



# Entail Amendment Act 1848

## 1848 CHAPTER 36

An Act for the Amendment of the Law of Entail in *Scotland*. [14th August 1848]

WHEREAS the Law of Entail in *Scotland* has been found to be attended with serious Evils, both to Heirs of Entail and to the Community at large, and it is expedient that the same be amended in manner herein-after provided for:

Be it therefore 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,

**Heir born after the Date of any future Entail may disentail the Estate; born before, may do so with Consent of Heir next in succession, being Heir Apparent under the Entail.**

That where any Estate in *Scotland* shall be entailed by a Deed of Tailzie dated on or after the First Day of *August* One thousand eight hundred and forty-eight it shall be lawful for any Heir of Entail born after the Date of such Tailzie, being of full Age, and in possession of such entailed Estate by virtue of such Tailzie, to acquire such Estate, in whole or in part, in Fee Simple, by applying to the Court of Session for Authority to execute and executing, and recording in the Register of Tailzies, under the Authority of the Court, an Instrument of Disentail in the Form and Manner herein-after provided ; and it shall be lawful for any Heir of Entail, being of lawful Age, and in possession of such entailed Estate by virtue of such Tailzie, though born before the Date of such Tailzie, with the Consent, and not otherwise, of the Heir next in succession, being Heir Apparent under the Entail of the Heir in possession, to acquire such Estate, in whole or in part, in Fee Simple, by applying to the Court for Authority to execute and executing, and recording in the Register of Tailzies, under the Authority of the Court, an Instrument of Disentail in the Form and Manner hereinafter provided: Provided always, that such Consent to such Instrument of Disentail shall not be valid and effectual unless granted by a Person of the Age of Twenty-five Years complete, not subject to any legal Incapacity, and born after the Date of the Tailzie to which such Instrument applies.

**II Heir in possession under an existing. Entail born after 1st August 1848 may disentail; born before that Date, may do so with Consent of Heir next in succession, being Heir Apparent born after 1st August 1848.**

And be it enacted, That where any Estate in *Scotland* is held by virtue of any Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight it shall be lawful for any Heir of Entail born on or after the said First Day of *August*, being of full Age, and in possession of such entailed Estate by virtue of such Tailzie, to acquire such Estate, in whole or in part, in Fee Simple, by applying to the Court of Session for Authority to execute and executing, and recording in the Register of Tailzies, under the Authority of the Court, an Instrument of Disentail in the Form and Manner herein-after provided; and it shall be lawful for any Heir of Entail, though bom before the said First Day of *August* One thousand eight hundred and forty-eight, being of full Age, and in possession of such entailed Estate by virtue of such Tailzie dated prior to the said First Day of *August*, with the Consent (and not otherwise) of the Heir next in succession, being Heir Apparent under the Entail of the Heir in possession, he being bom on or after the said First Day of *August* One thousand eight hundred and forty-eight, and being of the Age of Twenty-five Years complete at the Time of granting such Consent, and not subject to any legal Incapacity, to acquire such Estate, in whole or in part, in Fee Simple, by executing, under Authority of the Court, an Instrument of Disentail as aforesaid, in the Form and Manner herein-after provided.

**III Heir of Entail under an existing Entail may disentail, with certain Consents.**

And be it enacted, That it shall be lawful for any Heir of Entail, being of full Age, and in possession of an entailed Estate in *Scotland* holden by virtue of any Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight, to acquire such Estate, in whole or in part, in Fee Simple, by applying to the Court of Session for Authority to execute and executing, and recording in the Register of Tailzies, under the Authority of the Court, an Instrument of Disentail in the Form and Manner herein-after provided : Provided always, that such Heir of Entail in possession shall be the only Heir of Entail in existence for the Time, and unmarried, or otherwise shall have obtained the Consents of the whole Heirs of Entail, if there be less than Three in being at the Date of such Consents and at the Date of presenting such Application, or otherwise shall have obtained the Consents of the Three nearest Heirs who at the said Dates are for the Time entitled to succeed to such Estate in their Order successively immediately after such Heir in possession, or otherwise shall have obtained the Consents of the Heir Apparent under the Entail and of the Heir or Heirs, in Number not less than Two, including such Heir Apparent who in Order successively would be Heir Apparent: Provided also, that the nearest Heir of Entail for the Time entitled to succeed to such Estate immediately after such Heir in possession, where any such other Heir exists, shall be of the Age of Twenty-five Years complete, and not subject to any legal Incapacity.

**IV Heir of Entail may sell, charge, lease, and feu, with the like Consents as enable him to disentail.**

And be it enacted, That it shall be lawful for any Heir of Entail, being of full Age, and in possession of an entailed Estate in *Scotland*, with such and the like Consents as by this Act would enable him to disentail such Estate, to sell, alienate, dispone, charge with Debts or Incumbrances, lease and feu such Estate, in whole or in part, and that unconditionally, or subject to Conditions, Restrictions, and Limitations, according to the Tenor of such Consents, the Authority of the Court of Session being always

obtained thereto in the Form and Manner herein-after provided; and such Heir of Entail shall be entitled to make and execute, at the Sight of the Court, all such Deeds of Conveyance and other Deeds as may be necessary for giving Effect to the Sales, Dispositions, Charges, Leases, or Feus so made and granted.

**V Heir of Entail under existing Entail may excamb, with certain Consents.**

And be it enacted, That it shall be lawful for any Heir of Entail, being of full Age, and in possession of an entailed Estate in *Scotland* holden by him by virtue of any Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight, with the Consent of the whole Heirs of Entail if there be less than Three in being at the Date of such Consents and at the Date of presenting Application for the Authority of the Court as after mentioned, or otherwise with the Consent of the Three nearest Heirs who at the said Dates are for the Time entitled to succeed to such Estate in their Order successively immediately after such Heir in possession, or otherwise with the Consent of the Heir Apparent under the Entail, and of the Heir or Heirs, in Number not less than Two, including such Heir Apparent, who in Order successively would be Heir Apparent, to excamb such Estate, in whole or in part, the Authority of the Court of Session being always obtained thereto in the Form and Manner herein-after provided, and such Heir of Entail in possession shall be entitled to make and execute, at the Sight of the Court, all such Contracts of Excambion and other Deeds as may be necessary in order to give effect to such Excambions, by the Substitution of the Lands to be acquired in the Room and Place in all respects of the Lands to be disponed.

**VI Provision for Disclosure of Entailer's Debts which affect the Estate disentailed.**

And be it enacted, That where any Heir of Entail in possession of an entailed Estate in *Scotland* shall apply to the Court of Session under this Act in order to disentail such Estate, in whole or in part, or to sell, alienate, dispone, charge with Debts or Incumbrances, lease, feu, or excamb the same or any Part thereof, he shall make and produce in such Application an Affidavit setting forth that there are no Entailer's Debts or other Debts, and no Provisions to Husbands, Widows, or Children, affecting or that may be made to affect the Fee of the said entailed Estate or the Heirs of Entail, or, if there are such Debts or Provisions, setting forth the Particulars of the same, with the Amounts thereof respectively, Principal, Interest, and Expenses, and the Vouchers by which the same are instructed, and the Names, Designations, and Residences of the Parties in right of the same; and the Court shall not proceed with such Application until such Affidavit, is lodged; and, if the Court shall see Cause, Intimation of such Application may be ordered to be made to the Parties in right of the said Debts or Provisions or any of them, with a view to such Parties appearing for their Interest, if they shall see fit; and it shall be lawful for the Court to order such Provision as may appear just to be made for such Debts or Provisions, or for the Protection of the Parties in right of the same, before granting the Authority sought for in such Application, or as the Condition of granting the same; and any Person who shall wilfully make such Affidavit falsely shall be deemed to be guilty of Perjury, and be punishable accordingly.

**VII Creditors in Entailer's Debts, &c. using Inhibition not to be affected by Instrument of Disentail.**

And be it enacted, That any Party in right of an Entailer's Debt or of any other Debt, or of any Provision to a Husband, Widow, or younger Child, affecting or that may be

made to affect the Fee of any entailed Estate in *Scotland*, and who before the Expiry of One Year from the Date of recording an Instrument of Disentail of such Estate in the Register of Tailzies shall use and record Inhibition in reference to such Debt against the Heir of Entail in possession of such Estate for the Time, shall be entitled to affect such Estate in respect of such Debt or Provision as if no such Instrument of Disentail had been recorded as aforesaid, and no Debt or Charge on such Estate, or Right whatsoever therein, which would not have competed with such Debt or Provision had such Instrument of Disentail not been recorded, shall be allowed to compete therewith by reason of the recording of such Instrument of Disentail.

#### **VIII Settlements by Marriage Contract not to be disappointed.**

And be it enacted, That where any Heir of Entail in possession of an entailed Estate in *Scotland* holden by virtue of any Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight, or the Heir Apparent to such Estate, shall, together or separately, have secured by Obligation in any Marriage Contract the Descent of such Estate upon the Issue of the Marriage in reference to which such Contract is entered into, it shall not be competent for such Heir of Entail in possession, or Heir Apparent, or either of them, to apply for or to consent to the Disentail of such Estate, until there shall be born a Child of such Marriage capable of taking the Estate in Terms of such Contract, and who, by himself or his Guardian, shall consent to such Disentail, or until such Marriage shall be dissolved without such Child being born, unless the Trustee or Trustees named in such Contract, or the Party or Parties at whose Sight the Provisions of the Contract are directed to be carried into execution, shall concur in such Application or Consent.

#### **IX Heirs of Entail not to give Consent in opposition to Creditors in Debts now Ousting.**

And be it enacted, That where any Heir of Entail called to the Succession of an entailed Estate in *Scotland* by any Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight shall have borrowed Money previous to the passing of this Act on the Security or Credit of his Right of Succession to or Interest in such entailed Estate, such Heir shall not be entitled to give Consent to any Application under this Act which shall be opposed by any Creditor to whom such Heir stands indebted in respect of Money borrowed as aforesaid, and who shall either hold Infeftment in the entailed Estate, duly recorded, in security of his said Debt, or shall enter Appearance, and prove the same, in the course of the Proceedings under such Application : Provided always, that it shall be competent to the Court of Session, if, with reference to any Offer of adequate Security, or otherwise in the Circumstances, it shall deem the Opposition on the Part of such Creditor to be unreasonable, to disallow the same, and to give effect to the Consent of such Heir.

#### **X Heir Apparent under future Tailzie not to give Consent in opposition to his Creditors.**

And be it enacted, That where any Heir Apparent of an entailed Estate in *Scotland* under a Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight shall subsequent to the passing of this Act borrow Money on the Security or Credit of his Right of Succession to or Interest in such entailed Estate, such Heir Apparent shall not be entitled to give Consent to any Application under this Act, except under the like Circumstances as would have enabled him to give Consent, and

to have his Consent allowed, had such Money been borrowed previous to the passing of this Act; but the Consents of the other Heirs Substitute shall be given and allowed independently of the Rights of any such Creditors.

**XI Creditor of an Heir empowered to disentail may affect the Estate for Payment of his Debt.**

And be it enacted, That any Creditor of an Heir of Entail in possession of an entailed Estate in *Scotland* who is by this Act empowered by himself alone, without the Consent of any other Party, to acquire such Estate in Fee Simple, by executing and recording an Instrument of Disentail as aforesaid, shall be entitled to affect such Estate for Payment of Debt, and have the same Rights and Interests therein as if such Instrument of Disentail had been duly executed and recorded, albeit such Heir in possession may not have duly executed and recorded such Instrument of Disentail.

**XII Acts 10 G.S c.51 and 5 G.4 c.87 not to apply to future Tailzies.**

And whereas an Act was 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*; and another Act was passed in the Fifth Year of the Reign of His Majesty King *George* the Fourth, 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*; be it enacted, That neither of the Two last-recited Acts shall be applicable to any Tailzie dated on or after the First Day of *August* One thousand eight hundred and forty-eight.

**XIII Heir having obtained Decree for Expense of Improvements may grant Bond of annual Rent.**

And be it enacted, That where an Heir of Entail in possession of an entailed Estate holden by virtue of any Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight shall have executed Improvements on such Estate previous to the passing of this Act, and shall have obtained Decree for Three Fourth Parts of the Sums expended thereon, in Terms of the said recited Act of the Tenth Year of the Reign of His Majesty King *George* the Third, and shall also have obtained the Authority of the Court of Session as after mentioned, it shall be lawful for such Heir to execute, in favour of any Party he may think fit, a Bond of annual Rent in ordinary Form over such entailed Estate or any Portion thereof, binding himself and his Heirs of Tailzie to make Payment of an annual Rent during the Period of his own Life and Twenty-five Years thereafter, such annual Rent during his own Life not exceeding the legal Interest of the said Three Fourth Parts of the Sums expended as aforesaid, and during the Twenty-five Years after his Decease not exceeding the Sum of Seven Pounds Two Shillings for every One hundred Pounds of such Three Fourth Parts as aforesaid, and so in proportion for any greater or less Sum, and such annual Rent being payable by equal Moieties half-yearly at the Terms of *Whitsunday* and *Martinmas*, beginning the first Term's Payment at the first Term of *Whitsunday* or *Martinmas* after the Date of the Bond, for the Proportion of annual Rent then due, with legal Interest, and Penalties in case of Failure.

**XIV Heir in future expending Money in Improvements may grant Bond of annual Rent.**

And be it enacted, That where an Heir of Entail in possession of an entailed Estate holden by virtue of any Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight shall execute Improvements on such Estate subsequent to the passing of this Act, and obtain Decree for Three Fourth Parts of the Sums expended thereon, in Terms of the said recited Act of the Tenth Year of the Reign of His Majesty King *George* the Third, and shall also obtain the Authority of the Court as after mentioned, it shall be lawful for such Heir of Entail to execute, in favour of any Party he may think fit, a Bond of annual Rent in ordinary Form over such entailed Estate or any Portion thereof, binding himself and his Heirs of Tailzie to make Payment of an annual Rent during the Period of Twenty-five Years from and after the Date of such Decree, or during such Part of the said Period of Twenty-five Years as may remain unexpired at the Date of such Bond, such annual Rent not exceeding the Sum of Seven Pounds Two Shillings for every One hundred Pounds of the whole of the Sums expended as aforesaid, and so in proportion for any greater or less Sum, and being payable half-yearly by equal Moieties at the Terms of *Whitsunday* and *Martinmas*, beginning the first Term's Payment at the first Term of *Whitsunday* or *Martinmas* after the Date of the Bond, for the Proportion of annual Rent then due, with legal Interest, and Penalties in case of Failure.

**XV Executor may call on Heir in possession to grant Bond of annual Rent.**

And be it enacted, That where any Heir of Entail in possession of an entailed Estate in *Scotland* shall have executed Improvements on such Estate prior to the passing of this Act, and recorded the same in Terms of the said last recited Act, and died without having executed a Bond of annual Rent as herein-before authorized, or having charged the Estate as herein-after authorized, and where Decree shall have been obtained, in Terms of the said last-recited Act, for Three Fourth Parts of the Sums expended thereon, it shall be lawful for the Executor or personal Representative of such Heir of Entail, or for any Party to whom such Heir may have conveyed or assigned such Debt, to make Application by summary Petition to the Court of Session, praying the Court to decern and ordain the Heir in possession of such entailed Estate to execute, in favour of any Party such Petitioner may think fit, a Bond of annual Rent in ordinary Form over such entailed Estate or any Portion thereof, binding himself and his Heirs of Tailzie to make Payment of an annual Rent during the Period of Twenty-five Years from the Date of the Death of the Heir of Entail who shall have executed the Improvements, such annual Rent not exceeding the Sum of Seven Pounds Two Shillings for every One hundred Pounds of such Three Fourth Parts aforesaid, and so in proportion for any greater or less Sum, and such annual Rent being payable half-yearly by equal Moieties at the Terms of *Whitsunday* and *Martinmas*, beginning the first Term's Payment, notwithstanding the Date of such Bond of annual Rent, at the first Term of *Whitsunday* or *Martinmas* after the Date of the Death of the Heir of Entail who shall have executed the Improvements, for the Proportion of annual Rent then due, with legal Interest, and Penalties in case of Failure, which Bond such Heir of Entail in possession shall be bound to execute accordingly at the Sight of the Court: Provided always, that the Heir of Entail in possession required to grant and granting such Bond shall be entitled to impute towards Payment of the Sums thereby due any Excess of Sums -which may have been paid by or recovered from him in Payment of the said Improvement Debt beyond the Amount of annual Rents due from and after the Decease of the Heir who shall have executed such Improvements.

### **XVI Proceedings where Improvements not executed in Terms of 10 G.3.**

And be it enacted, That where an Heir of Entail in possession of any entailed Estate holden by virtue of any Tailzie dated prior to the said First Day of *August* One thousand eight hundred and forty-eight shall, whether prior or subsequent to the passing of this Act, have executed Improvements on such Estate of the Nature of the Improvements contemplated by the said last-recited Act, but shall not have obtained Decree therefor in Terms of the said Act, by reason of the Provisions thereof not having been adopted or not having been duly complied with, it shall be lawful for such Heir to apply by summary Petition to the Court in manner herein-after provided, setting forth such Improvements, and the Amount of Money, not exceeding the Amount authorized by the said Act, expended thereon, and praying the Court for Authority to grant Bond of annual Rent as is herein-before provided in the Case of Improvements for which Decree in Terms of the said Act has been obtained; and the Court shall, after such Proceedings as they may think fit to direct or to adopt, proceed to consider such Application, and to take such Evidence, and institute such Inquiry into the Facts alleged in such Petition, as they shall judge necessary; and if it shall appear to the Court that such Improvements are of the Nature contemplated by the said Act, and that such Expenditure was *bonâ fide* made, they shall find accordingly, and shall also grant Warrant for Execution of a Bond of annual Rent as herein provided in the Cases of Improvements for which Decree in Terms of the said Act has been obtained.

### **XVII No Adjudication for annual Rent. Annual Rent, how to be recovered. Annual Rent to be kept down.**

And be it enacted, That so long as any entailed Estate remains subject to the Tailzie thereof, or is not liable to be disentailed by the Heir of Entail in possession without the Consent of any other Party, no Bond of annual Rent to be granted under the Authority of this Act shall be made the Ground of Adjudication or Eviction of such entailed Estate or any Part thereof; and the annual Rents contained in such Bond shall be recoverable as accords of Law from and out of the Rents and Profits of such entailed Estate, and from the Heir in possession thereof for the Time being : Provided always, that the Heir in possession of any such entailed Estate, and the Heirs substitute to him, shall be bound, each during his own Possession, yearly and each Year to pay and keep down such annual Rents accruing during their respective Possessions of such entailed Estate ; and no Remedy shall be competent to the Creditor in such Bond of annual Rent against the Rents and Profits of the said Estate for any Arrears beyond Two Years annual Rent, and Interest thereon, and corresponding Penalties ; without Prejudice to his Remedy for such Arrears against the Heirs, in possession respectively bound to pay and keep down the same, and against the Representatives of such Heirs, and the separate Estates of such Heirs, including the Rents of such entailed Estate during their respective Periods of possession.

### **XVIII Heir of Entail may charge Estates by granting Bond and Disposition in Security.**

And be it enacted, That in all Cases in which it may be competent for an Heir of Entail in possession of an entailed Estate in *Scotland*, or in which such Heir of Entail may be called upon to grant a Bond of annual Rent in Terms of this Act, it shall be lawful for such Heir of Entail, and such Heir of Entail may be called upon, to charge under the Authority of the Court of Session, as after mentioned, the Fee and Rents of such Estate other than the Mansion House, Offices, and Policies thereof, or the Fee and Rents of any Portion of such Estate other than as aforesaid, with Two Third Parts of the Sum on which the Amount of such Bond of annual Rent if granted would be calculated

in Terms of this Act, by granting, in favour of any Creditor who may advance the Amount of such Two Third Parts, Bond and Disposition in Security over such Estate or any Portion thereof other than as aforesaid for such Amount, with the due and legal Interest thereof from the Date of such Advance till repaid, and with corresponding Penalties ; and such Bond and Disposition in Security may be in the like Form, and shall have the like Effect and Operation, and be subject to the like Conditions and Provisions as to keeping down Interest, and as to the Extent of Remedy against the Fee and Rents of the entailed Estate, and others wise, as are herein-after made and provided in regard to Bonds and Dispositions in Security by this Act authorized to be granted in respect of Provisions to younger Children.

**XIX Bonds of annual Rent or of Dispositions in Security for Improvements to operate as Discharges.**

And be it enacted, That the granting under the Authority of this Act of any Bond of annual Rent, or Bond and Disposition in Security, in respect of any Improvements executed or to be executed on an entailed Estate in *Scotland*, shall operate as a Discharge of all Claims for or on account of such Improvements, against such Estate, and the Rents and Profits thereof, and the Heirs of Entail succeeding thereto, save and except the Claims under such Bond of annual Rent or Bond and Disposition in Security themselves.

**XX Private Roads to be deemed Improvements under 10 G.3 c.51 and under this Act.**

And be it enacted, That private Roads which shall from and after the First Day of *August* One thousand eight hundred and forty-eight be made through any entailed Estate, or by way of immediate Access thereto, may be deemed to be Improvements falling under the said recited Act passed in the Tenth Year of the Reign of His late Majesty King *George* the Third and also under this Act, in the same Way and Manner in all respects as inclosing, planting, and draining.

**XXI Provisions to younger Children may be made Charges upon the entailed Estate.**

And be it enacted, That in all Cases where an Heir of Entail in possession of an entailed Estate in *Scotland* shall be liable to pay or to provide by Assignation of the Rents and Proceeds of such Estate for any Sum or Sums of Money granted by any former Heir of Entail by way of Provisions to younger Children, in Terms of the said recited Act passed in the Fifth Year of the Reign of His Majesty King *George* the Fourth, or in virtue of the Powers to that Effect contained in any Deed of Entail under which the Heir of Entail in possession holds, and in all Cases where any Heir of Entail in possession as aforesaid shall in the Marriage Contract of his younger Child have validly granted Provision for such younger Child out of the Rents and Proceeds of such entailed Estate, in Terms of the said recited Act, or in Terms of such Deed of Entail, it shall be lawful for such Heir of Entail in possession to charge the Fee and Rents of such Estate other than the Mansion House, Offices, and Policies thereof, or to charge the Fee and Rents of any Portion of such Estate other than as aforesaid, with the Amount of such Provisions, by granting Bond and Disposition in Security over such Estate, or such Portion thereof other than as aforesaid, for such Amount, with the due and legal Interest thereof from the Date of such Bond and Disposition in Security, or any subsequent Date, till repaid, and with corresponding Penalties ; and such Bond and Disposition in Security may be in ordinary Form, binding the Granter and his Heirs of Entail in their Order successively to repay the Principal Sum therein,



with Interest and Penalties as aforesaid, and may contain all Clauses usual in Bonds and Dispositions in Security granted over Estates in *Scotland* held in Fee Simple.

**XXII Heir in possession to keep down the Interest on Provisions to Children.**

And be it enacted, That such Heir of Entail in possession, and the Heirs substitute to him in their Order successively, shall be Bound, each during his own Possession of such Estate, yearly and each Year, to pay and keep down the Interest on such Bonds and Dispositions in Security accruing during their Possession respectively of such entailed Estate ; and the Remedy competent to the Creditor against the Fee and Rents of such Estate on such Bonds and Dispositions in Security shall be limited to the Principal Sum therein contained, with Two Years Interest thereon, and corresponding Penalties ; without Prejudice to the Remedy of the Creditor for any further Arrears of Interest against the Heir or Heirs in possession bound to pay and keep down the same, and against his or their Representatives, or his or their separate Estate or Estates, including the Rents of the said entailed Estate during his or their Possession of the same.

**XXIII Provisions to Children not to be charged without Authority of Court.**

And be it enacted, That no Heir of Entail in possession of an entailed Estate shall charge the same under this Act with any Provision to any younger Child or Children until he shall have applied for and obtained the Authority of the Court thereto in the Form and Manner herein-after provided ; and such Application to the Court shall set forth in a Schedule to be annexed thereto the specific Portion of the Estate which it is proposed to include in such Bonds and Dispositions in Security.

**XXIV Power to grant Feus or long Leases.**

And be it enacted, That, notwithstanding any prohibitory, irritant, and resolute Clauses, or any Limitation by way of Maximum or Minimum of the Extent of Ground to be feued or to be granted in each separate Feu, contained in any Tailzie dated prior to the First Day of *August* One thousand eight hundred and forty-eight, it shall be lawful for an Heir of Entail in possession of an entailed Estate in *Scotland*, upon Notice to the Heir of Entail next entitled to succeed to such Estate immediately after such Heir of Entail in possession, with the Approbation of the Court, to be obtained in the Form and Manner herein-after provided, to grant Feus or long Leases of any Part of the said entailed Estate for the highest Feu Duty or Rent that can be got for the same, such Feus or long Leases so granted by him not exceeding in all One Eighth Part in Value for the Time of such Estate; provided always, that it shall not be lawful for such Heir to take any Grassum or Fine or valuable Consideration other than the Tack Duty or Rent for granting any such Feu or Lease, nor to grant any such Feu or Lease of the Mansion House, Offices, or Policies of the Estate ; and such Heir shall be entitled to make, at the Sight of the Court, all such Feu Charters or other Feu Rights, or Tacks or Leases, as shall be necessary; and in case any such Grassum, Fine, or Consideration shall be taken, and in case any Feu or Lease hereby prohibited shall be granted, such Feu or Lease shall be null and void; but nothing herein contained shall prevent or be construed to prevent any Heir of Entail in possession from exercising any Power of granting Feus or Leases which may be contained in the Tailzie under which he possesses, more extensive than the Power of granting Feu or Leases hereby conferred.

**XXV Where entailed Estate may be charged with Debt, Estate may be sold for Payment thereof.**

And be it enacted, That in all Cases in which it is made competent by this Act for any Heir of Entail in possession of an entailed Estate in *Scotland* to charge the same with Debt, by granting Bonds and Dispositions in Security therefor over such Estate, freed from all the Clauses prohibitory, irritant, and resolute contained in the Tailzie in virtue whereof such Estate is holden, and also in all Cases in which such Charge is made competent by any Act of Parliament, but no Power of Sale granted to the Heir of Entail, and in all Cases in which the Fee of an entailed Estate is validly charged with Debt, it shall be lawful for the Heir of Entail in possession for the Time being to sell and dispose of any Portion or Portions of such Estate, other than the Mansion House, Offices, and Policies thereof, which may be necessary, and which the Court of Session may select as most suitable and proper to be sold and disposed of for the Purpose of paying off the Debt in respect of which such Charge has been or might be competently made; and it shall be lawful for such Heir of Entail in possession to grant, at the Sight and under Authority of the Court, valid and effectual Dispositions in Fee Simple in ordinary Form of such Portion or Portions of the said Estate, to the Purchaser thereof, and his Heirs or Assignees; and the Price to be obtained for the Portion or Portions of the Estate to be so sold shall be previously approved of by the Court, and shall be paid into Court, under the Application for Sale, by the Purchaser, who shall by such Payment be fully discharged of such Price, and have no Interest, Concern, or Responsibility as to the Application thereof; and such Price shall be applied, at the Sight of the Court, in or towards Payment or Extinction of the said Debt; and the Surplus of such Price remaining after Payment of the said Debt, and of the Expenses attending the Application for Sale and Procedure thereon, shall, if more than Two hundred Pounds, be invested in other Lands or Heritages, to be added to the Remainder of such entailed Estate, or be laid out and expended in or towards Payment of Entailer's Debts, or in or towards Payment of any Money charged on the Fee of such entailed Estate under this or any other Act, or in Redemption of the Land Tax affecting such entailed Estate, or in permanently improving the same, or in Repayment of Money already expended in such Improvements, as may be deemed most advisable; and if such Surplus shall be invested, in other Lands or Heritages, to be added to the Remainder of such entailed Estate, the Tailzie of such other Lands or Heritages shall, whatever be its actual Date, be taken to be of equal Date with the Tailzie of the Remainder of such entailed Estate; and if such Surplus be less than Two hundred Pounds, the same shall be paid to the Heir of Entail in possession of such entailed Estate for the Time, for his own Use and Behoof, all at the Sight and under the Direction of the Court of Session.

**XXVI Money arising from Sale of Estate, and Trust Money may be applied in Payment of Entailer's Debts, &c.**

And be it enacted, That in all Cases where Money has been derived or may hereafter be derived from the Sale or Disposal of any Portion of an entailed Estate in *Scotland*, or of any Right or Interest in or concerning the same, or in respect of any permanent Damage done to such Estate, under any private or other Act of Parliament, or where any Money has been invested in trust for the Purpose of purchasing Lands to be settled upon the Series of Heirs entitled to succeed to such entailed Estate, and where such Money would fall to be invested in Lands or Heritages to be entailed on the same Series of Heirs as are called to the Succession of such entailed Estate by the Tailzie thereof, and under the same Prohibitions, Conditions, Restrictions, and Limitations as are contained in such Tailzie, and where the Heir in possession of such entailed

Estate could by virtue of this Act acquire to himself such Estate in Fee Simple by executing and recording an Instrument of Disentail as aforesaid, it shall be lawful for such Heir to make summary Application to the Court, in manner herein-after provided, for Warrant and Authority, and the Court upon such Application shall have Power to grant Warrant and Authority to and in favour of such Heir of Entail, for Payment to such Heir of such Sums of Money, as belonging to himself in Fee Simple ; but if such Heir of Entail shall not be entitled to acquire such Estate in Fee Simple, then it shall be lawful for such Heir, with the Approbation of the Court, to lay out such Money or any Portion thereof in or towards Payment of Entailer's Debts, or in or towards Payment of any Money charged on the Fee of such entailed Estate under this or any other Act, or in Redemption of the Land Tax affecting such entailed Estate, or in permanently improving the same, or in Repayment of Money already expended in such Improvements ; and in such Case such Heir shall apply summarily to the Court in manner herein-after provided, setting forth the Amount of the Sums proposed to be laid out, and the special Purpose to which it is intended to apply the same ; and if the Court shall be satisfied of the Propriety of the proposed Application they shall issue a Finding or Decree to that Effect, and authorizing such Application; and it shall thereafter be lawful for the Heir so applying to lay out such Money or any Part thereof, according as the Court shall have authorized the Application of the same, to all or any of the before-mentioned Purposes ; and if there shall be any Surplus of such Money after the Purposes authorized by the Decree of the Court shall be fulfilled, the same shall, if more than Two hundred Pounds, be applied as the whole Money would have been applied but for the Provisions of this Act, and if less than Two hundred Pounds shall be paid to the Heir of Entail in possession of such entailed Estate for the Time, for his own Use and Behoof.

**XXVII Money vested in trust for the Purchase of Land to be entailed may be dealt with as if it were the entailed Land.**

And be it enacted, That where any Money or other Property, Real or Personal, has been or shall be invested in trust for the Purpose of purchasing Land to be entailed, or where any Land is or shall be directed to be entailed, but the Direction has not been carried into effect, it shall be lawful for the Party who, if the Land had been entailed in Terms of the Trust, would be the Heir in possession of the entailed Land, and who in that Case might by virtue of this Act have acquired to himself such Land in Fee Simple by executing and recording an Instrument of Disentail as aforesaid, to make summary Application to the Court, as herein-after provided, for Warrant and Authority for the Payment to him of such Money, or for the Conveyance to him of such Land in Fee Simple; and the Court shall, upon such Application, and with such Consents, if any, as would have been required to the Acquisition of such Land in Fee Simple, have Power to grant such Warrant and Authority.

**XXVIII Date of Act of Parliament, &c. directing Entail deemed to be the Date at which Land should have been entailed.**

And be it enacted, That for the Purposes of this Act the Date at which the Act of Parliament, Deed, or Writing placing such Money or other Property under trust, or directing such Land to be entailed, first came into operation shall be held to be the Date at which the Land should have been entailed in Terms of the Trust, and shall also be held to be the Date of any Entail to be made hereafter in execution of the Trust, whatever be the actual Date of such Entail.

**XXIX Provisions to Wives and Children may be granted out of Money vested in trust for the Purchase of Lands to be entailed.**

And be it enacted, That where any Money or other Property, Real or Personal, has prior to the First Day of *August* One thousand eight hundred and forty-eight been invested in trust for the Purpose of purchasing Land to be entailed, or where any Land has prior to the said Date been directed to be entailed, but the Direction has not been carried into effect, it shall be lawful for the Party who, if the Land had been entailed in Terms of the Trust, would be the Heir in possession of the entailed Land for the Time, to grant Provisions in favour of his or her Husband or Wife and younger Children out of such Money or other Property, or out of such Land, as the Case may be, of such and the like Amount and Extent as he or she would have been entitled to grant out of the Land if entailed and if subject to the Provisions and Enactments of the said recited Act passed in the Fifth Year of the Reign of His Majesty King *George* the Fourth.

**XXX Creditor not to sell Land in excess of what is necessary to pay Debt affecting the Estate, and Reinvestment of Surplus.**

And be it enacted, That no Creditor acting under Powers of Sale contained in any Bond or Disposition in Security or other Deed of Security affecting any entailed Estate in *Scotland*, "by virtue of this or any other Act, shall be entitled to sell such entailed Estate, or any Portion or Portions thereof, in manifest Excess of what is necessary or proper in order to Payment and Extinction of the Debt, Principal and Interest, and whole Expenses appertaining thereto, for which such Sale is made; and any Judgment of the Court of Session pronounced in any Suspension of any such intended Sale on the Ground of manifest Excess shall be final, and not subject to Appeal; and wherever upon a Sale of such entailed Estate or of any Portion or Portions thereof by such Creditor acting under such Powers as aforesaid there shall arise a Surplus of the Price after Payment of such Debt, Principal and Interest, and whole Expenses effeiring thereto, such Creditor shall only be entitled to Payment from the Purchaser of the Amount of such Debt, Principal and Interest, and whole Expenses effeiring thereto and such Creditor and Purchaser shall be bound forthwith to present or cause to be presented an Application to the Court, setting forth such Surplus, and praying for the Reinvestment thereof in other Lands or Heritages, to be entailed, at the Sight of the Court, on the same Series of Heirs, and, as far as may be, in the same Terms, and subject to the same Prohibitions, Conditions, Restrictions, Limitations, and Clauses irritant and resolute as are contained in the Tailzie under which the Estate or the Portion or Portions thereof so sold was or were holden. previous to such Sale, Or for the Disposal of such Surplus in such other Manner as the Court may direct consistently with the Provisions of this Act; and on such Application being presented the Court shall ordain the Petitioner, or other Party in whose Hands the admitted Surplus, may be, to pay the same into Bank, and to produce a Receipt therefor taken, payable as the Court may direct, and shall also, appoint such Intimation and Advertisement of the Application as they may deem proper; and it shall be competent to the Court under such Application to ascertain and determine the just Amount of such Surplus, and to give Decree for the same, and to exonerate and discharge the Creditor and Purchaser and all others thereof, and also, if such Surplus shall exceed Two hundred Pounds, to see to the Reinvestment thereof in other Lands or Heritages, and to: the entailing of such Lands or Heritages as aforesaid, or to the Disposal of such Surplus in such other Way and Manner as may be consistent with the Provisions of this Act, and as may appear to the Court to be suitable and proper; and if such Surplus shall be reinvested in other Lands or Heritages as aforesaid the Tailzie of such other Lands or Heritages shall, whatever be its actual Date, be taken to be of equal Date with the Tailzie of

the Remainder of such -entailed Estate; and if such Surplus shall not exceed Two hundred Pounds the Court shall order the same to be paid over to the. Heir of Entail in possession, for his own Use and Behoof.

### **XXXI Guardians may consent for Minors.**

And be it enacted, That, unless where inconsistent with any other Provisions of this Act, it shall be competent for the Court of Session, where any Heir of Entail whose Consent is required under this Act shall be under Age, or subject to. any legal Incapacity, to appoint, in the course of any Application to which such Consent is required, a separate Tutor ad litem, or Curator ad litem, or Curator bonis, or other Guardian, to each such Party; and such Tutor ad litem, or Curator ad litem, or Curator bonis, or other Guardian, being so appointed by the Court, shall be charged with the Interest of such Party in reference to such Application, and shall be entitled, with or without Consideration, to act and to give Consent on the Behalf of such Party; and no Tutor or Curator or other legal Guardian who may give any Consent under this Act on behalf of any Heir Substitute shall incur any Responsibility on account of such Consent in respect of any alleged Error in Judgment, or Inadequacy of Consideration, or Want of Consideration therefor, unless it shall also be alleged and proved that he acted corruptly in the Matter; and such Consent by such Tutor or Curator or other legal Guardian shall be in all respects as effectual as if the same had been given by such Heir himself when of full Age and of legal Capacity to act in his own Affairs: Provided always, that no Heir of Entail in possession of an entailed Estate in *Scotland*, or whose own Consent shall be required in the Application, shall be entitled to give Consent on the Behalf of any other Party in reference to any Application for Disentail of such Estate.

### **XXXII Form and Effect of Instrument of Disentail, and Registration thereof.**

And be it enacted That an Instrument of Disentail under this Act may be in the Form or as nearly as may be in the Form set forth in the Schedule to this Act annexed, and it shall be the Duty of the Keeper of the Register of Tailzies for the Time being to record such Instrument, when duly presented, under Authority of the Court for that Purpose, in the Register of" Tailzies along with the Decree of Court on which it proceeds, upon Payment of such Fee for the same as may be fixed by the Court by Act of Sederunt; and such Instrument, when duly executed, and recorded in the Register of Tailzies, under Authority of the Court, in Terms of this Act, shall have the Effect of absolutely freeing, relieving, and disencumbering the entailed Estate to which such Instrument applies, and the Heir of Entail in possession of the same, and his Successors, of all the Prohibitions, Conditions, Restrictions, Limitations, and Clauses irritant and resolute of the Tailzie under which such Estate is held, and of entitling such Heir in possession to alter the Course of Succession prescribed by such Tailzie, and to alienate and dispone such Estate, onerously or gratuitously, and to burden the same with Debt, and to do any other Act or Deed in relation thereto competent by Law to any absolute Proprietor in Fee Simple: Provided always, that such Instrument of Disentail shall in no way defeat or affect injuriously any Charges, Burdens, or Incumbrances, or Rights of Interests, of whatsoever Kind or Description, held by Third Parties, and lawfully affecting the Fee or Rents of such Estate, or such Heir in possession or his Successors, other than the Rights and Interests of the Heirs Substitute of Entail in or through the Tailzie under which such Estate is held, but that all such Charges, Burdens, and Incumbrances, and Rights and Interests, other than

---

*Status: This is the original version (as it was originally enacted).*

---

as aforesaid, shall remain at least as valid and operative in all respects as if no such Instrument of Disentail had been executed or recorded.

### **XXXIII Applications to the Court.**

And be it enacted, That it shall be lawful for any Heir of Entail in possession of an entailed Estate in *Scotland*, desiring to take advantage of any of the Provisions of this Act as to which the Authority of the Court is by this Act required, to make Application to that Effect by way of summary Petition to the Court, and such Petition shall set forth the Tailzie under which- such Estate is held, and the Date of the Petitioner's Infeftment therein, if any be, and the Names, Designations, and Places of Abode, so far as known to the Petitioner, of the Heirs Substitute of Entail (if any) whose Consents are required to such Petition, and whether such Heirs Substitute are of Age to consent on their own Behalf, and if not then the Names, Designations, and Places of Abode of their Fathers, or Tutors or Curators or other legal Guardians, and if such Heirs Substitute or any of them are the Children of such Heir of Entail in possession himself, and are Minors, or legally incapacitated to act in their own Affairs, the same shall be stated in such Petition, and such Petition shall also set forth specifically to what Extent and in what Way and Manner such Estate is proposed to be affected.

### **XXXIV Intimation of Petitions.**

And be it enacted, That the Court, on any such Petition being presented to it in Terms of this Act, shall appoint Intimation thereof to be made in the Minute Book and on the Walls in common Form, and shall also appoint the same to be publicly advertised once in the *Edinburgh Gazette*, and at least once weekly for Six successive Weeks, or for any longer Period the Court shall deem fit, in such Newspaper or Newspapers as shall be appointed by the Court; and it shall be sufficient in such Advertisements to state the leading Name of such Lands by which the same are commonly known, without any detailed Description thereof.

### **XXXV Procedure in Court.**

And be it enacted, That after Intimation and Advertisement as aforesaid in Terms of such Deliverance of the Court it shall be competent to such Petitioner to move the Court to grant the Prayer of such Petition; and if the Procedure shall appear to the Court to be regular and proper, the Court shall interpose their Authority, and give Decree authorizing such Petitioner to do and perform the Act or Acts proposed in such Petition, in so far as the same may appear to the Court to be permitted by this Act, or the Court shall do otherwise in reference to such Petition as may appear to them to be proper, and consistent with this Act: Provided always, that it shall be competent, at any Time before Decree is actually pronounced and extracted, for any Person or Persons having Interest to compare and object on any relevant Ground to the Prayer of such Petition ; and in the event of such Objection being offered the Court shall investigate and dispose of the same by such Form of Procedure as may seem to the Court to be expedient and proper; and in all Applications presented under this Act it shall be competent to the Court to decern for Costs of Suit against the Parties to the Proceedings, or any of them, or to decern for Payment thereof out of the Estate or Fund to which such Applications respectively relate.

### **XXXVI Heirs to be called in Proceedings under this Act.**

And be it enacted, That it shall not be necessary in any Proceedings under this Act to call as Parties thereto any Heirs of Entail other than those whose Consent would be required by the Heir in possession for the Time to an Instrument of Disentail; and no Heir of Entail other than those whose Consent would be required as aforesaid shall be entitled to appear or to be heard in such Proceedings.

### **XXXVII Excambions under the Act 6 & 7 W. 4. c. 42. may be carried through under the Forms of this Act.**

And whereas by the said recited Act passed in the Session of Parliament holden in the Sixth and Seventh Years of the Reign of His late Majesty King *William* the Fourth certain Powers to make Excambions are conferred upon Heirs of Entail, certain Notices being given to Heirs Substitute and others, and certain Advertisements made, and certain Procedure had before the Court of Session, all as in the said recited Act especially provided; and it is expedient to simplify the Mode of effecting Excambions under the said Act, and to diminish, the Expense thereof; be it enacted, That from and after the passing of this Act it shall not be necessary for any Heir of Entail in possession intending to effect any Excambion under or by virtue of the said recited Act to adopt any of the Procedure thereby required, but it shall be competent to such Heir of Entail to present an Application to the Court by way of summary Petition in the Form and Manner provided by this Act, and the Court shall entertain, proceed with, and dispose of the same in every respect as if the Powers to effect Excambions conferred by the said recited Act had been contained in and conferred by this Act; and further, it shall not be necessary to record any Contract of Excambion which shall be executed at the Sight and with the Approbation of the Court, as required by the said recited Act, in any other Register than the Register of Tailzies.

### **XXXVIII Instruments of Disentail to be final.**

And be it enacted, That any Instrument of Disentail recorded in the Register of Tailzies under the Authority of the Court, where the Judgment of the Court allowing such Instrument of Disentail has not been brought under Review of the House of Lords by Appeal, or where such Judgment has not been brought under Reduction upon any relevant Ground during the Period within which such Judgment might have been appealed from, shall, as regards any Third Parties acting *bonâ fide* on the Faith thereof, be no longer reducible on any Ground of Irregularity or Noncompliance with the Provisions of this Act, but in respect of any such Ground of Challenge be final and conclusive.

### **XXXIX In future Entail, irritant and resolute Clauses implied in Warrant to record.**

And be it enacted, That in any Tailzie dated on or after the First Day of *August* One thousand eight hundred and forty-eight, containing an express Clause authorizing Registration in the Register of Tailzies, it shall not be necessary to insert any irritant or resolute Clauses in order to render such Tailzie effectual in Terms of an Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and eighty-five, intituled *Act concerning Tailzies*, but such Clause of Registration shall have in every respect the same Operation and Effect as the most formal irritant and resolute Clauses duly applied to every Prohibition, Condition, Restriction, and Limitation contained in such Tailzie, except only such Prohibitions, Conditions, Restrictions, and Limitations as by the Terms of such Tailzie may be specially excepted; and such Clause

authorizing Registration in the Register of Tailzies shall be engrossed as Part of such Tailzie in the Register of Tailzies when such Tailzie is recorded therein, and shall also be inserted or duly referred to in all Procuratories of Resignation, Charters, Decrees of Special Service, Precepts, and Instruments of Seisin following on such Tailzie, in the same Manner, or as nearly as may be in the same Manner, as irritant and resolute Clauses are now required to be so inserted or referred to.

**XL Irritancy not to affect Conveyances or Securities.**

And be it enacted, That no Irritancy committed or that may be committed by any Heir of Entail in possession of an entailed Estate in *Scotland* shall operate to set aside, impair, or in any way affect, directly or indirectly,- in the Person of any Purchasers or *bonâ fide* onerous Creditors, any Conveyances, Deeds, or Securities granted in reference to such Estate, or the Rents thereof, prior to the Execution of the Summons of Declarator on which Decree in respect of such Irritancy shall proceed, and not invalid as being inconsistent with the Provisions of the Entail under which such Estate is held.

**XLI 39 & 40 G.S applied to Heritable Property in Scotland.**

And whereas an Act was passed in the Thirty-ninth and Fortieth Years of the Reign of His Majesty King *George* the Third, intituled *An Act to restrain all Trusts and Directions in Deeds or Wills whereby the Profits or Produce of Real or Personal Estate shall be accumulated, and the beneficial Enjoyment thereof postponed beyond the Time therein limited*, by which Act it is provided and enacted, " that nothing in this Act contained shall extend to any " Disposition respecting Heritable Property within that Part of Great " Britain called *Scotland*;" and it is expedient that the Provisions of the said Act should be extended to Heritable Property in *Scotland*; be it enacted, That the said Provision and Enactment of the said recited Act shall be and the same is hereby repealed, and the said Act shall in future apply to Heritable Property in *Scotland*.

**XLII Proceedings may be taken under this Act, though Entail not recorded or Heir infeft.**

And be it enacted, That all the Acts hereby permitted to be done by an Heir in possession of an entailed Estate, in virtue of the Deed of Entail under -which such Estate is held, may be done by such Heir, whether such Deed of Entail be recorded in the Register of Tailzies or not, or whether such Heir be duly infeft in such Estate or not.

**XLIII Entail defective in anyone Prohibition to be bad as to all.**

And be it enacted, That where any Tailzie shall not be valid and effectual in Terms of the said recited Act of the Scottish Parliament passed in the Year One thousand six hundred and eighty-five, in regard to the Prohibitions against Alienation and Contraction of Debt, and Alteration of the Order of Succession, in consequence of Defects either of the original Deed of Entail or of the Investiture following thereon, but shall be invalid and ineffectual as regards any one of such Prohibitions, then and in that Case such Tailzie shall be deemed and taken from and after the passing of this Act to be invalid and ineffectual as regards all the Prohibitions; and the Estate shall be subject to the Deeds and Debts of the Heir then in possession, and of his Successors, as they shall thereafter in Order take under such Tailzie ; and no Action of Forfeiture shall be competent at the Instance of any Heir Substitute in such Tailzie against the Heir in possession under the same by reason of any Contravention of all or any of



the Prohibitions ; and where any Money or other Property, Real or Personal, has been or shall be invested in trust for the Purpose of purchasing Lands to be entailed, or where any Lands are or shall be directed to be entailed, but the Direction has not been carried into effect, such Trust Money or other Property, and such Lands, though still unentailed, may be dealt with under this Act in all respects as such Lands might have been dealt with if entailed in Terms of such Trust or Directions.

**XLIV Instruments of Disentail may be registered in the Registers of Sasines.**

And be it enacted, That it shall be lawful for and incumbent upon the Keepers of the Registers of Sasines of every County in which any Lands contained in any Instrument of Disentail are situated and of the Keepers of the General Register of Sasines at *Edinburgh* respectively to record any such Instrument of Disentail, and any Decree of the Court pronounced under this Act, when presented to them for that Purpose, on Payment of such Fees for the Registration thereof as may be fixed by the Court by Act of Sederunt,

**XLV No Irritancy or Forfeiture to be incurred for any thing done under this Act.**

And be it enacted, That no Heir of Entail or other Person shall, by taking advantage of the Provisions of this Act, or by acting under the same, incur any Irritancy or Forfeiture under any Tailzie, anything in such Tailzie to the contrary notwithstanding; and no Disposition, or Bond and Disposition in Security, or Bond of annual Rent, or other Deed, Instrument, or Writing, granted under Authority of this Act, shall be held as any Contravention of or be in any way affected by any Prohibitions, Conditions, Restrictions, Limitations, or Clauses prohibitory, irritant, and resolute contained in any Tailzie.

**XLVI Act 1685 to remain in force, except as affected by this Act.**

And be it enacted, That the before-recited Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and eighty-five shall be and the same is hereby repealed, to the Effect of making the Provisions of this Act operative, but no further.

**XLVII Act not to be defeated by Trusts ;**

And be it enacted, That where any Land or Estate in *Scotland* shall, by virtue of any Trust Disposition or Settlement or other Deed of Trust whatsoever dated on or after the First Day of *August* One thousand eight hundred and forty-eight, be in the lawful Possession, either directly or through any Trustees for his Behoof, of a Party of full Age born after the Date of such Trust Disposition or Settlement or other Deed of Trust, such Party shall not be in any way affected by any Prohibitions, Conditions, Restrictions, or Limitations which may be contained in such Trust Disposition or Settlement or other Deed of Trust, or by which the same or the Interest of such Party therein may bear to be qualified, such Prohibitions, Conditions, Restrictions, or Limitations being of the Nature of Prohibitions, Conditions, Restrictions, or Limitations of Entail, or intended to regulate the Succession of such Party, or to limit, restrict, or abridge his Possession or Enjoyment of such Land or Estate in favour of any future Heir, and such Party shall be deemed and taken to be the Fee Simple Proprietor of such Land or Estate, and it shall be lawful to such Party to make Application by way of summary Petition to the Court of Session, setting forth the Facts, and referring to this Act, and craving the Court to pronounce an Act and Decree declaring him Fee Simple

---

*Status: This is the original version (as it was originally enacted).*

---

Proprietor of such Land or Estate, and unaffected by any such Conditions, Provisions, Restrictions, or Limitations ; and the Court shall proceed in such Petition as may be just, and shall have Power to pronounce an Act and Decree declaring such Party to be Fee Simple Proprietor of such Land or Estate, and unaffected as aforesaid; and such Act and Decree may be recorded in the Register of Sasines, and being so recorded shall have all the Operation and Effect of the most formal and valid Disposition to such Party, and his Heirs and Assignees whomsoever, of such Lands or Estate, with Infertment thereon in favour of such Party duly recorded; Provided always, that the Rights of the Superior of such Lands or Estate, and of all Parties holding Securities thereon, and all Rights which are held independently of such Trust Disposition or Settlement or other Deed of Trust, shall be as they are hereby reserved entire.

#### **XLVIII or by Liferents ;**

And be it enacted, That from and after the passing of this Act it shall be competent to grant an Estate in *Scotland* limited to a Liferent Interest in favour only of a Party in Life at the Date of such Grant; and where any Land or Estate in *Scotland* shall, by virtue of any Deed dated on or after the said First Day of *August* One thousand eight hundred and forty-eight, be held in Liferent by a Party of full Age born after the Date of such Deed, such Party shall not be in any way affected by any Prohibitions, Conditions, Restrictions, or Limitations which may be contained in such Deed, or by which the same or the Interest of such Party therein may bear to be qualified, and such Party shall be deemed and taken to be the Fee Simple Proprietor of such Estate, and it shall be lawful to such Party to obtain and record an Act and Decree of the Court of Session in the like Form and Manner and in the like Terms and with the like Operation and Effect as is herein-before provided with reference to an Act and Decree of the said Court in the Case of Deeds of Trust: Provided always, that the Rights of the Superior of such Lands or Estate, and of all Parties holding Securities thereon, and all Rights which shall be held independently of the Deed by which such Liferent is constituted, shall be as they are hereby reserved entire.

#### **XLIX or by Leases.**

And be it enacted, That where any Land or Estate in *Scotland* shall, by virtue of any Tack, Assignation of Tack, or other Deed or Writing dated on or after the said First Day of *August* One thousand eight hundred and forty-eight, be held in Lease, either directly or through Trustees for his Behoof, by a Party of full Age born after the Date of such Tack, Assignation of Tack, or other Deed or Writing, such Party shall not be in any way affected by any Prohibitions, Conditions, Restrictions, or Limitations which may be contained in such Tack, Assignation of Tack, or other Deed or Writing, or by which the same or the Interest of such Party therein may be qualified, such Prohibitions, Conditions, Restrictions, or Limitations being of the Nature of Prohibitions, Conditions, Restrictions, or Limitations of Entail, or intended to regulate the Succession of such Party, or to limit, restrict, or abridge his Possession or Enjoyment of such Land or Estate in favour of any future Heir: Provided always, that it shall be lawful to the Proprietor of whom such Lease is held to enforce any Prohibitions, Conditions, Restrictions, or Limitations contained in such Tack, Assignation of Tack, or other Deed or Writing which shall have been inserted therein for the bond Jide Purpose of protecting the just Rights and Interests of such Proprietor, in so far as such Enforcement may be necessary in order to such Protection.

**L Consents to be in Writing and to be irrevocable.**

And be it enacted, That all Consents of Heirs of Entail, or of their Tutors or Curators or other legal Guardians, under this Act, shall be in the Form of Writings duly tested according to the Law of *Scotland*, and otherwise in such Form as may be fixed by the Court of Session by Act of Sederunt; and no Consent duly given in the Manner provided by this Act shall be revocable by the Granter thereof.

**LI Court may make Acts of Sederunt.**

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

**LII Interpretation of Act.**

And be it enacted, That in construing this Act, except where the Nature of the Provision shall be repugnant to such Construction, the Words " Court of Session " or " the Court " shall be construed to mean either Division of the Court of Session; and the Words " Heir " and " Heir of Entail " shall include the Institute ; and the Words " Heir Apparent " shall be construed to mean the Heir who is next in succession to the Heir in possession, and whose Right of Succession, if he survive, must take effect; the Words " Land " and " 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; the Words " Creditor " and " Creditors " shall extend to and comprehend the Heirs and Assignees of such Creditor or Creditors; and all Words used in the Singular Number shall be held to include several Persons or Things; and Words in the Plural shall be held to include the Singular Number; and all Words importing the Masculine Gender shall extend and be applied to Females as well as Males.

**LIII Act may be amended, &c.**

And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

---

*Status: This is the original version (as it was originally enacted).*

---

SCHEDULE TO WHICH  
 THE FOREGOING  
 ACT REFERS

Form of Instrument of Disentail

At [*state Place*] the [*state Date*], in Presence of [*name Notary Public*] Notary Public, and of the Witnesses subscribing, I [*Name and Designation of Heir in possession*], Heir of Entail in possession of the Lands and others after mentioned, viz. [*take in full Description from Titles*], which Lands and others are held by me under a Deed of Entail dated [*state Date of Entail*], and recorded [*state Particulars of Registration*], take Instruments in the Hands of the said Notary Public subscribing that the said Lands and others are now held by me free from the Conditions, Provisions, and Clauses prohibitory, irritant, and resolute of the Entail, by virtue of the Act [*specify this Act*]; and I consent to the Registration hereof in the Register of Tailzies, and also in the Books of Council and Session and others competent, therein to remain for Preservation, and thereto constitute  
 my Procurators, &c.

In witness whereof I and the said Notary Public have subscribed this Instrument of Disentail [*complete the Testing Clause in ordinary Form*].

[*Signature of Heir of Entail in possession.*]  
 [*Signature of Notary Public.*] *N. P.*

*A. B.*, Witness.  
*C. D.*, Witness.