

ANNO TRICESIMO PRIMO & TRICESIMO SECUNDO

VICTORIÆ REGINÆ.

****

CAP. LXXXIV.

An Act to amend in several Particulars the Law of Entail in *Scotland*. [31st *July* 1868.]

WHEREAS it is expedient to amend in several Particulars the Law of Entail in *Scotland*: 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, as follows:

Short Title.

1. This Act may be cited for all Purposes as the "Entail Amendment (*Scotland*) Act, 1868."

Interpretation of Terms.

2. The following Words occurring in this Act shall, except where the Nature of the Provision shall be repugnant to such Construction, be construed as follows; that is to say, the Words "Court of Session," or "the Court," shall be construed to mean either Division of the Court of Session, or the Junior Lord Ordinary, or the Lord Ordinary on the Bills, as the Case may be; the Word "Sheriff" shall include "Sheriff Substitute;" the Words "Heir of Entail" shall include "Institute;" the Word "Lands" shall extend to and comprehend all Heritages; the Words "Entailed Estate" shall extend to and comprehend all Heritages which by the Law of *Scotland* may be made the Subject of Entail; and the

Words "Feu Charter" shall comprehend a Feu Contract, a Feu Disposition, and every other Grant of a like Kind.

Power to grant Feus, Building Leases, &c.

3. It shall be lawful for any Heir in possession of an Entailed Estate, notwithstanding any Prohibitions or Limitations in the Deed of Entail or in any Act of Parliament, in the Manner and subject to the Conditions herein-after mentioned, to grant Leases for the Purpose of building for any Number of Years not exceeding Ninety-nine Years, or Feus of any Part of such Estate (but reserving the Minerals therein and the Right of working the same), except the Garden, Orchards, Policies, or Inclosures adjacent to or in connexion with the Manor Place, in so far as such Garden, Orchards, Policies, or Inclosures are necessary to the Amenity of the Manor Place, or, if the Estate be held by Burgage Tenure, to dispone any Part thereof, reserving and excepting as aforesaid, subject to a Ground Annual: Provided always, that the Feu Duty, Rent, or Ground Annual to be stipulated for shall not be less than the Amount ascertained as herein-after provided: Provided also, that it shall not be lawful for such Heir to take any Grassum or Fine or valuable Consideration other than the Feu Duty, Rent, or Ground Annual for granting any such Charter, Lease, or Disposition; and in case any such Grassum, Fine, or Consideration shall be taken, such Charter, Lease, or Disposition shall be null and void; but nothing herein contained shall prevent any Heir of Entail in possession from exercising any Power of granting Feu Charters, Leases, or other Grants which may be contained in the Entail under which he possesses, more extensive than the Powers hereby conferred.

Procedure in granting Feus, Building Leases, &c.

4. For ascertaining whether the Land so proposed to be feued, leased, or disponed may be feued, leased, or disponed in Terms of the Provisions of the preceding Section, and the Value of the same, an Application shall be made by the Heir in possession of the Entailed Estate to the Sheriff of the County within which the Entailed Estate, or the Portion thereof proposed to be feued, leased, or disponed, is situated, who thereupon shall direct Notice to be given to the next Heir of Entail entitled to succeed to the Entailed Estate in such Manner as shall seem proper (and in the event of such next Heir of Entail being under Age or subject to any legal Incapacity, the Sheriff shall appoint a Tutor *ad litem* or Curator *ad litem* to such Heir), and shall appoint One or more skilful Persons to inquire and report as to the Value of the Lands proposed to be feued, leased, or disponed, and whether from their Position or otherwise they may or ought to be feued, leased, or disponed in Terms of the preceding Section either in whole or

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in Lots; and upon such Person or Persons reporting that the Feu Duty, Rent, or Ground Annual offered is in their Opinion, having regard to all the Circumstances, fair and adequate, and that such Land may, from its Position, be feued, leased, or disponed in Terms of the preceding Section either in whole or in Lots, the Sheriff, on consideration of the whole Circumstances, may and is hereby empowered to authorize such Heir in possession or his Successor in the Entailed Estate at any Time within Ten Years from the Date of such Deliverance to feu, lease, or dispone the said Land in One or more Lots at such Rate of Feu Duty, Rent, or Ground Annual as he can obtain for the same, not being less than the Rate fixed by the said skilled Persons, subject to such Conditions as the Sheriff may think essential to secure such Feu Duty, Rent, or Ground Annual, and any other Conditions he may see fit, and also subject to a nominal taxed Sum of One Penny Sterling in lieu of all Casualties on the Entry of Heirs and singular Successors, and to grant the necessary Feu Charter, Lease, or Disposition, and which being executed and recorded in the Register of Sasines shall be effectual to all Intents and Purposes; and the Lands so feued, leased, or disponed shall, from the Date of recording the Feu Charter, Lease, or Disposition in the Register of Sasines, and so long as such Feu Charter, Lease, or Disposition shall remain in force, be held as out of the Entail, and be liberated from all the prohibitory, irritant, and resolutive Clauses or Clause of Registration thereof: Provided always, that the Superiority of the Lands so feued, leased, or disponed, and the Feu Duties, Rents, and Ground Annuals thereof, shall be and shall remain subject to the said Entail in the same Manner as the Lands themselves were subject thereto previous to the granting of such Feu Charter, Lease, or Disposition; and it is hereby provided, that the Decree of the Sheriff pronounced on such Application and Proceeding shall not be subject to Review by Suspension, Advocation, or Reduction, or in any other Form, except by a short Note of Appeal to be presented to the Court of Session in one or other of the Divisions thereof, which Appeal shall be disposed of by such Division as a summary Cause: Provided always, that unless such Note of Appeal shall be lodged with the Clerk of the Division of the Court of Session, and Notice thereof given in Writing to the opposite Party, or his known Agent, or lodged with the Sheriff Clerk, within Six Months of the Date of the Decree of the Sheriff, such Decree shall be final and conclusive; and in the event of an Appeal being duly taken and lodged, the Judgment of the Court of Session thereon shall be final and conclusive.

Feu Charters, &c. to be void unless

5. Provided always, that every such Feu Charter, Lease, or Disposition shall contain a Condition that the same shall be void,

Buildings of certain Value erected and kept in repair.

void, and the same is hereby declared void, if Buildings of the annual Value of, at the least, double the Feu Duty, Rent, or Ground Annual therein stipulated shall not be built within the Space of Five Years from the Date of such Grant upon the Ground comprehended therein, and that the said Buildings shall be kept in good, tenantable, and sufficient Repair, and that such Grant shall be void whenever there shall not be Buildings of the Value foresaid, kept in such Repair as aforesaid, standing upon the Ground so feued, leased, or disponed.

Power to grant Provisions to Wife and Children of Heir Apparent.

6. It shall be lawful for the Heir Apparent to any Entailed Estate, with the Consent of the Heir in possession of such Estate, to grant Provisions in favour of his Wife, and of the lawful Child or Children of such Heir Apparent who shall not succeed to such Entailed Estate, to the same Extent, in the same Manner, and subject to the same Conditions to, in, or under which it is now competent for the Heir in possession of such Entailed Estate to grant such Provisions, either under the Act of the Fifth *George* the Fourth, Chapter Eighty-seven, or under the Powers of the Entail: Provided that such Provisions shall not exceed in any Case the Amount authorized to be charged on the Entailed Estate and Rents thereof, either under the said Act or under the Entail of the said Estate, and that the same shall become payable at the Death of such Heir Apparent; and provided also, that such Provisions to be granted by such Heir Apparent shall not interfere with or affect any Provisions which have been granted by the Heir in possession of such Estate, and shall be postponed to the Provisions granted by such Heir in possession; and that the Provisions to be granted by such Heir Apparent shall be calculated under the said Act, or under the Provisions of the Entail on the Footing of the Rental of such Entailed Estate, after deducting the Burdens and Provisions directed to be deducted by the said Act or by the Deed of Entail, and also after deducting the Burdens and Provisions granted by the Heir in possession to his or her Wife or Husband and Child or Children, so far as chargeable on such Entailed Estate, or on the Rents thereof.

Intimation of Petitions under Entail Acts.

7. Notwithstanding the Provisions contained in any of the Statutes relating to Entails, and particularly in the Thirty-fourth Section of the Act Eleventh and Twelfth of *Victoria*, Chapter Thirty-six, it shall be sufficient Advertisement of any Petition presented to the Court of Session under these Acts, or any of them, if the presenting of such Petition is advertised once in the *Edinburgh Gazette*, and once weekly for Three successive Weeks in such Newspaper or Newspapers as may be appointed by the Lord Ordinary or the Court; and it shall be sufficient in such Advertisements

ments to state the leading Name of the Lands by which the same are commonly known without any detailed Description thereof, and the leading Purpose of the Petition without any detailed Statement of such Purpose, and such Advertisement may be in the Form, or as nearly as may be in the Form, of Schedule (A.) hereto annexed; and in all Cases of Parties called under such Petitions who may be resident furth of *Scotland* the Induciæ for citing such Parties shall be Thirty Days.

Repeal of 11 & 12 Vict. c. 36. s. 12. and 16 & 17 Vict. c. 94. s. 12. 10 G. 3. c. 51. and 5 G. 4. c. 87. to apply to all Entails.

8. The Twelfth Section of the Act Eleventh and Twelfth *Victoria*, Chapter Thirty-six, and the Twelfth Section of the Act Sixteenth and Seventeenth *Victoria*, Chapter Ninety-four, are hereby repealed; and it is enacted, that the Act Tenth *George* the Third, Chapter Fifty-one, intituled *An Act to encourage the Improvement of Lands, Tenements, and Hereditaments in that Part of* Great Britain *called* Scotland, *held under Settlements of strict Entail*, and the said Act Fifth *George* the Fourth, Chapter Eighty-seven, intituled *An Act to authorize the Proprietors of Entailed Estates in* Scotland *to grant Provisions to the Wives or Husbands and Children of such Proprietors*, shall, from and after the passing of this Act, be applicable to all Entails, whether dated before or after the First Day of *August* One thousand eight hundred and forty-eight, and to all Trusts, of whatever Date, under which Land is held for the Purpose of being entailed, or by which Money or other Property, Real or Personal, is invested in trust for the Purpose of purchasing Land to be entailed; and the Powers conferred by the said Two last-mentioned Acts, or either of them, may be exercised with reference to such Land, Money, or other Property by the Person who if such Land had been entailed in Terms of the Trust would be the Heir in possession of the Entailed Land, and by the Person who if such Money or other Property had been invested in the Purchase of Land to be entailed would be the Heir in possession under the Entail to be executed of such purchased Land if such Entail had been executed; and the Apparent Heir of such Person who would be Heir of Entail in possession of such Land if it were entailed, or if it were purchased and entailed, shall have the same Powers with reference to such Land, Money, or other Property as are conferred on Heirs Apparent under the Sixth Section of this Act with reference to granting Provisions to their Wives or Husbands and Child or Children: Provided always, that where the Operation of the said Two last-mentioned Acts, or the Power granted by the Sixth Section of this Act, are, or any One of them is, expressly excluded by the Deed of Entail or Trust Deed, the Powers conferred by the said Acts, or by the Act so excluded, or by the Sixth Section of this Act when

so excluded, shall not be competent to the Heir of Entail in possession under such Entail, or to the Person who would be Heir of Entail in possession under the Entail directed to be made if such Entail were executed as aforesaid, or to the Heir Apparent of such Heir of Entail or Person.

When Estate may be sold, Sale may be by private Bargain.

9. It shall be competent for the Court of Session, where any Entailed Estate is subject to or may be charged with Debt affecting, or that may be made to affect, the Fee of the Estate, on a Petition to be presented by the Heir of Entail in possession of such Estate, to approve of an Agreement to sell by private Bargain the whole or any Portion of such Estate for Payment of the whole or any Part of such Debt; and the Court may authorize such Sale under such Agreement where they are satisfied, after making such Inquiry as they consider necessary, that the Sale is advantageous and beneficial for the Heir of Entail in possession of such Estate, and not detrimental to the Interests of the succeeding Heirs of Entail; and the said Court may authorize such Sale even though the Price to be paid under such Agreement is considerably above the total Amount of the Debt affecting such Entailed Estate as aforesaid, provided they are satisfied of the Advantage and Benefit likely to accrue from such Sale as aforesaid; and in the event of such Sale being effected as aforesaid, and of any Surplus remaining after paying off the said Debts and the Expenses attending the Sale, such Surplus, if less than Two hundred Pounds, shall belong to the Heir of Entail in possession, and if more than Two hundred Pounds shall be applied under the Authority of the Court in buying other Lands in the Neighbourhood of the Remainder of the Entailed Estate, if the whole Estate is not sold, or, if the whole Estate is sold, in buying Lands in *Scotland*, to be approved of by the Court; and until a suitable Purchase of Land is found, such Surplus may be invested by Trustees to be appointed by the Court, on the Application of the Petitioner in the course of the Proceedings, or in any Application to be presented by him for the Purpose, on Heritable Security in *Scotland* to the Satisfaction of the said Trustees, or may be applied otherwise under the Provisions of the Acts of Parliament relating to Entails in *Scotland;* and the Form of Petitions to be presented under this Section and the Procedure thereon shall, as nearly as may be, be similar to the Form and Procedure prescribed with reference to Petitions presented to the Court under the said Acts; and until such Surplus is invested in the Purchase of Land for the Purpose of being entailed, the free annual Proceeds thereof shall be paid to the Person who would be the Heir in possession if such Land were purchased and entailed; and it is hereby provided that it shall be competent to any Heir of Entail in

in possession of an Entailed Estate in *Scotland* who has or whose Predecessors have sold the whole or part of the Entailed Estate, and where the Price or the Balance of the Price is available for the Purchase of Land, to apply to the Court in like Manner for the Appointment of Trustees by whom the said Price or Balance thereof may be invested on Heritable Security in *Scotland*, or may be applied otherwise under the Provisions of the Acts of Parliament relating to Entails in the same Manner till the same Event and to the same Effect in all respects as is herein-before provided with reference to the Price or the Balance of the Price of Lands sold under the Provisions of this Section.

Provisions as to Sale by Public Roup.

10. When the Upset Price of any Entailed Lands, the Sale of which has been authorized by the Court, shall have been fixed, the Court may authorize the Lands to be exposed by the Heir of Entail in possession, in presence of the Judge of the Roup appointed by the Court, at such Time and at such Upset Price, not being under the said fixed Upset Price, as the Heir of Entail in possession may arrange, and in the event of the Lands not being sold at such Upset Price, then the Heir of Entail in possession may re-expose the Lands at a reduced Upset Price, not being under the said fixed Upset Price, in presence of the Judge of the Roup, and so on thereafter if the said Lands shall not be sold at such Re-exposure: Provided always, that such Heir of Entail in possession shall advertise the Land in the first and subsequent Exposures, if any, in Terms of the Interlocutor which shall have been pronounced by the Court on authorizing the Sale, and upon the Heir of Entail effecting a Sale in virtue hereof the Court shall approve of such Sale according to the existing Law and Practice.

Entailer's Debts, &c. may be charged on Entailed Estate by Bond and Disposition in Security.

11. In all Cases where there are or shall be Entailer's or other Debts or Sums of Money which might lawfully be made chargeable, by Adjudication or otherwise, upon the Fee of an Entailed Estate, the Heir of Entail in possession of such Estate for the Time being shall have all the like Powers of charging the Fee and Rents of such Estate, or any Portion thereof, other than the Mansion House, Offices, and Policies thereof, with the full Amount of such Debts or Sums of Money, and of granting, with the Authority of the Court of Session, Bonds and Dispositions in Security for the full Amount of such Debts and Sums of Money, as by the Act Eleventh and Twelfth *Victoria*, Chapter Thirty-six, and the Act Sixteenth and Seventeenth *Victoria*, Chapter Ninety-four, are conferred with reference to Provisions to younger Children; and such Bonds and Dispositions in Security may be granted in favour of any Parties in the Right of such Debts or Sums of Money

Money at the Date when such Bonds and Dispositions in Security are executed.

Provisions of Act 10 G. 3. c. 51. to apply to Dwellings for the Labouring Classes.

12. Whereas it is expedient to grant further Facilities for the building of Cottages for Labourers, Farm Servants, Artizans, and others residing on Entailed Estates in *Scotland*, and for that Purpose to amend the Act of the Twenty-third and Twenty-fourth Years of the Reign of Queen *Victoria*, Chapter Ninety-five: Be it therefore enacted, That it shall be sufficient Compliance with the Provisions of the said Act and of the Acts of the Tenth Year of the Reign of King *George* the Third, Chapter Fifty-one, the Eleventh and Twelfth Years of the Reign of Queen *Victoria*, Chapter Thirty-six, and the Sixteenth and Seventeenth Years of the Reign of Queen *Victoria*, Chapter Ninety-four, therein recited, if it be shown that the Cottages in respect of which a Charge is proposed to be created, or towards the Erection of which Monies are sought to be applied, have been completed in a proper and substantial Manner, and it shall not be necessary to prove that they are required for the Accommodation of the Labourers, Farm Servants, Artizans, and others employed on or connected with the Entailed Estate on which they have been or may be erected.

Where Estate propelled, Applications under 11 & 12 Vict. c. 36. and 16 & 17 Vict. c. 94. may be made either in Name of Liferenter or of Fiar.

13. Where any Heir of Entail in possession of an Entailed Estate under an Entail dated prior to the First Day of *August* One thousand eight hundred and forty-eight shall have lawfully propelled, or shall hereafter lawfully propel, such Estate under Reservation of his own Liferent to the Heir entitled to succeed him therein, any Application which has been or shall be made under the Acts of the Eleventh and Twelfth *Victoria*, Chapter Thirty-six, and of the Sixteenth and Seventeenth *Victoria*, Chapter Ninety-four, and all Procedure following thereon, shall be equally effectual in all respects whether made in the Name of the Heir of Entail who has propelled the Estate or in the Name of the Heir to whom it has been propelled; and during the Lifetime of such last-mentioned Heir it shall be sufficient that the Consents of the Persons whose Consents would have been required to such Application if the Estate had not been propelled be obtained thereto; and provided also, that where the Application is presented in the Name of the Heir to whom the Entailed Estate has been propelled, the Presentation of such Application shall be sufficient Evidence of his Consent thereto.

Repeal of Sect. 33 of Act of 10 G. 3. c. 51.

14. So much of the Thirty-third Section of the Act of the Tenth Year of the Reign of *George* the Third, Chapter Fifty-one, as provides that not more than Thirty Acres of Arable Land, nor more than

than One hundred Acres of Lands consisting of Hills or other Grounds incapable or improper by their Nature for Culture by the Plough, of such Entailed Estates lying together in One Place or Plot shall be given in Exchange, and that an Equivalent in Land contiguous to the Entailed Estate with which the Exchange is to be made shall be received in place of the Land given in Exchange, is hereby repealed; and in lieu thereof it is enacted, that not more than Three hundred Acres of Lands of such Entailed Estates lying together in One Place or Plot shall be given in Exchange, and that an Equivalent in Land shall be received in place of the Land given in Exchange; and the said Section shall be read as if this last-mentioned Enactment was contained therein.

Court of Session may cause Entails to be registered for Preservation.

15. It shall be competent to any Heir of Entail, Trustee, or other Person interested in any Entail to apply to the Court of Session for Warrant to register such Entail in the Books of Council and Session for Preservation, as well as in the Register of Entails for Publication, where not previously so registered; and it shall be lawful for the Court, under such Application, to cause such Registration to be made at the Expense of the Applicant, or of the Heir of Entail in possession, as the Court shall direct, and, with a view to such Registration, to order Production of such Entail, or grant Diligence for its Recovery.

Court may make Acts of Sederunt.

16. It shall be lawful for the Court to pass such Act or Acts of Sederunt as they may deem proper for the further Regulation of the Forms of Procedure under this Act, and otherwise for rendering the same more effectual according to the true Intent and Meaning hereof.

Liferents of Personal Estate beyond certain Limits prohibited.

17. From and after the passing of this Act, it shall be competent to constitute or reserve, by means of a Trust or otherwise, a Liferent Interest in Moveable and Personal Estate in *Scotland* in favour only of a Party in Life at the Date of the Deed constituting or reserving such Liferent, and where any Moveable or Personal Estate in *Scotland* shall, by virtue of any Deed dated after the passing of this Act (and the Date of any testamentary or *mortis causa* Deed shall be taken to be Date of the Death of the Grantor, and the Date of any Contract of Marriage shall be taken to be the Date of the Dissolution of the Marriage), be held in Liferent by or for Behoof of a Party of full Age born after the Date of such Deed, such Moveable or Personal Estate shall belong absolutely to such Party, and where such Estate stands invested in the Name of any Trustees such Trustees shall be bound to deliver, make over, or

convey such Estate to such Party: Provided always, that where more Persons than One are interested in the Moveable or Personal Estate held by Trustees as herein-before mentioned, all the Expenses connected with the Transference of a Portion of such Estate to any of the Beneficiaries in Terms of this Act shall be borne by the Beneficiary in whose Favour the Transference is made.

11 & 12 Vict. c. 36. ss. 5, 16. to apply to Entails dated after 1848, and to all Trusts.

18. The Provisions of the Fifth and Sixteenth Sections of the said Act Eleventh and Twelfth *Victoria*, Chapter Thirty-six, shall from and after the passing of this Act be extended to Entails dated on or after the First Day of *August* One thousand eight hundred and forty-eight, and shall apply to such Entails in the same Manner and to the same Effect in all respects as if these Provisions had been by the said Sections made to apply expressly to such Entails, as well as to Entails dated prior to the First Day of *August* One thousand eight hundred and forty-eight; and the Provisions of these Sections shall apply to all Trusts of whatever Date under which Land is held for the Purpose of being entailed.

SCHEDULE (A.)

Intimation is hereby given that *A.B.*, Heir of Entail in possession of the Entailed Lands and Estate of in the County of has presented a Petition to the Lords of Council and Session (Division, Lord Ordinary, Clerk), in Terms of the Acts Eleventh and Twelfth Victoria, Chapter Thirty-six, and Sixteenth and Seventeenth Victoria, Chapter Ninety-four, and (*this Act*), and relative Acts of Sederunt, for Authority to disentail the Lands and Estate of in the County of (*or* to charge the Lands of in the County of with the Sum of , *or otherwise, as the Case may be*). Date of Interlocutor ordering Intimation Day of One thousand eight hundred and .

C.D., Agent of the Petitioner.
Address and Date.

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