



ANNO QUINQUAGESIMO QUARTO

GEORGI II. REGIS.

Cap. 35.

An Act for inclosing Lands within the Manor of *Bewaldeth*, in the Parish of *Torpenhow*, in the County of *Cumberland*. [4th May 1814.]

WHEREAS there are within the Manor of *Bewaldeth*, in the Parish of *Torpenhow*, in the County of *Cumberland*, several Commons and Waste Grounds, containing together Seven hundred Acres, or thereabouts, which in their present State yield but little Profit to the Persons interested; and there are also within the said Manor certain Open and Common Fields called *Townfallas* and *Longwood*, containing Twenty Acres, or thereabouts: And whereas Sir *Frederick Fletcher Vane* Baronet is or claims to be Lord of the said Manor, and as such is seized of or claims to be entitled to the Royalties of the said Commons and Waste Grounds; but for facilitating the said Inclosure, and for other the Considerations herein-after mentioned, he hath agreed to relinquish and abandon all his Right, Title and Interest in or to the Soil and Royalties of the said Commons and Waste Grounds: And whereas the Right Reverend *Samuel* Lord Bishop of *Carlisle*, in Right of his See, is Patron of the Vicarage of *Torpenhow*; and *John Fenton* Clerk is Vicar of the said Parish of *Torpenhow*, and as such is possessed of and entitled to various Great and Small Tythes, Moduses, Prescriptions or Compositions for Tythes and other Ecclesiastical Dues, yearly arising and growing due within the said Manor: 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 Pro-* 41G.3.c.109.
visions
[*Loc. & Per.*] 7 G

visions 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 the said Sir Frederick Fletcher Vane, John Pingney, John Swinburn, John Pingney the younger, Richard Atkinson, and others, are respectively Owners of Messuages, Lands, or Tenements within the said Manor, and as such entitled to Right of Common, or otherwise interested in the said Commons and Waste Grounds; and the said Sir Frederick Fletcher Vane and divers other Persons are also Owners of Dales and Small Parcels of Land in the said Open and Common Fields, which lie intermixed and dispersed: And whereas the said Sir Frederick Fletcher Vane, John Pingney, John Swinburn, John Pingney the younger, and Richard Atkinson, and such several other Owners as aforesaid, are desirous that the said Commons and Waste Grounds and Open and Common Fields may respectively be divided allotted and inclosed, according to their several Rights and Interests therein; but such Division, Allotment, and Inclosure, cannot be effected without the Authority of Parliament: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled; and by the Authority of the same, That the whole of the Commons and Waste Grounds lying within or belonging to the said Manor, and also the said Open and Common Fields shall (as soon as conveniently may be) be respectively set out, divided and allotted by John Hudleston of Gosforth, and John Norman of Kirkandrews-upon-Eden, both in the said County of Cumberland, Gentlemen, Commissioners appointed by this Act, or their Successors, to be elected in Manner herein-after mentioned, subject to the Regulations of the said recited Act (except in such Cases where the same are hereby varied or altered).

Commissioners appointed.

For appointing new Commissioners.

II. And be it further enacted, That in case of the Death, Incapacity, or Refusal to act of the said John Hudleston, or of any future Commissioner to be nominated and appointed by the said Sir Frederick Fletcher Vane (or the Lord or Lords, Lady or Ladies of the said Manor for the Time being) and John Pingney, John Swinburn, John Pingney the younger, and Richard Atkinson and others, the several Owners of Messuages, Lands or Tenements, within the said Manor for the Time being, or the major Part of them respectively, in the Room or Stead of the said John Hudleston, or any of his Successors, they the said Lord or Lords, Lady or Ladies of the said Manor, and Owners for the Time being, or the major Part of them respectively, shall by some Instrument in Writing under their Hands and Seals nominate and appoint a new Commissioner from Time to Time in the Room or Stead of the said John Hudleston, or of any future Commissioner to be nominated and appointed by the said Lord or Lords, Lady or Ladies of the said Manor, and Owners of Messuages, Lands, or Tenements within the said Manor for the Time being respectively, or the major Part of them; and that in case of the Death, Incapacity, or Refusal to act of the said John Norman, or of any future Commissioner to be nominated and appointed in the Room or Stead of him the said John Norman, or any of his Successors, the said John Fenton, and his Successors, Vicars of the said Parish, shall by some Instrument in Writing under their Hands and Seals, nominate and appoint a new Commissioner from Time to Time in the Room or Stead of the said John Norman, or of such future Commissioner so to be nominated and appointed as is last-mentioned; and every new Commissioner to be nominated

nominated and appointed as aforesaid shall, after taking the Oath prescribed in that Behalf, have and is hereby declared to have the same Powers and Authorities to put this and the said recited Act in Execution, and for the Purposes thereof shall be considered to all Intents and Purposes as if he had been expressly named in and appointed by this Act; and every such Instrument of Nomination and Appointment shall be enrolled, recorded and paid for at the General Quarter Sessions of the Peace for the said County of *Cumberland* next after such Nomination and Appointment; and the same or the Inrolment thereof, or a true Copy of such Inrolment, shall be admitted as Evidence in all Courts whatsoever; and all Persons shall be at Liberty to peruse or inspect the same from Time to Time, and at all reasonable Times, paying for every such Inspection or Perusal the Sum of One Shilling.

III. And be it further enacted, That the said Commissioners shall cause Notice in Writing under their Hands to be affixed upon the principal Door of the Parish Church of *Torpenhow* aforesaid, and also to be inserted in the *Carlisle* Newspaper, or in some other Paper usually circulated in the County of *Cumberland*, of the Time and Place of their First, Second, and Third Meetings respectively, to put this Act and the said recited Act into Execution, at least Fourteen Days next before such respective Meetings; and that the said Commissioners shall and may after the said Third Meeting, from Time to Time appoint such Time and Place for every subsequent Meeting as they shall think proper, they causing a Notice in Writing under their Hands to be affixed upon the principal Door of the said Church of *Torpenhow* Eight Days at least before every such subsequent Meeting; but the said Commissioners, at their First, Second or Third, or any other subsequent Meeting or Meetings, shall have full Power and Authority from Time to Time, as they shall think it convenient, to continue such First, Second, or Third, or any subsequent Meeting or Meetings, by Adjournment, for the due Execution of this Act, without giving any other Notice whatsoever of such Meeting or Meetings by Adjournment; and that all Meetings of the said Commissioners shall be held within the said Parish of *Torpenhow*, or within Eight Miles thereof.

Commissioners to give Notice of Meetings.

IV. Provided always, and be it further enacted, That whenever a Notice shall by this Act be required to be given, and the Manner in which such Notice so to be given shall not be particularized, the same shall be inserted in the *Carlisle* Newspaper, or in some other Paper usually circulated in the said County of *Cumberland*, and a Copy thereof affixed on the principal Door of the Parish Church of *Torpenhow* aforesaid.

How Notices not particularized are to be given.

V. Provided always, and be it further enacted, That whenever the said Commissioners shall disagree or differ in Opinion, touching or concerning any Matter or Thing to be by them done and performed in pursuance and by virtue of this Act, or of the said recited Act, then and in every such Case it shall be lawful for the said Commissioners, and they are hereby authorized and required, with all convenient Speed, after such Disagreement or Difference in Opinion shall happen, to refer the Matter thereof to such disinterested Person as the said Commissioners shall think proper to appoint for that Purpose, as Umpire; whose Judgment and Determination thereupon respectively shall be deemed and considered as the Judgment and Determination of the said Commissioners: Provided also, that no Person shall be capable

Umpire to be appointed in case of Difference.

Umpire to be sworn. of acting as Umpire in the Execution of the Powers given by this or the said recited Act, until he shall have taken and subscribed the Oath following; (that is to say),

‘ I do swear [*or*, being one of the People called Quakers, do solemnly affirm] That I will faithfully, impartially, and honestly, according to the best of my Skill and Ability, execute and perform the several Trusts, Powers, and Authorities vested and reposed in me as an Umpire, by virtue of an Act passed in the Fifty-fourth Year of the Reign of King George the Third, intituled [*here set forth the Title of this Act*] according to Equity and good Conscience, and without Favour or Affection, Prejudice or Partiality, to any Person or Persons whomsoever. ‘ So help me GOD.’

Which Oath or Affirmation it shall be lawful for the said Commissioners or either of them to administer; and the said Oath or Affirmation so taken and subscribed by such Umpire, shall be annexed to and inrolled with the Award of the said Commissioners; and a Copy of the Inrolment thereof shall be admitted as legal Evidence.

Commissioners to settle Disputes;

VI. And be it further enacted, That if any Dispute or Difference shall arise between any of the Parties interested, or claiming to be interested in the said Division and Allotments, touching or concerning their respective Rights and Interests, which they or any of them shall have or claim to have in, over, and upon the said Lands and Grounds by this Act directed to be divided, allotted, and inclosed, or touching or concerning any other Matter or Thing relating to the said Division and Allotments, it shall and may be lawful for the said Commissioners, and they are hereby authorized and required, with all convenient Speed, to proceed to hear and determine such Claims and Objections, upon their own View, or Examination of Witnesses upon Oath, to be administered by either of the said Commissioners, or by such other Evidence, Proof, Ways, and Means as by them shall be adjudged proper; and the said Commissioners shall make and signify their Determination in Writing of and concerning the Premises, under their Hands, within Six Calendar Months next after such Claims or Objections shall be respectively made as aforesaid, or as soon after as conveniently may be: Provided always, that nothing herein contained shall authorize the said Commissioners, or Umpire, to determine the Title to any Messuages, Cottages, Lands, Tenements or Hereditaments whatsoever.

but not to determine Titles.

Commissioners to assess Costs.

VII. Provided always, and be it further enacted, That the said Commissioners shall, and they are hereby empowered and required, upon Request made to them, to assess such Costs and Charges as they shall think reasonable, for the Use and Benefit of the Party or Parties in whose Favour such Determination shall be made, upon or against the Person or Persons whose Claim or Claims, Objection or Objections shall be thereby disallowed; and by Warrant under the Hands and Seals of such Commissioners, levy such Costs and Charges by Distress and Sale of the Goods and Chattels of such last mentioned Person or Persons, together with the Charges of such Distress and Sale.

VIII. Pro.

VIII. Provided always, and be it further enacted, That in case any Person or Persons interested or claiming to be interested in the said intended Division and Allotments; shall be dissatisfied with any Determination of the said Commissioners or Umpire, touching or concerning any Claim or Claims to any Rights of Common or other Rights or Interests in, over, or upon the Lands and Grounds hereby directed to be divided, allotted, and inclosed, or any Part thereof, it shall be lawful for the Person or Persons so dissatisfied to proceed to a Trial at Law of the Matter so determined by the said Commissioners, or Umpire, at the then next or at the following Assizes to be holden for the said County of *Cumberland*; and for that Purpose the Person or Persons who shall be dissatisfied with the Determination of the said Commissioners, or Umpire, shall cause an Action to be brought upon a feigned Issue, against the Person or Persons in whose Favour such Determination shall have been made, within Three Calendar Months next after the Determination of the said Commissioners, or Umpire, shall be made; 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 or Claims and the Right or Rights thereby insisted on may be tried and determined (such Issue or Issues to be settled by the proper Officer of the Court in which the said Action or Actions shall be commenced, in case the Parties shall differ about the same); and the Verdict or Verdicts which shall be given in such Action or Actions, shall be 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 after such Verdict or Verdicts shall be obtained and not set aside by the Court, 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: Provided always, that the Determination of the said Commissioners or Umpire, touching any Rights or Interests in, over, or upon the Lands and Grounds, hereby directed to be divided, allotted, and inclosed, or any Part thereof, which shall not be objected to, or being objected to, the Party or Parties objecting not causing such Action at Law to be brought and proceeded in as aforesaid, shall be final and conclusive upon all Parties.

Allowing Parties to try their Rights by an Issue at Law.

IX. And be it further enacted, That if any of the Persons interested or claiming to be interested in the said intended Division, shall happen to die before the said intended Division shall be made and perfected, or before the said Commissioners shall have made their Award touching the same, the Powers and Authorities hereby given unto and vested in the said Commissioners shall not be in any ways determined or suspended by such Death or Deaths; but that the said Commissioners and their Successors shall and may proceed in and execute the said Powers and Authorities and every of them, in such and the like Manner as they respectively might have done, if such Person or Persons had not died; and that the Part or Parts, Share or Shares of the said Commons and Waste Grounds, which such Person or Persons so dying would have been entitled unto, shall be taken by the Person or Persons who shall upon the Death of the Person or Persons so dying, be entitled to the same; and such Person or Persons shall

Deaths of Parties not to obstruct Proceedings of the Commissioners.

[Loc. & Per.]

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accordingly

accordingly accept and fence, and have, hold, and enjoy the same, according to his, her, or their respective Estates and Interests in the Lands, Tenements, and Hereditaments, in respect whereof such Allotment or Allotments shall be made.

How Actions
may be
brought after
Deaths of
Parties.

X. And be it further enacted, That 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 herein-before limited for bringing such Action or Actions, it shall be lawful for the Person or Persons, Bodies Politic or Corporate respectively, who might have brought such Action against the Person or Persons so dying, to bring the same within the Time so limited as aforesaid, against such Person or Persons, as if actually living, and to serve one of the said Commissioners, or their Clerk, with Notice of 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 Proceedings shall be had therein in the same Manner as if such Person or Persons had been actually living; and the Rights of all Parties shall be equally bound and concluded by the Event of such Action or Actions.

Right of
Possession not
to be deter-
mined by the
Commission-
ers.

XI. Provided always, and be it further enacted, That nothing in this Act contained shall extend to enable the said Commissioners or Umpire to determine any Right between any Parties, contrary to the Possession of any such Parties, (except in Cases of Encroachments made within the Period of Thirty Years, as herein-after mentioned); but if the said Commissioners or Umpire 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.

No Turfs or
Sods to be
cut.

XII. And be it further enacted, That from and after the passing of this Act, it shall not be lawful for any Person or Persons to dig, cut, or carry away any Turfs or Sods, in, upon, or from the said Commons and Waste Grounds, or any Part thereof.

Encroach-
ments to be
deemed Part
of the Com-
mons.

XIII. 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, within Thirty Years before the passing of this Act, shall be deemed Part and Parcel of the said Commons and Waste Grounds, from or on which the same were respectively taken in or made, and shall be allotted to the Proprietor or Proprietors thereof, as the Whole or Part of the Share of the Commons or Waste Grounds to be allotted to him, her, or them respectively, pursuant to this Act, according to the Value of the Land so taken or encroached upon, before any Improvement was made thereof or therein; and in case any Dispute shall happen to arise touching such Encroachments, or which of them shall or may be so deemed to be Part or Parcel of the said Commons or Waste Grounds, such Dispute shall be referred to the Determination of the said Commis-
sioners,

tioners, to be by them proceeded on, examined into, and determined, in such and the same Manner as disputed Claims touching Rights of Common are directed by this Act to be proceeded on, examined into, and determined; but no such Determination shall prevent any of the Parties from trying their Rights at Law, in respect to any Matter of Title, nor shall any Proceedings or Trials to be had thereupon, suspend the Execution of the Powers given by this Act.

XIV. And be it further enacted, That the said Commissioners shall, and they are hereby authorized and required, according to the best of their Skill and Judgment, to assign, set out, and appoint, a proper Part or Parts of the said Commons and Waste Grounds, for public Stone 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 aforesaid Manor for the Time being, and the other Land Owners respectively within the said Manor for the Time being; such Stone and Bricks to be used by the Lord or Lords, Lady or Ladies of the said Manor for the Time being, and such Land Owners respectively within the said Manor, for the Use of their respective Tenements within the said Manor, but not to be sold or otherwise disposed of; and shall set out and appropriate any other Part or Parts of the said Commons and Waste Grounds for the getting Sand, Gravel, and other Materials for making and repairing such public and private Roads as shall be set out and appointed, or continued within the said Manor, in pursuance of this Act, and according to the Directions herein contained, or for any other Purpose or Purposes which to the said Commissioners shall seem necessary and expedient: Provided always, that nothing herein contained shall extend, or be deemed, taken, or construed to extend, to preclude or prevent the Surveyor or Surveyors appointed by the said Commissioners within the said Manor for the Time being from getting Materials within any other Lands or Grounds for the Repairs of the Highways, agreeably to the Laws now in force or to be made for repairing the Roads within that Part of *Great Britain* called *England*.

Allotment
for Public
Quarries,
Clay and
Gravel Pits.

XV. And be it further enacted, That the said Commissioners shall, and they are hereby authorized and empowered to sell, by public Auction or private Contract, together or in separate Lots, pursuant to the Directions of the said recited Act, so much of the Residue of the said Commons and Waste Grounds as they may judge expedient, towards paying the Costs, Charges, and Expences incident to and attending the obtaining this Act, and carrying the same into Execution.

For selling
Land to pay
Expences.

XVI. And be it further enacted, That the Person or Persons who shall become the Purchaser or Purchasers of the Land so to be allotted and sold as aforesaid, his, her, and their Heirs and Assigns, shall be subject and liable to the making and keeping in Repair such Parts of the Ring or Outer Fences thereof as shall be directed by the said Commissioners, and also to the due Observance and Performance of all Orders, Matters, Charges, and Directions to be made, laid down and applied by the said Commissioners in and by their Award, and also to all Rights, Liberties and Privileges of the Lord or Lords, Lady or Ladies of the said Manor for the Time being, and his, her or their Lessee or Lessees and Assigns.

The Pur-
chaser to
fence such
Lands, &c.

XVII. And

How Surplus
Money (if
any) arising
from Sale of
Lands to be
disposed of.

The Defici-
ency (if any)
to be made
good by the
Proprietors.

XVII. And be it further enacted, That if any Surplus shall remain of the Monies to arise by or from such Sale or Sales, or Valuation or Price (if any) to be paid by the said Sir *Frederick Fletcher Vane*, after Payment and Satisfaction of all Costs, Charges, and Expences in and about applying for, obtaining, procuring, and passing this Act, and carrying the same and the said recited Act into Execution, the same shall be laid out and disposed of in the Manner directed by the said recited Act with respect to the Money to be paid for the Purchase or Exchange of any Lands, Tenements, or Hereditaments, or any Timber or Wood growing thereon, and which Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments, to be settled to the same Uses: Provided always, that if the Money to be produced by Sale or Sales or otherwise as aforesaid, shall not be sufficient to defray all the Costs, Charges, and Expences herein-before directed to be paid and defrayed thereby, then such Deficiency shall be borne, defrayed, and paid by the respective Persons to whom Allotments of the said Commons and Waste Grounds shall be respectively made (other than and except the said *John Fenton* and his Successors, as such Vicar as aforesaid) in Proportion to the real Value of their respective Allotments, to be settled and ascertained by the said Commissioners, and to be payable and paid by them respectively to such Person or Persons, and at such Time or Times, as shall by the said Commissioners be named and appointed; and in case any of the said Persons shall refuse or neglect to pay his, her, or their Share or Proportion of the said Deficiency, within the Time so to be limited and appointed as aforesaid, then the said Commissioners shall and may, and they are hereby empowered and required, by Warrant under their Hands and Seals, to cause the same to be levied by Distress and Sale of the Goods and Chattels of the Owner or Owners, Occupier or Occupiers of the Allotment or Allotments of the Person or Persons so respectively refusing or neglecting to pay the same, together with the Charges of such Warrant, Distress, and Sale, rendering the Overplus (if any be) to the Owner or Owners of such Goods and Chattels upon Demand; and that every such Occupier or Tenant shall and may deduct and retain out of his or her Rent or Rents, so much Money as he or she shall so pay as aforesaid.

Allotment to
Sir *Frederick
Fletcher
Vane*,
Baronet.

XVIII. And be it further enacted, That the said Commissioners shall set out, allot and appoint, unto and for the said Sir *Frederick Fletcher Vane*, all that Plot or Piece of Land called *Binssey*, or Parcel of *Binssey*, as the same is now staked and set out, being Part of the said Commons and Waste Grounds, and containing Two hundred Acres more or less, for and as his Share or Allotment in the Residue of the said Commons and Waste Grounds, on account of his Messuages, Lands or Tenements within the said Manor, if the same shall in the Judgment of the said Commissioners be equivalent thereto; otherwise such further Allotment adjoining thereto, shall by the said Commissioners be set out and appointed unto and for the said Sir *Frederick Fletcher Vane*, as they shall deem to be such Equivalent; and in case the said Plot or Piece of Land called *Binssey*, or Parcel of *Binssey*, shall in the Judgment of the said Commissioners be more than an Equivalent for the Share or Allotment of the said Sir *Frederick Fletcher Vane*, in the Residue of the said Commons and Waste Grounds, on account of his Messuages, Lands, or Tenements in the said Manor, then that the said Sir *Frederick Fletcher Vane* shall pay to the said Commissioners, for the Excess of the said Plot or Piece of Land called *Binssey*, or Parcel of *Binssey*,

such fair and reasonable Valuation and Price as shall be set thereon and fixed by the said Commissioners, and at such Time as they shall direct, to be by them applied and laid out towards paying the Costs, Charges, and Expences incident to and attending the obtaining this Act and carrying the same into Execution; and which Plot or Piece of Land called *Binsfey*, or Parcel of *Binsfey*, or such Addition thereto (if any) shall also be accepted and deemed and taken to be a Satisfaction for the Right and Interest of the said Sir *Frederick Fletcher Vane*, as Lord of the said Manor, in and to the Soil of the Residue of the said Commons and Waste Grounds; which Allotment so to be set out to the said Sir *Frederick Fletcher Vane*, shall be Ring-fenced, and at all Times for ever thereafter maintained, repaired, preserved, and kept in good and sufficient Repair, by and at the Expence of the said Sir *Frederick Fletcher Vane*, his Heirs or Assigns: Provided always, that if there shall be any Surplus of the Money to be paid as aforesaid, such Surplus shall be divided and apportioned between the several Proprietors and Persons interested in the said Commons and Waste Grounds, in such Shares as shall be in Proportion to their respective Property and Interest therein; and the Shares of such of them as shall be Tenants in Fee Simple shall be paid to them respectively; and the Shares of such other Proprietors and Persons of and in such Surplus Money, shall be applied and disposed of in Manner directed by the said recited Act, in those Cases wherein any Money is to be paid for the Purchase or Exchange of any Lands, Tenements or Hereditaments, or of any Timber or Wood growing thereon, and which Money ought to be laid out in the Purchase of other Lands, Tenements or Hereditaments, to be settled to the same Uses.

XIX. And be it further enacted, That the said Commissioners shall also set out, allot and appoint, unto and for the said *John Fenton*, and his Successors, Vicars of the said Parish of *Torpenhow*, so much of the said Commons and Waste Grounds, in one entire Plot, as shall in the Judgment of the said Commissioners be deemed equivalent to and a full Recompence and Satisfaction for all Manner of Tythes, Moduses, Composition for Tythes, and other Ecclesiastical Dues (Mortuaries, Easter Offerings, and Surplice Fees only excepted) due, owing or belonging to him the said *John Fenton*, as such Vicar as aforesaid, or that might thenceforth arise and grow due to him the said *John Fenton*, or his Successors, Vicars as aforesaid, out of, or for or in respect of the several old Inclosures, and other Messuages, Lands, and Tenements within the said Manor of *Bewaldeth*; and the said Commons and Waste Grounds so to be divided and allotted as aforesaid, computing the Value of such Tythes at the clear Yearly Sum of Seventy Pounds, which Allotment or Plot so to be appointed to the said Vicar and his Successors as aforesaid, in lieu of Tythes, shall be set out upon that Part of the said Commons and Waste Grounds which adjoins to other Allotments on *Torpenhow Low Moor*, within the said Parish of *Torpenhow*, lately allotted to the said *John Fenton* as such Vicar, in lieu of Tythes, in pursuance of an Act passed in the Forty-seventh Year of the Reign of His present Majesty, intituled *An Act for inclosing Lands in the Parish of Torpenhow, in the County of Cumberland*; and that the said Commissioners shall, and they are hereby authorized and empowered to apply, out of the Money to be raised, as herein-before directed, for defraying the Costs, Charges, and Expences incident to and attending the obtaining of this Act, and carrying the same into Execution, the Sum of Three hundred Pounds in making and erecting such substantial Farm

Allotment to
Mr. Fenton
for Tythes in
Bewaldeth.

Buildings upon such Part of the said Allotment or Plot, so to be set out for the said Vicar, as shall in their Judgment be most useful, beneficial and necessary, not only for the permanent Improvement and Cultivation of the said Allotment and Plot hereby directed to be made and set out, but also of the before-mentioned Allotments on *Torpenhow Low Moor* aforesaid; and in case no Part of the said Allotment or Plot hereby directed to be made and set out to the said Vicar, shall extend to and adjoin the *Keswick Road*, the Commissioners shall and they are hereby authorized and empowered to set out and make such Road as they may think necessary, between the same and the nearest or most convenient Part of the said Allotment.

Commissioners to allot the Open and Common Fields.

XX. And be it further enacted, That it shall and may be lawful to and for the said Commissioners, and they are hereby required, to set out, divide and allot the Lands and Grounds in the said Open and Common Fields, unto and amongst the several Owners and Proprietors thereof, according and in proportion to their several and respective Estates, Rights and Interests therein (Quantity and Quality being considered); and the several Allotments and Shares so to be made and set out by the said Commissioners, shall be accepted and taken by each of the said Proprietors, and fenced or inclosed by such Person or Persons, and in such Manner and Form, and under and subject to such Regulations, as the said Commissioners shall by their Award order and direct: Provided always, that in making the Division of the said Open and Common Fields, the said Commissioners shall allot to the Persons whose Dales or Lands therein lay, in one entire Parcel, and convenient for Occupation, such Dales or Lands as they are now possessed of, so far as the Circumstances and Nature of the Case will, in the Judgment of the said Commissioners, admit.

Allotment of the Residue.

XXI. And be it further enacted, That the said Commissioners shall, and they are hereby required to set out, by Metes and Bounds, and allot in Severalty, the Residue of the said Commons and Waste Grounds, after the several Allotments and Appropriations herein-before mentioned shall be made, unto and amongst the several other Persons, Bodies Politic and Corporate, entitled to Right of Common upon the said Commons and Waste Grounds, for or on account of their respective Messuages, Lands and Tenements within the said Manor, in proportion to their several and respective Rights and Interests therein; such Allotments to be settled and ascertained by the said Commissioners, by and according and in proportion to the true and real Annual Value of the several and respective Messuages, Lands, Tenements or other Estate, in respect of which such Allotments shall be so made; and such Annual Value to be settled and ascertained by the said Commissioners, in such Manner and by such Ways and Means as to them shall seem most proper, in order to render the said intended Division and Allotments fair, just and equal, to and amongst the several Parties interested therein.

Allotments to be Freehold.

XXII. And be it further enacted, That from and after the Execution of the Award directed to be made by the said Commissioners, all and every the Allotments and Appropriations herein-before directed to be made, shall and are hereby declared to be Freehold, to all Intents and Purposes whatsoever.

XXIII. And

XXIII. And be it further enacted, That the Allotment to be set out to the said Vicar, and his Successors as aforesaid, in lieu of Tythes, shall be Ring-fenced in a sufficient Manner, at the Expence of the other Proprietors, exclusive of him the said Vicar.

Vicar's Allotment to be ring-fenced at the Expence of the Proprietors.

XXIV. And be it further enacted, That it shall and may be lawful for any Person or Persons interested in the said Commons or Waste Grounds to be inclosed by virtue of this Act, who shall have, in himself, herself or themselves respectively, an Estate of Inheritance in Fee Simple, of and in any Freehold Lands, Tenements or Hereditaments, in respect of which he, she or they shall or may be entitled to any Allotment or Allotments by virtue of this Act; at any Time or Times before the signing of the Award or Instrument directed to be made by the said Commissioners, or at any Time afterwards to sell and dispose of all such Estate, Right, Title, Interest and Property, which he, she or they now have, or hath, or shall or may hereafter have, in, to or upon the said Commons or Waste Grounds, or in or to any Allotment or Allotments to be made in respect thereof by virtue of this Act, separate from such Freehold Estate or Estates, in right whereof he, she or they is, are or shall be so entitled; and that in case of any such Sale or Sales, previous to the Execution of such Award, it shall and may be lawful for the said Commissioners, and they are hereby authorized and required to allot the same to the Purchaser or Purchasers thereof respectively, and in respect of such Purchase specially, who shall and may immediately after the same shall be allotted and marked out as aforesaid, have, hold, use and enjoy such Allotments so by him, her or them purchased as aforesaid, and shall and may have, use and exercise any Act of Ownership in and upon the same, in as full and ample a Manner, to all Intents and Purposes whatsoever, as the former Proprietor or Vendor, Proprietors or Vendors thereof respectively might have done, in case such Sale or Sales had not been made; but subject nevertheless to the several Rules, Orders, Conditions and Restrictions mentioned and contained in this Act.

Owners may dispose of their Allotments prior to the Award.

XXV. And whereas the Allotment so to be made to the said *John Fenton* and his Successors, Vicars aforesaid, will probably require some other and further Buildings; by reason whereof, and in order to render the same of greater Value to the said Vicar and his Successors, it will be necessary that some such Buildings should be erected thereon, and some necessary Interior or Subdivision Fences made, planted and raised, in and upon the said Allotment: And whereas the erecting of such further Buildings, and the making, planting and raising such Interior or Subdivision Fences, will be a considerable Expence, and as the same will probably be more beneficial to the Successors of the said Vicar than to himself; be it therefore further enacted, That it shall and may be lawful to and for the said *John Fenton* and his Successors, Vicars as aforesaid, by and with the Consent in Writing of the Lord Bishop of *Carlisle*, as Patron of the said Vicarage and Ordinary of the Diocese for the Time being, to erect or cause to be erected, such further Buildings and Conveniencies upon the Allotment so as aforesaid to be set out unto and for the said *John Fenton* and his Successors, Vicars as aforesaid, and also to make, plant and raise such Interior or Subdivision Fences in and upon the said Allotment, as the said Commissioners shall judge necessary and proper, for the Occupation of the Lands so to be allotted to the said Vicar and his Successors; and by any Deed or Deeds,

Power for the Vicar to erect Buildings, and borrow Money for defraying the Expences thereof, and making Subdivision Fences.

Writing or Writings, under his or their Hand and Seal, or Hands and Seals, and attested by Two or more credible Witnesſes, by and with the Conſent in Writing of the Lord Biſhop of *Carlisle*, as Patron of the ſaid Vicarage and Ordinary of the Dioceſe for the Time being, to charge ſuch Allotment ſo as aforeſaid to be ſet out for the ſaid *John Fenton* and his Succeſſors, Vicars as aforeſaid, and the Buildings and Conveniences ſo to be erected thereon, with ſuch Sum or Sums of Money not exceeding the Sum of Three hundred Pounds, as the ſaid Commiſſioners ſhall think neceſſary, for the Purpoſes of, and in order to be applied for paying and defraying the Charges and Expences of erecting the ſaid further Buildings and Conveniences, and of making, planting and raiſing ſuch interior or Subdiviſion Fences, and in applying for and obtaining the Conſent of the ſaid Lord Biſhop of *Carlisle* for the Time being, as Patron and Ordinary as aforeſaid, and in the Exerciſe of the Powers given to and veſted in the ſaid *John Fenton* by virtue of this Act and the ſaid recited Act; which Sum or Sums of Money ſhall be paid to ſuch Perſon or Perſons as the ſaid Commiſſioners ſhall nominate or appoint, in order to be applied or diſpoſed of accordingly; and, for ſecuring the Repayment of ſuch Sum or Sums of Money, with Intereſt for the ſame, to grant, mortgage, leaſe or demife the Allotments ſo as aforeſaid to be ſet out unto and for the ſaid *John Fenton* and his Succeſſors, Vicars as aforeſaid, and the Buildings and Conveniences ſo to be erected thereon, unto ſuch Perſon or Perſons who ſhall advance and lend the ſame, his, her and their Executors, Adminiſtrators and Aſſigns, for any Term or Number of Years; ſo as every ſuch Grant, Mortgage, Leaſe or Demife be made with a Proviſo to ceaſe and be void, or with an expreſs Truſt or Condition to be ſurrendered, when the Sum or Sums of Money thereby to be ſecured, with the Intereſt thereof, ſhall be reſpectively fully paid and ſatiſfied; and ſuch Mortgagee or Mortgagees advancing and lending the Money ſo to be borrowed, ſhall not be obliged to ſee to the Application, or be anyways anſwerable for the Miſapplication of ſuch Monies, or any Part thereof; and the ſaid Vicar and his Succeſſors for the Time being ſhall be, and is hereby required and made liable, at the End of every Year after the Commencement of the ſaid Term of Years, to pay to the Perſon or Perſons to whom ſuch Grant, Mortgage, Leaſe, or Demife ſhall be made, his, her, or their Executors, Adminiſtrators, or Aſſigns, One Twentieth Part of the Principal Money ſo to be borrowed, until the whole thereof ſhall, by ſuch Annual Payments, be paid off and diſcharged; and alſo to pay and keep down the Intereſt of the ſaid Monies ſo to be borrowed, ſo that the future Vicars of the ſaid Pariſh of *Torpenhow* becoming poſſeſſed of ſuch reſpective Lands and Grounds, ſhall not be ſubject or liable (and they are hereby reſpectively diſcharged from being ſubject or liable) to pay any further or larger Share of ſuch Monies than his or their Proportion thereof, according to ſuch laſt mentioned Condition, or any Intereſt for the ſame, ſave only for One Year from the Day of the Death, Reſignation, or Ceſſion of the Predeceſſor of ſuch future Vicar; but that all Arrears of ſuch Intereſt beyond One Year before ſuch Death, Reſignation, or Ceſſion, ſhall be paid by ſuch Predeceſſor, his Executors or Adminiſtrators; and that it ſhall and may be lawful to and for the Perſon or Perſons who ſhall advance and lend ſuch Monies, his, her, or their Executors, Adminiſtrators, and Aſſigns, for the more eaſily recovering the ſaid One Twentieth Part of the ſaid Principal, and the whole of the Intereſt which is enacted annually to be paid, to have, uſe, exerciſe and take ſuch and the ſame Powers and Remedies, by Entry and Diſtreſs upon the Premises ſo to be charged, mortgaged,

gaged, and demised, and Sale of such Distress, as by the Laws now in force are provided for and given to Landlords, or as they can use and take for the Recovery of Rack Rents in Arrear.

XXVI. And be it further enacted, That it shall and may be lawful for the Vicar of the said Parish of *Torpenhow*, or his Successors for the Time being, by Indenture or Indentures under his Hand and Seal, with the Consent and Approbation of the Bishop of the Diocese, and the Patron of the Vicarage, to lease or demise all or any Part of the Allotment to be set out and allotted to the said Vicar by virtue of this Act, to any Person or Persons whomsoever, for any Term not exceeding Twenty-one Years, to commence at any Time within Twelve Calendar Months next after the said Allotment shall have been so set out; so that the Rent or Rents for the same shall be thereby reserved to the Vicar aforesaid for the Time being, by Four equal Quarterly Payments in the Year; and so that there be also thereby reserved and made payable to the said Vicar, the best and most improved Rent or Rents that can reasonably be had or gotten for the same, without taking any Fine, Foregift, Premium, Sum of Money, or other Consideration for the same; and so that no such Lessee, by any such Lease or Demise, be made dispunishable for Waste, by any express Words to be therein contained; and so that there be inserted in every such Lease, Power of Re-entry on Non-payment of the Rent or Rents to be thereby reserved, within a reasonable Time, to be therein limited, after the same shall become due; and so that a Counterpart of such Lease be duly executed by the Lessee or Lessees to whom such Lease shall be made as aforesaid; and every such Lease shall be valid and effectual, any Law or Usage to the contrary notwithstanding.

Empowering
the Vicar to
lease his Al-
lotment.

XXVII. 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 whatsoever, within the said Manor of *Bewaldeth*, in lieu of and in Exchange for any other Lands, Tenements, or Hereditaments whatsoever, within the said Parish, or within any adjoining Parish, Hamlet, Township, or Place; provided that all such Exchanges be ascertained, specified, and declared in the Award of the said Commissioners, and be made with the Consent of the Owner or Owners, Proprietor or Proprietors of the Lands, Tenements or Hereditaments which shall be so exchanged, whether such Owner or Owners, Proprietor or Proprietors shall be a Body or Bodies Politic, Corporate, or Collegiate, Corporation Aggregate or Sole, 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 other Uses, Husbands, Committees or Attornies, of or acting for any such Proprietors or Owners as aforesaid, who at the Time of making such Exchange or Exchanges, shall be respectively Infants, Females Covert, Lunatics, or under any other legal Incapacity, or who shall be beyond the Seas, or otherwise incapable 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 Parties consenting respectively; and all and every such Exchange and Exchanges so to be made, shall be good, valid, and effectual in the Law, to all Intents and Purposes whatsoever: Provided nevertheless, that no Exchange shall be made of any Lands,

Exchanges
may be made.

[*Loc. & Per.*]

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Tenements,

Expences of Exchanges how to be paid.

Tenements, or Hereditaments held in Right of any Church, 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, Tenements, or Hereditaments so to be exchanged, shall lie or be situate: Provided always, that the Costs, Charges, and Expences attending the making and completing any Exchanges or Partitions under the Powers and Authorities of this Act and the said recited Act, or either of them, contained, shall be borne and paid by the several Persons, Bodies Politic, Corporate, or Collegiate, making such Exchanges or Partitions, in such Manner and in such Proportions as the said Commissioners shall order and direct.

Satisfaction to be made to Lessees for the Loss of Common Rights.

XXVIII. And be it further enacted, That the Part and Share, Parts and Shares of the said Commons and Waste Grounds, which shall upon such Division as aforesaid be allotted to, for or in respect of any Estate or Estates in Grant or Lease, when the Grantee or Grantees, Lessee or Lessees, Tenant or Tenants, is or are entitled to Right of Common upon the said Commons or Waste Grounds, during the Term of their respective Grants or Leases, shall be allotted unto, and be had, held, inclosed, and enjoyed by the respective Grantor or Grantors, Proprietors or Owners of the Estates so granted or leased, in respect whereof the same shall be allotted, according to their several Estates and Interests therein respectively, and none of the Grantee or Grantees, Lessee or Lessees, or Tenants of such Estates in Grant or Lease, shall have any Right to any such Allotment, or any Part thereof, but all and every such Grantee or Grantees, Lessee or Lessees, shall receive and be paid or abated by Yearly or Half Yearly Payments or Abatements, during the Continuance of their respective Terms, from their Grantor or Grantors respectively, such Sum or Sums of Money as the said Commissioners shall fix, determine, order, and direct, upon the Application or Applications either of the said Grantor or Grantors, Grantee or Grantees, such Sum and Sums of Money as shall in the Judgement of the said Commissioners be a fair, reasonable, and full Compensation for the Common Rights of the said Grantees or Lessees respectively, during the Continuance of their said several Terms, which they could or might have enjoyed in or upon the said Commons or Waste Grounds in case this Act had not been made; and which Determination, Order and Direction of the said Commissioners, shall be final, binding, and conclusive upon all such Grantor or Grantors, Grantee or Grantees.

Act not to prejudice any Will or Settlement.

XXIX. Provided always, and be it further enacted, That nothing in this Act contained shall extend, or be construed or adjudged to revoke, alter, make void, or invalidate any Will, Settlement, or Lease whatsoever, or to prejudice any Person having or claiming any Jointure, Dower, Portion, Rent, Debt, Charge or Incumbrance out of, upon, or affecting any of the Lands, Tenements, or Hereditaments, in respect whereof any Allotment or Allotments shall be made in pursuance of this Act; but that the respective Allotments to be made in pursuance of this Act, shall be subject to such and the same Wills, Settlements, Uses, Trusts, Limitations, Powers, Provisoos, Conditions, Remainders, Reversions, Leases, Rents, Services, Debts, Charges, and Incumbrances, as the several Lands, Tenements, and Hereditaments, in respect whereof such Allotments shall be respectively made, were and stood subject to at the Time of passing this Act; and that such Allotments shall in respect of all such Wills, Settlements, Uses, Trusts, Limitations, Powers, Provisoos, Conditions, Remainders, Reversions, Leases, Rents, Services, Debts, Charges, and Incumbrances, be deemed

deemed and adjudged to be Part and Parcel of the ancient Tenements for which such Allotments shall be so made respectively.

XXX. And be it further enacted, That all Tythes, Moduses, Prescriptions or Compositions for Tythes and other Ecclesiastical Dues whatsoever, heretofore belonging to the said *John Fenton* or his Successors, Vicars of the said Parish (Mortuaries, *Easter Offerings* and Surplice Fees only excepted), as well for and in respect of the several old Inclosures, and other Messuages, Lands, and Tenements within the said Manor of *Bewaldeth*, as also for or in respect of the said Commons and Waste Grounds to be allotted and awarded in respect thereof, shall, at the End of Six Calendar Months next after the Allotments herein-before directed to be made in lieu of such Tythes shall have been set out and ring-fenced, cease and be for ever extinguished, and be no longer paid or payable.

When Tythes within the Manor of Bewaldeth shall cease.

XXXI. And be it further enacted, That convenient Gaps or Openings shall be left in the said Fences and Inclosures, for such Space of Time next ensuing the Execution of the Award of the said Commissioners, for the Passage of Cattle, Carts and Carriages, as the said Commissioners shall in and by their said Award direct and appoint.

Gaps to be left in the Fences.

XXXII. And be it further enacted, That no Lambs or Sheep shall be depastured in any of the said intended new Inclosures (except in such Allotments where there shall be no Quickset Fences), during the Space of Seven Years from the Execution of the Award of the said Commissioners, unless the Persons so respectively depasturing or keeping Lambs or Sheep, do at their own Expence effectually guard and fence their Neighbours Quicksets adjoining to such Inclosures respectively, in which Lambs or Sheep shall be depastured or kept as aforesaid, so as to prevent any Damage or Injury to be done to such Fence or Fences and Quicksets by any such Lambs or Sheep; and that in case any Person shall turn in or keep any Lambs or Sheep in any such Allotment or Allotments, without raising or keeping up such protecting Fences as aforesaid, it shall be lawful for the Owner or Owners of any adjoining Allotment or Allotments, from Time to Time to enter into the Allotment or Allotments where any Lambs or Sheep shall be so turned in or kept as aforesaid, and from Time to Time to take, drive away, and impound the same, as Cattle damage feasant.

No Sheep to be depastured in the new Inclosures for Seven Years.

XXXIII. And be it enacted, That the said Commissioners, and every and each of them, shall at all and every of their Days of Attendance and Travelling, for the Purpose of executing the Trusts and Powers hereby given, bear and pay their own Expences; and in discharge thereof, and for their Trouble and Attendance, it is hereby directed, that each Commissioner shall be paid and allowed the Sum of Two Pounds and Two Shillings, and no more, for each and every Day upon which the said Commissioners shall have attended or travelled for the Purposes aforesaid.

Commissioners Allowance.

XXXIV. And be it further enacted, That once at least in each and every Year during the Execution of this Act (such Year to be computed from the passing of this Act), the said Commissioners shall and they are hereby required to make a true and just Statement or Account of all Sums of Money by them received and expended, or due to them for their own Trouble or Expences, in the Execution of this Act; and such Statement or Account when so made, together with the Vouchers relating

Commissioners to lay their Accounts before Two Justices.

relating thereto, shall be by them laid before Two Justices of the Peace in and for the said County of *Cumberland*, to be by them examined and balanced; and such Balance shall be by such Justices 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 the Law, unless the same shall have been duly allowed by such Justices.

Power of
Appeal.

XXXV. And be it further enacted, That if any Person shall think himself or herself aggrieved, by any Thing done in pursuance of this or the said recited Act, then and in every such Case (except in such Cases where the Determinations of the said Commissioners are hereby or by the said recited Act declared to be final, binding and conclusive, or where a Trial at Law shall be had as herein-before mentioned), he or she may appeal to any General Quarter Sessions of the Peace which shall be held for the County of *Cumberland*, within Four Calendar Months next after the Cause of Complaint shall have arisen, on giving to the said Commissioners or either 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, as to them in their Discretion shall seem reasonable; and by their Order or Warrant to levy the Costs 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) upon Demand, to the Owner or Owners of such Goods and Chattels, after deducting the reasonable Costs of such Distress and Sale; and every Order and Determination of the said Justices upon every such Appeal shall be final and conclusive, to and upon all Parties concerned, and shall not be removed or removable by Certiorari, or any other Writ or Process whatsoever, into any of His Majesty's Courts of Record at *Westminster*.

General
Saving.

XXXVI. Saving always to the King's most Excellent Majesty, His Heirs and Successors, and to all and every other Person and Persons, Bodies Politic, Corporate, or Collegiate, his, her and their Heirs, Successors, Executors and Administrators, (except the several Persons to whom any Allotment or Allotments, or Compensation, shall be made in pursuance of this Act, for and in respect of such Rights and Interests as are hereby meant and intended to be barred, destroyed and extinguished, and all Persons respectively claiming under them, or in Remainder after them), all such Right, Title and Interest, as they, every or any of them should or ought to have had and enjoyed, in, to or out of the Lands and Grounds hereby directed to be divided and inclosed, in case this Act had not been passed.

Act to be
printed by
King's Print-
ers.

XXXVII. 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. 1814.