery of Rent in Arrear.

For allowing Exchanges to be made.

XXV. And be it further enacted, That it ſhall and may be lawful to and for the ſaid Commiſſioners to ſet out, allot, and award any Lands, Tenements, or Hereditaments within the ſaid Pariſh of *Brumfield*, in lieu of and in Exchange for any other Lands, Tenements, or Hereditaments within the ſaid Pariſh, or within any adjoining Pariſh, Townſhip, Hamlet, or Place; provided that all ſuch Exchanges be aſcer-

tained, ſpecified, and declared in the Award of the ſaid Commiſſioners, and be made with the Conſent of the Owner or Owners of the Lands, Tenements, or Hereditaments which ſhall be ſo exchanged, whether ſuch Owner or Owners ſhall be a Body or Bodies Politic, Corporate or Collegiate, or a Tenant or Tenants in Fee Simple, or for Life, or in Fee Tail General or Special, or by the Courteſy of *England*, or for Years determinable on any Life or Lives, or with the Conſent of the Guardians, Truſtees, Feoffees for charitable or or other Uſes, Huſbands, Committees, or Attornies of or acting for any ſuch Owners aforeſaid, who at the Time of making ſuch Exchange or Exchanges ſhall be reſpectively Infants, Femes Covert, Lunatics, or under any other legal Diſability, or who ſhall be beyond the Seas, or otherwiſe diſabled to act for themſelves, himſelf, or herſelf, (ſuch Conſent to be teſtified in Writing under the Common Seal of the Body Politic, Corporate or Collegiate, and under the Hands of the other conſenting Parties reſpectively,) and all ſuch Exchanges ſo to be made ſhall be good, valid, and effectual in the Law to all Intents and Purpoſes whatſoever; provided, that no Exchange of any Lands, Tenements, or Hereditaments holden in right of any Church, Chapel, or other Eccleſiaſtical Benefice, ſhall be made without the Conſent (teſtified as aforeſaid) of the Patron thereof, and of the Ordinary of the Dioceſe in which ſuch Lands, Tenements, or Hereditaments ſhall lie and be ſituate; provided alſo, that all Coſts, Charges, and Expences attending the making and completing any Exchanges or Partitions, ſhall be paid and borne by the ſeveral Perſons making ſuch Exchanges or Partitions, in ſuch Manner and in ſuch Proportions as the ſaid Commiſſioners ſhall by their ſaid Award order and direct.

Commiſſioners authorized to determine Leaſes of Allotments.

XXVI. And be it further enacted, That the ſaid Commiſſioners, upon the Application in Writing of any Proprietor or Proprietors of Meſſuages, Lands, Tenements, or Hereditaments, ſituate within the ſaid Pariſh of *Brumfield*, or to be exchanged by virtue of this Act, now holden and occupied by virtue of any Leaſe or Agreement at Rack Rent for any Term or Numbers of Years unexpired, to annul and make void ſuch Leaſe or Agreement, ſo far as the ſame may affect any Allotment to be made of the ſaid Commons and Waſte Grounds hereby directed to be incloſed, or any Part thereof, or the Lands, Tenements, or Hereditaments to be exchanged by virtue of this Act, or any Part thereof, (but no further or otherwiſe,) and by their Award to order and direct from what Time the Term or Terms therein ſhall ceaſe and determine, the reſpective Proprietors of the ſaid Meſſuages, Lands, Tenements, or Hereditaments, making ſuch Satisfaction to their reſpective Leſſees, as to the ſaid Commiſſioners ſhall ſeem juſt and reaſonable, and by their Award direct to be paid to them reſpectively, as a Compenſation for ſuch Leaſes or Agreements: Provided always, that when any Lands to be taken in Exchange, and which ſhall be under Leaſe, ſhall be wholly ſituate in any adjoining Pariſh, the Leaſe of ſuch laſt-mentioned Land ſhall not be annulled or made void.

Wills, Settlements, &c. not to be affected.

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

tion, Debt, or Incumbrance out of, upon, or affecting any of the Lands, Tenements, or Hereditaments to be divided, allotted, or exchanged by virtue of this Act or any Part thereof; but that the respective Parties to whom any Lands or Hereditaments shall be allotted or awarded in exchange by virtue of this Act, shall stand and be seised thereof to such and the same Uses, and for such and the same Estates, and subject to such and the same Wills, Jointures, Rents, and Charges, and no other, as the Lands, Tenements, and Hereditaments whereof such Person or Persons was or were seised or possessed at or immediately before the Execution of the Award to be made by the said Commissioners, and for which and in respect whereof such Allotments or Exchanges shall be made, would have been subject to, charged with, or affected by, in case this Act had not been made.

Owners may dispose of their Allotments prior to the Award.

XXVIII. And be it further enacted, That it shall and may be lawful to and for any Person or Persons who shall or may be entitled to any Allotment or Allotments in or upon the said Commons or Waste Grounds by virtue of this Act, or who shall be Owners or Proprietors of any Common Right or other Right upon the said Commons or Waste Grounds, to give, grant, bargain, sell, demise, mortgage, limit, convey, and dispose of the same for all or any Part of his, her, or their Estate or Interest therein, or Right thereto, (but no further or otherwise) either separate and distinct from or along with any Estate in Right of which he, she, or they is or are entitled to the same, at any Time before the Execution of the Award of the said Commissioners; and every such Gift, Grant, Bargain, Sale, Demise, Mortgage, Limitation, Conveyance, or Disposition thereof, shall be of the same Force and Validity as if the same were made after the Execution of the said Award; and it shall and may be lawful to and for the said Commissioners, and they are hereby authorized and required to award each such Allotment so sold or disposed of, or set out in lieu of any Common Right, or other Right so sold or disposed of, on its being satisfactorily proved to them that such Sale and Disposition shall have been really and *bonâ fide* made and completed to the Purchaser or Purchasers thereof, or other Person or Persons entitled to the same by virtue of any such Sale or Disposition; and if any Person or Persons shall at any Time before the Execution of the said Award have sold his, her, or their Right, Interest, or Property in, over, or upon the said Commons or Waste Grounds to any other Person or Persons, the said Commissioners are hereby authorized and required to make an Allotment or Allotments of Land unto the Purchaser under every such Sale, or to his or her Heirs or Assigns, as convenient to any other Allotment or Estate of such Purchaser as reasonably may be, for or in respect of such Right, Interest, and Property so sold as aforesaid; and every such Purchaser, or his or her Heirs or Assigns, shall and may, from and after the Execution of the said Award, hold and enjoy the Land so to be allotted to him or her as aforesaid, in the same Manner and for the same (but for no further or other) Estate or Interest to all Intents and Purposes as the Vendor in every such Sale might or could have held and enjoyed the same in case such Sale had not been made.

When Tythes shall cease.

XXIX. And be it further enacted, That all Tythes, Moduses, Prescriptions and Compositions for Tythes, and all other Ecclesiastical Dues and

and Payments whatſoever, (Mortuaries, *Eaſter* Offerings, and Surplice Fees only excepted,) as well for or in reſpect of the ſeveral old Incloſures, and other the ancient Meſſuages, Lands and Tenements in the Manor or Townſhip aforeſaid, as alſo for or in reſpect of the ſaid Commons and Waſte Grounds hereby directed to be divided and incloſed, ſhall on the Second Day of *February* next, after the ſeveral Allotments to be made in lieu of ſuch Tythes, Moduſes, Preſcriptions, Compoſitions, and other Eccleſiaſtical Dues and Payments, ſhall have been ſet out and ring-fenced as hereinbefore directed, ceaſe and be for ever extinguiſhed, and be no longer paid or payable.

No Sheep to be kept in the Allotments for Ten Years after the Award, except in certain Caſes.

XXX. And be it further enacted, That no Sheep or Lambs ſhall be kept or depaſtured in any of the ſaid Allotments from the Time ſuch Allotments are ſtaked out and fenced, within the Space of Ten Years after ſigning the Award of the ſaid Commiſſioners, unleſs the Owners or Occupiers thereof ſhall, at their own Expence, fence and effectually guard the young Quickſet Hedges on every ſide of the Allotments, where ſuch Sheep or Lambs ſhall be kept and depaſtured; and if any ſuch Perſon ſhall neglect to fence and effectually guard ſuch Quickſet Hedges as aforeſaid, the Perſon or Perſons who ſhall ſuſtain any Injury or Damage from ſuch Neglect may bring his or their Action or Actions at Law for the Damages actually ſuſtained, or may diſtrain and impound for the ſame.

Directions for defraying the Expences of this Act.

XXXI. And be it further enacted, That all the Coſts, Charges, and Expences of incloſing and fencing any Allotment or Allotments to be made to the ſaid Sir *Henry Fletcher* and *Walter Fletcher*, and their reſpective Sequels in Right, in Lieu of the Tythes of the ſaid Commons and Waſte Grounds (but not of the old Incloſures), and all the Coſts, Charges and Expences incident to and attending the obtaining and paſſing of this Act, and of ſurveying, meaſuring, planning, valuing, dividing and allotting the Lands and Premiſes hereby directed to be divided and allotted, and of preparing and enrolling the Award of the ſaid Commiſſioners, and all the Charges and Expences of the ſaid Commiſſioners, their Aſſiſtants and Servants, and all other neceſſary Charges and Expences of the ſeveral Perſons to be employed by the ſaid Commiſſioners 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 Commiſſioners over the ſaid Commons and Waſte Grounds, and of making, repairing, and widening the ſaid Roads leading through the ancient Incloſures within the ſaid Townſhip or Manor, and all other Expences of carrying this Act and the ſaid recited Act into Execution, ſhall be borne, defrayed, and paid by the ſeveral Perſons, Bodies Politic, Corporate or Collegiate, to whom any Allotment or Allotments ſhall be made (ſave and except the ſaid Sir *Henry Fletcher* and *Walter Fletcher*, and their reſpective Sequels in Right, for or in reſpect of any Allotment or Allotments to be made to them, or either or any of them, for or in reſpect of Tythes) in ſuch Shares or Proportions, at ſuch Time or Times, and to ſuch Perſon or Perſons as the ſaid Commiſſioners ſhall direct or appoint, according to the Value of their ſeveral and reſpective Allotments; and in caſe any Perſon or Perſons ſhall at any Time or Times refuſe or neglect to pay

his, her, or their Proportion of such Costs, Charges and Expences, or any Part thereof, according to such Direction or Appointment as aforesaid, then and in such Case the same shall and may be recovered in the Manner directed in and by the said recited Act.

Allowance to Commissioners and their Clerk.

XXXII. And be it further enacted, That out of the Monies to be raised for the general Purposes of this Act there shall be paid to each of the said Commissioners the Sum of Two Pounds and Two Shillings, and no more, for each Day he shall be employed in travelling to and from, and attending the Execution of this or the said recited Act; and the said Clerk shall be paid any Sum not exceeding the Sum of Two Pounds and Two Shillings, as the said Commissioners shall think proper; and that as well the Commissioners and their Clerk, as also all Proprietors and other Persons whosoever, shall pay their own Expences at all Meetings to be holden under the Authority of this Act.

For paying Interest on Money advanced.

XXXIII. And be it further enacted, That in case any Money shall be advanced or paid by any Person or Persons for defraying any of the Expences of or incident to the soliciting, applying for, procuring, obtaining or passing this Act, or in or about the Execution of any of the Powers or Authorities given hereby or by the said recited Act, or the carrying the Division and Inclosure of the said Commons and Waste Grounds into Execution, or in any Manner relative thereto, the said Money shall be repaid, with lawful Interest, out of the first Money to be raised by the said Commissioners in pursuance of this Act.

Commissioners to lay their Accounts before a Justice once in every Year.

XXXIV. 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 this Act) the said Commissioners shall, and they are hereby required to make a true and just Statement or Account of all Monies by them received and expended, or due to them for their own Trouble and Expences in the Execution of this or the said recited 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 *Cumberland*, (not interested in the said Division and Inclosure,) to be by him examined and balanced, and such Balance shall by such Justice be stated in the Book of Accounts to be kept in the Office of the Clerk of 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.

Deposit of Award.

XXXV. And be it further enacted, That the said Award of the said Commissioners, after the same shall have been enrolled in the Manner in the said recited Act mentioned, shall, together with the Maps and Plans annexed thereto, be deposited in the Parish Church of *Brumfield* aforesaid.

Appeal to the Sessions.

XXXVI. 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 Act or the said recited Act, (other than and except such Determinations as are by this Act, or the said recited Act, declared to be final, binding, and conclusive, and except in those Cases

wherein an Iſſue at Law is hereinbefore authorized to be tried,) then, and in every ſuch Caſe, he, ſhe, or they, may appeal to the General Quarter Seſſions of the Peace which ſhall be holden for the ſaid County of *Cumberland*, within Four Calendar Months next after the Cauſe of Complaint ſhall have ariſen, on giving to the ſaid Commiſſioners, or any One of them, and to the Party or Parties concerned, Fourteen Days' Notice in Writing of ſuch Appeal, and of the Matter thereof; and the Juſtices (not intereſted in the Premiſes), in ſuch Seſſions aſſembled, are hereby authorized and required to hear and determine the Matter of every ſuch Appeal, and to make ſuch Order therein, and to award ſuch Coſts and Damages, as to them ſhall ſeem reaſonable, and by their Order or Warrant to levy the Coſts and Damages which ſhall be ſo awarded by Diſtreſs and Sale of the Goods and Chattels of the Party or Parties made liable to pay the ſame, rendering the Overplus (if any) to the Owner or Owners of ſuch Goods and Chattels, after deducting the reaſonable Charges of ſuch Warrant, Diſtreſs and Sale; and every Order and Determination of the ſaid Juſtices upon every ſuch Appeal ſhall be final and concluſive to all Parties concerned, and ſhall not be removed or removeable by *Certiorari*, or any other Writ or Proceſs whatſoever, into any of His Majeſty's Courts of Record at *Weſtminſter* or elſewhere; and in caſe ſuch Appeal ſhall appear to the ſaid Juſtices to be frivolous, vexatious, or without Foundation, then the ſaid Juſtices ſhall, and they are hereby required to award ſuch Coſts to be paid by the Appellant or Appellants as to them ſhall ſeem reaſonable; and which Coſts ſhall be levied in Manner aforeſaid; provided that the ſaid Juſtices in their ſaid General Quarter Seſſions ſhall not, by any Order or Orders, or any ſuch Appeal, alter, impeach, prejudice or diſturb the Allotment or Allotments of any Perſon or Perſons to whom ſuch Notice of Appeal as is hereinbefore mentioned, ſhall not have been previouſly given.

Not to prejudice the Lords' Rights.

XXXVII. Provided always, and be it further enacted, That nothing in this Act contained ſhall extend or be conſtrued or adjudged to defeat, leſſen or prejudice the Right, Title or Intereſt of the Lords of the ſaid Barony and Manor reſpectively for the Time being, who ſhall reſpectively eſtabliſh his, their, or any of their Claim or Claims, Title or Titles to the Soil and Royalties of the ſaid Commons and Waſte Grounds, or any Part or Parts thereof, of, in, or to the Seigniories or Royalties, Franchiſes or Liberties incident or belonging to them, or any of them; but the Lords of the ſaid Barony and Manor reſpectively for the Time being, ſhall and may at all Times for ever hereafter have, hold, take and enjoy all Rents, Fines, Payments, Suits, and Services to or at the Lords Courts, Perquiſites and Profits of Courts, Suits, and Services to the Lord's Mill, Piſcaries, Fiſhings, Hunting, Hawking, and Fowling, Free Chaſe and Free Warren, Goods and Chattels of Felons and Fugitives, Felons of themſelves, and put in Exigent, Deodands, Treaſure Trove, Waifs, Eſtrays, Forfeitures, Eſcheats, Fairs, Markets, Tolls, Cuſtoms, Stallages, Dues, Duties, and other Rights, Royalties, Liberties, Privileges, Franchiſes, Pre-eminences, Juriſdictions and Appurtenances whatſoever, (except ſuch as are expreſsly taken away by this Act,) in the ſame and as full, ample, and beneficial Manner, to all Intents and Purpoſes, as they are now held, taken, or enjoyed, or have been anciently or heretofore uſed, exerciſed, or enjoyed by

by the preſent or any former Lord or Lords of the ſaid Manor or Barony, or as he or they, or any of them, might or could have had, held, uſed, exerciſed, received, taken or enjoyed the ſame, in caſe this Act, or the ſaid recited Act, had not been made; and that notwithſtanding the Diviſion and Incloſure hereby authorized to be made, the ſaid Lords of the ſaid Barony and Manor reſpectively, making out and eſtabliſhing ſuch Claims or Titles to the Soil as hereinbefore mentioned, ſhall for ever hereafter be reſpectively deemed and taken to be Owner or Owners of all the Mines of Coal, Lead, Copper, Tin, Iron, and all other Mines, Minerals, Ores, Stones, Clay, Foſſils and Quarries, of what Nature or Kind ſoever, within or under thoſe Parts of the ſaid Commons and Waſte Grounds, to the Soil and Royalties of which they ſhall reſpectively be entitled, as well thoſe not opened as thoſe already opened (except the ſaid public Stone Quarries, Clay, Sand, and Gravel, to be ſet out for the Purpoſes aforeſaid), and ſhall have full Power and Authority to uſe and exerciſe all convenient Ways, Way Leaves, and Liberties of laying, making and repairing Waggon Ways, and other Ways, in, over and along the ſaid Commons and Waſte Grounds, and the ſeveral Allotments thereof, and of ſearching for, winning, and working the ſaid Minerals and Quarries, and leading and carrying away the Coal, Lead, Tin, Copper, Iron or other Ore, Metals, Mines, Minerals, Stones, Slate, Clay and Foſſils, to be gotten therein and thereout reſpectively, and of making Pits, Shafts, Pit Rooms, Heap Rooms, Drifts, Levels, Sumps and Watercourſes, and erecting and uſing Fire Engines and other Engines, and all other Matters and Things now in uſe or hereafter to be invented for the Purpoſes aforeſaid, or any of them, in, through, over or along the ſaid Commons and Waſte Grounds, and the ſeveral and reſpective Allotments thereof, and all other Powers, Privileges and Authorities to do or execute any neceſſary Acts or Things for the Purpoſes aforeſaid, in and over the ſame, in ſuch and the like Manner as if this Act had not been paſſed.

Satisfaction or Damages.

XXXVIII. And be it further enacted, That if at any Time after the ſaid Diviſion and Incloſure ſhall have been made by virtue of this Act, the ſaid Lords of the ſaid Barony and Manor reſpectively for the Time being, or their reſpective Leſſees, Farmers, or Tenants, Servants or Workmen reſpectively, ſhall enter upon or make any uſe of any Allotment or Allotments of the ſaid Commons and Waſte Grounds hereby directed to be divided or incloſed, for the Purpoſes of winning or getting the ſaid Coal, Lead, Tin, Copper, Metals, Ores, Mines, Minerals, Stones, Slates, Clay or Foſſils, or other Royalties, or for laying or ſtoring the ſame when got, or the Rubbiſh or other Produce of the ſaid Mines or Works, or for erecting Fire Engines or other Engines or Buildings, or for laying, making, or continuing any Waggonways, or other Ways or Roads, or any other Works above Ground for the Purpoſes aforeſaid, or for uſing or exerciſing any Power or Authority above Ground hereby given, ſaved or reſerved to them, or any of them reſpectively for the Time being, or their reſpective Leſſees, Farmers or Tenants, Servants or Workmen reſpectively, in or about working, winning, digging, raiſing, taking or carrying away the ſaid Coal, Lead, Tin, Copper, Metals, Ores, Mines, Minerals, Stones, Slates, Clay or Foſſils, or otherwiſe relative thereto, the Lords for the Time being

being of the ſaid Barony and Manor, reſpectively, ſo eſtabliſhing their Right and Title as aforeſaid; and their Leſſees, Tenants, Servants, or Workmen reſpectively, ſhall make reaſonable Satisfaction for any Damage or Injury which ſhall or may be done in the working, winning, digging, raiſing, taking or carrying away the ſaid Coal, Lead, Tin, Copper, Metals, Ores, Mines, Minerals, Stones, Slates or Foſſils, to the Perſon or Perſons, Body or Bodies Politic or Corporate, ſuſtaining ſuch Damage or Injury.

Allowing Owners of Allotments to get certain Materials for their own Uſe.

XXXIX. Provided always, and be it further enacted, That it ſhall and may be lawful to and for the reſpective Owners of Allotments of the ſaid Commons and Waſte Grounds, to dig for and get Freeſtone, Limeſtone, and Clay in their reſpective Allotments, and to uſe and apply the ſame for the Purpoſes of improving their reſpective Meſſuages, Buildings, Walls, Fences, or Lands within the ſaid Manor or Townſhip, or of erecting new Buildings, Walls, or Fences thereon, and to make Bricks and Tiles of the ſaid Clay for the Purpoſes aforeſaid, (but not to uſe the ſaid Freeſtone, Limeſtone, or Clay elſewhere, or on any other Lands than within the ſaid Manor or Townſhip, or to make any Sale, Gift, Exchange, or other Diſpoſition whatſoever thereof than as aforeſaid,) ſo as that the raiſing or taking of ſuch Freeſtone, Limeſtone, and Clay for the Purpoſes aforeſaid do no wiſe prejudice or hinder the working or carrying on of any Coal Mines, Quarries, or other Mines, or Works that now are or ſhall hereafter be wrought or carried on by the ſaid Sir *Waſtel Briſco*, or the ſaid Earl of *Egremont*, or their Sequels in Right, or other Perſon or Perſons who ſhall be entitled to the Soil of the ſaid Commons and Waſte Grounds, or any Part or Parts thereof, or their reſpective Leſſees, Servants or Workmen, in or upon any Part or Parts of the ſaid Commons and Waſte Grounds, to be incloſed by virtue of this Act.

General Saving.

XL. Saving always to the King's moſt Excellent Majeſty, his Heirs and Succeſſors, and to all and every other Perſon and Perſons, Body and Bodies Politic, Corporate, or Collegiate, and his, her, and their reſpective Heirs, Succeſſors, Executors, and Adminiſtrators, (other than and except all and every Perſon and Perſons, Bodies Politic, Corporate, or Collegiate, entitled to or claiming Right of Soil or Common upon the ſaid Commons and Waſte Grounds, or to whom any Allotment or Allotments, or other Compenſation ſhall be made by virtue of this Act or the ſaid recited Act, or who ſhall become entitled to any ſuch Allotment, or any Part thereof, or any Eſtate or Intereſt therein, or who ſhall make any Claim or Claims affecting the Boundaries of the ſaid Commons and Waſte Grounds, or any Part thereof, or any Claim or Claims of Right of Common or other Right thereon, which ſhall be adjudged and determined againſt him, her, or them as aforeſaid, and their reſpective Heirs, Succeſſors, Executors, Adminiſtrators, and Aſſigns, and all Perſons and Bodies Politic, Corporate, or Collegiate, intereſted in ſuch Property by Way of Reverſion, Remainder, or Contingency, and all Perſons claiming or to claim by, from, through, or under them, or any of them, their or any of their reſpective Heirs, Succeſſors, Executors, Adminiſtrators or Aſſigns, and all Perſons, Bodies Politic, Corporate, or Collegiate, required by this Act or the ſaid recited Act to make, but neglecting or omitting to make, their reſpective Claims according

to the Provisions thereof), all such Right, Estate, Title, and Interest as they, every, or any of them could or ought to have had and enjoyed of, in, to, or in respect of the Commons and Waste Grounds hereby directed to be divided, allotted, and inclosed, in case this Act had not been passed.

Act to be printed by the King's Printer.

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 thereof by all Judges, Justices, and others.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN, Printers to the King's most Excellent Majesty. 1813.