ANNO QUINTO

VICTORIÆ REGINÆ.

Sess. 2.

**** ***

Cap. 2.

An Act for inclosing and dividing *Wakeyhill* Common in the Parish of *Stapleton* in the County of *Cumberland*. [22d *April* 1842.]

WHEREAS the Right Honourable Sir *James Robert George Graham* Baronet is Lord of the Manor of *Solport* in the Parish of *Stapleton* in the County of *Cumberland*, and there is within and Parcel of the said Manor certain Common or Waste Lands and Grounds called *Wakeyhill* Common, containing by Estimation Three hundred and forty Acres, or thereabouts; and the said Sir *James Robert George Graham*, as such Lord of the said Manor, is Owner of the Soil of the said Common or Waste Lands and Grounds, and is entitled to all Mines and Minerals within and under the same, and to other Rights, Royalties, Liberties, and Privileges in and over the same: And whereas Sir *Simon Heward* Knight, and *Richard Miller*, *William Davidson*, *Christopher Routledge*, and *James Bell*, are respectively Owners and Proprietors of certain Messuages, Lands, or Tenements situated at *Troughead*, *Shawhouse*, and *Rowntree*, *Upper Town Trough*, and *Lowtown*, in the Parish of *Stapleton* in the County of *Cumberland* aforesaid, in respect whereof they or their Lessees or

Tenants are or claim to be entitled to Common of Pasture and Turbary, and other Rights, on the said Common or Waste Lands: And whereas the said Common or Waste Lands and Grounds are in their present State incapable of any considerable Improvement, and it will be advantageous to the Persons entitled to the said Common or Waste Lands and Grounds that the same should be divided and allotted unto and amongst them according to their respective Rights and Interests therein, in order that such Allotments may be inclosed and held in Severalty, and all Rights of Common therein extinguished; but the same cannot be effected without the Authority of Parliament: And whereas an Act was passed in the Forty-first Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for consolidating in One Act certain Provisions usually inserted in Acts of Inclosure, and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts:* And whereas another Act was passed in the Second Year of the Reign of His late Majesty King *George* the Fourth, intituled *An Act to amend the Laws respecting the inclosing of Open Fields, Pastures, Moors, Commons, and Waste Lands in* England: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said Two recited Acts passed respectively in the Forty-first Year of the Reign of King *George* the Third and in the Second Year of the Reign of King *George* the Fourth, and the several Enactments and Provisions thereof, shall, from the passing of this Act, be deemed to be and shall be executed as Part of this Act, except in such Cases wherein the same are hereby respectively repealed or varied, or wherein the same shall be inapplicable to the Purposes of this Act.

41 G. 3. c. 109.

1 & 2 G. 4. c. 23.

Recited Inclosure Acts to form Part of this Act.

Appointment of Commissioner.

II. And be it further enacted, That *John Studholme* of *Morton* in the County of *Cumberland*, Gentleman, and his Successor for the Time being, to be elected or appointed in manner herein-after mentioned, shall be the sole Commissioner for carrying this Act and the said recited Acts into execution; and it shall be lawful for the said Commissioner and he is hereby required to divide, allot, and inclose the said Common or Waste Lands and Grounds according to the Regulations and Provisions contained in the said recited Acts and this Act: Provided always, that no Person shall be capable of acting as such Commissioner (except in signing and giving Notice of the First Meeting of the Commissioner), until he shall have made and subscribed a Declaration in the Words or to the Effect set forth in Schedule (A.) to this Act; and such Declaration may be made before any Justice of the Peace for the County of *Cumberland*, and shall be in lieu of the Oath or Affirmation required by the said Act of the Forty-first Year of the Reign of King *George* the Third to be taken and subscribed by Persons acting as Commissioners in the Execution of any Act for dividing, allotting, and inclosing any Lands or Grounds.

Qualification of Commissioner.

Penalty on Persons acting not qualified.

III. And be it enacted, That if any Person not having so qualified himself shall act as a Commissioner, he shall for every such Offence forfeit

forfeit the Sum of Fifty Pounds, with full Costs of Suit, to any Person who shall sue for the same, by Action of Debt or on the Case, in any of Her Majesty's Courts of Record at *Westminster*.

Appointment of Commissioner on Vacancy.

IV. And be it further enacted, That in case the said *John Studholme*, or any Person to be appointed a Commissioner in his Room by virtue of this Act, shall die or become incapacitated, or neglect or refuse for the Space of Two Months to act as such Commissioner, it shall be lawful for the Lord of the said Manor for the Time being, and the major Part in Value (such Value to be ascertained by the Land Tax Assessment for the Time being) of the several Proprietors of Lands and Hereditaments entitled to Right of Common on the said Common or Waste Lands or Grounds, who shall attend either personally or by their respective Agents at any Meeting to be held for that Purpose (of which Meeting Notice shall be given by some One or more of the Persons interested in the said Inclosure, by Advertisement, and also on the Church Door as herein-after directed, at least Fourteen Days before such Meeting,) to appoint, by Writing under their Hands, some fit Person to be a Commissioner in the Room of the said *John Studholme*, or of the Commissioner appointed in his Place; and so from Time to Time as often as any such Commissioner shall die, neglect or refuse or become incapable to act.

Appointment of Surveyor.

Surveyor to make a Declaration.

V. And be it enacted, That it shall be lawful for the Commissioner from Time to Time, by Writing under his Hand, to appoint a fit Person to be a Surveyor for the Purposes of this Act, during the Pleasure of the Commissioner, and on every Vacancy in like Manner to appoint some other Surveyor, as often as there shall be Occasion: Provided always, that no Person shall act as such Surveyor until he shall have made and subscribed a Declaration, in the Words or to the Effect set forth in the Schedule (A.) to this Act; which Declaration it shall be lawful for any Commissioner for the Time being, or any Justice of the Peace for the said County, to administer and receive; and the said Declaration so made and subscribed shall be annexed to and deposited with the Award of the Commissioner.

Penalty on making false Declaration.

VI. And be it enacted, That if any Person shall falsely or corruptly make and subscribe a Declaration, under the Authority of this Act, knowing the same to be untrue in any material Particular, he shall be guilty of a Misdemeanor.

Appointment of Clerk.

VII. And be it enacted, That it shall be lawful for the Commissioner to appoint a Clerk to assist him in carrying this Act into execution, and from Time to Time to remove such Clerk, and to appoint another in his Stead.

No Party interested to be appointed a Commissioner, &c.

VIII. And be it enacted, That no Person shall be appointed or shall act as a Commissioner, Umpire, or Surveyor in execution of this Act, who shall be interested in the Lands to be inclosed, or who shall be the Agent ordinarily intrusted with the Care, Superintendence, or Management of the Estate of any Person so interested.

IX. And

Allowance to Commissioner and Clerk.

IX. And be it enacted, That the said Commissioner and the said Clerk shall be paid respectively out of the Inclosure Expences Fund, for each Day they shall respectively travel or be engaged in any Business relating to the Execution of this Act, the Sum of Two Guineas for each Day they shall respectively be engaged as aforesaid; and such Payment shall be in full Satisfaction to the Commissioner and Clerk respectively for their Time and Trouble, and for the several Expences incurred by them during their several Journeys and Attendance in the Execution of this Act, except the Expence of the Rooms in which the Meetings of the Commissioner shall be held, and the Expence of Appeals or other legal Proceedings against the Commissioner, and the Expences of Notices and Advertisements, and of preparing, proclaiming, and enrolling the Award, and such other like necessary Expences: Provided always, that it shall not be lawful for the Commissioner to retain or pay himself, or the said Clerk, any Money on account of the before-mentioned Allowances respectively, beyond One Third of the Allowance to which they shall be respectively entitled, until after the Expiration of Six Calendar Months from the Day of the Date of the Award to be made in pursuance of this Act; or in case the Accounts of the Commissioner shall be appealed against, then not until such Appeal shall have been heard and decided.

Length of Day for estimating Allowance.

X. And be it further enacted, That in computing the aforesaid Allowance to the Commissioner and Clerk a Day shall be deemed to consist of Eight Hours, during the Period between the Twenty-fifth Day of *March* and the Twenty-ninth Day of *September*, and of Six Hours during the Period between the Twenty-ninth Day of *September* and the Twenty-fifth Day of *March*; and where the Time occupied in going to and attending at and returning from any Meeting to be holden, or on other Business to be transacted under the Provisions of this Act shall be of less Duration than Eight Hours in the first of the Periods aforesaid, or of Six Hours in the second Period, the same shall be charged as only Half a Day, and the Commissioner and Clerk shall be paid accordingly.

Allowance to Surveyor.

XI. And be it enacted, That it shall be lawful for the Commissioner to pay to the Surveyor to be appointed by him, out of the Inclosure Expences Fund, the Sum of Sixpence *per* Acre, for surveying, measuring, mapping, and planning the Land required to be surveyed under the Provisions of this Act, and the Sum of Two Guineas for each Day that he shall be actually and wholly engaged in the Duties imposed by this Act, exclusive of the Time he may be engaged in surveying, measuring, mapping, and planning as aforesaid; and such Payments shall be in full Satisfaction for the Time and Trouble of the Surveyor, and for all travelling and other Expences of every Description to be incurred by him whilst engaged in the Duties of surveying under this Act.

Old Surveys of inclosed Lands may be used.

XII. And be it enacted, That nothing in the said first-recited Act or in this Act contained shall require the Commissioner to make or cause to be made any Survey or Admeasurement of any of the Messuages, Cottages, Gardens, and Inclosures within the Manor of *Solport* afore-

aforesaid; but the Commissioner shall, for the Purposes of the said Inclosure, be at liberty to use and adopt the Plans and Surveys already or which may hereafter be made and used in effecting the Commutation of Tithes in the said Parish, or any other Plans or Surveys he may deem sufficient.

Old Surveys of Waste Lands may be used.

XIII. And be it enacted, That it shall be lawful for the Commissioner to adopt and make use of any Survey, Admeasurement, or Plans already made of the Lands to be inclosed, or of any Part thereof respectively, without causing a new Survey, Admeasurement, or Plan to be made thereof.

Meetings, and Notices thereof.

XIV. And be it enacted, That the Commissioner shall cause Notice to be given by Advertisement, or on the Church Door, of the Time and Place when and where his first and every subsequent Meeting shall be held, (Meetings by Adjournment only excepted,) and he may from Time to Time adjourn any such Meetings; and if at the Time and Place appointed for any such Meeting the Commissioner shall not attend, it shall be lawful for his Clerk to adjourn such Meeting for not more than Twenty-one Days, to be held at the same Place, giving timely Notice thereof to the Commissioner: Provided always, that all Meetings of the Commissioner for executing this Act shall be held within the said Parish, or within Eight Miles thereof.

Notices how to be given.

XV. And be it enacted, That all Notices by this Act directed to be given by Advertisement shall be given by Advertisement to be inserted in some Newspaper or Newspapers printed or usually circulated in the said County; and all Notices directed to be given on the Church Door shall be by Writing, under the Hands of the Party giving such Notice, to be affixed on the principal outer Door of the Parish Church of *Stapleton* aforesaid on *Sunday* before Divine Service; and all Notices necessary to be given by the Commissioner (the Mode of giving which is not hereby particularly directed) shall be by one of the Methods aforesaid; and all Notices so given shall be deemed sufficient Notices to all Persons concerning all Matters and Things to which such respective Notices shall relate, any thing in the said first-recited Act to the contrary notwithstanding.

Persons summoned by the Commissioner and refusing to give Evidence to be punished.

XVI. And be it enacted, That if any Person having been summoned to testify the Truth upon Oath touching any Matter relating to the Execution of this Act, and having been paid or tendered a sufficient Sum of Money, to be ascertained by the Commissioner, to defray the Charges of his Attendance, shall not appear before the Commissioner pursuant to such Summons, without assigning some reasonable Excuse for not appearing, or appearing shall refuse to be sworn or to give Evidence touching the Premises, it shall be lawful for the Commissioner upon Proof of such Summons and Tender made before him upon Oath, (which Oath he may administer,) by Warrant directed to any Person whomsoever, to cause any Sum of Money not exceeding Ten Pounds to be levied by Distress upon the Person so neglecting or refusing to appear or give Evidence, and the Money

so to be levied as aforesaid shall be considered as Part of the Inclosure Expences Fund, and shall be applied accordingly.

For regulating Distresses.

XVII. And be it enacted, That when in this Act any Sum of Money, whether in the Nature of Penalty or otherwise, shall be directed to be levied by Distress, such Sum of Money shall be levied by Distress and Sale of the Goods and Chattels of the Party liable to pay the same; and the Surplus Monies arising from such Sale, after satisfying such Sum of Money and the Costs and Expences attending the Distress and Sale, shall, on Demand, be rendered to the Party whose Goods and Chattels shall have been distrained.

Proceedings to be entered in a Book.

XVIII. And be it further enacted, That all the Orders, Proceedings, and Determinations of the said Commissioner at any Meeting to be held in pursuance of this Act shall be entered in a Book to be provided for that Purpose, and shall be signed by the said Commissioner, and being so signed shall be deemed and taken to be Originals; and all such Books shall be deposited with and kept by the Clerk of the said Commissioner, and shall and may be read in Evidence in all Cases of Appeals, Suits, Actions, and other Proceedings touching any Matter or Thing done in pursuance of or in relation to this Act.

Proprietors to pay their own Expences at Commissioner's Meetings.

XIX. Provided always, and be it further enacted, That the several Persons interested in the said Division, Allotment, and Inclosure, and their respective Agents, shall pay their own Expences whenever they shall attend any of the Meetings to be held in pursuance of this Act.

Debts to be paid and Accounts to be audited.

XX. And be it further enacted, That the Commissioner shall not at any Time permit any just Claim or Demand upon him as such Commissioner to remain unpaid for a longer Period than Three Months, and once at least in every Twelve Months during the Execution of this Act, and until the Account of the Commissioner shall be finally allowed, the first of such Periods to be computed from the Day of the passing hereof, he shall make out a true and accurate Account of all Sums of Money by him received and expended in the Execution of this Act, and of all Sums due to him for his own Trouble or Expences; and in such Account shall be particularly specified the several Items and Articles for which each particular Sum shall have been paid; and such Account, when so made out, together with the Vouchers relating thereto, shall be by the Commissioner laid before One or more of Her Majesty's Justices of the Peace acting for the said County of *Cumberland* not interested in the Premises, to be by him or them examined and balanced.

Accounts to be published.

XXI. And be it enacted, That the Balance of such Account shall be by such Justice or Justices stated in the Book of Account to be kept in the Office of the Person acting as Clerk to the Commissioner, and an Abstract of such Account so examined and balanced shall, within Fourteen Days after the same shall have been so examined

and

and balanced, be inserted in some Newspaper printed or usually circulated within the said County; and no Charge or Item in any such Account shall be binding on the Parties concerned, or be valid in Law, unless the same shall have been duly allowed by such Justice or Justices, nor until such Abstract thereof shall have been published in some such Newspaper as aforesaid, subject nevertheless to the Power of Appeal herein-after contained.

For shortening Boundaries.

XXII. And be it enacted, That for the Purpose of shortening or rendering straight any Boundary Fences between the Lands to be inclosed and the old inclosed Lands in the said Parish, or between such Allotments and inclosed Lands, or any of them, and any adjoining Lands, it shall be lawful for the Commissioner (with the Consent of the Lord of any Manor in which the Lands are situate, and of the Owners of any such adjoining Lands, testified by Writing under their respective Hands or under the Common Seal of any of them being a Corporation Aggregate), to set out and determine the Boundaries between the Lands to be inclosed and any adjoining Lands lying in the same, or in any adjoining Manor, as he shall judge proper for the Purposes aforesaid; and after such Boundaries shall have been so set out and determined as aforesaid, the same shall be made, fenced, ditched, or mounded by such Person in such Manner and at such Times as the Commissioner shall direct, and shall for ever thereafter be deemed the Boundaries between the allotted and the old inclosed Lands respectively, or (as the Case may be) between the allotted or old inclosed Lands and such adjoining Lands.

Commissioner to set out Drains, and enlarge and turn Watercourses.

XXIII. And be it enacted, That it shall be lawful for the Commissioner to set out and make such common Ponds, Ditches, Watercourses, Tunnels, Banks, and Bridges of such Extent and Form and in such Situations as he shall deem necessary in the Lands to be inclosed; and also to enlarge, cleanse, or alter the Course of, and improve any of the present Ditches or Watercourses, Banks, or Bridges, as well in and over the same Lands, as also in any ancient Inclosures or other Lands within the said Parish as the Commissioner shall deem necessary, (making such Satisfaction to the Proprietors of such ancient Inclosures or Lands for the Damage done thereby as the Commissioner shall think just,) and the Expences of making and enlarging, altering, and cleansing such Ponds, Ditches, Watercourses, Tunnels, Banks, and Bridges, when the same shall be first done in pursuance of this Act, if not otherwise provided for, shall be raised by the Commissioner in the same Manner as the other Expences of carrying this Act into execution; but all such Ponds, Ditches, Watercourses, Tunnels, Banks, and Bridges shall at all Times afterwards be repaired, cleansed, and maintained by such Persons and in such Manner as the Commissioner shall by his Award direct; provided that no Watercourse be diverted or turned without the Consent in Writing of the Person from whose Lands the same may be diverted, and of the Persons into whose Lands the same may be turned, or to the Prejudice of any Person interested in such Watercourse except with his Consent in Writing.

XXIV. And

Commissioner to appoint private Roads.

XXIV. And be it enacted, That the said Commissioner shall set out such private Roads, Bridleways, and Footpaths through the Lands to be inclosed as he shall think requisite, giving such Notice and subject to such Examination as is required by the said first-recited Act in the case of public Roads; and any Expences which the said Commissioner may think fit to incur prior to the Time of making his Award relative to the setting out or the Formation or Completion of such private Roads, Bridleways, and Footpaths, or any of them, shall be paid out of the Inclosure Expences Fund; and the said private Roads, Bridleways, and Footpaths shall thereafter be maintained and kept in repair by and at the Expence of the Owners and Proprietors for the Time being of any of the Lands within the said Parish, in such Shares and Proportions, and in such Manner, as the said Commissioner shall in and by his Award direct.

Commissioner empowered to suspend or extinguish Rights of Common.

XXV. And be it enacted, That it shall be lawful for the said Commissioner at such Time as he shall think proper, and before the Execution of his Award, by Notice on the Church Door of *Stapleton* aforesaid, to order all or any Part of the Rights of Sheep-walk or other Rights in or over the Lands to be inclosed, or any Part thereof, to be extinguished, or the Exercise thereof to be suspended during such Time as shall be expressed in such Notice; and from the Time mentioned in such Notice such Rights shall be extinguished or suspended accordingly.

Cattle depasturing in Breach of the Commissioner's Order to be distrained.

XXVI. And be it enacted, That if, during the Suspension or after the Extinguishment of any such Rights of Sheep-walk, Common or other Rights as aforesaid, any Owner or Occupier of Land, or of any commonable Messuage or Cottage, or the Site of any commonable Messuage or Cottage within the said Parish, or any other Person, shall permit his Cattle or Sheep to go or depasture upon any of the Lands over which such Rights shall be suspended or extinguished, it shall be lawful for the said Commissioner, or any other Person by his Order (testified in Writing under his Hand), and also for any other of the said Owners and Occupiers, to distrain such Cattle or Sheep being upon such Lands or Grounds contrary to such Order, and to impound the same, until the Person so offending shall pay to the Person so distraining such Sum of Money as the said Commissioner shall, by Writing under his Hand, to be delivered to or left at the Place of Abode of the Person whose Cattle or Sheep shall be so distrained, have previously ordered, not exceeding the Sum of Ten Shillings for each Head of Cattle and Five Shillings for each Sheep so distrained; and in case the same shall not be paid within Seven Days after the Delivery of such Writing, the said Commissioner is hereby authorized, upon Proof of such Offence having been committed and of Nonpayment of the Penalty hereby imposed, to cause the Cattle or Sheep so distrained or impounded, or such of them as he shall think necessary, or any other Goods or Chattels of the Person so offending, to be sold, for raising and paying the Penalty aforesaid, together with the Costs and Charges attending such Distress, rendering the Surplus (if any) to the Owner of such Cattle or Sheep.

XXVII. And

Claims to be delivered to the Commissioner.

XXVII. And be it enacted, That all Persons claiming any Interest in any of the Lands to be inclosed shall deliver their respective Claims in Writing, under their Hands or the Hands of their Agents, unto the Commissioner at the Meetings to be held for that Purpose, stating the several Particulars in respect whereof such Claims are made, and distinguishing Freehold, Copyhold, and Leasehold Property from each other, and the Manors in which they are situate; and no such Claim shall be received by the Commissioner after the last Meeting to be held for that Purpose, of which due Notice shall have been given and expressed therein (except for some special Cause to be allowed by the Commissioner).

Adjudication upon Claims.

XXVIII. And be it enacted, That after the said Claims shall be so received the Commissioner shall cause Notice on the Church Door to be given of a Time (at least Ten Days distant) and a Place for all Parties concerned to appear before him, and show Cause for or against the Allowance or Disallowance of the said Claims; and at such Meeting the Commissioner shall proceed to examine into and determine the same, and shall make such Order thereon as to him shall appear just; and in case any Doubts or Difficulties shall arise respecting such Claims, or any Differences shall happen between any of the said Proprietors, touching their respective Rights or Claims, or touching the respective Shares which they ought to have in the Allotments, the Commissioner shall, by Examination of Witnesses upon Oath, (which Oath the said Commissioner is hereby empowered to administer,) and by such other Evidence as to him shall seem proper, hear and determine the same, and shall make such Order therein as to the Commissioner shall appear just; which Order shall be final unless any Party shall be dissatisfied with the Determination of the Commissioner, and shall proceed to try his Rights by an Issue at Law, as herein-after mentioned.

Commissioner not to determine Titles contrary to Possession.

XXIX. And be it enacted, That this Act shall not authorize the Commissioner to determine the Title to any Lands, or to determine any Right between any Parties contrary to the actual Possession of such Parties (except in respect of Encroachments as herein-after mentioned), but in case the Commissioner shall be of opinion against the Rights of the Party in possession, he shall forbear to make any Determination thereon until the Possession shall have been given up by such Party, or recovered from him by due Course of Law.

Parties dissatisfied authorized to try their Rights at Law.

XXX. Provided always, and be it enacted, That if any Person claiming to be interested in the said Inclosure shall be dissatisfied with any Determination of the said Commissioner concerning any Claim or any Right or Interest in or to the Lands to be inclosed, or concerning any Objection to such Claim, it shall be lawful for such Person to bring an Action upon a feigned Issue against the Person in whose Favour such Determination shall have been made, within Three Calendar Months next after such Determination shall have been notified in Writing to the Person against whom such Determination shall have been made, or to his known Agent, and thereupon the Person so dissatisfied may proceed to a Trial at Law at the then next Assizes, or at the Assizes immediately following such next Assizes which may

be holden for the said County of *Cumberland* after such Action shall have been commenced; and the Defendant in such Action shall, upon being served with the usual Process therein, appear and plead thereto, or file Common Bail, and accept One or more Issue or Issues, whereby such Claim and the Right and Interest thereby insisted on may be tried and determined (such Issues to be settled by the proper Officer of the Court in which such Action shall be commenced in case the Parties differ); and the Verdict given upon the Trial of such Action shall be binding and conclusive upon all the Parties thereto, unless the Court shall set aside such Verdict and order a new Trial to be had; and after such Verdict shall be given, and final Judgment obtained thereon, the said Commissioner shall act in conformity thereto, and allow or disallow the Claim thereby determined, according to the Event of such Trial; and the Costs attending any such Action shall abide the Event of the Trial.

If no Action brought within limited Time, Determination of Commissioner to be final.

XXXI. Provided always, and be it enacted, That if no such Action shall be commenced, or if the Plaintiff therein shall not proceed to Trial within the Time herein-before limited for that Purpose, (unless the Court for sufficient Cause put off such Trial,) the Determination of the said Commissioner shall be final.

Deaths of Parties not to abate Proceedings; and in case Parties die before Action brought, Suits to be carried on and defended in their Names.

XXXII. And be it enacted, That if any Person, Plaintiff or Defendant in any Action to be brought as aforesaid, shall die pending the same, such Action shall not abate by reason thereof, but may be proceeded in as if no such Death had happened, (the Heir or Devisee or other Person entitled to the Interest of the deceased Party in the Matter in question being served with Process in the Action,) and if any Person in whose Favour any such Determination as aforesaid shall have been made, and against whom any such Action might have been brought if living, shall die before Action brought, it shall be lawful for the Person who might have brought such Action to bring the same within the Time so limited as aforesaid against such Person as if actually living, and to serve the said Commissioner or his Clerk with the usual Process for commencing such Action in the same Manner as the deceased Person might have been served therewith if living; and it shall thereupon be incumbent on such Clerk to serve with such Process the Heir or Devisee or personal Representative of the deceased Person, or other the Person who shall claim the Benefit of such Determination as aforesaid, and on such Process being served such Heir or Devisee or personal Representative or other Person shall appear and defend such Action in the Name of the Person so dead, and Proceedings shall be had thereon in the same Manner as if such Person had been living; and the Rights, Interests, and Claims of all Parties shall be equally bound by the Event of any Action so brought or continued as aforesaid, as if the Death of any of the Persons interested therein had not occurred.

Actions not to abate Proceedings of Commissioner.

XXXIII. And be it enacted, That no such Difference, Suit, or Proceeding as aforesaid, respecting the Title or Interest of any Person or Persons in or to any Lands, Tenements, or Hereditaments, shall impede or delay the Proceedings of the said Commissioner in the Execution of this Act or of the said recited Act, but the Division,

Allotment, and Inclosure by this Act directed to be made shall be proceeded in notwithstanding any such Difference, Suit, or Proceeding, and the said Commissioner shall award the Allotment or Allotments respecting which such Difference, Suit, or Proceeding shall relate to the Person or Persons who shall be in the actual Possession of such Hereditaments; and the same Allotment or Allotments shall follow the Event of any such Difference, Suit, or Proceeding, and shall be taken by the Person or Persons who by the Determination of such Difference, Suit, or Proceeding shall become entitled to the same.

If Parties die before Inclosure, &c. is completed, Allotments to be made to their Representatives.

XXXIV. Provided always, and be it enacted, That if any Person interested in the said Inclosure shall die before the same shall have been completed, the Powers and Authorities hereby vested in the said Commissioner shall not be thereby determined or suspended, but the said Commissioner shall proceed in the Execution of such Powers and Authorities in such Manner as he might have done in case such Person had not died; and the Share of the Person so dying shall be allotted to such Person as by Law shall become entitled to the same, and shall be accepted and fenced by such Party according to the Directions of this Act, and he shall be liable to the Charges and Expences and other Conditions of this Act.

Commissioner to award Costs.

XXXV. And be it enacted, That in case the said Commissioner, upon the Determination of any Claim or Objection to be delivered to him in pursuance of this Act, shall see Cause to award any Costs, it shall be lawful for the said Commissioner, upon Application made to him, to assess and award such Costs as he shall think reasonable to be paid by the Person whose Claim or Objection shall have been disallowed to the Person in whose Favour any Determination shall have been made; and in case any Person liable to pay such Costs shall refuse or neglect to pay the same upon Demand the said Commissioner shall, by Warrant directed to any Person whomsoever, cause the same to be levied by Distress; and if there be no Goods or Chattels whereon to levy such Costs, it shall be lawful for the Person in whose Favour such Costs shall be awarded to recover the same by Action of Debt or on the Case, in which Action it shall be sufficient for the Plaintiff to declare that the Defendant is indebted to him in the Sum specified in the Order of Adjudication made by the said Commissioner and in consequence of such Order, without setting forth any other Proceedings under this Act.

Leases at Rack Rent to be void.

XXXVI. And be it enacted, That immediately after the Allotments herein directed to be made shall have been marked and staked out, and the Commissioner shall have directed the same to be entered upon by the Persons respectively for whom the same shall be intended, every Lease and other Agreement at Rack Rent subsisting of all or any Part of the Lands to be inclosed, or of any Common Rights thereon, for any Term of Years not exceeding Twenty-one Years, (except such Leases and Agreements as by the express Terms thereof are not to be void in case of an Allotment in Severalty or Inclosure,) shall determine and be void as to all such Lands or Common Rights, but not as to any other Lands comprised therein, such Compensation as

as between Lessor and Lessee being paid to or allowed by the respective Landlords whose Leases or Agreements shall be so vacated as the Commissioner shall, by Writing under his Hand, order in that Behalf; and if any such Compensation shall not be paid to the Party entitled to receive the same within One Month after Demand made in Writing under the Hand or Common Seal (as the Case may require) of the Party to whom the same shall be payable, the Commissioner shall raise and levy the same for the Use of the Party entitled thereto by such Ways and Means as the Rates to be levied for defraying the Inclosure Expences are directed to be raised and recovered; and it shall be lawful for the Commissioner, by Writing under his Hand, to ascertain and direct what Rent or Proportion of Rent shall be paid by the several Tenants of the Lands to be inclosed, or Common Rights, in their respective Holdings, to their respective Landlords, from the Time of the passing of this Act, until such Lands shall be marked and staked out and be directed to be entered upon as aforesaid.

Beneficial Leases not to be vacated.

XXXVII. Provided always, and be it enacted, That nothing in this Act contained shall extend to set aside or make void any beneficial Lease of any Lands within the said Parish, but the Party entitled to such beneficial Lease shall be entitled to hold and enjoy his Term under the Rents and Covenants specified in his Lease.

Wills and Settlements not to be affected.

XXXVIII. Provided also, and be it further enacted, That nothing in this Act shall extend to revoke, make void, or alter any Will or Settlement, or to prejudice any Person having any Right or Claim to Dower, Jointure, Annuity, Portion, Debt, Charge, Rent, or Incumbrance, out of or affecting any of the Lands to be inclosed as aforesaid, or any of the Lands which may be exchanged or parted with in pursuance of this Act, but that as well the Lands allotted and exchanged as the Lands which shall be assigned in partition or in compensation for any other Estate or Right by virtue of this Act shall, immediately after such Allotment, Exchange, or Partition, be and enure, and the several Persons to whom the same shall be so allotted or given in exchange or partition as aforesaid shall be seised and possessed thereof respectively, to, for, and upon the same Estates, Uses, Trusts, Intents, and Purposes, and subject to the same Conditions, Charges, and Incumbrances, as the several Lands in respect whereof such Allotments, Exchanges, and Partitions shall have been made would have stood limited for or been subject to in case the same respectively had not been allotted, exchanged, or parted with as aforesaid, or as if this Act had not been passed, subject nevertheless to all such Mortgages and Sales as shall be made by virtue of this Act.

Persons may sell their Common Rights, and Persons entitled to have Allotments may mortgage, &c.

XXXIX. And be it enacted, That if at any Time before the Execution of the Award of the Commissioner any Person shall sell his Right or Interest in the Lands to be inclosed, or any Part thereof, to any Person, the Commissioner shall, upon any such Sale being made, make an Allotment of Land to the Purchaser, or to his Heirs or Assigns, in respect of the Right or Interest so sold, and every such Purchaser, or his Heirs or Assigns, shall, from the Execution of the said

said Award, hold and enjoy the Land so to be allotted to him, in the same Manner as the Vendor might or ought to have done in case such Sale had not been made; and it shall be lawful for any Person who shall be entitled to any Allotment under this Act to devise, grant, surrender, mortgage, or otherwise convey and assure the same Allotment, or all or any Part of his Interest therein, at any Time before the Execution of the said Award; and every such Devise, Grant, Surrender, and other Assurance shall be of the same Validity as if the same had been made after the Execution of the said Award; and it shall be lawful for any Person entitled to any Allotment to sell, dispose of, and convey the Estate in right of which he may be entitled to such Allotment, separate from and retaining to himself such Allotment, Common Right, and Interest, and the Commissioner is hereby required to award such Allotment accordingly.

before Execution of Award.

XL. And be it enacted, That all Encroachments and Inclosures which shall have been made by any Person from or upon any Part of the Lands to be enclosed within Twenty Years next before the passing of this Act, whether any Amerciament, annual Rent, or any Money Payment or Acknowledgment hath or hath not been paid in respect of the same, to or for the Use of the Lord of the Soil or any other Person, shall be deemed Parcel of the Lands to be inclosed, and shall be divided, allotted, and inclosed accordingly: Provided always, that it shall be lawful for the several Persons who shall be in possession of any such Encroachment or Inclosure, or in the Receipt of the Rent thereof, at the Time of the passing of this Act, to take down and remove all such Buildings, Fences, and other Erections as shall then be thereon, and to convert the Materials thereof to their own Use.

Encroachments.

XLI. And be it enacted, That the said Commissioner shall and he is hereby authorized and required, according to the best of his Skill and Judgment, to assign, set out, and appoint a proper Part or Parts of the said Common or Waste Lands for public Freestone Quarries and Limestone Quarries, also Clay Pits for making of Bricks, common Watering Places for Cattle, and public Peat Mosses (if any there be), for the common Use and Benefit of the Lord or Lords, Lady or Ladies, of the said Manor for the Time being, and the Proprietors of or Persons interested in the said Common or Waste Land, such Freestone, Limestone, and Bricks to be used by the Lord or Lords, Lady or Ladies, of the said Manor for the Time being, and such Proprietors or their Lessees respectively, but not to be sold or otherwise disposed of; and shall set out and appropriate any other Part or Parts of the said Common or Waste Lands for the getting Sand, Gravel, and other Materials, for the making and repairing such public and private Roads as shall be set out and appointed or continued over the said Common or Waste Lands in pursuance of this Act and according to the Directions herein contained, or for any other Purpose or Purposes which to the said Commissioner shall seem necessary and expedient.

Public Freestone Quarries, &c.

XLII. And be it enacted, That the Commissioner shall allot and award unto the Churchwardens and Overseers for the Time being of the

Allotment for Recreation of the Inhabitants.

the said Parish of *Stapleton*, out of any Part of the Lands to be inclosed, One or more Piece or Pieces of Land, not exceeding Two Acres nor less than One Acre, in a most appropriate Situation, as a Place of Exercise and Recreation for the Inhabitants of the said Parish and Neighbourhood, and such Allotment shall be held by the Churchwardens and Overseers for the Time being of the said Parish for the Purposes aforesaid, and shall be in the first instance fenced at the general Expence; and the Fences of such Allotments shall for ever afterwards be repaired and maintained by the said Churchwardens and Overseers, in such Proportions and Manner as shall be directed by the Award of the Commissioner, out of the Rents to be received for the Herbage of the said Allotment, or out of the Poor Rates of the said Parish or otherwise; and the Grass and Herbage growing upon such Allotment may be from Time to Time let by such Churchwardens and Overseers, and the Rent which shall be received by them for the same shall be by them from Time to Time applied, in the first place, in maintaining and repairing the Fences of the said Allotment, and, subject thereto, in aid of the Rates for the Repair of the public Highways in the Parish of *Stapleton* aforesaid.

Allotments to be set-out for the Lord of the Manor for Right of Soil.

XLIII. And be it further enacted, That the said Commissioner shall, after making the Allotments herein-before directed, allot and award unto and for the said Sir *James Robert George Graham* as Lord of the said Manor of *Solport*, or to such Person as shall in the Judgment of the Commissioner be entitled to the Soil of the Commons or Waste Lands in the said Parish, or any Part thereof, so much and such Part of the Lands to be inclosed as shall, in the Judgment of the Commissioner, be equal in Value to One Twelfth Part of the Residue of such Common and Waste Lands, Quality and Value considered, in lieu of his Right and Interest in the Soil of the said Common and Waste Lands, exclusive of any other Allotments which may be made to such Lord in lieu of or in satisfaction for any other Rights or Interests in such Common or Waste Grounds.

Allotment of Residue.

XLIV. And be it further enacted, That after the several Allotments herein-before directed shall have been set out and made, (and after making Provision for the Expences of the Inclosure by the Sale of Lands as herein-after mentioned,) the Commissioner shall divide, allot, and award all the Remainder of the Lands to be inclosed unto and amongst the several Owners and Proprietors thereof, and Persons who shall be entitled to any Estate, Right, or Interest therein, in such Shares and Proportions as the said Commissioner shall adjudge and determine to be proportionate to the Value of their respective Rights and Interests therein.

For determining Objections to Allotments.

XLV. And be it enacted, That as soon as the Commissioner shall have ascertained the respective Rights and Interests of the several Parties interested in the Lands to be inclosed, and also the Allotments by him proposed to be made to such Parties respectively in lieu of such Interests, he shall hold a Meeting, of which Ten Days Notice shall be given by Advertisement or on the Church Door, where such Parties may be informed of the Situation of such intended Allotments, and see the same delineated upon a Map or Plan to be produced

produced for their Inspection; and if any of such Parties upon such Inspection shall be dissatisfied with the proposed Allotments, the Commissioner shall at such Meeting, or at some other Meeting to be appointed by him for that Purpose, receive Statements in Writing of Complaints and Objections thereto, and shall forthwith, or as soon after as conveniently may be, determine the same, and such Determination shall be final.

Allotments to be fenced.

XLVI. And be it further enacted, That the several Allotments to be made in pursuance of this Act (except the Allotment to the Surveyor and Churchwarden and Overseer respectively) shall be inclosed, ditched, and fenced at the Expence of the respective Persons to whom the same shall be allotted, in such Manner and within such Times as the said Commissioner shall by his Award or any Writing under his Hand direct, and the Fences so to be made shall for ever afterwards be repaired and maintained by such Persons as the said Commissioner shall by his Award direct.

Equalizing the Share of fencing.

XLVII. And be it enacted, That if from Situation or from any other Circumstance it shall happen that any of the Proprietors of the Lands to be inclosed, or any Person to whom any Allotments shall be made, shall not have a fair Proportion of the Boundary Hedges, Ditches, Mounds, or Fences assigned to him to make by virtue of this Act, it shall be lawful for the Commissioner to ascertain and appoint what Sum of Money shall be contributed by such Proprietor or Person towards making the Boundary Hedges, Ditches, Mounds, and Fences of the Allotments of such other of the said Proprietors and Persons as shall have too great a Proportion thereof to make, and such Money shall be paid to such Persons and in such Manner as the Commissioner shall by any Writing under his Hand direct, and the same may be recovered by any of the Means which by the first recited Act are provided for raising and recovering the Expences of obtaining and executing Acts of Inclosure, in Cases where such Expences are directed to be paid in proportion by the Proprietors of Lands to whom any Allotments shall be made; and every such Order of the Commissioner shall be final.

Cattle not to be depastured in the Highways for Seven Years.

XLVIII. And be it enacted, That no Person shall graze or keep any Beast or Cattle upon any of the Roads or Ways which the Commissioner shall order to be set out, and which shall be fenced on both Sides, for the Space of Seven Years next after the Execution of the Award of the Commissioner; and every Owner of Lands within the said Parish, his Servants and Labourers, and also every Peace Officer and Parish Officer of the said Parish for the Time being, is hereby empowered to take and impound any such Beast or Cattle which shall be found so grazing as aforesaid as Cattle Damage feasant: Provided always, that nothing herein contained shall prevent the Proprietors of the Lands which shall next adjoin the said Roads and Ways from depasturing their Cattle thereon, so far as the Frontage of their respective Lands extends.

Allotments to be Freehold.

XLIX. And be it further enacted, That from and after the Award directed to be made in pursuance of this and the said recited Act shall

shall have been executed by the said Commissioner, and deposited, all and every the Allotments herein-before directed to be made shall be and are hereby declared to be Freehold, to all Intents and Purposes whatsoever.

Power for Commissioner to make Alterations in Allotments.

L. And be it enacted, That it shall be lawful for the Commissioner, at any Time before the Execution of his Award, to make any Alterations which he may think right and expedient in the Allotments or in the Fences which he may have set out and ordered, or in the private Roads over such Allotments, or in any of the Orders or Directions relating thereto, which he may have made in pursuance of this Act; and in case any Person shall be injured by any such Alteration, on account of any Expences he may have incurred, or otherwise, the Commissioner shall ascertain and determine what Recompence shall be made to him for such Injury, and shall either pay the Amount thereof out of the Inclosure Expences Fund, or shall direct by whom and in what Manner such Recompence shall be made; and in case of Nonpayment thereof the same shall be recovered in manner by the said first-recited Act directed with respect to the Recovery of Penalties or Forfeitures.

Separate Allotments for Land held by different Titles.

LI. And be it enacted, That when any Person to whom any Allotment shall be made or Lands assigned in exchange by virtue of this Act shall hold such Lands, or the Lands in respect of which such Allotment or Exchange is made, under different Titles and for different Estates, the Commissioner shall ascertain and distinguish the Lands held for each of such Estates, and under each of such Titles respectively, and shall accordingly in his Award set out distinct and several Allotments for such respective Lands, and also in the said Award and the Map annexed thereto set out and distinguish the several Estates holden by several and distinct Quit Rents.

Where Allotments are omitted to be distinguished by the Award, the Defect may be remedied by a separate Instrument.

LII. And be it enacted, That where the Commissioner shall have omitted to distinguish in his Award the several Tenures under which any of the said Lands shall be holden, or the different Estates or Titles for or under which the same shall be held, or set out and award several and distinct Allotments, as by this Act directed, it shall be lawful for him, at any Time within Twelve Months after the Execution of his Award, and he is hereby required, upon Request in Writing to him made by any Proprietor of any such Allotment or Lands, or other Person interested therein, or his Agent, to do all such Acts as may be necessary for supplying such Omission, and for that Purpose to examine Witnesses, and proceed as if his Award had not been made, and by any Deed or Instrument under his Hand and Seal to distinguish and set out the Allotments and Lands held by different Tenures, and also the Allotments and Lands held by, for, or under different Estates or Titles respectively, in the same Manner as he is by this Act authorized and required to do in Cases where such Allotments and Lands are directed to be ascertained, distinguished, and set out by his Award; and every such separate Instrument shall have the same Force and Effect as if it were contained in the said Award; and such Instrument shall be enrolled and deposited with the Award of the Commissioner, and shall thenceforth be deemed to

be Part thereof to all Intents and Purposes; and all the Expences which shall be reasonably incurred in or about any such subsequent Inquiry or separate Instrument as aforesaid, and the Inrolment thereof, shall be paid by the Party who shall have requested the Commissioner to make and execute the same, or by his Heirs, Executors, or Administrators.

Partitions may be made in certain Cases.

LIII. And whereas it may happen that some of the Proprietors of Lands in the said Parish, and Persons entitled to Allotments to be made by virtue of this Act, may be seised or possessed thereof or entitled thereto in undivided Moieties, Joint Tenancy, or as Coparceners or Tenants in Common, and cannot, by reason of Infancy, Settlement, Absence beyond the Seas, or other Disability or Incapacity, make an effectual Partition thereof; be it therefore enacted, That it shall be lawful for the Commissioner, upon the Request in Writing of any such Proprietors being seised or possessed or entitled in undivided Moieties, or as Coparceners, Joint Tenants, or Tenants in Common, or of the Husbands, Guardians, Trustees, Committees, or Attornies duly authorized of such of them as may be under Coverture, Minors, Lunatics, or beyond the Seas, or under any other legal Disability or Incapacity, to make Partition and Division of the said Lands or Allotments coming to such of the said Proprietors as shall be so seised or possessed or entitled, and to allot the same to such Owners and Proprietors in Severalty; and immediately after the said Allotment shall be so made and declared, the same shall be holden and enjoyed by the Persons to whom the same shall be allotted in Severalty, in the same Manner and subject to the same Uses and Trusts as the undivided Parts or Shares of such Estates would have been in case such Partition and Division had not been made; and every such Partition shall be specified in the Award of the Commissioner, or some other Instrument under his Hand and Seal, and every such Partition shall be good, valid, and effectual to all Intents and Purposes whatsoever.

Expences of Partitions.

LIV. And be it enacted, That all Costs and Expences attending any Partition to be made by virtue of this Act shall be borne and defrayed by the several Proprietors of or Persons interested in the Estates which shall be so parted, in such Manner and Proportions as the Commissioner shall order; and in case of Nonpayment thereof shall be recovered in the Manner by the said first-recited Act directed with respect to the Recovery of Penalties and Forfeitures.

Power of Exchange

LV. And be it further enacted, That it shall be lawful for the said Commissioner to allot and award any Lands within the said Parish of *Stapleton* in exchange for any other Lands within the said Parish, or within any adjoining Parish, Township, or Place, provided that all such Exchanges be specified and declared in the Award of the Commissioner, and be made with the Consent in Writing of the Owner of the Lands so exchanged, whether such Owner shall be a Corporation, or a Tenant in Fee Simple or for Life, or in Fee Tail, General or Special, or by the Curtesy of *England*, or for Years determinable on any Lives, (with the Consent of the Lessor thereof, but not otherwise,) or with the Consent of the Guardians, Trustees, Feoffees for

charitable or other Uses, Husbands, Committees, or Attorneys of or acting for any such Owners as aforesaid, who at the Time of making such Exchange shall be an Infant, Feme Covert, Lunatic, or under any other legal Disability, or who shall be beyond the Seas, or otherwise disabled to act for himself, 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 every such Exchange so to be made shall be good, valid, and effectual in the Law to all Intents and Purposes whatsoever: Provided nevertheless, that no Exchange shall be made of any Lands held in right of any Church or Chapel, or other Ecclesiastical Benefice, without the Consent, testified as aforesaid, of the Patron thereof, and of the Bishop of the Diocese in which such Lands shall be situate: Provided also, that all the Costs, Charges, and Expences attending the making and completing of any Exchanges shall be borne by the several Parties making such Exchanges, in such Manner and in such Proportions as the said Commissioner shall by his Award direct, and in case of Nonpayment thereof shall be recovered in the Manner by the said first-recited Act directed with respect to the Recovery of Penalties and Forfeitures.

Power to apply Compensation Money coming to Parties under Disability towards Inclosure Expences and substantial Improvements.

LVI. And be it enacted, That when any Money is, under the Provisions of the said first-recited Act or of this Act, directed to be paid for the Purchase or Exchange of any Lands, or of any Timber or Wood growing thereon, which shall belong to any Corporation, Tenant for Life or in Tail, or to any Feoffee in Trust, Executor, Administrator, Husband, Guardian, Committee, or other Trustee, for or on behalf of any Infant, Idiot, Lunatic, Feme Covert, or other Cestuique Trust, or to any Person whose Lands are limited in strict or other Settlement, or to any Person under any other Disability or Incapacity whatsoever, and which Money ought to be laid out in the Purchase of other Lands to be settled to the same Uses, it shall be lawful for the said Commissioner out of such Money to defray the Proportion (if any) of the Inclosure Expences which shall be charged upon any of the Lands of the respective Parties in possession of the Lands, or of the Timber or Wood growing thereon, which shall be so purchased or exchanged, or on which such Timber or Wood actually grew, and also to defray the Expence of any permanent Improvement, such as building, subdividing, dividing, draining, or planting, and the like, which shall in the Judgment of the said Commissioner be proper to be made, and shall be made under his Direction, upon any Lands to be by virtue of this Act allotted to such Parties.

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

LVII. And be it enacted, That if the Surplus of any such Monies shall amount to or exceed the Sum of Two hundred Pounds, the same shall with all convenient Speed be paid into the Bank of *England* in the Name and with the Privity of the Accountant General of the Court of Chancery, to be placed to his Account there *ex parte* the Commissioner for executing this Act, pursuant to the Method prescribed by an Act passed in the Twelfth Year of the Reign of His late Majesty King *George* the First, intituled *An Act for the better securing the Monies and Effects of the Suitors of the Court*

12 G. 1. c. 32.

Court of Chancery, and to prevent the counterfeiting of East India *Bonds, and the Endorsements thereon, as likewise the Endorsements on* South Sea *Bonds;* and pursuant to the General Rules and Orders of the said Court, and without Fee or Reward, according to an Act passed in the Twelfth Year of the Reign of His late Majesty King *George* the Second, intituled *An Act to empower the High Court of Chancery to lay out upon proper Securities any Monies not exceeding a Sum therein limited, out of the common and general Cash in the Bank of* England *belonging to the Suitors of the said Court, for the Ease of the said Suitors, by applying the Interest arising therefrom for answering the Charges of the Office of the Accountant General of the said Court;* and shall, when so paid in, there remain until the same shall, by Order of the said Court, made upon a Petition to be preferred to the said Court, in a summary Way, by the Parties who would have been entitled to the Rents and Profits of the said Lands, be applied to either of the following Purposes; that is to say, 12 G. 2. c. 24.

The Redemption or Discharge of the Land Tax, or of any Debt or other Incumbrance affecting the same Lands, or affecting other Lands standing settled therewith to the same or the like Uses or Trusts;

The Purchase of other Lands to be conveyed or settled upon the like Uses or Trusts, or such of them as shall be then existing undetermined or capable of taking effect.

Payment of Dividends meanwhile.

LVIII. And be it enacted, That in the meantime and until such Application shall be made the said Money may, by Order of the said Court to be made upon the like Petition, be invested by the said Accountant General in his Name in the Purchase of Three Pounds *per Centum* Consolidated or Three Pounds *per Centum* Reduced Bank Annuities, or of other Government and Real Securities; and the Dividends or Interest of such Annuities or Securities shall from Time to Time be paid, by Order of the said Court, to the Parties who would for the Time being have been entitled to the Rents and Profits of the Lands so to be purchased, conveyed, and settled.

When less than 200*l.* and exceeding 20*l.*

LIX. And be it enacted, That in case the Surplus of such Monies shall be less than the Sum of Two hundred Pounds, and shall exceed or amount to the Sum of Twenty Pounds, the same shall, at the Option of the Parties for the Time being entitled to the Rents and Profits of the Lands so purchased or exchanged, or their Guardians or Committees in case of Infancy, Idiotcy, Lunacy, or other Incapacity, with the Approbation of the said Commissioner, to be signified in Writing under his Hand, be paid into the Bank of *England*, in the Name and with the Privity of the said Accountant General of the Court of Chancery, and be placed to his Account as aforesaid, in order to be applied in manner herein-before directed; or otherwise the same may be paid, at the like Option and with the like Approbation, to Two Trustees, to be nominated by the Parties who for the Time being would be entitled to the Rents and Profits of the said Lands, such Nomination to be approved of by the said Commissioner, and such Nomination and Approbation to be signified in Writing under the Hands (or Common Seal, as the Case may be,) of the nominating and approving Parties; and the Monies so paid to such

such Trustees, and the Dividends and Produce arising therefrom, shall be by them applied in like Manner as is herein-before directed with respect to Money so to be paid into the Bank of *England*, but without obtaining or being required to obtain any Order of the said Court touching the Application thereof.

When under 20*l.*

LX. And be it enacted, That in case the Surplus of such Monies shall be less than Twenty Pounds, the same shall be paid to the Parties who would for the Time being have been entitled to the Rents and Profits of the Lands so purchased or exchanged, for their own Use and Benefit, or in case of Infancy, Idiotcy, Lunacy, or other Incapacity, then such Monies shall be paid to their Guardians, Committees, or Trustees, for the Use and Benefit of the Parties respectively entitled thereto.

Power for Commissioner to borrow Money.

LXI. And be it enacted, That if before the said Monies herein-before authorized to be raised by the Commissioner can be raised and received by him, he shall find it necessary or expedient to obtain by Loan any Money for or towards the defraying the said Expences, it shall be lawful for him to borrow and take up at Interest such Sums of Money as he shall from Time to Time think necessary for the Purposes aforesaid, which Money so to be borrowed shall be repaid by the Commissioner, with Interest for the same, out of the Monies to be raised and received by him by any of the Means aforesaid.

Monies may be recovered after Execution of Award.

LXII. Provided always, and be it enacted and declared, That if at the Time of the Execution of the said Award there shall remain due from any Person any Sum of Money which shall have been ordered to be paid by virtue of this Act, it shall be lawful for the said Commissioner and he is hereby required to levy and raise the same in like Manner as he might have done before the Execution of his Award.

Expence of the Inclosure to be defrayed by Sale of a sufficient Part of the Commons.

LXIII. And for the Purpose of raising Money for defraying the Expences of the Inclosure, (that is to say,) the Costs and Expences incident to and attending the passing of this Act, and the several Sums of Money and Allowances hereby directed or authorized to be paid and allowed to the said Commissioner, Clerk, and Surveyor for their Expences, Time, and Trouble, and the Costs and Expences of preparing and enrolling the Award of the Commissioner, and all Costs and Expences that the said Commissioner shall be put unto in respect of any Appeal against his Decision, or of any Suit at Law or in Equity that may be instituted by or against him as Commissioner in the Execution of this Act, either before or after the Execution of his Award, and all other Costs and Expences whatsoever of carrying this Act into execution; be it enacted, That the Commissioner shall mark and allot in the said Parish such Parts of the Lands to be inclosed as he shall judge sufficient in Value to defray the Expences aforesaid, and shall from Time to Time, as he shall find expedient, sell and dispose of the same, either by public Auction or private Contract; and the Purchase Monies to arise by such Sales shall be paid into the Hands of the Commissioner, and shall be by him applied in discharging the said Expences.

LXIV. And

Commissioner to sign Receipts for Purchase Monies and make Conveyances to Purchasers.

LXIV. And be it enacted, That upon every Sale by the Commissioner under the Provisions of this Act, the Commissioner shall sign and deliver to each Purchaser a Receipt for his Purchase Money, which shall be a sufficient Discharge for the same; and upon Receipt of the whole Purchase Money for any of the Lands which shall be sold as aforesaid, the Commissioner shall convey such Lands, and the Fee Simple and Inheritance thereof in possession, by Deed under his Hand and Seal, upon and for such Uses, Trusts, and Purposes as such Purchaser shall direct; and after such Conveyance the Premises conveyed shall become vested as Freehold of Inheritance, upon and for such Uses, Trusts, and Purposes as shall be expressed by such Deed; and any such Conveyance may be to the Effect set forth in the Schedule (B.) to this Act.

Application of Purchase Monies.

LXV. And be it enacted, That all such Purchase Monies as shall be from Time to Time raised or received by the Commissioner by such respective Sales as aforesaid shall be paid and applied by the Commissioner towards the Inclosure Expences Fund; and the respective Purchasers or other Persons paying the same shall not in any Manner be liable to see to the Application or be answerable for any Misapplication thereof.

Persons having limited Interests may raise Money for Expences by Mortgage.

LXVI. And be it enacted, That it shall be lawful for the respective Proprietors of Allotments to be made by virtue of this Act, being Tenants for Life or in Tail, or for any other Estate of Freehold or Inheritance, and also for the Husbands, Guardians, Trustees, Committees, or Attornies of any of the Proprietors being under Coverture, Infants, Lunatics, Idiots, or beyond the Seas, or otherwise incapacitated, and for the Trustees or Feoffees for charitable, parochial, or other Uses, or a competent Number of them, in respect of any Lands held by them in Trust for any charitable, parochial, or other Uses, with the Consent of the Commissioner, testified in Writing under his Hand and Seals, from Time to Time to charge their Allotments with any Money not exceeding Five Pounds *per* Acre towards their respective Proportions of the Inclosure Expences; and for securing the Repayment of such Money, with Interest, to mortgage or demise the said Allotments unto or in Trust for any Person who shall advance such Money for any Term of Years; but so that every such Mortgage or Demise be made with a Condition to cease and be void, or with an express Trust to be surrendered or re-assigned, when the Money thereby to be secured, with all Interest thereon, shall have been fully paid and satisfied; and so that in every such Mortgage or Demise which shall be made by or on behalf of any such Person entitled to any such Allotment for the Term of his natural Life, there be contained a Covenant to pay and keep down the Interest of the Money to be secured during his Life, in such Manner that no Person afterwards becoming possessed of such Lands shall be subject or liable to pay any larger Arrear of Interest than for Six Months previous to the Time when the Title of such Person shall accrue or commence; and every such Mortgage or Demise shall be valid in the Law for the Purposes thereby intended; and every such Mortgagee and his Assigns shall have the like Remedies in case of Nonpayment of the

Monies thereby secured as in the Case of other Mortgages of the like Nature.

Award to be deposited in the Hands of the Clerk of the Peace.

LXVII. And be it enacted, That as soon as conveniently may be after the said Inclosure shall be completed the Commissioner shall draw up and execute an Award, and the Execution of the said Award shall be proclaimed upon the next or some subsequent *Sunday*, by affixing a Proclamation on or near the outer Door of the Church of the said Parish previously to Divine Service, from the Time of which Proclamation only, and not before, such Award shall be considered as complete; and within Three Calendar Months after the Commissioner shall have so made and executed the said Award he shall cause the same, together with one of the reduced Plans herein-after directed to be made annexed thereto, to be delivered to the Clerk of the Peace of the said County, who is hereby required to deposit and keep the same among the Records of the said County, so that Recourse may be had thereto by any Person interested in the Premises, for the Reception whereof the Fee of Two Pounds Two Shillings and no more shall be paid; and the said Award shall, from the Delivery thereof to the said Clerk of the Peace, be deemed to be enrolled according to the Directions and within the Meaning of the said first-recited Act.

Copy of the Award to be deposited in the Parish Church.

LXVIII. And be it further enacted, That a Copy of the said Award fairly transcribed in a Book on plain or unstamped Paper or Parchment, with another of the reduced Plans herein-after directed to be made, shall within the Time aforesaid be deposited in the Archives of the Lord of the said Manor of *Solport*, and another Copy of the said Award shall be deposited in the Parish Church of *Stapleton* aforesaid, and there kept in a Box to be provided for that Purpose by the Commissioner; and the said Award, and the said Copy thereof, and any other Copy of the said Award, or of any Part thereof, attested by the Clerk of the Peace for the Time being of the said County or his Deputy, (for every Sheet of which containing One hundred Words Sixpence and no more shall be paid,) shall thereafter be admitted as legal Evidence of the Matters and Things therein contained in all Courts whatsoever.

Reduced Plan to be annexed to Award, and a Schedule of old Inclosures.

LXIX. And be it enacted, That the Commissioner shall cause Three reduced Plans of the said Parish to be drawn upon Parchment or Vellum, on which the public and private Roads, Paths, and Drains, with the Boundary Fences of the several Allotments mentioned and described in the said Award, and such other Matters and Things as the Commissioner shall think fit, shall be fairly and distinctly delineated and expressed; and the Commissioner shall sign the said Plans, one of which shall be annexed to the said Award, and another Copy of the said Plans shall be annexed to or shall go and be kept with the Copy of the said Award to be deposited in the Archives of the Lord of the said Manor of *Solport*, and the other of the said Plans shall be annexed to or shall go and be kept with the Copy of the said Award to be deposited in the Parish Church of *Stapleton* aforesaid; and the Commissioner shall make and annex to the said

Award a Schedule describing and setting forth the Quantities of all the Homesteads, Gardens, Orchards, and ancient Inclosures entitled to Right of Common upon the said Common or Waste Lands; which said Plans, or either of them, shall be admitted as legal Evidence of the Matters and Things therein contained in all Courts whatsoever.

Power of Appeal.

LXX. And be it enacted, That if any Person shall think himself aggrieved by any thing done in pursuance of this Act, (except as to the Allotments, and except as to such other Determinations as are by this Act directed to be final, and except such Cases wherein an Issue at Law shall be tried as herein-before is mentioned,) he may appeal to the General or Quarter Sessions of the Peace which shall be held for the said County of *Cumberland* within Four Calendar Months next after the Cause of Complaint shall have arisen, on giving to the said Commissioner and to the Party concerned Ten Days previous Notice in Writing of such Appeal, and of the Matters thereof, (except with respect to the Accounts of the said Commissioner,) which, notwithstanding the same shall have been examined and published as aforesaid, may be appealed against at any Time within One Month after the Enrolment of the Award, on giving to the said Commissioner such Notice as last aforesaid; and the Justices (not interested in the Premises) in such Sessions assembled are hereby 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 in case any such Appeal shall appear to the said Justices to be frivolous, vexatious, or without Foundation, they shall award such Costs to be paid by the Appellant as to them shall seem reasonable, and such Costs shall be levied in manner aforesaid, and the Costs and Damages which shall be so awarded shall be levied by Distress, and the said Justices shall issue their Warrant accordingly.

Order on Appeal to be final.

LXXI. And be it enacted, That every Order and Determination of the said Justices upon every such Appeal shall be final, and shall not be removed or removeable, by Certiorari or any other Writ or Process whatsoever, into any of Her Majesty's Courts of Record at *Westminster* or elsewhere.

Reservation of Mines and Minerals to the Lord.

LXXII. Provided always, and be it further enacted, That notwithstanding the Division and Inclosure hereby authorized to be made, the said Sir *James Robert George Graham*, his Heirs and Assigns, Lords of the said Manor of *Solport* for the Time being, shall for ever hereafter be deemed and taken to be the Owner or Owners of all the Mines of Coal, Lead, Copper, Tin, Iron, and all other Metals, Mines, Minerals, and Ores, of what Nature or Kind soever, within or under the several and respective Parts of the said Common or Waste Lands intended to be divided and inclosed as aforesaid (as well those not opened as those, if any, already opened), and shall have full Power and Authority to use and exercise all convenient Ways, Wayleaves, and Liberties of laying, making, and repairing Waggonways and other Ways in, over, and along the said Common or Waste Lands, and the several Allotments thereof, and of searching for, winning, and working the said Mines, Minerals, and Quarries, and leading and carrying

carrying away the Coal, Lead, Copper, Tin, Iron, and all other Metals, Mines, Minerals, and Ores to be gotten thereon and thereout respectively, and of making Pits, Shafts, Pit-rooms, Heap-rooms, Drifts, Levels, 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, upon, through, or over the said Common or Waste Lands, and the respective Allotments thereof, and all other Powers, Privileges, and Authorities, and to do or to execute any necessary Acts or Things for all or any of the Purposes aforesaid in and over the same, in such and the like Manner as if this Act had not been made, he the said Sir *James Robert George Graham*, his Heirs and Assigns, Lords of the said Manor of *Solport* for the Time being, making reasonable Satisfaction for the Damage to be done to the Owner or Owners of the said Allotments in making or using the said Works, or any of them, or by exercising any of the Powers or Authorities aforesaid.

Power to Proprietors to get Stones for their own Use.

LXXIII. Provided always, and be it enacted and declared, That it shall and may be lawful to and for the several Proprietors of or Persons interested in the said Common or Waste Lands to whom Allotments shall be made as aforesaid, their Heirs and Assigns, to dig for, take, and carry away, within, upon, from, or under their respective Allotments, any Quantity of Lime or other Stone for the Improvement of their respective Lands or Grounds within the said Manor, or for any other Purpose or Purposes for which Lime or other Stone is used, so as the same be used by them respectively within the said Manor, and be not sold or otherwise disposed of, and so as no Damage or Obstruction be thereby done or given to the working of any Mine or Mines, Colliery or Collieries, Pit or Pits, Quarry or Quarries, Delf or Delves, Work or Works, carrying on or to be carried on by the said Sir *James Robert George Graham*, his Heirs and Assigns, Lords of the said Manor for the Time being, his or their Stewards, Agents, or Workmen respectively.

Rights of Lords not to be prejudiced.

LXXIV. And be it further enacted, That nothing herein contained shall prejudice, lessen, or defeat the Right, Title, or Interest of the said Sir *James Robert George Graham*, his Heirs or Assigns, Lords of the said Manor of *Solport* for the Time being, of, in, or to any Seigniories, Royalties, Rights, or Services incident or belonging to such Manor.

General Saving.

LXXV. Saving always to the Queen's most Excellent Majesty, Her Heirs and Successors, and to all other Persons, Bodies Politic, Corporate, or Collegiate, their Heirs, Successors, Executors, and Administrators, all such Estate, Right, Title, and Interest, Claim and Demand, (other than and except such as are expressly barred and compensated for or intended to be barred and compensated for and extinguished by this Act,) which they or any of them could or might have had in, to, or in respect of the Lands hereby authorized to be divided, allotted, and inclosed in case this Act had not been passed.

Interpretation Clause.

LXXVI. And be it enacted, That in the Construction of this Act the following Words and Expressions shall have the several Meanings hereby

hereby assigned to them, unless there be something in the Subject or Context repugnant to such Construction ; (that is to say,)

Words importing the Singular Number shall include the Plural Number, and Words importing the Plural Number shall include the Singular Number :

Words importing the Masculine Gender only shall extend to Females as well as Males :

The Word "Month" shall mean Calendar Month :

The Word "Lands" shall include Tenements and Hereditaments :

The Expression "Lands to be inclosed" shall be understood to mean the Lands by this Act authorized to be divided, allotted, and inclosed :

The Expression "the Inclosure Expences Fund" shall be understood to mean the Monies by this Act authorized to be raised for defraying the Expences of obtaining this Act and carrying the same into execution:

The Expression "the Commissioner" shall mean the Commissioner appointed for the Time being acting by virtue of this Act.

Act as printed by the Queen's Printers to be Evidence.

LXXVII. And be it enacted, That this Act shall be printed by the several Printers to the Queen'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.

SCHEDULES referred to in the foregoing Bill.

SCHEDULE (A.)

Form of Declaration by Commissioner or Surveyor.

I *A.B.* do solemnly declare, That I will faithfully, impartially, and honestly, according to the best of my Skill and Ability, execute and perform the several Powers and Authorities vested and reposed in me as a Commissioner [*or* Surveyor, *as the Case may be*,] by virtue of an Act passed in the Year of the Reign of Her Majesty Queen Victoria, intituled [*here set forth the Title of this Act*], according to Equity and good Conscience, and without Favour or Affection, Prejudice or Malice, to any Person whomsoever.

SCHEDULE (B.)

Form of Conveyance by Commissioner.

I the Commissioner acting in execution of an Act of Parliament passed in the Year of the Reign of Queen Victoria, intituled [*here insert the Title of this Act*], by virtue of the Power and Authority to me given by the said Act, and in consideration of the Sum of paid into my Hands by , which Sum is the whole Purchase Money agreed to be paid by him to me for the Purchase of the Lands and Hereditaments herein-after described, being Part and Parcel of the Lands by the said Act authorized to be sold and disposed of by me, and the Receipt of which said Sum I do hereby acknowledge, do by this Deed under my Hand and Seal, by the Direction of the said , testified by his Execution of these Presents, grant and convey unto , his Heirs and Assigns, all that [*here describe the Premises*], together with the Appurtenances to the said Premises belonging, and the Fee Simple and Inheritance thereof in possession, to have and to hold the same unto the said , his Heirs and Assigns [*here state the Uses, Trusts, or Purposes of the Conveyance, as the Case may require*]. In witness whereof I have hereunto set my Hand and Seal, this Day of .

LONDON: Printed by GEORGE E. EYRE and ANDREW SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1842.