ANNO SEXTO & SEPTIMO

GULIELMI IV. REGIS.

C A P. XLII.

An Act to grant certain Powers to Heirs of Entail in *Scotland*, and to authorize the Sale of Entailed Lands for the Payment of certain Debts affecting the same. [28th *July* 1836.]

WHEREAS by an Act of the Parliament of *Scotland* made in the Year One thousand six hundred and eighty-five, intituled *Act concerning Tailzies*, it is statuted and declared that it shall be lawful to His Majesty's Subjects to tailzie or entail their Lands and Estates, and to substitute Heirs in their Tailzies or Entails, with such Provisions and Conditions as they shall think fit, and to affect the said Entails with irritant and resolutive Clauses, whereby it shall not be lawful to the Heirs of Entail to sell, analzie, or dispose of the said Lands or any Part thereof, to contract Debt, or do any other Deed whereby the same might be apprized, adjudged, or evicted from the other Substitutes in the Entail, or the Succession frustrate or interrupted, declaring all such Deeds to be in themselves null and void; and Provision is made by the said Act for the recording such Entails in the Manner therein set forth: And whereas it is expedient that certain Powers should be conferred upon Heirs of Entail in relation to granting Tacks and making Excambions, and to selling Portions of Entailed Estates for Payment of the Entailer's Debts: Be it therefore 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

Heirs of Entail in Possession empowered to grant Tacks of any Part of Entailed Estates under the Restrictions herein contained.

Parliament assembled, and by the Authority of the same, That, notwithstanding any prohibitory, irritant, and resolutive Clauses contained in any Entails already made and established, or which may hereafter be made and established, pursuant to the Directions of the said Act passed in the Parliament of *Scotland* in the Year One thousand six hundred and eighty-five, it shall be lawful for the respective Heirs of Entail in Possession to grant Tacks of any Parts of the Lands, Estates, or Heritages therein contained, for the fair Rent of such Lands or Heritages at the Period of letting, either by public Auction or private Bargain, and notwithstanding any Prohibition against Diminution of the Rental, for any Period not exceeding Twenty-one Years, and to grant Tacks of any Mines and Minerals contained in such Lands and Estates for any Period not exceeding Thirty-one Years: Provided always, that nothing herein contained shall authorize any Heir of Entail in Possession of any Entailed Lands, Estates, or Heritages to take any Grassum or valuable Consideration, other than the Tack Duty or Rent, for granting any Tack, or to grant any Tack of the Home Farm, nor of the Mansion House and Offices, or of the Garden, Lawn, Park, or Policy attached thereto, for any Period beyond his own Life; and in case any such Grassum or Consideration shall be taken, or in case any Tack hereby prohibited shall be granted, such Tack shall be null and void.

This Act not to restrain any more extensive Powers contained in any Entail.

II. Provided also, and be it enacted, That nothing herein contained shall prevent or be construed to prevent any Heir of Entail in Possession from exercising any Power of granting Tacks which may be contained in the Entail under which he possesses more extensive than the Power of granting Tacks hereby conferred.

Heirs in Possession may make Excambions of Entailed Estates in the Mode herein named.

III. And be it enacted, That, notwithstanding any prohibitory, irritant, and resolutive Clauses contained in any Entail already made and established, or which may hereafter be made and established, pursuant to the Directions of the said Act passed in the Parliament of *Scotland* in the Year One thousand six hundred and eighty-five, it shall be lawful for the respective Heirs of Entail in Possession of any Entailed Lands, Estates, or Heritages, having made up a Feudal Title thereto, to make Excambion, without the Consent of any other Heir, of any Portion of the Entailed Lands, Estates, or Heritages, for an Equivalent in Lands, Estates, or Heritages lying contiguous to the same or to some other Part of the said Entailed Estate, or being convenient to be holden with the same, and whether the same shall belong to himself in Fee Simple or to any other Person, and that although the Heritages to be given and taken in Exchange may consist of different Descriptions of Heritable Property: Provided always, that Notice of the Intention to make such Excambion shall, Three Months previous to the Application to the Court of Session to that Effect, as herein-after required, be given to the Five Heirs of Entail, or to the whole Heirs of Entail if their Number be less than Five, of the said Entailed Lands, Estates, or Heritages next in the Order of Succession to the Heir so applying; and if any of the said Five Heirs of Entail shall be under Age, or under any mental or other legal Disability, then to the legal Guardians, Curators, or Administrators of such Heirs; and if Three or more of the said Five Heirs shall be

under Age, or under any mental or other legal Disability, then to their respective Guardians, Curators, or Administrators, and also to the Two Heirs next in the Order of Succession after such Five Heirs, who shall be of lawful Age and not under any mental or other legal Disability; and if any of the said Heirs to whom Notice is thus directed to be given shall be forth of the United Kingdom, then to the known Agent or Factor of such absent Heir or Heirs; and for ascertaining and adjusting the Value of the Lands, Estates, or Heritages proposed to be exchanged an Application shall be made for that Purpose by the Heir of Entail in Possession, and feudally vested in such Lands, Estates or Heritages, after such Notice as is herein directed to be given, by summary Petition, setting forth the Objects of the said Excambion, and the Advantages expected to be derived therefrom, to one or other of the Divisions of the Court of Session, praying for such Excambion; and the said Court shall, after Proof made to them of Notice to the Heirs of Entail as aforesaid, take into consideration the Expediency of such Excambion, and the other Circumstances of or affecting the Lands, Estates, or Heritages proposed to be excambed, and the Interests of the succeeding Heirs of Entail therein, and after such Notice as is herein-after directed to be given, and hearing any Party having a Title and Interest to be heard, if any such shall appear, shall appoint Two or more skilful Persons to inspect and adjust the Value and settle the Marches of the said Lands, Estates, or Heritages proposed to be excambed; and upon receiving the Report upon Oath of such Persons, and being satisfied of the respective Values of such Lands, Estates, or Heritages, and of the Expediency of such Excambion, the said Court shall thereupon give Judgment authorizing the said Excambion; and thereupon the Contract of Excambion shall be executed at the Sight and with the Approbation of the said Court, and recorded in the Sheriff Court Books of each of the Shires or Stewartry in which the Lands or Heritages to be excambed are situated, and also within Three Months in the Register of Tailzies: Provided also, that after hearing any Party having a Title or Interest, and appearing as aforesaid, it shall be competent to the said Court to decern the Expences to be incurred by such Party in such Appearance to be borne either by such Party or by the Heir of Entail applying for the Excambion, as to the said Court shall seem just.

Provision as to Excambion of Mansion Houses, &c.

IV. Provided further, and be it enacted, That it shall not be lawful to excamb the principal Mansion House or Offices, or the Garden, Park, Lawn, Home Farm, or Policy of any Entailed Estate, nor more than One Fourth in Value of such Entailed Lands, Estate, or Heritages in all; and declaring that after Excambions have been made under the Authority of this Act to the Extent in all of One Fourth Part in Value of the whole Entailed Lands, Estates, or Heritages, it shall not be in the Power of any Heir of Entail to make any further Excambions of any Part of the said Lands, Estate, or Heritages.

Tenure of excambed Lands.

V. And be it enacted, That all Contracts of Excambion executed and recorded in Terms of this Act shall be effectual to all Intents and Purposes; and the Lands and Heritages given or received in Excambion shall be held to be a Part of the Entailed Estate or of the

the Entailed Estates respectively, and shall be subject to all the prohibitory, irritant, and resolutive Clauses of the Entail or Entails, in the same Manner as if it or they had been originally a Part of such Estate or Estates respectively; and the Lands and Heritages given from the Entailed Estate or Estates shall from thenceforth be held as out of the Entail or Entails under which it was previously held, and be liberated from all the prohibitory, irritant, and resolutive Clauses thereof: Provided always, that no Debt contracted by any Heir of Entail during the Period between the Execution of any such Contract of Excambion and the recording of such Contract in the Register of Tailzies as aforesaid shall affect or be capable of affecting the Lands contained in such Contract, and thereby added to the Entailed Estate: And provided further, that if in any such Excambion as aforesaid there shall be any Excess of Value on either Side, not exceeding Two hundred Pounds, such Excess shall go and be paid to the Proprietor, whether Heir of Entail in Possession or Proprietor in Fee Simple, to whom the Lands of smaller Value shall be awarded; and that if any Party to any such Excambion shall give or shall receive any Consideration or Value of any Kind whatever, other than the Lands to be exchanged, or such Excess as aforesaid not exceeding Two hundred Pounds, such Excambion shall be null and void.

Excess of Value in any Excambion to the Amount of 200*l.* to be paid to the Proprietors.

In case of any larger Excess Excambion void.

As to Excambion of Entailed Estates under more than One Entail.

VI. Provided always, and be it further enacted, That where any such Heir in Possession shall apply as aforesaid for the Excambion of any Part or Parts of any Entailed Estate or Estates under more than One Deed of Entail, descendible to the same Series of Heirs, such Deeds of Entail shall in reference to such Application be held and construed to be One Deed of Entail, and the Estates settled by such Entail to be One Entailed Estate: Provided also, that an Act passed in the Tenth Year of the Reign of His Majesty King *George* the Third, 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*, shall remain in full Force and Effect, excepting in so far as the same is altered or repealed by any of the Provisions of this Act.

10 G. 3. c. 51.

Part of Entailed Estates may be sold for Payment of Entailer's Debts affecting the Estate.

VII. And for effecting the Sale of Portions of Entailed Estates for Payment of the Entailer's Debts, be it enacted, That from and after the passing of this Act it shall and may be lawful for the Heir of Entail in the Possession of any Entailed Estate liable to be adjudged or evicted for the Debts or Obligations of the Maker of the Entail, and for the Tutors or Curators or legal Guardians of any such Heir, if under Twenty-one Years of Age or under any mental or other legal Disability, to apply by summary Petition to the Court of Session in either of the Divisions of the said Court, setting forth the Entail, and the Debts or Obligations affecting or which may be made to affect the Lands or Heritages contained in the said Entail as aforesaid, and praying the said Court that so much of the said Lands or Heritages may be sold as will produce a Sum adequate to discharge the Debts so affecting the said Estate.

Court of Session to inquire into the

VIII. And be it enacted, That it shall and may be lawful for the Judges of the said Court, sitting in either of the Divisions thereof, and

and they are hereby authorized and required, upon such Petition presented to them as aforesaid, to direct due Notice, according to the Practice of the said Court, to be given of such Petition to all concerned, to hear all Parties that shall appear for their Interest, to inquire into and take an Account of the Debts, Obligations, and other Burdens due by or binding upon the Entailer of such Estate, which affect or may be made to affect such Estate as aforesaid, and to fix and ascertain the Amount of such Debts, Obligations, and Burdens, and Interest, if any, due thereupon, by Interlocutors or Judgments, and thereupon to inquire into and ascertain, by the Investigation and Evidence or Report of such Surveyors or other skilful Persons as the said Court shall think fit to nominate and appoint for that Purpose, what Portions of such Entailed Estate sufficient to produce a Price adequate to the Payment of all such Debts, Obligations, and Burdens affecting or capable of being made to affect the said Entailed Estate as aforesaid may be sold with the least Detriment or Injury to the Remainder of such Estate, and to take all necessary Proof thereof, and of the Value at which such Portions of such Estate ought either in Whole or in Lots to be exposed to Sale, and thereupon to order and decern that such Portions of such Estate shall be sold by public Roup or Auction.

Particulars, and direct what Portion of Estate shall be sold;

IX. And be it enacted, That the said Judges shall cause Notice of the intended Sale or Auction of such Portions of such Estates to be inserted in one of the Newspapers published in the County or Counties in which the Lands or Heritages to be sold lie, and also in Three of the Newspapers published in *Edinburgh*, Three Times, at least Three Weeks previous to the Day of Sale, and shall otherwise advertise and notify such Sale as to the said Judges shall seem necessary and proper; and the Articles and Conditions of Roup or Sale of such Portions of such Estates shall be adjusted at the Sight and with the Approbation of the said Judges, and the Lands or Heritages be exposed to Sale in such Manner as the said Judges shall direct; and the said Judges may authorize and direct such Sales respectively to be adjourned from Time to Time, and to be again from Time to Time advertised and notified as herein-before directed.

and cause Notice of Sale to be given, and adjust the Conditions thereof.

X. And be it enacted, That upon the Sale of such Portions of such Estates as aforesaid the said Judges shall adjudge and decern the same, freed from all the Burdens, Conditions, Restrictions, and Provisions, Clauses irritant and resolutive, and other Clauses of such Entail, to belong to and be the Property of the Purchaser or respective Purchasers thereof, when and as soon as such Purchaser or Purchasers shall have completed such Purchase or Purchases by Payment or Consignation of the Purchase Money, or Price or Prices at or for which he, she, or they shall have purchased the same, to or with the Treasurer, Cashier, or Manager or other proper Officer of the Bank of *Scotland*, the Royal Bank of *Scotland*, Bank of the *British* Linen Company of *Scotland*, Commercial Bank of *Scotland*, or National Bank of *Scotland* respectively, to whom the said Judges shall order such Payment or Consignation to be made, to be placed to an Account to be raised in the Books of such Bank in the Name or Names of such Person or Persons as the said Judges shall direct; and which Monies shall, when so paid in,

Court of Session to adjudge the Lands sold to the Purchaser, and direct the Disposition of the Purchase Money;

produce the highest Interest that can be obtained for the same, which Interest shall by such Person or Persons be annually accumulated and added to the Principal Sum, to carry Interest together, until applied, by a Warrant or Warrants of the said Judges in either Division of the said Court as aforesaid, for the Purposes of this Act; and the said Judges shall further pronounce such Interlocutor or Interlocutors and hold such other Proceedings in the said Matter as the Judges of the Court of Session are in use to pronounce and hold in Judicial Sales, or as shall appear to the said Judges necessary for fully carrying the Purposes of this Act into execution.

Purchasers upon Payment of the Money, to have a good Right to the Lands, &c. freed from the Entail.

XI. And be it enacted, That the Purchaser or Purchasers in pursuance of this Act, and their Heirs and Assignees, shall, by the Interlocutors or Decrees of Sale to be pronounced by the said Judges, and upon full Payment of the Price or Prices for which they shall respectively purchase to such Person or Persons or in such Way as they shall by the Articles and Conditions of Sale be taken bound to pay the same, have a good and undoubted Right to the Lands and Heritages so to be purchased by them, freed and discharged of all the Conditions, Provisions, Limitations, and Restrictions of such Entail, and of all the Debts, Obligations, and Burdens by which the said Lands and Heritages were affected, and from every other Incumbrance, Defect of Title, or Ground of Eviction whatsoever, in as full and ample a Manner, Sort, and Form as any Purchaser of Lands at a Judicial Sale before the Court of Session may, can, or ought to have by the Law and Practice of *Scotland*; and the Heir of Entail of the Estate for the Time being, or his or her Tutors or Curators or other legal Guardians as aforesaid, shall and is or are hereby required to execute and deliver, under the Authority of the said Judges of the Court of Session in either Division thereof as aforesaid, all such Dispositions and Conveyances of such Portions of such Estates as shall be so sold, containing Procuratories of Resignation, Precepts of Sasine, and other usual and necessary Clauses as shall by the said Judges be deemed necessary and proper, in favour of such Purchaser or Purchasers, his, her, or their Heirs and Assignees, without incurring any Irritancy or Forfeiture, any thing in such Deed of Entail to the contrary notwithstanding.

Lands not sold to continue subject to the Entail.

XII. Provided always, and be it enacted, That such Parts of such Entailed Estate as shall not be sold under the Authority of this Act, in the Manner herein directed, shall remain and continue settled and entailed to and upon the same Series of Heirs, under the same prohibitory, irritant, and resolutive Clauses, Provisions, and Conditions as are contained in such Deed of Entail, but subject to the Powers and Provisions herein-before given by this Act.

Court of Session to direct Purchase Money to be applied to Payment of Debts, &c.

XIII. And be it enacted, That after such Sale or Sales are accomplished, and the Purchase Money paid or consigned as aforesaid, the said Judges of the Court of Session in either Division thereof shall issue their Warrants or Decrees for Payment, out of the Money so paid or consigned, of the Expences of the Proceedings attending such Petition, Inquiry, and Sale, and also of the Amount of such Debts, Obligations, or Burdens affecting or which might be made to affect such Entailed

Entailed Estate as aforesaid of which such Portions have been sold as aforesaid; and every Creditor in such Debt, Obligation, or Burden shall upon receiving Payment be obliged to execute a complete Discharge of his or her Debt, Right, or Claim; and the several Discharges shall be registered in the Books of Council and Session.

By whom the Costs of Parties interested and appearing shall be paid.

XIV. Provided always, and be it enacted, That if any Party interested in such Entailed Estate shall have appeared and been heard before the said Court, it shall be competent for the said Court to decern the Expences incurred by such Party in such Appearance and Hearing to be borne, either by such Party, or by the Heir applying for such Sale, either out of the Price of the Lands to be so sold, or otherwise as to the said Court shall seem just.

Any Surplus exceeding 200*l.* to be laid out in Purchase of other Land, to be limited to same Uses &c. as Lands sold;

XV. Provided always, and be it enacted, That if any Surplus exceeding Two hundred Pounds shall remain of the Price of the Lands and Heritages so sold, after defraying such Expences, Debts, Obligations, or Burdens directed to be paid as aforesaid, the said Judges of the said Court in either of the Divisions thereof shall and they are hereby empowered and required to direct and order that such Surplus shall be laid out and employed in the Purchase of other Lands or Heritages, which shall be limited and settled to the same Uses and Purposes, and under the like prohibitory, irritant, and resolutive Clauses, as by the Deed of Entail in relation to which such Proceedings have been held the Lands and Heritages therein described stand limited and settled.

and the Deed of Entail thereof to be framed at the Sight of the Court of Session;

XVI. And be it enacted, That when such Surplus shall be laid out and employed in the Purchase of other Lands or Heritages to be settled as aforesaid, the Disposition, Deed, or Settlement of Entail thereof to or in favour of the Heir of Entail in Possession for the Time being, and the other Heirs of Entail entitled to succeed to the Entailed Estate to which the Lands or Heritages so purchased are to be added, shall be framed at the Sight and with the Approbation of the Judges of the said Court, and shall be so framed as to bind the Heir in Possession or Person in whose Favour the same is executed as well as the succeeding Heirs of Entail.

and recorded in Register of Tailzies, &c.

XVII. And be it enacted, That after such Disposition, Conveyance, or Entail shall be so made and executed, the same shall be directed by the said Judges to be forthwith recorded in due Form in the Register of Tailzies, for the Benefit of all the Persons interested therein, and Infeftment shall be taken by virtue of the Procuratory of Resignation or the Precept of Sasine therein contained, and shall be registered agreeably to the Forms and Practice of the Law of *Scotland*, upon all which the said Court shall interpose its Authority by declaring that the Directions by this Act given have been complied with according to the true Intent and Meaning thereof.

Application of surplus Monies till invested in Land.

XVIII. And be it enacted, That until such Surplus as aforesaid shall be applied in the Purchase of other Lands or Heritages as aforesaid, the said Judges shall order and direct that the same shall remain in one or other of the aforesaid Banks respectively, subject to the Direction of the said Judges of that Division of the said Court to

to which Application shall have been originally made, in the Name of such Person or Persons as they shall have appointed, who shall receive the highest Interest which can be got for the same; and the Interest arising from the Money so paid in shall be laid out in the Name or Names of such Persons as aforesaid, and shall annually accumulate and be added to the Principal Sum so that they may carry Interest together until a proper Purchase in Lands or Heritages shall be found, to be limited and settled in the Manner herein-before directed, and until the same shall be ordered to be paid by the Treasurer, Cashier, or Manager or other proper Officer of the Bank of *Scotland*, the Royal Bank of *Scotland*, Bank of the *British* Linen Company of *Scotland*, Commercial Bank of *Scotland*, or National Bank of *Scotland* respectively, for completing the said Purchase in such Manner as the said Court shall think just and direct; and if the Money arising by the Principal and accumulated Interest of such Sum or Sums shall exceed the Amount of the original Purchase Money, then and in that Case only the Surplus which shall remain, after discharging the Expence of the Applications to the Court, shall be paid to the Person or Persons respectively who would have been entitled to receive the Rents and Profits of the Entailed Lands or Heritages.

If under 200*l.* to be paid to Heir in Possession.

XIX. And be it enacted, That if such Surplus as aforesaid shall be under Two hundred Pounds Sterling, the same shall be paid, by Order of the said Court, to the Heir in Possession of such Entailed Estate for the Time being.

Definition of Terms used in the Act.

XX. And be it enacted, That any Matter or Thing permitted or prohibited to be done by any Heir of Entail by virtue of this Act is and shall be permitted or prohibited to be done by any Trustees or Trustee holding Lands in Trust under Obligations to entail the same; and that where the Words "Heir" or "Heirs of Entail" are used in any Part of this Act, such Word or Words shall be held and construed to include the Institute equally as any Substitute Heir of Entail.

How Notices to be given of Applications under this Act to Court of Session, &c.

XXI. Provided always, and be it further enacted, That Notice of all Applications, either to the Court of Session or any Lord Ordinary of the said Court, or to any Sheriff of any County, under the Provisions of this Act, by any Heir of Entail, shall be inserted once at least in the *London* and *Edinburgh* Gazettes, and in Two or more Newspapers published in *Edinburgh* and usually circulated in the Part of *Scotland* in which the Entailed Lands and Estates to which such Application relates lie, and also in any One Newspaper published (if any so be) in such Part of *Scotland* at least Three Months previous to the making such Application; and where such Application shall be to the Court of Session, the said Court or the Lord Ordinary shall, if they or he shall see Cause, cause such further Intimation thereof to be made in the Minute Book of the said Court or on the Walls of the Parliament House, or otherwise, as the said Court or Lord Ordinary shall think proper.

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