



Entail (Scotland) Act 1914

1914 CHAPTER 43

An Act to amend the Law of Entail in Scotland.

[10th August 1914]

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, as follows :

1 Short title

This Act may be cited as the Entail (Scotland) Act, 1914.

2 Entail Act, 1685, not to apply to future deeds

The Entail Act, 1685, shall not apply to any deed relating to land in Scotland dated after the passing of this Act, the effect of which would be to entail such land, and no such deed shall be recorded in the register of entails ; and any prohibition of alienation, contracting debt, or altering the order of succession, and any clause of consent to registration in the register of entails in any such deed shall be null and void :

Provided that—

- (a) where at the passing of this Act any Act of Parliament, deed, or writing is in operation whereby any money or other property, heritable or moveable, is held or invested for the purpose of purchasing land to be entailed, or whereby any land is directed to be entailed, but the direction has not been carried into effect, the date at which such Act of Parliament, deed, or writing first came into operation shall, for the purposes of this section, be held to be the date of any entail to be made in execution of the trust or direction whatever be the actual date of such entail; and
- (b) for the purposes of this section any testamentary or mortis causa deed or writing made and executed before the passing of this Act by a person alive at the passing of this Act, shall be deemed to be dated after the passing of this Act, except in the case where such person dies within twelve months after such passing, or in the case where such person ceases or has ceased to be of sound disposing mind before the expiry of the said twelve months.

3 Further facilities for disentail, &c

Where in any application to the Court of Session relating to an entailed estate in Scotland the value in money of the expectancy or interest therein of any heir entitled to succeed thereto has been ascertained, it shall not be necessary for the sum so ascertained to be consigned or paid into bank in name of such heir ; provided that security for the amount so ascertained in favour of such heir be given over the estate which is the subject of the application postponed only to such securities, if any, as validly affect and such debts or provisions, if any, as might be made validly to affect such estate or the rents thereof, or any part of such estate or rents, at the date of such application, not being securities granted by the heir of entail in possession affecting only his life-interest; and if there be more than one such heir entitled to succeed, their securities shall rank *pari passu*.

4 Power to grant feus

Without prejudice to any powers, whether statutory or otherwise, already enjoyed by an heir of entail in possession of an entailed estate in Scotland to grant feus of any part of such estate, any such heir in possession may, notwithstanding any prohibition or limitation in the deed of entail, or in any Act of Parliament, grant feus of any part or parts of such estate, and that for such feu-duty as such heir shall think fit; but excepting from the provisions of this section the mansion house, offices, garden, orchards, and policies or enclosures adjacent to or in connexion with the mansion house, in so far as such offices, garden, orchards, policies, or enclosures are necessary to the amenity of the mansion house :

Provided that it shall not be lawful for such heir of entail in possession in virtue of the provisions of this section—

- (a) to grant any feu unless the nearest heir of entail, being of lawful age and subject to no legal incapacity, shall consent thereto and shall sign the feu-charter, feu-contract, or other deed constituting the feu in token of such consent, or unless in the event of such nearest heir refusing or withholding such consent or signature, or in the event of the nearest heir not being of full age or being subject to any legal incapacity, the sheriff of the county within which the entailed estate or the part thereof proposed to be feued is situated, upon the application of such heir of entail in possession duly intimated to such nearest heir (who shall be entitled to appear and object), shall have found that the granting of such feu is in accordance with the provisions of this section, and that the feu-duty is in all the circumstances fair and reasonable ; or
- (b) to feu more than ten acres of land to or for behoof of the same person; or
- (c) to take any grassum or valuable consideration other than the feu-duty for granting any such feu.

5 Obligations in leases

- (1) Subject to the limitation provided in section twelve of the Conveyancing (Scotland) Act, 1874, as to the liability of an heir for the debts of his ancestor, and notwithstanding any fetters of entail, any condition or obligation undertaken by an heir of entail in possession of an entailed estate in Scotland in any lease of a farm granted, by him as proprietor of such estate, or in any contract of agreement ancillary to any such lease, binding such heir of entail and his successors or representatives to take over from the tenant at the termination of the lease the sheep stock of the farm let by such lease, shall, in case of the lessor's death before fulfilment of such condition or obligation and to the

extent of the normal and regular sheep stock of the farm and the value thereof to an incoming tenant, as such value shall be ascertained as herein-after provided, devolve and be binding upon the heir of entail in possession of the estate at the time when such condition or obligation becomes prestable, and such last-mentioned heir of entail and his heirs and executors and representatives whosoever shall, to the extent and value foresaid, and unless the lessor have otherwise provided, be liable to relieve the other heirs and the executors and personal representatives of the lessor of such condition or obligation, and to repay to the extent foresaid to such other heirs, executors, or personal representatives of the lessor any sums of money which they or any of them may have been liable to pay and may have paid under and in virtue of such condition or obligation.

- (2) For the purposes of this section the value to an incoming tenant of the normal and regular sheep stock on any farm shall, notwithstanding the provisions of the Agricultural Holdings (Scotland) Amendment Act, 1910, or any agreement providing for a different method of arbitration contained in the lease or other deed by which such condition or obligation is constituted, be determined by a single arbiter appointed by the parties mutually, whom failing by the Board of Agriculture for Scotland, in accordance with the provisions of section eleven of the Agricultural Holdings (Scotland) Act, 1908, and the procedure in such arbitration shall be regulated by the rules set out in the Second Schedule to the said last-mentioned Act, except that rules ten and sixteen of the said schedule shall not apply to such arbitration.
- (3) Nothing in this section contained shall prejudice or affect the right of the tenant to enforce any such condition or obligation as aforesaid against the heirs, executors, and representatives whomsoever of the lessor in the same way as if this Act had not been passed.
- (4) This section shall not apply to any condition or obligation undertaken in any lease which terminated before the passing of this Act, or in any contract or agreement ancillary to any such lease.

6 Effect of death of heir of entail in possession on subsisting lease of mansion house

Notwithstanding any prohibition or any rule of law to the contrary, where at the death of the heir of entail in possession of any entailed estate in Scotland the mansion house, offices, gardens, and policies of such estate are in whole or in part in the occupation of a tenant under a lease granted or adopted by such deceased heir of entail in possession, the lease shall not be determined by such death until the next term of Whitsunday or Martinmas which shall occur not less than three months after the date of such death; provided that the rent effeiring to the period between the date of such death and the termination of the lease shall be payable to the next heir or heirs of entail who shall succeed to such estate.

7 Contract for the sale of growing timber

Where the heir of entail in possession of any entailed estate in Scotland has sold or entered into a contract for the sale of any timber growing thereon which he is lawfully entitled to sell, but the timber so sold, Or any part thereof, has not been severed from the ground at the date of the seller's death, such sale or contract to sell shall nevertheless be valid and enforceable as against the heir or heirs of entail who may succeed to the seller in the possession of the said estate, to the same extent as it would

have been valid and enforceable against the seller had he survived, the completion of the severance :

Provided that—

- (a) the price paid or contracted to be paid for such timber, where no part thereof has been severed from the ground at the date of the seller's death, or where some part thereof has been so severed, then so much of such price as effeirs to the remainder shall be a debt due and payable by the purchaser to the heir or heirs in possession of such estate at the date or dates of severance; and
- (b) the purchaser of such timber shall, if so required by the heir or heirs succeeding to the seller thereof, either consign in bank the amount of such price or part thereof as the case may be, or at the purchaser's option find caution for the payment of the same before beginning or continuing the severance of such timber.

8 Application of sections 47, 48, and 49 of Entail Amendment Act, 1848

In any case where—

- (a) the provisions of section forty-seven of the Entail Amendment Act, 1848, would apply to any trust disposition, or settlement, or other deed of trust whatsoever, and to the right of any party thereunder ; or
- (b) the provisions of section forty-eight of the said Act would apply to any deed and to the right of any party thereunder; or
- (c) the provisions of section forty-nine of the said Act would apply to any tack, assignation of tack, or other deed or writing, and to the right of any party thereunder;

if such trust disposition, or settlement, or other deed of trust, or deed, or tack, assignation of tack, or other deed or writing, as the case may be (herein-after in this section referred to as "such writing"), had been dated on or after the first day of August one thousand eight hundred and forty-eight, the provisions of the said sections respectively shall, from and after the passing of this Act, apply to such writing and to the right of any party thereunder, notwithstanding that the same be dated prior to the said first day of August; provided that in the application of the said provisions respectively to such writing, and to the right of any party thereunder, the date of such writing shall be deemed to be the passing of this Act.

9 Application to Scotland of Accumulations Act, 1800

The second section of the Accumulations Act, 1800, shall not apply to Scotland ; and the restrictions in the said Act contained shall take effect and be in force with respect to any provision or direction in operation at the passing of this Act to which, but for the enactment of this section, the said second section would continue to apply, as if the date of the execution of the deed, will, codicil, or other writing wherein such provision or direction is contained, had been the passing of this Act.

10 Interpretation

In this Act, unless the contrary intention appears, the word "land" shall include all heritages, and the words "heir of entail" shall include the institute.