



Entail Amendment Act 1848

1848 CHAPTER 36

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

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

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Way and Manner as may be consistent with the Provisions of this Act, and as may appear to the Court to be suitable and proper; and if such Surplus shall be reinvested in other Lands or Heritages as aforesaid the Tailzie of such other Lands or Heritages shall, whatever be its actual Date, be taken to be of equal Date with the Tailzie of the Remainder of such -entailed Estate; and if such Surplus shall not exceed Two hundred Pounds the Court shall order the same to be paid over to the Heir of Entail in possession, for his own Use and Behoof.