



Entail Provisions Act 1824

1824 CHAPTER 87

An Act to authorize the Proprietors of Entailed Estates in *Scotland* to grant Provisions to the Wives or Husbands and Children of such Proprietors. [21st June 1824]

WHEREAS by an Act of the Parliament of *Scotland*, made in the Year One thousand six hundred and eighty-five, intituled *Act concerning Tailzies*, it is statuted and declared, that it shall be lawful to His Majesty's Subjects to tailzie their Lands and Estates, with such Provisions and Conditions as they shall think fit, and to affect the said Tailzies with irritant and resoluteive Clauses, which Tailzies, when completed and recorded in Manner by the said Act directed, are declared to be real and effectual against Creditors, Comprisers, Adjudgers, and other singular Successors whomsoever : And whereas by an Act of Parliament passed in the Tenth Year of the Reign of His late Majesty King George the Third, intituled *An Act to encourage the Improvement of Lands, Tenements, and Hereditaments, in that Part of Great Britain called Scotland, held under Settlement of strict Entail*, the Proprietors of Entailed Estates in *Scotland* were empowered to burden their Estates and the subsequent Heirs of Entail, for the Improvement of their Entailed Estates, in Manner specified in that Act : And whereas sundry Entails of Lands and Estates in *Scotland* contain no Powers in regard to the granting of Provisions to the Wives or Husbands and Children of the Proprietors thereof; and in many, other Entails, by reason of the Change in the Value of Money the improved Value of Lands and Estates in *Scotland*, and other Causes, the Powers of granting Provisions to the Wives or" Husbands and Children of the Proprietors of such Entailed Estates .have become entirely inadequate for those Purposes ; and it has become expedient that the Powers of granting such Provisions should be conferred or enlarged, as the Case may be, under certain Regulations and Conditions, in all Entails already made or hereafter to be made :

May it therefore please Your Majesty that it may be enacted ; and be it enacted by the King's, most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

Provision to be granted to a Wife.

That it shall and may be lawful to every Heir of Entail in Possession of an Entailed Estate under any Entail already made or hereafter to be made, in that Part of *Great Britain*

called *Scotland*, under the Limitations and Conditions after mentioned, to provide and infest his Wife in a Liferent Provision out of his Entailed Lands and Estates by way of Annuity; provided always, that such Annuity shall not exceed One-third Part of the free yearly Rent of the said Lands and Estates, where the same shall be let, or of the free yearly Value thereof where the same shall not be let, after deducting the public Burdens, Liferent Provisions, the yearly Interest of Debts and Provisions, including the Interest of Provisions to Children herein-after specified, and the yearly Amount of other Burdens of what Nature soever affecting and burdening the said Lands and Estates or the yearly Rents or Proceeds thereof, and, diminishing the clear yearly Rent or Value thereof to such Heir of Entail in Possession, all as the same may happen to be at the Death of the Grantor.

II Provision to be granted to a Husband.

And be it further enacted, That it shall and may be lawful to every Heir Female in Possession of such Entailed Estate as aforesaid, to provide and infest her Husband in a Liferent Provision out of her Entailed Lands and Estates byway of Annuity; provided always, that such Annuity shall not in any Case exceed One Half of the free yearly Rent or free yearly Value as aforesaid of the Whole of the said Lands and Estates, after all Deductions to be made from the same in manner before mentioned; but in case the said Lands and Estates shall already be burthened with a prior existing Annuity, granted to a Wife or Husband under the Authority of this Act, the Annuity to be granted to a Husband in manner before mentioned shall not exceed One-third Part of the said yearly Rent or yearly Value to be taken as aforesaid.

III Only Two Liferent Provisions to be subsisting at one Time.

Provided always, and be it enacted, That where Two Liferents to Wives or Husbands, granted under the Powers herein-before contained, shall be subsisting at any one Time upon an Entailed Estate, it shall not be competent to grant a Third Liferent to take effect till one of the former subsisting Liferents shall cease or expire; but the Power of granting a Liferent may be exercised so as to increase a former Liferent, or grant a new Liferent to the Extent hereinbefore authorized to be granted upon the ceasing or Expiration of any former or subsisting Liferent, although, the same may not take place in the Lifetime of the Person granting such prospective or increased Liferent.

IV Provision in certain Cases to Children.

And be: it further enacted, That it shall and may be lawful to the Heir of Entail in Possession of any such Entailed Estate as aforesaid, to grant Bonds of Provision or Obligations, binding the succeeding Heirs of Entail in Payment, out of the Rents or Proceeds of the same, to the lawful Child or lawful Children of the Person granting such Bonds or Obligations, who shall not succeed to such Entailed Estate, of such Sum or Sums of Money, bearing Interest from the Grantor's Death, as to him or her shall seem fit: Provided always, that the Amount of such Provision shall in no case exceed the Proportions following of the free yearly Rents or free yearly Value of the Whole of the said Entailed Lands and Estates, after deducting the public Burdens, Liferent Provisions, including those to Wives or Husbands authorized to be granted by this Act, the yearly Interest of Debts and Provisions, and the yearly Amount of other Burdens of what Nature soever, affecting or burdening the said Lands and Estates, or the yearly Rents or Proceeds thereof, and diminishing the clear yearly Rent or yearly Value thereof as aforesaid to the Heir of Entail in Possession ; (that is to say), for One

Child, One Year's free Rent or Value; for Two Children, Two Years free Rent or Value ; and for Three or more Children, Three Years free Rent or Value in the whole : Provided always, that such Provision shall, except in the Case of the Settlement thereof by a Marriage Contract as herein-after mentioned, be valid and effectual only to such Child or Children as shall be alive at the Death of the Grantor, or to the Child or Children of which the Wife of the Grantor shall be then pregnant; and upon any such Child succeeding to the Entailed Estate, the Provision granted to him or her, in so far as not previously paid, shall be extinguished for ever, and shall never be set up as a Debt against any succeeding Heir.

V Provision settled in Consideration of Marriage, Death of Children before Grantor not to affect the Provision.

Provided always, and be it further enacted, That if any Child to whom any such Provision as aforesaid may be granted shall marry, and that such Provision, or any Part thereof, shall, with the Consent of the Grantor of the same, be settled in the Contract made in Consideration of the Marriage of such Child, and such Child so marrying shall die before the Grantor of such Provision, then and in all such Cases the Provision, or any Part thereof, so settled in Consideration of such Marriage, shall remain and be effectual, as if such Child had survived the Grantor.

VI Where Provisions to Children granted to the full Extent, no further Provisions to be granted till the former are diminished, &c.

Provided always, and be it enacted and declared, That where the Powers herein-before contained of granting Provisions to a Child or Children shall have been exercised by One or more Heir or Heirs in Possession of any such Entailed Lands and Estates as aforesaid, to the full Extent of Three Years free Rent or Value of the Entailed Estate as aforesaid, it shall not be in the Power of any Heir, in Possession of the same Lands and Estates, to grant further Provisions to his or her Child or Children, till some Part of the Provisions granted to the Extent of Three Years free Rent or Value as aforesaid shall have been paid or extinguished; but upon the Payment or Extinction thereof, or of any Part thereof, it shall be in the Power of such Heir in Possession to grant Provisions to his or her Child or Children, to the Extent of the Provisions so paid or extinguished as aforesaid; the Heir in Possession of any such Entailed Lands and Estates as aforesaid being always hereby empowered to grant Provisions to his or her Child or Children, to such Extent of the Power of granting Provisions to a Child or Children herein-before contained, as may be open or unexercised for the Time, so that the Provisions to be granted do not in any Case exceed the Proportions aforesaid of One Year's free Rent or Value for One Child, of Two Years free Rent or Value for Two Children, and of Three Years free Rent or Value for Three or more Children : And provided always, that such Provision shall (except in the Case of the Settlement thereof by a Marriage Contract as herein-before mentioned,) be valid and effectual only to such Child or Children as shall be alive at the Death of the Grantor, or to the Child or Children of which the Wife of the Grantor shall be then pregnant; and that upon any such Child succeeding to the Entailed Estate, the Provision granted to him or her, in so far as not previously paid, shall be extinguished for ever, and shall never be set up as a Debt against any succeeding Heir.

VII Excess in Provisions granted to be regulated by the Court of Session.

Provided always, and be it enacted, That in every Case in which the Provision granted to a Wife or Husband, or to a Child or Children, under the Authority of this Act, shall exceed such Proportions of the Rent or Value of any Entailed Estate as herein-before mentioned, such Provision shall not be deemed to be null and void, but the same shall be voidable at the Instance of the Heir of Entail next in the Order of Succession, or of any other Heir of Entail, to such Extent as such Provision shall exceed those herein authorized in each respective Case to be granted, but no further ; and the Court of Session in either Division thereof is hereby authorized and required to make the necessary Order to that Effect, on advising a Petition to be presented to that Court by the Heir of Entail next in the Order of such Session, or any other Heir of Entail.

VIII No Security or Provision to affect the Fee.

Provided always, and be it further enacted and declared. That no Securities or Provisions to be granted under the Authority of this Act to a Wife or Husband, or to a Child or Children of the Proprietors of any such Entailed Lands and Estates as aforesaid, shall affect, or be made by any Process of Law whatsoever to affect, the Fee of the same Lands and Estates, but such Securities and Provisions shall only affect the yearly Rents or Proceeds of the said Lands and Estates.

IX After Death of the Grantor of Provisions to Children, Heir succeeding to Estate to make Payment thereof, with Interest.

And be it enacted, That after the Expiration of One Year from the Death of the Grantor of such Provisions to Children as aforesaid, it shall and may be lawful for the Person or Persons having Right to the same, to require the Heir succeeding to the Estate to make Payment of the said Provisions, with the legal Interest thereof, from the Term at which the Right of such succeeding Heir to the Rents of the Estate did commence, after receiving a proper Discharge thereof, or Assignment to the same: and if the Money shall not be paid within Three Months after Requisition of Payment shall be made as aforesaid, it shall then be lawful for the Person or Persons having Right to any such Provision, to institute an Action in the Court of Session against the Heir then in Possession, for compelling him or her to pay the Money and Interest thereof; and on obtaining a Decree, the Person or Persons in whose Favour Decree shall be made, shall be at liberty to use every Kind of Diligence or Execution authorized by the Law of *Scotland*, in recovering the Payment of Debts, except Adjudication, against the Entailed Estate.

X Heir sued for Provisions to Children to be discharged on conveying One Third of clear Rents.

And be it enacted, That in case any Heir in Possession of an Entailed Estate shall be sued for Payment of the Provisions granted under the Authority of this Act to the Child or Children of any former Heir or Heirs, he or she shall be discharged in all Cases from such Suit, upon assigning or effectually conveying to a Trustee to be named by the Court of Session, One-third Part of the clear Rents or Proceeds of the Entailed Estate, payable to such Heir in Possession during his or her Life, or until the Provisions aforesaid shall be paid off; and the Rents so assigned and conveyed shall be applied in Payment of the whole subsisting Provisions to a Child or Children, granted under the Authority of this Act,

XI Granting Provisions not to infer Contravention, &c.

And be it further enacted and declared, That for and notwithstanding of any Clause prohibitory, irritant, or resolute, Proviso, Matter, or Thing in any, Deed of Entail contained to the contrary, no Proprietor of any Entailed Estate in *Scotland* shall be held to have committed any Contravention, or to have incurred any Irritancy or Forfeiture, for or by reason of such Proprietor having granted any of the Provisions upon or out of an Entailed Estate herein-before authorized to be granted.

XII Act not to diminish more extensive Powers.

And be it further enacted, That nothing herein contained shall be held or construed to diminish or abridge the Powers of the Heir in Possession of any such Entailed Estate in *Scotland* as aforesaid, in regard to the granting of Provisions to his or her Wife or Husband, or to his or her Child or Children, if empowered by the Deed of Entail under which he or she shall hold such Entailed Estate, to grant Provisions to a larger Extent than those herein, before specified; but it shall not be lawful in any case to grant any such Provision as is herein-before authorized to be granted in addition to any Provision authorized to be granted to a Wife or Husband, or to a Child or Children, under any Deed of Entail, so as to exceed in the Whole the Proportions of the yearly Rent or yearly Value of any Entailed Estate herein-before mentioned and authorized to be granted for making such Provisions as aforesaid.

XIII The Heir in Possession not to be deprived of more than Two Third Parts of the clear annual Income.

And be it enacted and declared, That the Powers given and granted by this Act, and by the said recited Act of the Tenth Year of the Reign of His said late Majesty, shall in no case be exercised to such an Extent as to deprive the Heir in Possession of any Entailed Lands and Estates in *Scotland* of more than Two Third Parts of the free yearly Rent or free yearly Proceeds of the same; and the Court of Session, in either Division thereof, is hereby authorized and required in each respective Case to give all necessary Orders for relieving the Heir in Possession from the Payment of more than such Two-third Parts of the said free yearly Rent or yearly Proceeds as aforesaid, by authorizing such Heir to retain any Excess beyond the same, from the Security or Provision, or Securities or Provisions on such Entailed Lands and Estates which shall be least entitled by the Law of *Scotland* to legal Preference.