

GEORGE, &c. WHEREAS it is humbly meant and shown to Us, by Our lovites the Honourable WILLIAM HONYMAN of Armadale, one of the Senators of the College of Justice, and GILBERT LAING Esquire of Rothesholm, merchant in Edinburgh, THAT by the 38th act of the 5th session of King William's first Parliament, entituled, ' Act concerning the dividing of commonties, ' it is *inter alia* statuted and ordained, ' That all commonties, excepting the commonties belonging to the King and Royal boroughs, that is, all that belongs to his Majesty in property, or Royal boroughs in burgage, may be divided at the instance of any having interest, by summons raised against all persons concerned, before the Lords of Session, who are hereby empowered to discuss the relevancy, and to determine upon the rights and interests of all parties concerned; and to value and divide the same, according to the value of the rights and interests of the several parties concerned; and to grant commissions to Sheriffs, Stewarts, Baillies of Regality, and their deputies, or Justices of Peace, or others, for perambulating and taking all other necessary probation; which commissions shall be reported to the said Lords, and the said processes ultimately determined by them: And, where mosses shall happen to be in the said commonties, with power to the said Lords to divide the said mosses amongst the several parties having interest therein, in manner foresaid; or, in case it be instructed to the said Lords, that the said mosses cannot be conveniently divided, it is statuted and declared, that the said mosses shall remain common, with free ish and entry thereto, whether divided or not: Declaring also, that the interest of the heritors having right in the said commonties, shall be estimate according to the valuation of their respective lands or properties; and which divisions are appointed to be made of that part of the commonty that is next adjacent to each heritor's property.' THAT the pursuer, the Honourable William Honyman, is proprietor of, and stands heritably infest and seised in, ALL and WHOLE the four penny land of Clestraine benorth the burn, the four penny land of Clestraine besouth the burn, with two quoys, and the mill of Clestraine; ALL and WHOLE the nine penny land called the Bull of Orphir, with Carlingskerry, with the mill of Orphir, and multures thereof; ALL and HAILL the mill of Kirbister; the lands called Banks, with two quoys of land; the three merk land in Acres; the half merk two settings udal lands in Breckney, in the village of Swambister, with the parts and pendicles of the said several lands, which lye in the parish of Orphir, and shire or stewartry of Orkney, conform to instrument of seisin, dated 22d April 1786, and recorded in the general register of seifins at Edinburgh, the 3d May thereafter, proceeding upon the precept of seisin contained in a feu disposition of the said lands and others, dated 3d April 1700, granted by Patrick Honyman Esquire of Græmsay, heritable proprietor thereof, and Mrs Margaret Sinclair, otherwise Honyman, his spouse, to the said Honourable William Honyman, pursuer, therein designed William Honyman Esquire of Strathy, advocate: AND the said Honourable William Honyman, pursuer, therein designed William Honyman Esquire of Strathy, advocate, is proprietor of, and stands heritably infest and seised in, certain lands and others lying within the said parish of Orphir, and shire or stewartry of Orkney, conform to instrument of seisin in his favour, to be produced in the process to follow hereupon; and they, and their predecessors and authors, and their tenants, have, past the memory of man, possessed the commonty or common grounds lying within the said parish of Orphir, and adjacent to their said lands, as their common property, and part and pertinent of their said lands, by pasturing cattle, casting seal and divot, and using other acts of commonty thereon, whereby the pursuers have good and undoubted right and interest to prosecute and insist in an action of division of the said commonty, in manner underwritten: AND TRUE IT IS, that the pursuers have often desired and required John Johnston of Cubister; ~~John~~ Halcro, *alias* Johnston, relict of Joshua Johnston writer in Stromness; Thomas Sands of Swambister; Robert Moncrief of Howton; Murdoch M'Kenzie of Groundwater; William Graham of Redland; Nicol Wishart of Wirtquoy; John Wishart in Howaback; the Reverend Mr Francis Liddell, minister of the gospel in the parish of Orphir *&c* conterminous heritors, as having, or pretending to have, interest in the said commonty, to have concurred with them in a division thereof; yet they refuse, at least delay so to do: THEREFORE, the said John Johnston, ~~John~~ Halcro, *alias* Johnston, Thomas Sands, Robert Moncrief, Murdoch M'Kenzie, William Graham, Nicol Wishart, John Wishart, Mr Francis Liddell, *&c* defenders, OUGHT and SHOULD EXHIBIT and PRODUCE their several rights and titles, whereby they claim right to the said commonty, or to rights of servitude thereon: AND it OUGHT and SHOULD be FOUND and DECLARED, by decree of the Lords of Our Council and Session, That the pursuers are entitled to prosecute an action of division of the said commonty betwixt them and the defenders, or such of them as shall be found to have any right thereto; and thereupon the same OUGHT and SHOULD be DIVIDED, by decree of Our said Lords, betwixt the said parties: AND, for that effect, a commission OUGHT and SHOULD be GRANTED by Our said Lords, to the Judges-Ordinary, or other proper persons, for perambulating the said commonty, and taking a proof of the extent, limits, quality, and marches thereof, as the same has been reputed, possessed, and enjoyed for forty years bygone, or past the memory of man, by the pursuers, and such of the defenders as shall produce their rights in manner foresaid; and for describing the marches of the said commonty, and setting up march stones therein; and for taking a proof of the valuations, or valued rents of the respective lands of the parties who shall be proven to have right and interest in the said commonty; and for appointing a proper person or persons, upon oath, to value the several parts and parcels of the said commonty, upon due consideration of the different qualities of the soil, and grounds thereof; and for appointing a surveyor or surveyors, also upon oath, to measure and survey the said commonty, and the several parts and pertinents thereof so to be valued; and thereafter to divide the said commonty amongst the pursuers and defenders, according to the valuations of their respective lands afore said; and to draw out a plan or map thereof, and of the several divisions made of the same; and to pite, meith, and set up stones in the marches of the several divisions and shares to be allotted to each heritor; and with an instruction to the said commissioners, that, in making the said division, the parts and portions to be divided and allotted to each heritor, be such as may be next adjacent to his property, or as near as conveniently may be; and with power also to the said commissioners, to cause divide the mosses lying within the said commonty, amongst the said heritors, in manner above written; or, in case it shall be instructed that the said mosses cannot be divided, to cause leave

leave the same still common, with free ish and entry thereto; all to be reported in due form to Our said Lords: AND, upon the said division being so made and reported, Our said Lords OUGHT and SHOULD RATIFY, APPROVE of, and CONFIRM, the said divisions and allocations, and DECERN and ORDAIN the same to take full effect; and the said shares, and no more, to pertain and belong to the respective parties, heritably and irredeemably: AND it OUGHT and SHOULD be FOUND and DECLARED, by decree foresaid, that the pursuers and defenders, betwixt whom the said division shall be made, and their heirs and successors, have right to enjoy and possess the respective shares of the said commonty so to be divided, allotted, and appointed to each of them, as parts and pertinents of their other lands and heritages: AND the said defenders OUGHT and SHOULD be DECERNED and ORDAINED, by decree foresaid, to make payment to the pursuers of their respective shares and proportions of the expences to be disbursed in prosecuting and obtaining the said division, corresponding to the valuation of their respective lands, conform to the accounts thereof, to be adjusted by the said Lords: AND such of the said defenders as shall not produce their rights and titles, and instruct their possession of the said commonty, OUGHT and SHOULD be FOUND and DECLARED, by decree foresaid, to have no right thereto, and discharged from claiming or exercising any servitude, or other right, in or upon the said commonty, in all time coming, after the form and tenor of the foresaid act of Parliament, and laws and daily practice of Scotland, used and observed in the like cases, in all points, as is alleged. OUR WILL, &c.

I *James Robertson* messenger at arms, by virtue of a summons of division of commonty, whereof this and the preceding page is a full double, so far as relates to you, at the instance of the Honourable William Honyman of Armadale, one of the Senators of the College of Justice, and Gilbert Laing Esquire of Rothesholm, merchant in Edinburgh, pursuers, lawfully summon, warn, and charge you *Margaret Widdie alias Johnston* defender, to compare before the Lords of Council and Session at Edinburgh, or where it shall happen them to be for the time, the *third and fourth days of February next to come* for first and second diets, with continuation of days, to answer at the instance of the said pursuers in the action and cause libelled, with certification conform to the principal summons, dated and signed the *fourteenth day of September 1802*. This I do upon the *third* day of *November* One thousand eight hundred and *two* years, before these witnesses, *John Ross and James Scott both Notaries in Publick*

James Robertson

Mr. Johnston
Robert
George Comstock
of Crisp Mill
 1802
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