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THE
ENTAIL (SCOTLAND) ACT, 1882,

(45 AND 46 VICTORIA, CHAPTER 53.)

WITH

NOTES

AND

AN INDEX OF THE WHOLE ENTAIL STATUTES.

BY

JOHN PHILP WOOD,

WRITER TO THE SIGNET.



EDINBURGH:
BELL & BRADFUTE, 12 BANK STREET.
1882.

INTRODUCTION.

THE most important provisions of the Entail (Scotland) Act, 1882, are as follows :—

(1) It is made competent for the heir in possession of any entailed estate in Scotland who is of full age, whatever the date of the entail, to disentail the estate without the consent of the nearest heir, provided that, in the cases where the consent of the nearest heir would formerly have been necessary, the value of his expectancy or interest be ascertained, and paid or secured (sects. 3 and 13).

(2) It is rendered competent for any heir of entail, or the guardians of a minor heir, to apply to the Court for an order of sale of the estate, or a part of it (sect. 19). Full provisions are made by the subsequent sections for the administration of the fund to arise through such sale. It was formerly only competent to sell an entailed estate, or a portion of it, to pay entailer's debts, &c. ; but the power conferred by the present statute is not so restricted. The Court is to have, however, a certain discretion as to giving the power craved, specially when the application is made by or on behalf of a married woman, minor, pupil, or other person under disability (sect. 21). It is also provided that the proceeds of an estate so sold can

be disentailed in the same way as the estate itself could have been (sect. 27).

(3) The creditor of any heir in possession in respect of debt incurred after the passing of the Act, is now entitled to force the granting of a security to him upon the estate, and compel a disentail. Further, the trustee on the sequestrated estate of any heir in possession, sequestrated for debt incurred after the passing of the Act, is authorised to apply for disentail (sect. 18).

There are, besides, various subsidiary provisions, of which the following may be here mentioned:—

Heirs in possession under entails dated on or after 1st August 1848, are empowered to sell, grant feus and long leases, and charge with debts and incumbrances, and for improvement expenditure, and to convey, bequeath, or assign the amount of such expenditure in the same way as if the entail were dated before said date (sect. 4).

Applications under the 1875 and 1878 Acts, for authority to charge with improvement expenditure, and for authority to grant leases, may be made in the Sheriff-Court (sect. 5).

Three-fourths of the sum authorised to be borrowed for improvements may be charged on the estate (sect. 6, subsect. 1).

An authority to feu or grant leases is made available to succeeding heirs (sect. 6, subsect. 3).

A lease may be granted at a diminished rent, and a new lease may be contracted for two years before the expiration of the current lease (sects. 8 and 9).

The guardians of a minor or pupil are empowered

to present to the Court any entail petition, except an application for disentail (sect. 11).

Provision is made for the cases where an heir in possession, or an heir whose consent is required, shall have disappeared (sects. 14, 15, and 16).

It has not been thought necessary to print the prior entail statutes. These will be found collected and annotated in Mr. Rankine's "Law of Land Ownership," and (except the short Act of 1878) in Mr. Cowan's "Land Rights," second edition, 1876.

Mr. Alexander Ritchie, S.S.C., has been kind enough to read the proof, and make several important suggestions.

The Index of the Entail Acts will, it is hoped, be found useful.

EDINBURGH, *30th September* 1882.

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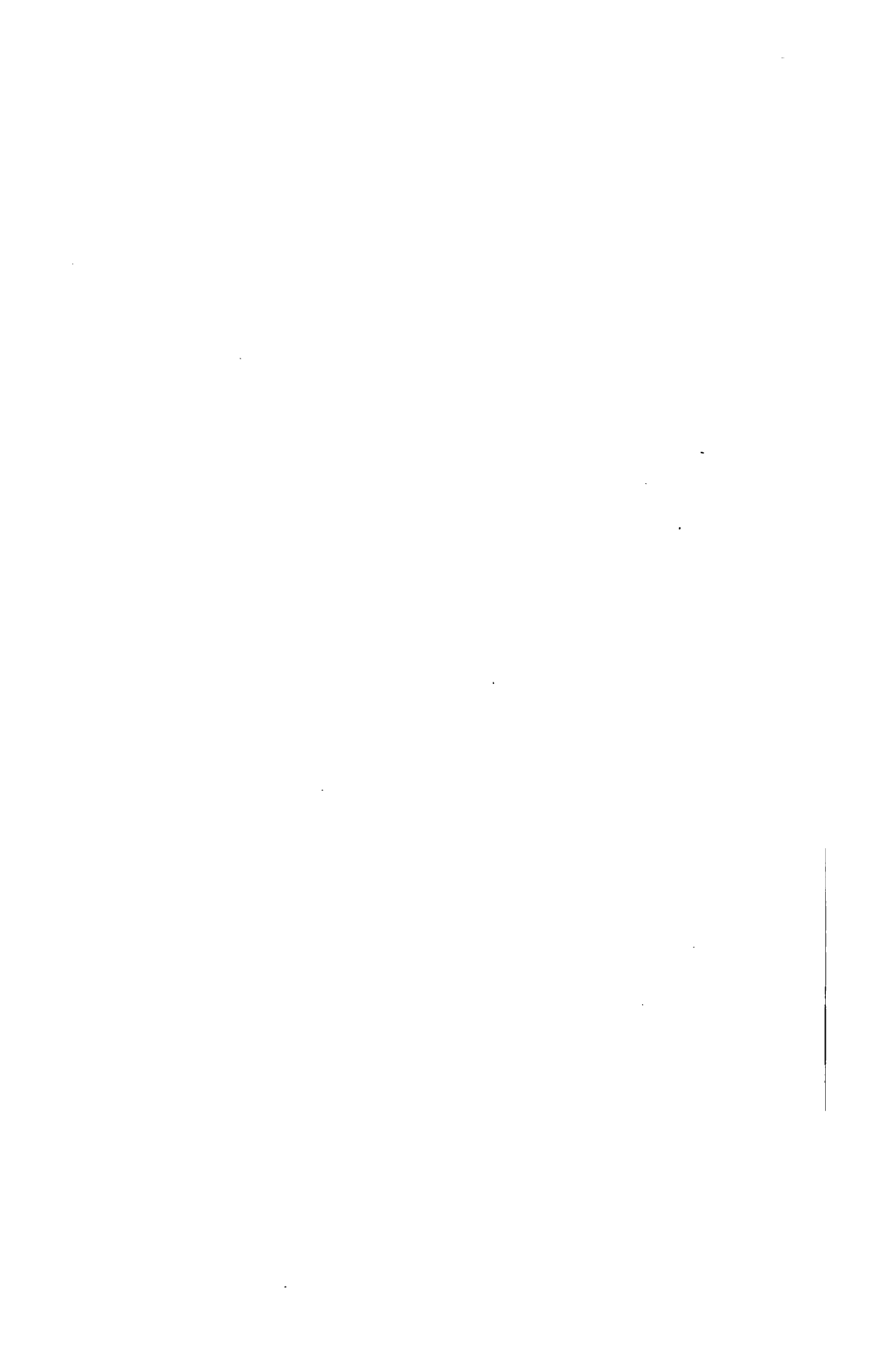
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AN ACT TO AMEND THE LAW OF ENTAIL IN SCOTLAND,

45 & 46 VICTORIA, CHAPTER 53,

(*Royal Assent, 18th August 1882*),

WITH

NOTES.

1. This Act may be cited as the Entail (Scotland) Act, 1882, Short title. and shall apply to Scotland only.

2. The expression "Entail Acts" shall mean the Acts and Definitions. sections of Acts mentioned in the schedule to this Act and this Act, and they may be cited by the short titles therein mentioned, and shall for all purposes and to all effects be read as one Act.

Other expressions shall have the same meanings as in the Entail Acts.

The following is the interpretation clause of the Rutherford Act (1848), section 52 :—"In construing this Act, except where the & 12 Vict. 36. 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 suc- " cession, 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 com-
 “ prehend 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.”

16 & 17 Vict.
c. 94.

The same meanings are, by clause 25 of the Entail Amendment Act, 1853, ascribed to the expressions “ the Court ” “ heir of entail ” “ lands ” and “ entailed estate.”

38 & 39 Vict.
c. 61, sect. 3.

The meaning of the phrase “ entailed estate ” is, by the Entail Amendment Act, 1875, extended to include “ all heritages which by “ the law of Scotland may be made the subject of entail, and also all “ lands or other heritages held in trust for the purpose of being “ entailed, and all money or other property, real or personal, “ invested in trust for the purpose of purchasing land to be entailed, “ and also all money consigned in respect of the taking of any land “ forming part of any entailed estate.”

The part of the interpretation clause of the 1875 Act, dealing with “ improvements,” will be found quoted in the notes to sect 6.

Heirs under
new entails
may disentail
with the same
consents as
heirs under
old entails.

3. It shall be lawful for an heir of entail in possession of an entailed estate held under an entail dated on or after the first day of August, one thousand eight hundred and forty-eight, to disentail the estate and acquire it in fee simple by applying to the Court in the manner provided by the Entail Acts, if he shall be the only heir of entail in existence, or if he shall obtain the like consents as are required by the third section of the Entail Amendment Act, 1848, in the case of entails dated prior to the said date.

11 & 12 Vict.
c. 36.

Provided that any creditor of an heir of entail in possession who is empowered by this section by himself alone without the consent of any other party to acquire the estate in fee simple, shall have the like powers of affecting the estate for payment of debt, and shall have the like rights and interest therein as if the entail had been dated prior to the said date.

11 & 12 Vict.
c. 36.

By the Rutherford Act (1848), entails were divided into two classes—(*first*), entails dated *before* 1st August 1848, commonly called “ old entails ; ” and (*second*) entails dated *after* 1st August 1848, commonly called “ new entails.”

It was provided (sect. 1) that the heir of entail in possession under a new entail could disentail at the sight of the Court—

1. If born *after* the date of the entail, and of full age, without any consents.

2. If born before the date of the entail, with consent of the heir next in succession, being his heir-apparent [that is, an heir “whose right of succession, if he survive, must take effect”]; providing that the consenting heir be *capax*, born after the date of the entail, and twenty-five years old. (By the 4th section of the Entail Amendment Act, 1875, the necessary age of the consenting heir was reduced to twenty-one years.) 38 & 39 Vict. c. 61.

It was further provided (Rutherford Act, sect. 2) that the heir of entail in possession under an *old* entail could disentail at the sight of the Court—

1. If born *after* 1st August 1848, and being of full age, without any consents.

2. If born *before* 1st August 1848, with consent of the heir next in succession, being his heir-apparent, providing that the consenting heir be *capax*, born *after* 1st August 1848, and twenty-five years old (reduced by the 1875 Act to twenty-one years).

And by sect. 3—

3. Irrespective of the date of his birth—

- (a.) If he is the only heir in existence, and unmarried. (The condition as to his being unmarried was repealed by the 1875 Act, sect. 5, subsect. 3.)
- (b.) Or if he had obtained the consents of the whole heirs in existence, if less than three, at the date of their consents and at the date of presenting the application.
- (c.) Or if he had obtained the consents of the three nearest heirs at the said dates for the time entitled to succeed in their order successively immediately after the heir in possession.
- (d.) Or if he had obtained the consents of the heir-apparent and the heir or heirs, not less than two, including such heir-apparent, who in order successively would be heir-apparent, provided that the nearest heir consenting should be twenty-five years old, (reduced by the 1875 Act to twenty-one years), and *capax*.

The effect of the 3rd section of the present statute is to make the 3rd section of the Rutherford Act apply to new entails.

The 2nd section of the Rutherford Act, it will be observed, remains unaffected, its provisions as to *old* entails being parallel to those of the 1st section, which relate to *new* entails.

It may be noted that the phrase “entailed estate” applies (see the interpretation clause of the 1875 Act, quoted in the notes to the

previous section) to land held in trust for the purpose of being entailed, and money or other property held in trust for the purpose of purchasing land to be entailed. The disentailing powers of the present Act, therefore, embrace such land or money.

The provision in favour of creditors is in substance a repetition of clause 11 of the Rutherford Act, which clause will be found quoted in the notes to section 18 of the present Act.

The effect of this section, combined with section 13, is that the heir in possession of any entailed estate in Scotland, who is of full age, may disentail the estate, without any consents, provided that where consents are necessary, but are refused or cannot be obtained, he shall first have the value in money of the expectancy or interest of the heir or heirs whose consent is refused or cannot be obtained, paid or secured, under authority of the Court.

Heirs under new entails may sell, lease, feu, and charge on the same conditions as heirs under old entails.

4. It shall be lawful for an heir in possession of an entailed estate held under an entail, dated on or after the first day of August, one thousand eight hundred and forty-eight, to sell the estate and to grant feus and long leases, and to charge the estate with debts or incumbrances and for improvement expenditure; and to convey, bequeath, or assign the amount of such expenditure, all in like manner, and with the like consents, as if the entail were dated prior to the said date.

11 & 12 Vict.
c. 36.

The 4th section of the Rutherford Act empowered any heir of entail in possession, of full age, and with the like consents as would enable him to disentail, to sell, alienate, dispoise, charge with debts or incumbrances, lease, and feu the estate in whole or in part.

These powers were, it will be observed, not confined to heirs in possession under *old* entails, but extended to all heirs in possession. The purpose of the present enactment appears to be to make it distinct that the alteration of sect. 3 applies not only to disentailing, but to these other powers.

It may be useful, however, here to summarise the powers of granting feus and long leases, and of selling, which an heir in possession can exercise *without* such consents.

10 Geo. III.
c. 51.

Feus and Long Leases.—The Montgomery Act empowers heirs of entail in possession to grant leases of land, for the purpose of building, for a period not exceeding 99 years, sect. 4. The extent of each long leasehold was not to be more than five acres, and there were certain enactments as to the value of the buildings to be erected (sect. 5), and the amount of rent (sect. 6).

The Act of 1840 enables an heir in possession and infert, if ^{3 & 4 Vict.} of lawful age, or, if in pupillarity or minority or *incapax*, ^{c. 48.} empowers his tutors or curators, to feu or let on lease for any period, for an agreed on feu-duty or rent, though below the full annual value, portions of the estate as the sites of places of public Christian worship, and schools, and for burying-grounds and playgrounds for such places of public worship and schools respectively, and for dwelling-houses and gardens for the ministers and schoolmasters thereof respectively. No grassum is permitted. The extent of ground feued or leased is not to exceed one-fourth of an acre for a place of worship ; one acre for a burying ground attached thereto ; one-eighth of an acre for a dwelling-house for a minister or schoolmaster ; one acre for a schoolhouse and playground attached ; nor half an acre for the garden attached to such dwelling-houses respectively (sect. 1).

An application is to be made to the Sheriff for his approval of the feu or lease (sects. 1 and 3).

The Rutherfurd Act empowers an heir in possession under an ^{11 & 12 Vict.} old entail, after notice to the nearest heir, and with appro- ^{c. 36.} bation of the Court of Session, to grant feus or long leases of any part of the estate for the highest feu-duty or rent that can be got for the same, such feus or long leases not exceeding in all one-eighth part in value for the time of the estate. No grassum is permitted to be taken, nor can the mansion-house, offices, or policies be feued or leased (sect. 24).

The Entail Amendment Act, 1853, makes it competent to ^{16 & 17 Vict.} present a "continuing petition," under which the rates of feu or ^{c. 94.} tack-duty, and the form of the feu-right or long lease may from time to time be varied by the Court (sect 6).

The same Act (sect. 13) confers on heirs in possession under entails dated after 1st August 1848, the same powers of granting feus and building leases as are possessed by heirs under old entails under the Rutherfurd Act or other entail Act, unless where the entail expressly prohibits the granting of feus or building leases.

By the Entail Amendment Act, 1868, an heir of entail in posses- ^{31 & 32 Vict.} sion is authorised to grant leases for building for any term of years ^{c. 84.} not exceeding ninety-nine, or feus of any part of the estate (but reserving the minerals) except the garden, &c., so far as necessary to the amenity of the manor-place, or if the estate is held by burgage tenure, to dispone any part thereof, reserving and excepting as afore-said, subject to a ground-annual. It is provided that the feu-duty, rent, or ground-annual is not to be less than the amount to be ascer- tained in terms of the Act. No grassum is to be taken, and the taking of a grassum is to have the effect of irritating the charter or other writ. The powers conferred by the Act are not to restrict wider powers which may be given (sect. 3).

The following section (4) prescribes the procedure before the Sheriff in obtaining authority to grant feus or building leases. The 5th section enacts that every charter, lease, or disposition is to contain a condition that the same shall be void if buildings of the annual value of at least double the feu-duty, rent, or ground-annual are not built within five years from the date of the grant, and that the said buildings shall be kept in repair, and that the grant shall be void whenever there are not buildings of the value foresaid and in repair, upon the ground.

In the case of *Miller*, 5 M'P. 715, relating to similar provisions in the *Montgomery Act*, it was held that the statutory nullities were absolute.

38 & 39 Vict.
c. 61.

The procedure in all entail petitions to the Court of Session is now regulated by the 1875 Act, sect. 12.

6 & 7 Will. IV.
c. 42.

Sale.—The *Rosebery Act*, sect. 7, provides for the sale of portions of entailed estates for the payment of entailers's debts. Sections 8 to 21 thereof prescribe the method of procedure in such sales.

11 & 12 Vict.
c. 36.

The *Rutherford Act*, sect. 25, provides that when an heir in possession can charge the estate with debt by granting bonds and dispositions in security therefor over the estate, and also when such charge is made competent by any Act of Parliament, but no power of sale is granted, and in all cases where the fee of the estate is validly charged with debt, it shall be lawful for him to sell any portion of the estate other than the mansion-house, &c. The sale is to take place at the sight of the court.

16 & 17 Vict.
c. 94.

The *Entail Amendment Act*, 1853, sect. 9, extends this provision of the *Rutherford Act* to entailers's debts or other debts or sums of money which might lawfully be made chargeable upon the fee of an entailed estate.

31 & 32 Vict.
c. 84.

The *Entail Amendment Act*, 1868, sect. 9, provides that when an entailed estate is subject to, or may be charged with debt affecting or that may be made to affect the fee of the estate, the whole or any portion of it may, at the sight of the Court, be sold by private bargain. Section 10 of the same Act makes certain provisions as to the manner of sale thereof by public roup.

Improvement Expenditure.—Reference is made to the notes on sect. 6.

It will be observed that the section under consideration does not refer to *Excambions*. The reason is that the provisions of sect. 5 of the *Rutherford Act*, authorising heirs in possession under old entails to excamb, with certain consents, at the sight of the Court, have, by the *Entail Act*, 1868, sect. 18, been made applicable to entails dated on or after 1st August 1848.

In the general index to the whole *Entail Acts*, further details

as to the powers of heirs in possession will be found under the heads "Debt," "Feus," "Leases," "Improvements," "Provisions," "Sale," &c.

5. Any application under the Entail Amendment Act, 1875, and the Entail Amendment Act, 1878, for authority to borrow and charge for improvement expenditure, and any application for authority to grant leases under the Entail Acts, may be made in the Sheriff-Court. And it shall be lawful for the Sheriff (including the Sheriff-substitute) to grant such authority, and to exercise all necessary powers for carrying out the provisions of the said Acts in those particulars.

Applications for authority to charge for improvements and grant leases may be made in the sheriff-court.

38 & 39 Vict. c. 61.
41 & 42 Vict. c. 28.

In such applications the procedure with regard to notice and inquiry shall be as nearly as possible the same as in applications to the Sheriff for authority to feu under the Entail Amendment Act, 1868, and there shall be the like appeal to one of the Divisions of the Court of Session, but there shall be no appeal from the Sheriff-substitute to the Sheriff.

31 & 32 Vict. c. 84.

As to improvement expenditure, see the notes on sect. 6.

Petitions as to improvement expenditure, under the 1875 and 1878 Acts, are alone mentioned in this section. Improvement petitions, therefore, brought under any of the previous statutes are still only competent in the Court of Session. It will be observed that applications for authority to feu are not mentioned. These, therefore, unless under the 1868 Act, as to which reference is made to the notes on the preceding section, must still be presented to the Court of Session.

As to leases, it may be noticed that by the 1st section of the Rosebery Act, power is granted to heirs in possession under entails made or to be made to grant tacks (1) of any part of the estate for the fair rent of the lands at the time of letting, either by public auction or private bargain, for any time not exceeding twenty-one years, (2) of minerals for any time not exceeding thirty-one years. No grassum is to be taken, and mansion-house and pertinents are not to be let for a period longer than the life of the heir in possession.

6 & 7 Will. IV. c. 42.

The 2nd section of the same Act provides that the statutory powers are not to restrain the heir in possession from exercising any more extensive powers contained in the entail.

An heir in possession has, accordingly, full power to grant ordinary leases without any procedure. The expression, "authority to grant leases," in the section now under consideration, can therefore apply only to leases of extraordinary duration.

31 & 32 Vict.
c 84.

For the provisions of the entail statutes in relation to leases of extraordinary duration, reference is made to the notes on clause 4. It will be observed that in building leases under the Amendment Act of 1868 the procedure already was in the Sheriff-Court.

The procedure under the 1868 Act is prescribed by sect. 4 thereof, which is as follows :—“ For ascertaining whether the land so proposed to be feued, leased, or disposed may be feued, leased, or disposed in terms of the provisions of the preceding section, and the value of the same, an application may be made by the heir in possession of the entailed estate to the sheriff of the county within which the entailed estate, or the portion thereof proposed to be feued, leased, or disposed, is situated, who thereupon shall direct notice to be given to the next heir of entail entitled to succeed to the entailed estate in such manner as shall seem proper (and in the event of such next heir of entail being under age or subject to any legal incapacity, the sheriff shall appoint a tutor *ad litem* or curator *ad litem* to such heir), and shall appoint one or more skilful persons to inquire and report as to the value of the lands proposed to be feued, leased, or disposed, and whether from their position or otherwise they may or ought to be feued, leased, or disposed in terms of the preceding section, either in whole or in lots ; and upon such person or persons reporting that the feu-duty, rent, or ground-annual offered is in their opinion, having regard to all the circumstances, fair and adequate, and that such land may from its position be feued, leased, or disposed, in terms of the preceding section either in whole or in lots, the sheriff, on consideration of the whole circumstances, may and is hereby empowered to authorise such heir in possession or his successor in the entailed estate at any time within ten years from the date of such deliverance to feu, lease, or dispone the said land in one or more lots at such rate of feu-duty, rent, or ground-annual as he can obtain for the same, not being less than the rate fixed by the said skilled persons, subject to such conditions as the sheriff may think essential to secure such feu-duty, rent, or ground-annual, and any other conditions he may see fit, and also subject to a nominal taxed sum of one penny sterling in lieu of all casualties on the entry of heirs and singular successors, and to grant the necessary feu-charter, lease, or disposition, and which being executed and recorded in the register of sasines shall be effectual to all intents and purposes ; and the lands so feued, leased, or disposed shall, from the date of recording the feu-charter, lease, or disposition in the register of sasines, and so long as such feu-charter, lease, or disposition shall remain in force, be held as out of the entail, and be liberated from all the prohibitory, irritant, and resolute clauses or clause of registration thereof : Provided always that the superiority of the lands so feued, leased,

“ or disposed, and the feu-duties, rents, and ground-annuals thereof, shall be and shall remain subject to the said entail in the same manner as the lands themselves were subject thereto previous to the granting of such feu-charter, lease, or disposition ; and it is hereby provided that the decree of the Sheriff pronounced on such application and proceeding shall not be subject to review by suspension, advocacy, or reduction, or in any other form, except by a short note of appeal to be presented to the Court of Session in one or other of the Divisions thereof, which appeal shall be disposed of by such Division as a summary cause: Provided always, that unless such note of appeal shall be lodged with the clerk of the Division of the Court of Session, and notice thereof given in writing to the opposite party or his known agent or lodged with the Sheriff-clerk, within six months of the date of the decree of the Sheriff, such decree shall be final and conclusive ; and in the event of an appeal being duly taken and lodged, the judgment of the Court of Session thereon shall be final and conclusive.”

6. (1.) Where application is made for authority to borrow and charge for improvement expenditure, the Court or Sheriff may grant authority to execute bonds and dispositions in security for three-fourths of the sum authorised to be borrowed, and whether the improvements shall have been executed at the date of the application or are contemplated.

Provisions for applications for authority to borrow, charge, lease, and feu.

(2.) Where application is made for authority to grant a feu or a lease of a portion of an entailed estate, not exceeding two acres in extent, for a scientific purpose, or other purpose of public utility, the Court or the Sheriff, if satisfied that it would be for the public advantage, and not prejudicial to the estate, may grant such authority for such yearly feu-duty or rent as may be agreed upon, though inadequate and below the just value, subject to such conditions as the Court or the Sheriff may think fit.

Provided that it shall not be lawful for the applicant to take any grassum or consideration for granting such feu or lease other than the feu-duty or the rent, and if any such grassum or consideration shall be taken, such feu or lease shall be null and void.

(3.) In every case in which authority to feu or grant leases

has been or shall be granted to the heir in possession of any entailed estate, such authority shall be available to the succeeding heirs.

(4.) When at least one-fourth part of a capital sum borrowed for improvements on an entailed estate upon the security of a terminable rent-charge, in manner provided by the Entail Acts, shall have been defrayed by the heir in possession, it shall be lawful for such heir, without the consent of the nearest heir being required, and whether the cost of such improvements shall have been charged prior or subsequent to the passing of the Entail Amendment Act, 1875, to avail himself of the provisions of the said Act, for the substitution of a bond or disposition in security over the estate for the remainder of such capital sum.

10 Geo. III
c. 51.

By the 9th section of the Montgomery Act, it is provided that every proprietor of an entailed estate who lays out money in inclosing, planting, or in erecting farm-houses and offices or out-buildings for the same, shall be a creditor to the succeeding heirs of entail for three-fourths part of the money laid out in making the said improvements. The 20th section of the Rutherford Act provides that private roads made after 1st August 1848 through an entailed estate, or by way of immediate access thereto, may be considered "Montgomery" improvements in the same way as inclosing, planting, and draining.

11 & 12 Vict.
c. 36.

The 27th section of the Montgomery Act further provides that every heir of entail who lays out money in building a mansion-house or offices, or in repairing or adding to the mansion-house or offices upon his estate, shall be a creditor to the next succeeding heir of entail for three fourth parts of the money expended by him.

The said Act limits the amount claimable to four years' free rent of the estate in case of improvements on the land (sect. 10), and two years' free rent in case of building or repairing the mansion (sect. 28). Machinery is also provided for constituting the claim for improvement expenditure and obtaining decree therefor against succeeding heirs.

The Rutherford Act (sects. 13 and 14), contains provisions enabling heirs of entail to grant bonds of annualrent for Montgomery improvements. The 15th section thereof further empowers the executor or assignee of a deceased heir in possession who has executed improvements, to call on the heir in possession to execute a bond of annualrent in favour of him or any person he may name.

It also enacts (sect. 16) that, where the procedure of the Montgomery Act shall not have been adopted or complied with, a summary petition may be presented to the Court, and under it the Court may, on being satisfied that the improvements are of the nature contemplated by the Montgomery Act, grant warrant for execution of a bond of annualrent, in the same way as if decree had been obtained in terms of the said Act. By the Entail Amendment Act, 1868, this provision of the Rutherford Act was extended to new entails. 31 & 32 Vict.
c. 84, sect. 18.

The Rutherford Act also provides (sect. 18) that, when a bond of annualrent may competently be granted, the heir of entail may be called on to charge, under the authority of the Court, the fee and rents of the estate, other than the mansion-house, &c., or the fee and rents of any part of the estate, with *two third* parts of the sum on which the amount of the bond of annualrent would be calculated in terms of the Act.

The Rutherford Act further (sect. 26) provides for consigned or trust-money being uplifted and applied, *inter alia*, towards payment of money spent in permanently improving the estate, or in repayment of money already spent in permanent improvements. These improvements are commonly called "Rutherford" improvements, and are not limited to or identical with "Montgomery" improvements.

The 1860 Act provides that the erection of cottages for labourers, farm-servants, and artisans upon entailed estate, shall be held as "Montgomery" and "Rutherford" improvements. 23 & 24 Vict.
c. 95.

There are numerous cases in regard to Montgomery and Rutherford improvements. They will be found in the notes to the sections of the respective Acts, as these are printed in the second edition of Mr. Hugh Cowan's "Land Rights," and in Mr. Rankine's "Law of Land Ownership."

The provisions of the Montgomery Act anent Improvements have now been practically superseded by the much more ample powers given by the Entail Amendment Act of 1875 (sect. 7). The 1875 Act does not, like the Montgomery Act, state a limit beyond which improvement expenditure cannot be charged on the estate. The 1878 Act (sect. 3) makes the improvement provisions of the 1875 Act apply to new entails. The 1875 Act contains the following in its interpretation clause :— 38 & 39 Vict.
c. 61.
41 & 42 Vict.
c. 28.

"Improvements" shall include all or any of the following matters and all operations necessary for carrying into effect any of such matters ; that is to say :

- "(1.) The draining, or the straightening, widening, deepening, or
 " otherwise improving the drains, streams, and watercourses
 " of an entailed estate, or the conducting of water to any
 " house or houses, or offices, or mill, or works, or to any
 " town, village, or populous place situated on the estate ;

- “(2.) The embanking, warping, or weiring of land from the
“ waters of the sea, or of any lake, river, or stream ;
- “(3.) The enclosing of land, and the straightening of fences, and
“ re-division of land ;
- “(4.) The reclamation of land ;
- “(5.) The making of private roads through the estate, and the
“ forming of roads or streets in any town, village, or
“ populous place in so far as situated on the estate, and the
“ making of tramways, or railways, or navigable canals for
“ the benefit of, and in so far as made within, the estate ;
- “(6.) The trenching of land, the clearing of land, or the planting
“ of land ;
- “(7.) The erecting or improving of, or the making additions to—
 - “(a.) The mansion-house, or any of the mansion-houses and
“ offices or out-buildings of the same on an entailed
“ estate ;
 - “(b.) Farm-houses and offices, or out-buildings for the same,
“ and cottages for labourers, farm-servants, and artisans,
“ whether employed on the estate or not ;
 - “(c.) Factors', ground-officers', and overseers' houses, with
“ suitable offices and outbuildings ;
 - “(d.) Inns or hotels, and offices or outbuildings, of the same on
“ the estate ;
 - “(e.) Shooting-lodges and offices or outbuildings for the occu-
“ pation of the tenants of any shootings which may
“ be let on the estate, and of the servants of such
“ tenants of shootings ;
 - “(f.) Engine-houses, water-wheels, water or horse-mills, saw-
“ mills, kilns, shafts, wells, ponds, tanks, reservoirs,
“ dams, leads, pipes, conduits, water-courses, bridges,
“ weirs, sluices, flood-gates, or hatches, with all fixed
“ machinery appertaining thereto, which will increase
“ the value of the land for agricultural purposes, or
“ otherwise be beneficial to the estate ;
 - “(g.) Jetties or landing-places on the shores of the sea or of a
“ lake, or on the banks of a navigable river, for faci-
“ tating the transport of agricultural stock and produce,
“ or of manures, or other articles needed for agricul-
“ tural purposes.”

38 & 39 Vict.
c. 61.

The 1875 Act, sect. 7, enacts that money may be borrowed to defray the cost of improvements, whether the same have been already executed, or are in course of execution, or are merely contemplated at the date of the application. It goes on to provide machinery for carrying its enactments into execution. The 7th section of the 1875 Act was made applicable to new entails by the 1878 Act, sect. 3.

The 8th sect. of the 1875 Act (also made applicable to new entails) provides for the granting of a bond of annualrent over the fee and rents, other than the mansion-house, &c., or the fee and rents of any portion of the estate, for the whole sum authorised to be borrowed, or a bond and disposition in security for two-thirds of the sum on which the bond of annualrent would have been calculated. 38 & 39 Vict.
c. 61.

The 9th section of said act (also now applicable to new entails) empowers an heir of entail, with consent of the creditor, to substitute a bond and disposition in security for the balance of capital due under a bond of annualrent, or under a rent charge on the estate.

The present Act, in the section under consideration (subject. 1.), allows a bond and disposition in security—that is a *permanent* burden, to be granted for three-fourths in place of two-thirds of the improvement expenditure.

On subject. 2 it may be noted that the Entail Amendment Act of 1840, 3 & 4 Vict. cap. 46, § 1, authorises feus or long leases within certain prescribed limits for churches, schools, burying-grounds, play-grounds, houses and gardens for ministers and school-masters “for such yearly feu-duty or rent as may be agreed upon, “ though inadequate and below the just avail or value.”

Subject. 3 enacts an improvement of great value. Formerly power granted by the Court to an heir in possession to grant feus or long leases fell with his death, and a new application with its attendant expense was necessary before the next heir could avail himself of the power so granted. This is now rendered unnecessary, and an application once granted is effectual to all succeeding heirs in possession. The enactment is, it will be observed, retrospective.

Subject. 4 is an amendment of sect. 9 of the Entail Amendment Act, 1875, which was made applicable to new entails by the Entail Amendment Act, 1878, sect. 3.

By that enactment an heir in possession was authorised, at the sight of the court, and “ *with consent of the nearest heir* for the time “ entitled to succeed to the estate in case he or any of his predecessors “ in possession of the estate *shall have granted* ” terminable charges either under the Montgomery Act and later entail statutes, or under “ The Improvement of Land Act, 1864 ” and other like acts, to substitute by agreement with the creditor, for such terminable charge a bond and disposition in security over the estate or any portion thereof.

The alteration made by the subject. 4 of the clause under consideration is that the heir in possession, if he has himself disbursed one-fourth of the *capital* included in the terminable charge (*not*, it will be observed, one-fourth of the total charge), may arrange for the

substitution of a permanent burden without the consent of the nearest heir, and can carry out the transaction whether the terminable charge has been made before or after the Act of 1875. "Bond or Disposition in Security" is an obvious misprint for Bond and Disposition in Security.

Improvements chargeable on estate to be deducted from valuation.

7. In all applications for disentail under this Act, where the heir in possession shall have expended sums in improving the estate which he is entitled to charge upon the entailed estate without consents, such heir shall be entitled to produce a statement of such expenditure, and upon the Court declaring such expenditure to be properly chargeable upon the estate the amount thereof, or such portion as the Court may declare properly chargeable, shall be deducted from the valuation of the estate before fixing the amounts of compensation payable to the next heirs.

The effect of this section is to render it competent for an heir of entail, who purposes to disentail, and who has executed improvements, but has not adopted the procedure requisite for charging on the estate the amount of his expenditure, to avoid the delay and expense of a separate application to have the expenditure ascertained and charged, before he applies for disentail.

Leases may be granted at diminished rent.

8. Notwithstanding any prohibition contained in any deed of entail against granting leases, unless such leases are without diminution of rental, it shall be lawful for any heir of entail in possession of an entailed estate to grant leases for such period as it may be otherwise competent for him to do, at a fair rent.

Provided, that it shall not be lawful for such heir to take any grassum or other consideration for granting such lease other than the rent; and if the rent shall be less than a fair rent, or if any such grassum or consideration shall be taken, such lease shall be null and void.

Some deeds of entail contain provisions prohibiting leases with any diminution of rental. This enactment amounts to the deletion of such a stipulation.

The statutory periods for which ordinary leases may be granted

will be found in the Rosebery Act, sect. 1. They are twenty-one years for lands, and thirty-one years for minerals. It will be kept in view that the statutory faculties do not restrain the exercise of wider powers if conferred by the deed of entail.

6 & 7 WILL. IV.
c. 42.

9. It shall be lawful for the heir in possession of an entailed estate, where any portion of the estate is held by a tenant under a current lease for not less than seven years, at any time within two years previous to the expiration of such lease, to grant a new lease at a fair rent, to commence at such expiration; and if such heir in possession shall die before the commencement of the new lease, it shall be as valid as if he were still alive.

Lease may be renewed two years before expiration.

Provided that it shall not be lawful for such heir in possession to take any grassum or consideration for granting such lease other than the rent, and if the rent fixed shall be less than a fair rent, or if any such grassum or consideration be taken, such lease shall be null and void.

The Montgomery Act, sect. 7, *inter alia*, provides that leases granted under its provisions (being generally improving leases) shall not be granted until after the end or other determination of any former lease of the same premises, or that such former lease, if granted for a time certain, shall be within one year of being determined, and that all leases otherwise granted shall be null and void.

10 Geo. III.
c. 51.

The law, prior to the passing of the present Act, as to the power of an heir in possession to enter into a new contract of lease before the ish of the tack current at the time, is stated by Mr. Hunter, as follows:—

“An heir of entail may accept of a renunciation of a current lease, and then grant a new one. But if a new lease be granted to commence upon the expiration of the current lease, the new one will be invalid against a succeeding heir, should it not be followed by possession before the succession opens to him. Without possession a lease is not a real right, and therefore not obligatory upon an heir taking only under the entail.”—*Law of Landlord and Tenant* (4th edition, vol. i. p. 110).

10. Where an entailed estate which is charged with debt or provisions shall be disentailed, it shall be lawful for the heir in possession, in substitution for such charge, and with consent of the creditor or creditors, to charge with such debt or pro-

Charge upon a disentailed estate may be transferred to another estate entailed on same series of heirs.

visions any other estate belonging to him, and entailed upon the same series of heirs to the extent to which such other estate might have been lawfully charged with such debt or provisions.

Contrast this section with section 23, subsect. 7.

Applications may be made by guardians on behalf of minors and persons under disability.

11. In every case in which it is competent for an heir in possession of an entailed estate, being of full age and not subject to any legal incapacity, to make an application to the Court under the Entail Acts, it shall hereafter be competent for an heir in possession, though a minor, with consent of his curators, or for the tutors of an heir in possession, if he is a pupil, or for his curator or other administrator if he is otherwise incapacitated, to make such application, not being an application for authority to disentail the entailed estate or any part thereof, and to execute and carry into effect any authority which may be given by the Court.

Provided that the Court shall not grant such application unless they are satisfied that it is for the benefit of the heir by whom or on whose behalf it is made.

It has been remarked on this enactment that its effect is "to confer upon minor and pupil proprietors of entailed estates more extensive powers of dealing with their estates than are possessed by fee simple proprietors under age."

It will be observed that power to disentail is not conferred on heirs in possession under age.

As "the Court" means the "Court of Session" (1875 Act, sect. 3), entail petitions by or for heirs in possession under age will apparently be competent only in the Court of Session and not in the Sheriff-Court.

Curator to be appointed to persons unable to consent.

12. In any application under the Entail Acts, to which the consent of any person is required, where such person is disabled under the provisions of the Entail Acts or otherwise from consenting by reason of being under age or subject to other legal incapacity, the Court shall appoint his tutor, curator, or other administrator, or one of his tutors, curators, or

administrators, or another person to be curator *ad litem* to the person under disability, and such curator *ad litem* may consent on his behalf, and no curator *ad litem* who may give any consent under this Act 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 be alleged and proved that he acted corruptly in the matter.

The previous enactments as to curators *ad litem* are contained in the Rutherford Act, sect. 31, and in the 1853 Act, sect. 18.

11 & 12 Vict.
c. 36.
16 & 17 Vict.
c. 94.

The variations introduced by the present enactment are—(1) That the Court is expressly authorised to appoint as curator *ad litem* one of the tutors, curators, or administrators of the pupil, minor, or *incapax*; (2) that the exception introduced by the 1853 Act, that the consent of a curator shall be valid unless in any case of application for disentail, is virtually repealed.

The declaration as to the responsibility of a curator *ad litem* consenting for an heir under age is in the same words as the corresponding proviso in the Rutherford Act.

It will be kept in view that the following proviso in the 31st section of the Rutherford Act is still in force :—“ 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.”

13. In any application under the Entail Acts to which the consent of the heir apparent or other nearest heir is required, and such heir or the curator *ad litem* appointed to him in terms of this Act shall refuse or fail to give his consent, the Court shall ascertain the value in money of the expectancy or interest in the entailed estate of such heir with reference to such application, and shall direct the sum so ascertained to be paid into bank in name of the said heir, or that proper security therefor shall be given over the estate, and shall thereafter dispense with the consent of the said heir, and shall proceed as if such consent had been obtained, and the provisions of sections 5 and 6 of the Entail Amendment (Scotland) Act, 1875, shall apply to the nearest heir as well as to other heirs,

Consent of
nearest heir
may be valued
and dispensed
with.

and shall apply to all applications to which consents are required, and to entails dated on or after the first day of August, one thousand eight hundred and forty-eight, as well as to entails dated prior to that date.

Provided that if the application is opposed by any creditor of such heir who shall prove that prior to the passing of this Act he has lent money to such heir on the security of his right of succession to or interest in the entailed estate, or by the wife or children of such heir in whose favour he shall have granted provisions under the Entail Acts, the consent of the heir shall not be dispensed with until arrangements have been made for the payment or security of the creditor or wife or children to the satisfaction of the Court. If the heir-apparent or other nearest heir whose consent is required as aforesaid shall have assigned his expectancy or interest, and the assignee shall have intimated the assignation to the heir in possession for the time being, at any time prior to the recording of the instrument of disentail, such assignee shall be entitled to appear at any time prior to such recording, and to demand that the value in money of such expectancy or interest shall be ascertained, and shall be entitled to a preference upon such value according to the date of the intimation of his assignation, and such preference shall be given effect to in his favour when the value of such expectancy or interest is paid or secured.

This section introduces changes of very great importance.

38 & 39 Vict.
c. 61.

11 & 12 Vict.
c. 36.

The 5th section of the Entail Amendment Act, 1875, *inter alia*, provided that in the case of old entails the consent to a disentail of any of the heirs mentioned in the 3rd section of the Rutherford Act, *except the nearest heir for the time, whether an heir-apparent or not*, might be dispensed with by the Court, on the Court ascertaining the value in money of the expectancy or interest in the entailed estate, with reference to such application, of the heir or heirs declining or refusing or incapacitated to consent, and seeing such value paid or secured.

Section 6 of the same statute enacts that the provisions of the preceding section as to disentailing are to apply also where an heir in possession under an old entail applies for power to sell, alienate, dispone, charge with debts or incumbrances, lease, or feu, or excamb.

The effect of the present enactment is to make the provisions of

the 5th and 6th sections of the 1875 Act apply to the nearest heir (including an heir-apparent), and to new entails as well as to old entails, and to dispense with all consents.

The following is a summary of the cases which have occurred under the provisions of the 1875 Act as to valuing expectancies or interests :—

De Virte v. Wilson, 5 Rettie, 328.—In this case the principles were discussed upon which the “expectancy or interest” of the heir whose consent is dispensed with should be valued. In the note by Lord Rutherford Clark, the following passage occurs :—

“The Act of 1875 has made an important change in the position of the second and third heir. Provided that he obtains the consent of the nearest heir, the heir in possession is entitled to disentail on paying to the second or third heirs the value of their ‘expectancy or interest.’ This means, as the Lord Ordinary conceives, their own individual expectancy or interest, or in other words, the value of their own chance of succession.

“It was urged by the respondent that the words should be construed as equivalent to consent; that the true meaning of the Act is that the heir shall be forced to consent on being paid the fair value, and that in computing the value there shall be taken into account all the considerations which might reasonably weigh with a prudent person in giving or withholding his consent. But the Act has not said so. It dispenses with the consent of the second and third heirs, and substitutes for it the value of their expectancy or interest.”

These views of the Lord Ordinary were strongly approved by the First Division, and also by several of the judges of the House of Lords in the subsequent case of *M'Donald, infra*.

It follows from this decision that in valuing the expectancy of a future heir the interests of his descendants, or the likelihood of his having any, or any such question, are not to be taken into consideration; but the powers which such future heir could exercise if he succeeded are to be taken into consideration.

M'Donald v. M'Donald, 7 Rettie (H. of L.), 41.—In this case the House of Lords held that the second and third heirs whose “expectancies” or “interests” were being valued, were entitled to bring before the Court facts bearing on the probable duration of life of the first heir; and statements that the first heir had suffered from ailments which made his life below an average one, were held to be relevant subject of inquiry.

It was also held that, as an heir of entail in possession is a fiar so far as not fettered, the chances of the second and third heirs succeeding to the estates in fee simple, by outliving the fourth and only other heir of entail in existence, were elements to be considered in a valuation of their respective expectancies or interests.

Sprot, 27th June, 1882, 19 S. L. R. 738.—In this case it was held by Lord Kinnear that the period when the value in money of the expectancy or interest in an entailed estate had to be calculated, was the date of the instrument of disentail.

The second paragraph of the section makes provision for protecting, (1) the interests of creditors of the heir whose consent is dispensed with, holding a security on such heir's right of succession to or interest in the estate, provided such security is for debt incurred prior to the passing of the Act, and (2) the wife or children of such heir in whose favour he may have granted provisions under the Entail Acts.

31 & 32 Vict.
c. 84.

It will be kept in view that by sect. 6 of the Entail Amendment Act, 1868, an heir-apparent was authorised, subject to certain conditions, to grant provisions to his wife and children.

The last sentence of the paragraph deals with creditors of the heir-apparent or nearest heir who hold an assignation of his expectancy or interest, intimated prior to the date of recording the instrument of disentail, and confers on them right to appear in the disentail proceedings and to secure a preference on the money value of such expectancy or interest.

Procedure
when heir in
possession has
disappeared.

14. If the heir in possession of an entailed estate shall have been absent from Scotland or shall have disappeared for a period of fourteen years and cannot be found, it shall be lawful for the next heir to make affidavit to that effect, and to apply to the Court, and the Court, if satisfied that such affidavit is true, and that there is no evidence that such heir in possession has been in life during the preceding fourteen years, may appoint a factor loco absentis to such heir in possession, and may grant authority to and ordain such factor loco absentis to execute an instrument of disentail of the estate, and such instrument shall be as valid and effectual as if it were executed by the heir in possession himself.

The value in money of the expectancy or interest in the entailed estate of the heirs whose consents to the disentail must be obtained or dispensed with under the provisions of the Entail Acts shall be ascertained and may be secured upon the estate, or on the application of the factor loco absentis, or of the next heir, the Court may grant authority to the factor loco absentis to sell the estate at the sight of the Court, and the balance of the price, after paying the value of the interests of

the heirs whose consents are required or must be dispensed with as aforesaid, shall be paid into bank or invested for behoof of the heir in possession, and shall be held to be moveable, subject to the provisions of the Presumption of Life Limitation (Scotland) Act, 1881. ^{44 & 45 Vict. c. 47.}

If the heir in possession shall have been absent from Scotland or shall have disappeared for any shorter period than fourteen years, and a factor loco absentis shall have been appointed under the provisions of the Presumption of Life Limitation (Scotland) Act, 1881, or otherwise, it shall be lawful for such factor to apply to the Court or the Sheriff, as the case may be, for authority to feu, lease, borrow, and charge for improvement expenditure, in the same manner as the heir in possession himself might have done. ^{44 & 45 Vict. c. 47.}

The leading provisions of The Presumption of Life Limitation (Scotland) Act, 1881, are as follows :—

In the case of any person who has been absent from Scotland, or has disappeared for a period of seven years or upwards, and who has not been heard of for seven years, and who at the time of his leaving or disappearance was possessed of or entitled to heritable or moveable estate in Scotland, or who has become entitled to such estate in Scotland, it is competent for any person entitled to succeed to an absent person in such estate, to apply to the Court, and the Court, after certain proof and procedure may authorise the petitioner to uplift and enjoy the income of the heritable or moveable estate of such absent person, as if the said person were dead ; or the Court may sequestrate the estate and appoint a judicial factor thereon, with authority to pay the income thereof to the petitioner.—Sect. 1.

It is competent to the petitioner upon whose petition a deliverance has been granted in terms of the foregoing provision authorising him to uplift and enjoy the yearly income of moveable estate, or to the heir or representative of such petitioner, to present another petition to the Court after the lapse of seven years from the date of said deliverance, setting forth that during that further period the said absent person has not been heard of ; and after certain proof and procedure, the Court may grant authority to the petitioner to make up a title to, and thereupon to receive and discharge, possess and enjoy, the fee or capital of the said moveable estate of the said absent person in the same manner as if the said absent person were dead.—Sect. 2.

It is competent to the petitioner or petitioners upon whose petition a deliverance has been granted in terms of section one of said Act, authorising him to uplift and enjoy the yearly income

of heritable estate, or to the heir or representative of such petitioner, to present another petition to the Court after a lapse of thirteen years from the date of said deliverance, setting forth that during that further period the said absent person has not been heard of; and after certain proof and procedure, the Court may grant authority to the petitioner to make up a title to, and enter into possession and enjoyment of the fee of the said heritable estate of the said absent person in the same manner as if the said absent person were dead.—Sect. 3.

In the case of any person who has been absent from Scotland, or who has disappeared for a period of fourteen years or upwards, and who has not been heard of for fourteen years, and who at the time of his leaving or disappearance was possessed of or entitled to moveable estate in Scotland, or who has since become entitled to moveable estate there, it is competent to any person entitled to succeed to the said absent person in such moveable estate to apply to the Court; and after certain proof and procedure, the Court may authorise to the petitioner to make up a title to receive and discharge, possess and enjoy, sell or dispose of the said moveable estate in the same manner as if the said absent person were dead.—Sect. 4.

In the case of any person who has been absent from Scotland, or who has disappeared for a period of twenty years or upwards, and who has not been heard of for twenty years, and who at the time of his leaving or disappearance was possessed of or entitled to heritable estate in Scotland, or who has since become entitled to heritable estate there, it is made competent to any person entitled to succeed to said absent person in such heritable estate to apply to the Court; and after certain proof and procedure, the Court may authorise the petitioner to make up a title to, enter into possession of and enjoy, and sell or dispose of the said heritable estate in the same manner as if the said absent person were dead. Sect. 5.

The language of the present Act is slightly different from that of the Presumption of Life Act. The expression in this Act is, "if the heir in possession shall have been absent from Scotland, or shall have disappeared for a period of fourteen years, *and cannot be found;*" while in the Presumption of Life Act the words are, "in the case of any person who has been absent from Scotland, or who has disappeared for a period of seven years or upwards, *and who has not been heard of for seven years.*"

No provision is made as to the disposal of the proceeds of the estate of the absent person after it has been disentailed, but they will apparently fall under the enactments of the Presumption of Life Act.

The second paragraph of the section—(1) deals with the interests

of the heirs, whose consents must be obtained or dispensed with ; and (2) authorises the factor *loco absentis*, with approval of the Court, to sell the estate. The provision that the balance of the price shall be held moveable, places entailed land in rather a different position from other heritage so far as regards the Presumption of Life Act.

The third paragraph does not call for comment, except that the Presumption of Life Act does not specially provide for the appointment of a factor *loco absentis*.

Reference is made to the notes on sections 4 and 6 for the powers of feuing, leasing, borrowing, and charging with improvement expenditure.

15. In any application to the Court under the Entail Acts to which the consent of an heir is required, and the applicant shall make affidavit that such consent cannot be obtained in consequence of the absence from Scotland or disappearance of such heir, and that such heir is absent from Scotland, or has disappeared and cannot be found, the Court after such inquiry as it may think fit, shall, if satisfied that the statements contained in the affidavit are true, ascertain the value in money of the expectancy or interest of such heir in the estate, and shall direct the sum so ascertained to be paid into bank in name or for behoof of such heir, or invested in such security and in such way as the Court may direct, and thereupon the Court shall dispense with such consent, and shall proceed as if such consent had been obtained.

Consent of heir who has disappeared.

16. If the fund deposited or invested in terms of the preceding section shall remain unclaimed by the absent heir for a period of fourteen years from the date when he was last heard of as being alive, or by anyone deriving right or title through or from him, an application may be made to the Court by any one or more of the heirs of entail whose consent to the original application would have been required if at the date of the original application the death of the absent heir had been legally established, or by his or their representatives, and the Court shall order intimation of the application to be made to the other heir or heirs whose consent would have been required

Provision for disposal of fund deposited or invested after fourteen years.

as aforesaid, or by his or their representatives, and if satisfied that the said absent heir has not been heard of during that period of fourteen years, shall ascertain by the best evidence which can then be obtained the value in money of the expectancy of such heir or heirs entitled to succeed after the absent heir, at the date of the disentail, as if the absent heir had been dead at that date, and shall apportion the fund among such heirs, or their representatives, according to their respective interest in so far as it shall be sufficient, and grant warrant for uplifting and paying the fund accordingly; and if there shall be any surplus over the ascertained value of the interests of such heirs, it shall be paid to the heir in possession at the date of the disentail, or his executors or assignees.

Settlements by marriage-contract not to be disappointed.

17. Where any heir of entail in possession of an entailed estate, or the heir apparent to such estate, shall, together or separately, have secured by obligation in any marriage contract entered into prior to the passing of the present Act 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.

11 & 12 Vict.,
cap. 36.

This section is similar to the 8th section of the Rutherford Act, which is as follows:—"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.”

It will be observed that the section of the Rutherford Act applies only to old entails, while the present statute apparently relates to all entails. The important words of the clause are, “*entered into prior to the passing of this Act.*” The result of these words is that such a settlement made after the Act will not be an obstacle to disentailling.

18. Where any heir of entail in possession is entitled to disentail the estate, with the consent of any other heir or heirs, or upon such consent being dispensed with by the Court, any creditor of such heir in possession, in respect of debt incurred after the passing of this Act, who has obtained decree against him for payment and charged upon the decree, shall, in the event of the debt so incurred not being paid for six months after the expiration of the charge, be entitled to apply to the Court, and the Court shall, if the said debt is not paid within three months after the date of the application, order intimation to be made to the heirs whose consents would be required or must be dispensed with by the Court in an application for disentail by the heir in possession, and in the event of any of the said heirs, or his curator ad litem, appointed in terms of this Act, refusing to give his consent, the Court shall ascertain the value in money of the expectancy or interest in the entailed estate of such heir, and shall ordain the heir in possession to grant a bond and disposition in security over the estate for the amount so ascertained in favour of such heir, and if he refuses or fails to do so, the Court shall grant authority to the clerk of Court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as

Powers of
 creditors of
 heir entitled
 to disentail.

valid as if it were executed by the heir in possession himself; and the Court shall thereafter ordain the heir in possession to execute an instrument of disentail of the estate; and if he refuses or fails to do so, the Court shall grant authority to the clerk of Court to execute such instrument, and after provision is made for the interests of any other creditors whose debts are secured on the estate, the creditor aforesaid shall be entitled to affect the estate for payment of such debt, and shall have the same rights and interests therein as if an instrument of disentail had been executed and recorded by the heir in possession himself.

If the estates of such heir of entail in possession of an entailed estate shall be sequestrated for debt incurred after the passing of this Act, the trustee on his sequestrated estates shall be entitled to apply to the Court for authority to disentail the estate, and the Court shall forthwith proceed in the same manner as is directed in this section with regard to the application of a creditor.

11 & 12 Vict.
c. 36.

The 11th section of the Rutherford Act is as follows:—"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."

The intention of this provision was to prevent an heir in possession, who, by virtue of the Statute had been rendered in substance a fee-simple proprietor, from prejudicing his creditors by refusing or delaying to carry through a formal disentail.

The present enactment empowers a creditor, in respect of debt incurred after 18th August 1882, to force a security on the estate, and compel a disentail.

Power is also conferred on the trustee in the sequestration of an heir in possession, sequestrated for debt incurred after 18th August 1882, to apply to the Court for authority to disentail.

As every heir of entail (unless when under age) is now entitled to disentail with consents, or upon consents being dispensed with (see sect. 13 and notes), it follows that creditors of heirs of entail in

debts incurred after the passing of the Act will be in a very different position from that in which creditors of heirs in possession have hitherto been. In fact, an entailed estate is no longer protected from the debts of the heir in possession.

Interest accruing after 18th August 1882 on a previously existing debt, seems, in the ordinary meaning of the words employed, to be itself a debt incurred after the passing of the Act. If this is the proper construction of the section, the change made is a most material one. But it may be contended that interest is a mere accessory to the principal, and is incurred from the date when the debt is incurred, although not payable.

It will be observed that the section says nothing about prior *unsecured* creditors. As, however, the creditor for a debt incurred after the Act can not only compel a security upon the estate to be given, but can force a disentail of the whole estate, the intention probably is that the estate shall be opened out to the diligence of prior unsecured creditors.

19. It shall be lawful for the heir of entail in possession of any entailed estate, or where an entailed estate consists of land held in trust for the purpose of being entailed for the person who, if the land had been entailed, would have been the heir in possession, or for the tutors, curators, or administrators of such heir or other person, to apply to the Court for an order of sale of the estate, or part of it.

Application
for order of
sale.

By the Rosebery Act, sect. 7 and following sections, certain powers were given to heirs in possession for the sale of entailed estates for the payment of entailer's debts. By the Rutherford Act, and the Entail Acts of 1853 and 1868, variations and additions were made on these powers.

6 & 7 William
IV. cap. 42.

The present enactment gives a power to apply to the Court to have the entailed estate converted into money, such money remaining subject to the fetters of the entail as a surrogatum for the estate. As to the meaning of the phrase "entailed estate" in this section, reference is made to section 26, and notes thereon.

The following sections (20 to 23) provide the code for the procedure necessary to carry out the sale and regulate the investment of the entailed money. These clauses do not call for much comment.

2 In every application for an order of sale, in addition to Procedure.

the procedure prescribed for applications under the Entail Acts, the applicant shall produce and depone to a schedule signed by him, or his tutors, curators, or administrators, setting forth the debts and charges affecting the estate, and the Court shall order intimation to be made to the heirs of entail whose consents would have been required to an application for disentail, and to the creditors, if there be any, and such heirs and creditors shall be entitled to appear for the purpose of seeing that their respective interests are protected, but shall not be entitled to oppose the application.

This schedule is not said to be of debts, &c., "that are not secured " by having been placed on the Record " (1875 Act, sect. 12, subsect. 5), but it may be unnecessary to specify debts so secured, as the interests of the creditors therein will be sufficiently protected by the recording.

Order of sale.

21. The Court shall procure a report as to the value of the estate, and as to the rights and charges affecting it, and shall, unless it appear that any patrimonial interest would be injuriously affected thereby, order the estate, or a part of it, to be sold in such manner as they think proper.

Provided that in the case of any such application by or on behalf of a married woman, minor, pupil, or other person under disability, the Court shall not make the order unless they are satisfied that it will be for the benefit of the applicant.

Court may prescribe manner of sale.

22. The Court shall fix the time and place and manner of sale, and may authorise the sale of the estate, or such part of it, in whole or in lots, and either by public auction, at such upset price or by private bargain at such price as the Court may direct, or partly by public auction and partly by private bargain, and if more advantageous to the parties, may direct the sale to be for a feu-duty instead of a price to be immediately paid, or partly for a feu-duty and partly for a price.

Provided that the sale shall not be by private bargain if

either the applicant or the next heir shall intimate within one month after the order for sale that he desires the sale to be by public auction.

When the estate is sold by public auction, any creditor or person interested, other than the applicant, may be the purchaser.

This is a similar right to that conferred on creditors of a bankrupt by the Bankruptcy (Scotland) Act, 1856, sect. 120.

23. Upon a sale of entailed estate, or such part of it, under the orders of the Court as aforesaid, the following provisions shall have effect :

Price to be consigned.

(1.) The price shall be paid into a bank to be named by the Court on a consignment receipt subject to the future orders of the Court, or, if the applicant desires it, instead of the price being paid in money the equivalent according to the current price of the day in consolidated stock of the United Kingdom shall be transferred into a special account to be opened in the name of the Accountant of the Court of Session, subject to the order of the Court.

(2.) Where the estate, or such part of it, is unencumbered, and where the price is paid in consolidated stock, unless desired by the applicant or his successors in the estate, no further proceedings in the nature of investment shall be necessary. The Court shall grant an order in such general form as it, after consulting the Bank of England, may settle, which order shall be an authority to the bank to pay the dividends to the applicant during his life. After the death of the applicant a similar order shall be granted to his heir of tailzie and provision on production of a decree of service.

Where price paid in consols dividends to be paid to applicant and his successors.

(3.) Where the estate is encumbered, the Court shall provide for the payment out of the price of all debts secured upon the estate, and the surplus, if desired by the applicant, may be invested in consolidated stock as aforesaid

Where estate encumbered.

under the conditions expressed in the preceding subsections.

Where applicant desires investment, trustees may be appointed.

- (4.) If the applicant desires that the price or surplus should be invested in any of the Government stocks, public funds, or securities of the United Kingdom, or heritable security in Great Britain, or in stock of the Bank of England, or in East India stock, or the mortgages or debentures or debenture stocks of such municipal corporations or public trusts, or railway companies, as may be approved by the Court after inquiry, it shall be invested as entailed money in the names of trustees to be appointed by the Court, in trust for the applicant and the heirs of entail in their order, and it shall be sufficient in the deed of security to refer to the deed of entail without setting forth the terms of the destination or the conditions and clauses of entail. The trustees shall be not less than three in number, and a majority of the trustees in all cases shall be a quorum. They shall receive such remuneration, if any, as the Court may fix, as well as all charges and expenses incurred by them. If the purchaser of the estate sold as aforesaid and the applicant desire it, a part of the price may be secured on the estate. Subsisting debts affecting the estate may, if desired, be left secured thereon and allowed for in the settlement of the price instead of being paid off.

Powers of trustees.

- (5.) If the money is called up or a change of investment is desired, the trustees shall not be bound to obtain the authority or approval of the Court in relation to new investments, but may themselves make such new investments in accordance with the provisions of this Act, or they may apply to the Court, if they think proper, for such authority. Until the first investment is found, or while it is waiting for re-investment, the entailed money shall remain in bank on a consignment receipt. The Court shall have power to accept the resignation of or to remove any trustee or trustees, and to appoint new or additional

trustees, and the petition shall remain a depending process for all purposes until the entail comes to an end.

The trustees will thus only have power to resign with consent of the Court, and will not have the power to assume new trustees. Trustees appointed by the Court under the Trusts Act, 1867, have no power of assumption unless expressly given to them.—Sect. 13.

- (6.) If it is desired that the price or surplus, whether before or after it has been invested as aforesaid, shall be applied in the purchase of other lands, the Court, after inquiry and report, may grant the requisite authority, and the purchased lands shall be settled in conformity with the subsisting destination. Purchase of lands.
- (7.) The price of any part of an entailed estate which shall be sold under the provisions of this Act may be applied in payment of the cost of improvements executed but not charged upon the entailed estate, or executed but not charged upon any other estate belonging to the applicant and entailed upon the same series of heirs, or in course of execution, or contemplated, upon the remaining portion of the entailed estate, or upon any other estate belonging to the applicant and entailed upon the same series of heirs. Price may be applied to improvements.
- Provided that the Court shall be satisfied that such improvements, if already executed, are of a substantial nature and beneficial to the estate at the date of the sale, or, if in course of execution or contemplated, that they will be, if well executed, of a substantial nature and beneficial to the estate.
- This is a similar provision to that in sect. 7 of the present statute in order to save the cost of a petition to charge improvement expenditure prior to the application for power to sell.
- (8.) All applications for investment or re-investment or other application of the price or surplus which might be made by the applicant may be made by his heir of tailzie and provision for the time being after the applicants' death. Investment after applicant's death.

Costs of appli-
cation.

(9.) The costs, charges, and expenses incurred in an application to the Court for an order of sale under this Act, and other applications or procedure following thereon shall, in so far as the same properly affect the capital of the estate, form a deduction from the price, and shall be payable out of the sum paid into bank, or deducted from the sums to be invested or applied as aforesaid, and all such costs, charges, and expenses as properly affect income shall be payable out of the income of the fund so paid into bank or invested.

Provisions to
husbands,
wives, and
children, &c.,
to be secured
upon the fund.

24. Where provisions to husbands, wives, and children, annuities or terminable charges, are secured upon the estate, or where courtesy or terce are not excluded, due provision shall be made under the authority of the Court for their payment out of the capital or income, as the case may be, of the estate or fund into which the entailed estate is converted, or otherwise to the satisfaction of the Court, and the entailed estate shall thereafter be effectually freed and disencumbered of such provisions, annuities, charges, courtesy, or terce, by discharges to be granted by the persons in right thereof or by a decree of the Court declaring the entailed estate to be so freed and disencumbered, which discharges or decree shall be recorded in the appropriate register of sasines.

This section speaks of provisions, &c., "secured upon the estate," but it obviously refers to such provisions, &c., as have been competently granted out of the estate or rents thereof, but have not yet been "secured" thereon in the ordinary sense of the word.

Disposition to
be granted at
sight of Court.

25. Upon payment of the price in money or stock as above provided (or without payment, where the sale is for a feu-duty), the applicant, or his tutors, curators, or administrators, or his heirs shall grant a disposition at the sight of the Court containing all clauses usual and necessary for the purposes of the conveyance (according to the nature of the transaction), and in particular a clause providing that the purchaser shall have warrandice against the price, so long as the same shall remain extant, deposited or

invested as aforesaid, and binding the applicant and his heirs of provision in warrandice to the extent of the shares of the price received by them respectively, in the event of the price being disentailed and divided among the applicant and his heirs of provision according to their respective interests therein. Where a portion of the price is to be secured on the estate, a bond and disposition in security containing all usual clauses shall be granted, or if the Court shall declare that any sum of money shall be a real burden on the estate, such decree on being recorded in the appropriate register of sasines shall have the same force and effect as a bond and disposition in security duly recorded in such register.

It is difficult to define the nature of the warrandice here provided, but apparently the meaning is that the price, while extant, shall remain as a species of real warrandice to the purchaser. And a claim of warrandice is apparently to subsist even after the price has been disentailed and divided. This seems at first sight an onerous burden to place on the persons receiving the price, but it is explained by the consideration that if these persons had been *pro indiviso* proprietors of fee simple lands, the absolute warrandice of the disposition thereof which they would have granted to a purchaser would have had substantially the same effect.

The phrase "divided among the applicant and his heirs of provision" obviously means the heir of entail in possession, and the heirs whose consents are necessary to be given or dispensed with in order to disentail.

A decree of Court constituting a real burden is, it will be observed, stated as an alternative to a bond and disposition in security.

26. Where any money or other property heritable or moveable is held in trust for the purpose of purchasing land to be entailed, it shall be lawful, when the direction to purchase and entail has become operative, for the person who, if the land were entailed in terms of the trust, would be the heir entitled to possession thereof, to make summary application to the Court for warrant and authority to the person or persons by whom the said money or property is held in trust at the time, to deal with and apply the same or the proceeds thereof as if it were the price of entailed land sold in pursuance of this Act,

Money in trust for purchase of land to be entailed.

and such money or property shall be subject to the provisions of this Act applicable to the price of entailed lands.

This enactment is necessary, because the phrase "entailed estate" is used in the 19th section, not in the extended sense of the interpretation clause of the 1875 Act, as including money or other property invested in trust to purchase land to be entailed, but in the restricted meaning of land actually under entail, or held in trust for the purpose of being entailed.

Reading this section along with that immediately following, it is clearly seen that such money or property may not only be sold but disentailed, subject to the same conditions as an entailed estate proper.

It is to be remarked, however, that the Act does not expressly say that land already held in trust to be entailed shall have the benefit of its disentailing provisions. But if "entailed estate" in sect. 3 is read in the extended sense of the 1875 Act, this result is arrived at.

Price of land
sold to remain
entailed estate.

27. The price of an entailed estate or any part thereof sold under the provisions of this Act shall be entailed estate within the meaning of the Entail Acts.

This section places it beyond doubt that the price of an entailed estate sold under this Act shall be disentailable. Reference is made to the interpretation clause of the 1875 Act quoted in the notes to clause 2 of this Act.

Investment
of entailed
money.

28. The provisions of this Act with regard to the descriptions of securities and stocks in which the price of land sold may be invested shall apply to all entailed estate consisting of money.

The expression "entailed money" is used in sect. 23, subsect. 5.

Deeds granted
under author-
ity of Court
to be final.

29. Any instrument of disentail, disposition, bond and disposition in security, or other deed granted under the authority of the Court in terms of this Act, where the judgment of the Court allowing such deed 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 *bona fide* on the faith thereof, be no longer reducible on any ground of irregularity or non-compliance with the provisions of this Act, but in respect of any such ground of challenge be final and conclusive.

This section is similar in its terms to clause 24 of the Entail 16 & 17 Vict. Amendment Act of 1853, which is as follows :—“Every judgment ^{c. 94.}

“and decree pronounced and that shall be pronounced upon any application under the said recited Act or under this Act, where such judgment or decree has not been or shall not be brought under review of the House of Lords by appeal, or brought under reduction upon any relevant ground during the period within which such judgment or decree might have been appealed from, shall, as regards third parties acting *bona fide* on the faith thereof, be no longer reducible on any ground of irregularity or non-compliance with the provisions of the said recited Act or of this Act, but in respect of any such ground of challenge be final and conclusive ; and the period during which challenge or appeal is competent under the said recited Act or under this Act, of any such judgment or decree, or of any instrument of disentail, or other deed executed in virtue of such judgment or decree, shall not be extended in respect of the minority or want of capacity to act of any person or persons whatever.”

It will be observed that the period during which an action of reduction may be brought, is limited to the time during which an appeal to the House of Lords is competent.

30. This Act shall apply to future as well as to existing entails. Act to apply to future entails.

It will therefore be impossible to stipulate in any future entail that the provisions of this Act, or any of them, shall not be applicable to it.

SCHEDULE.

—	Title of Act.	Short Title.
1685, c. 26. . . 20 Geo. 2. c. 50. ss. 14, 15, 16, 17.	Act concerning tailzies . An Act for <i>inter alia</i> allow- ing heirs of tailzie in Scotland to sell lands to the Crown for erecting buildings and making settlements in the High- lands.	Entail Act, 1685. Tenures Abolition Act, 1746.
20 Geo. 2. c. 51. ss. 2, 3.	An Act <i>inter alia</i> to enable heirs of tailzie, guardians, tutors, curators, and trust- ees to sell lands to the Crown.	Sales to Crown Act, 1746.
10 Geo. 3. c. 51.	An Act to encourage the improvement of lands, tenements, and heredita- ments in that part of Great Britain called Scotland, held under settlement of strict entail.	Entail Improve- ment Act, 1770.
5 Geo. 4. c. 87. .	An Act to authorise the proprietors of entailed estates in Scotland to grant provisions to the wives or husbands and children of such prop- rietors.	Entail Provisions Act, 1824.
1 & 2 Will. 4. c. 43. s. 68.	An Act for amending and making more effectual the laws concerning turn- pike roads in Scotland.	Turnpike Roads (Scotland) Act, 1831.
6 & 7 Will. 4. c. 42.	An Act to grant certain powers to heirs of entail in Scotland, and to au- thorise the sale of en- tailed lands for the pay- ment of certain deaths (<i>sic</i>) affecting the same.	Entail Powers Act, 1836.
3 & 4 Vict. c. 48.	An Act to enable proprie- tors of entailed estates in Scotland to feu or	Entail Sites Act, 1840.

—	Title of Act.	Short Title.
3 & 4 Vict. c. 48. — <i>cont.</i>	lease on long leases portions of the same for the building of churches and schools, and for dwelling-houses and gardens for the ministers and masters thereof.	
11 & 12 Vict. c. 36.	An Act for the Amendment of the law of entail in Scotland.	Entail Amendment Act, 1848.
16 & 17 Vict. c. 94.	An Act to extend the benefits of the Act of the eleventh and twelfth years of Her present Majesty, for the amendment of the law of entail in Scotland.	Entail Amendment Act, 1853.
23 & 24 Vict. c. 95.	An Act to facilitate the building of cottages for labourers, farm servants, and artizans, by the proprietors of entailed estates in Scotland.	Entail Cottages Act, 1860.
31 & 32 Vict. c. 84.	An Act to amend in several particulars the law of entail in Scotland.	Entail Amendment Act, 1868.
38 & 39 Vict. c. 61.	An Act to further amend the law of entail in Scotland.	Entail Amendment Act, 1875.
41 Vict. c. 28. (<i>sic</i>)	An Act to further amend the law of entail in Scotland.	Entail Amendment Act, 1878.
41 & 42 Vict. c. 51. s. 70.	An Act to alter and amend the law in regard to the maintenance and management of roads and bridges in Scotland.	Roads and Bridges (Scotland) Act, 1878.
43 Vict. c. 7.	An Act to amend the law in regard to charging road debts on entailed estates in Scotland.	Roads Amendment Act, 1880.

Two short Entail Statutes are not mentioned in the foregoing schedule.

The first of these is—1 & 2 Vict. cap. 70, entitled “An Act to

“extend the powers of an Act of the sixth and seventh year of the reign of His late Majesty in relation to granting tacks and making excambions by heirs of entail.” By this Act all the powers of granting tacks and making excambions conferred by the Rosebery Act are extended to heirs of entail in possession under deeds of entail not recorded in terms of the Act 1685. It is also provided that contracts of excambion under the Act shall be recorded in the Sheriff-Court books of each of the shires in which the lands excambied are situated, and shall be effectual without the necessity of being recorded in the Register of Tailzies; and further, that where an excambion shall be made of lands held under an unrecorded deed of entail, and the deed of entail shall, after the excambion, be recorded in the Entail Register, the contract of excambion must be recorded in the said Register of Entails along with the deed of entail.

The other statute is—4 & 5 Vict. cap. 24, entitled “An Act to amend an Act to grant certain powers to heirs of entail in Scotland, and to authorise the sale of entailed lands for the payment of certain debts affecting the same.” It provides that it shall not be necessary to insert in any contract of excambion executed under the Rosebery Act, the destination or the prohibitory, irritant, and resolute clauses of the original entail, provided that reference be made in the contract to the entail, and the date thereof, and the date of recording in the Register of Entails. It is farther enacted that such contracts may be recorded in the Register of Entails without the necessity of a warrant from the Court for that purpose.

The Entail Amendment Act, 1878, is stated in the Schedule to be 41 Vict. c. 28. It should have been entered as 41 & 42 Vict. c. 28.

I N D E X
OF THE
E N T A I L S T A T U T E S .

(PREFIXED to the Index will be found a Table of the Entail Statutes, with the year in which each was passed. The entries in the Index printed in italics relate to provisions which have been repealed or superseded by later enactments.)

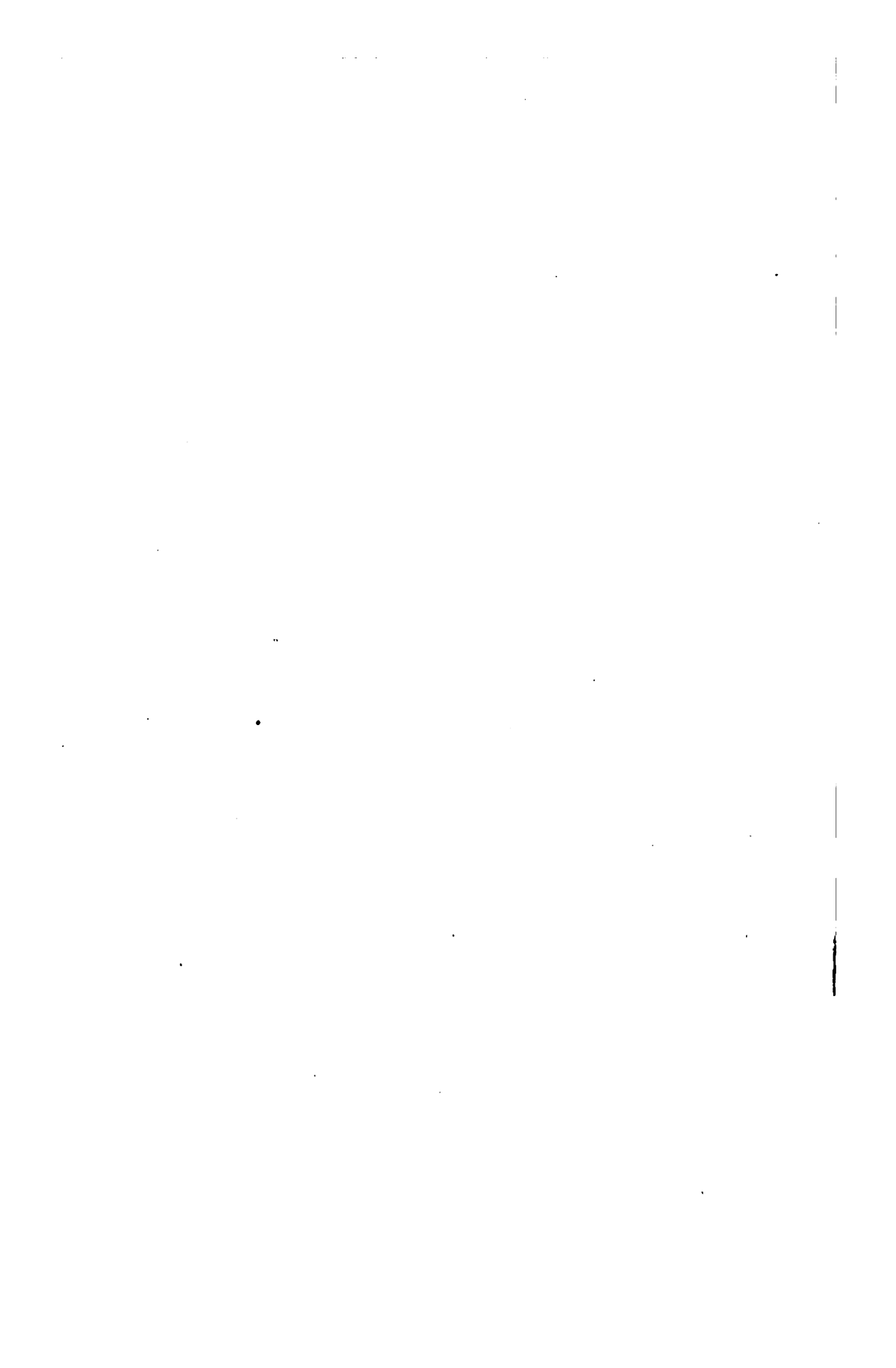


TABLE OF THE ENTAIL STATUTES.

(The short titles of the Acts are taken from the Schedule of the 1882 Act.)

- 1685.** Chapter 22. This is the statute on which the law of strict entail is founded.
The short title of this statute is "Entail Act, 1685."
- 1770.** 10 George III. chapter 51. "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."
This statute is commonly called the "Montgomery Act."
Its short title is "Entail Improvement Act, 1770."
- 1824.** 5 George IV. chapter 87. "An act to authorise the proprietors of entailed estates in Scotland to grant provisions to the wives or husbands and children of such proprietors."
This act is commonly called the "Aberdeen Act." Its short title is "Entail Provisions Act, 1824."
- 1836.** 6 & 7 William IV. chapter 42. "An act to grant certain powers to heirs of entail in Scotland, and to authorise the sale of entailed lands for the payment of certain debts affecting the same."
This act is commonly called the "Rosebery Act." Its short title is "Entail Powers Act, 1836."
- 1838.** 1 & 2 Victoria, chapter 70. "An act to extend the powers of an Act of the sixth and seventh years of the reign of his late Majesty in relation to granting tacks and making excambions by heirs of entail."
- 1840.** 3 & 4 Victoria, chapter 48. "An act to enable proprietors of entailed estates in Scotland to feu or lease on long leases portions of the same for the building of churches and schools, and for dwelling-houses and gardens for the ministers and masters thereof."
The short title of this statute is "Entail Sites Act, 1840."

- 1841.** 4 & 5 Victoria, chapter 24. "An act to amend an act to grant certain powers to heirs of entail in Scotland, and to authorise the sale of entailed lands for the payment of certain debts affecting the same."
This is a short statute removing a doubt in the construction of one of the provisions of the Rosebery Act.
- 1848.** 11 & 12 Victoria, chapter 36. "An act for the amendment of the law of entail in Scotland."
This statute is commonly called the "Rutherford Act."
Its short title is "Entail Amendment Act, 1848."
- 1853.** 16 & 17 Victoria, chapter 94. "An act to extend the benefits of the Act of the eleventh and twelfth years of her present Majesty for the amendment of the law of entail in Scotland."
The short title of this statute is "Entail Amendment Act, 1853."
- 1860.** 23 & 24 Victoria, chapter 95. "An act to facilitate the building of cottages for labourers, farm-servants, and artisans by the proprietors of entailed estates in Scotland."
The short title of this statute is "Entail Cottages Act, 1860."
- 1868.** 31 & 32 Victoria, chapter 84. "An act to amend in several particulars the law of entail in Scotland."
The short title of this statute is "Entail Amendment Act, 1868."
- 1875.** 38 & 39 Victoria, chapter 61. "An act to further amend the law of entail in Scotland."
The short title of this statute is "Entail Amendment Act, 1875."
- 1878.** 41 & 42 Victoria, chapter 28. "An act to further amend the law of entail in Scotland."
The short title of this statute is "Entail Amendment Act, 1878."
- 1882.** 45 & 46 Victoria, chapter 63. "An act to amend the law of entail in Scotland."
The short title of this statute is "Entail (Scotland) Act, 1882."

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Aberdeen Act (5 George IV. chapter 87).

Declared not applicable to Tailzies dated after 1st August 1848—1848 Act, sect. 12.

But may be made applicable if so declared in Entail, —1853 Act, sect. 12.

Declared applicable to all entails and trusts for entailing, unless expressly excluded in the entail or trust-deed—1868 Act, sect. 8.

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1824 Act, sects. 1 to 13.

Provisions may be charged on fee and rents by bond and disposition in security—1848 Act, sect. 21. (*See Provisions.*)

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Advertisement of Entail Petitions.

1836 Act, sect. 21.

1848 Act, sect. 34.

1868 Act, sect. 7 ; and schedule.

1875 Act, sect. 12, subsect. 4.

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Affidavit may bear to be to the best of the knowledge and belief of the maker—1853 Act, sect. 17.

May be lodged in course of proceedings at direction of Court—1853 Act, sect. 17.

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For improvement expenditure—1848 Act, sects. 13, 14, 15, 16, 17.

Operates as a discharge of claims against estate, rents, and heirs—1848 Act, sect. 19.

May be granted for 1875 Act improvements—1875 Act, sect. 8.

This provision made applicable to new entails—1878 Act, sect. 3.

Heir in possession under old entail may, in certain circumstances, by agreement with creditor, substitute bond and disposition in security for the balance of capital remaining due under bond of annual-rent, or under a rent-charge under the Lands Improvement Act—1875 Act, sect. 9.

This enactment extended to new entails—1878 Act, sect. 3.

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Bond and disposition in security for younger children's provisions may be granted to person who has advanced money to children—1853 Act, sect. 7.

Bond and disposition in security under 1848 or 1853 Act, may contain power of sale—1853 Act, sect. 23.

Debts chargeable on fee may, with authority of the Court, be charged by bond and disposition in security—1868 Act, sect. 11.

Bond and disposition in security may be granted for two-thirds of improvements under 1875 Act, executed after petition—1875 Act, sect. 8.

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Bond and Disposition in Security—(*Continued*).

Bond and disposition in security may, in certain circumstances, be substituted for bond of annual-rent or rent-charge—1875 Act, sect. 9. (*See* Bond of Annual-rent.)

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Provisions for valuing and securing expectancy or interest of heirs not consenting—1875 Act, sect. 5, subsect. 2.

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Heir in possession under new entail may disentail, sell, &c., with the same consents as heir in possession under old entail—1882 Act, sects. 3 and 4.

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Procedure in entail petitions—1875 Act, sect. 12.

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Further provision extending the above enactment—1853 Act, sect. 20.

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Creditor of heir of entail empowered to disentail by himself alone, entitled to affect estate for payment of debt, —1848 Act, sect. 11.

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Date at which Act of Parliament, or deed placing money &c., under trust, or directing land to be entailed, came into operation, to be date of deed of entail—1848 Act, sect. 28.

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Estate may be charged with debts and incumbrances with the like consents as it may be disentailed—1848 Act, sect. 4.

Debts to be disclosed in all entail applications by affidavit—1848 Act, sect. 6.

Schedule may be substituted for affidavit—1875 Act, sect. 12, subsect. 5.

Where estate may be charged by bond and disposition in security with debt, and in all cases where the fee is validly charged, it may be sold at sight of the Court—1848 Act, sect. 25.

Bond may be executed, and consent of Court afterwards obtained thereto—1853 Act, sect. 5.

Heir in possession may sell to pay debts which might lawfully be charged on the fee, in the same way as to pay debt actually charged on the fee—1853 Act, sect. 9.

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- Debts which may be charged on the fee may, with the authority of the Court, be charged by bonds and disposition in security—1868 Act, sect. 11.
- Provisions as to dispensing with consents of any but nearest heir, in applications to charge with debt—1875 Act, sects. 5 and 6. (*See Consents.*)
- Procedure in applications to Court to charge with debts—1875 Act, sect. 12.
- Heir in possession under new entail may charge with debts and incumbrances in the same way as heir in possession under old entail—1882 Act, sect. 4.
- Debts charged on an estate may, on disentail, be transferred to another estate entailed on same heirs—1882 Act, sect. 10.

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- Entails defective in any one of cardinal prohibitions of Act 1685 to be invalid as regards all these prohibitions—1848 Act, sect. 43.

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- Procedure when heir in possession has disappeared—1882 Act, sect. 14.
- Procedure when heir whose consent is required has disappeared—1882 Act, sects. 15 and 16.

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- Circumstances in which heir in possession under entail dated after 1st August 1848, may disentail—1848 Act, sect. 1.
- Circumstances in which heir in possession under entail dated before 1st August 1848, may disentail—1848 Act, sects. 2 and 3.
- Form and effect of instrument of disentail—1848 Act, sects. 32 and 38 and schedule.
- Instrument may be registered in Register of Sasines—1848 Act, sect. 46.
- Instrument of disentail may be executed, and sanction of Court afterwards obtained thereto—1853 Act, sect. 4.
- Nearest heir may consent when twenty-one years of age—1875 Act, sect. 4.
- Provisions as to dispensing with consents of any but nearest heir—1875 Act, sect. 5. (*See Consents.*)

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Heir in possession under new entail may disentail with the same consents as heirs in possession under old entail—1882 Act, sect. 3.

Provision as to money spent in improvements, but not charged—1882 Act, sect. 7. (*See* Improvements.)

Debt or provisions charged on estate may, on disentail, be transferred to another estate entailed on same heirs—1882 Act, sect. 10.

Provisions as to dispensing with consent of nearest heir—1882 Act, sect. 13.

Powers of creditors and of trustee in sequestration of heir in possession entitled to disentail—1882 Act, sect. 18.

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Powers of inhibition of creditor in entailer's debt for a year after recording instrument of disentail—1848 Act, sect. 7.

Money arising from sale of portions of estate and trust money, may be applied at sight of the Court, *inter alia*, in payment of entailer's debts—1848 Act, sect. 26.

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Entailer's debt which may be charged on the fee may, with authority of the Court, be charged by bond and disposition in security—1868 Act, sect. 11.

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Amount and situation of land so to be excambed—1770 Act, sect. 33.

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Procedure for carrying through excambion in Sheriff-Court—1770 Act, sect. 33.

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Petition to Court of Session—1836 Act, sect. 3.

Procedure therein—1836 Act, sect. 3.

Recording of contract of excambion in *Sheriff-Court Books and Entail Register*—1836 Act, sect. 3.

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- Excambion not to include the mansion-house, &c.—1836 Act, sect. 4.
- Excambion not to exceed one-fourth in value of the estate—1836 Act, sect. 4.
- Tenure of lands excambed—1836 Act, sect. 5.
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- Excambion void if excess exceeds £200—1836 Act, sect. 5.
- Estates under more than one entail, if descendible to the same heirs, to be, as regards excambion, held as one entailed estate—1836 Act, sect. 6.
- The Montgomery Act (1770) to be still in force except so far as repealed—1836 Act, sect. 6.
- Contracts of excambion do not need to be recorded in the Entail Register—1838 Act, sect. 2.
- But if excambion made before deed of entail recorded, contract of excambion to be recorded in Entail Register along with deed of entail—1838 Act, sect. 3.
- Contracts of excambion under 1836 Act do not need to contain destination or fetters—1841 Act, sect. 1.
- Court of Session warrant not necessary to authorise keeper of Entail Register to record contract of excambion, 1841 Act—sect. 1.
- Estate held under entail dated before 1st August 1848, may be excambed in whole or in part with certain consents—1848 Act, sect. 5.
- The last provision made applicable to entails dated after 1st August 1848, and the trusts for entailing land of whatever date—1868 Act, sect. 18.
- Excambions under 1836 Act may be carried through in the forms of the Rutherford Act—1848 Act, sect. 37.
- Not necessary to record contract of excambion executed at sight of the Court in any register but Entail Register—1848 Act, sect. 18.
- Contract of excambion may be executed, and the consent of the Court afterwards obtained thereto—1853 Act, sect. 5.
- In contracts of excambion, destination and fetters may be referred to as in the entail—1853 Act, sect. 11.

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Provisions as to dispensing with consent to excambion petition of any but nearest heir—1875 Act, sects. 5 and 6. (*See Consents.*)

Consent of nearest heir may be dispensed with—1882 Act, sect. 13.

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Provisions for ascertaining and securing expectancy or interest of heir not consenting to disentail, selling, alienating, disposing, charging with debts, leasing, feuing, or excambing—1875 Act, sect. 5, subsect. 2, and sect. 6.

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Tutors and curators of minor heir, and guardians of heir *incapax*, to have same powers—1840 Act, sect. 1.

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Heir not to incur irritancy by granting charter after authority of Sheriff is interponed—1840 Act, sect. 4.

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- Land ſo feued or leaſed, and buildings thereon not to be uſed for other purpoſe, or abandoned—1840 Act, ſect. 7.
- Procedure before Sheriff, by which heir in poſſeſſion can obtain declarator of forfeiture of feu—1840 Act, ſect. 7.
- Eſtate may be feued in whole or in part, with the like conſents that it may be diſentailed—1848 Act, ſect. 4.
- Feus to an extent not exceeding in all one-eighth in value of eſtate may be granted upon certain notice, and with approbation of the Court, by the heir in poſſeſſion—1848 Act, ſect. 24.
- This enactment not to reſtrict more ample powers in entail—1848 Act, ſect. 24.
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- Procedure before Sheriff, and before Court, if appeal from him—1868 Act, ſect. 4.
- Feu-right to be void unleſs buildings of annual value o double the feu-duty be built and maintained on feu—1868 Act, ſect. 5.
- Proviſions as to diſpenſing with conſents of any but neareſt heir in applications under ſection 4 of the 1848 Act—1875 Act, ſects. 5 and 6. (*See Conſents.*)
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Feus may be granted for scientific purpose of public utility, if Court or Sheriff approve, at a nominal feuduty—1882 Act, sect. 6, subsect. 2.

Provisions as to dispensing with consent to any entail application of nearest heir—1882 Act, sect. 13.

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1882 Act to apply to them—Sect. 30.

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Heir-apparent with consent of heir in possession may grant Aberdeen Act provisions to his wife and younger children—1868 Act, sect. 6.

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Court to be satisfied that estate permanently benefited, and erections substantial—1860 Act, sect. 3.

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Or if improvements executed before petition, a bond and disposition in security for two-thirds thereof may be granted—1875 Act, sect. 8.

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