



CHAPTER 2.

An Act for carrying into effect an Agreement dated the first day of August one thousand eight hundred and seventy-one, between William Thomas Burn Callander and Mary Harriet Burn Callander, spinster, of the first part; Henry Callander, an infant, of the second part; and Mary Frederica Beauclerk Coventry or Callander, widow, the Honourable Henry Amelius Coventry, and Henry Amelius Beauclerk Coventry, tutors and curators of the said Henry Callander, of the third part; for the compromise and settlement of claims by the said William Thomas Burn Callander and Mary Harriet Burn Callander against the entailed estates of Crichton and Prestonhall in the county of Edinburgh, Elphinstone in the county of Haddington, and Westertown in the county of Stirling, and the heirs of entail for the time being of the said estates, for security of the provisions mentioned in the said agreement; and to raise money on the security of the said estates for payment of the said provisions; and for other purposes relating thereto.

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[28th July 1873.]

WHEREAS William Burn Callander of Westertown, did by trust bond of provision, dated the twenty-first day of December one thousand eight hundred and forty-one, and recorded in the books of council and session the eighteenth day of April one thousand eight hundred and fifty-four, upon the narrative that he stood vested in the lands and estates of Crichton and Prestonhall in the county of Edinburgh, Elphinstone in the county of Haddington, and Westertown in the county of Stirling, under and by virtue of a deed of entail made and granted by the deceased Sir John Callander, of Westertown, Baronet, his grand-uncle, dated the twenty-ninth day of May one thousand seven hundred and ninety-nine, and of a deed of rectification thereof, dated the seventh day of

Bond dated
21st Dec.
1841.

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estates, the sum of nineteen thousand five hundred pounds sterling, being under three years free rents of the said estates; and in the case of three or more children not entitled to succeed to him in the said estates, the sum of twenty-six thousand pounds sterling, being under four years free rent of the said estates at that time, after deduction of all legal and public burdens in terms of the therein-before quoted clause of the said deed of entail, with a fifth part more of the said respective sums of penalty in case of failure, and the legal interest of the same from the day of his death till payment; but that in trust always for the purposes therein-after mentioned, videlicet, that the said trustees should apply the interest and such part of the principal as they should think proper in the support, aliment, education, and outfit of his said child or children, and pay over the balance thereof effecting to each child when he or she should attain the age of majority or should be married, it being his intention that if there should be more than one child entitled to the above provisions the same should be divided equally among them, however many there should be, and in the event of the death of any one or more of them without issue, and before testing upon the said provision, that the same should be equally divided among the rest, excluding the son succeeding to him in said estates, if the deceased should leave another brother or sister, or other brothers or sisters, or their offspring; and he thereby nominated and appointed the said Right Honourable James Andrew Earl of Dalhousie, John Burn Murdoch, Edward Burn, and William Bruce, and the survivors or survivor accepting, to be tutors and curators as well to the child or children entitled to the aforesaid provisions as to any son of his who might succeed to him in the said entailed estates; and for the further security and more sure payment of the foresaid sums, he thereby bound and obliged himself and the heirs of entail succeeding to him in the said lands and estates duly and validly to infeft and seise the said Right Honourable James Andrew Earl of Dalhousie, John Burn Murdoch, Edward Burn, and William Bruce, and the survivors and survivor of them who should accept, or those who should be assumed as trustees foresaid, not only in all and whole an annual rent of one thousand three hundred pounds sterling, or such other annual rent, less or more, as should by law for the time correspond to the foresaid principal sum of twenty-six thousand pounds sterling, being the largest sum in any event provided by that deed, restrictable as before and after mentioned, to be uplifted and taken at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first uplifting thereof at the first of these terms which should happen after his death, and so on to continue yearly and termly, thereafter to be uplifted by them during

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and all proper pertinents of the same, as well under as above ground, with the privilege and liberty of digging turf, commonly called divots, annually, for supporting and repairing the houses upon the said lands in that part of the muir of Crichton commonly called Stoneyhill; as also all and whole the teinds, great and small, parsonage and vicarage, of the lands, barony, and others foresaid, all lying within the barony and parish of Crichton and sheriffdom of Edinburgh; all which lands, teinds, right of patronage, and others foresaid, were united, annexed, and incorporated into the said barony of Crichton, conform to charter under the great seal in favour of the now deceased Mark Pringle, Esquire, dated the twenty-sixth day of July seventeen hundred and thirty-eight; as also all and whole the lands and estate of Longfauch and Crichtondean, and others after specified, which pertained to the deceased James Edmonston, of Crichtondean, writer in Edinburgh, videlicet, all and whole that part of the said lands and barony of Crichton, commonly called Templehouse, or Templelands, sometime possessed by Gersham Young, with the well called Blindwell, and such parts of the lands of Bankhead as are parts of the said barony lying upon the east side of the line of march mentioned in the rights and infeftments of the same; as also all and whole that piece of land of the mains of East Crichton, commonly called Ker's Green, lying upon the east side of that croft, called Houp, extending to three acres three roods and thirty-one falls, bounded in the manner mentioned in the rights and infeftments of the same, together with the mills, multures, sequels, and pertinents of the said lands of Templehouse, and the foresaid parts of the lands of Bankhead and mains of East Crichton, with the teinds, parsonage and vicarage, of the same, but with and under the burden of forty merks, Scots money, annually of stipend to the minister of the gospel at Crichton, in full satisfaction of all stipends and annual teind duties or future augmentations of stipend, and all other burdens or impositions whatsoever, all lying within the lordship, barony, and sheriffdom foresaid; as also all and whole the lands of Crichtondean and Longfauch, with houses, buildings, gardens, parts, pendicles, and pertinents of the same, with the privilege of digging turf in that part of the common of Crichton called Stoneyhill, for supporting the houses upon the said lands of Crichtondean and Longfauch, together with the teinds, parsonage and vicarage, of the said lands, and with the mills, multures, and sequels of the same; but excepting always from the foresaid lands and barony of Crichton the lands of Blackcastleford, with the mill thereof, lands of Ford Whitehouse, otherwise Ugston Lochquarrit and Hagbrae, which were formerly parts of the said barony of Crichton, but were disjoined from the same before the date of the foresaid

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charter in favour of the said deceased Mark Pringle; as also excepting twenty acres or thereby of the lands of Turniedykes, disposed by the deceased John Pringle, Esquire, of Crichton, to James Dewar of Vogrie, Esquire, but including two acres one rood and twenty-four falls or thereby of the lands of Halywellhaugh, part of the lands of Vogrie, the teinds and pertinents of the same lying within the parish of Borthwick and sheriffdom of Edinburgh, acquired by the said deceased John Pringle from the said James Dewar in part commutation and excambion for the said twenty acres of the lands of Turniedykes, conform to disposition dated the twenty-fourth day of May in the year one thousand seven hundred and sixty-four; and also all and whole the lands of Elphingston, with houses, buildings, yards, orchards, mills, mill lands, multures, coals, coalpits, tenants, tenandries, and services of free tenants, annexis, connexis, and whole parts, pendicles, and pertinents of the same whatsoever, lying within the lordship and barony of Tranent, late regality of Seton and constabulary of Haddington, and within the sheriffdom of Edinburgh; but excepting the lands now commonly called the Tower Farm of Elphinstone, bounded on the east by the road leading from Musselburgh by Harry's Burn, West Park, and the western boundary of the town of Elphinstone to Bellyford, on the south by the march between the estate of Elphinstone and the lands of Cousland, and on the west and north partly by the march with the lands of Carberry, and partly by the march with the lands which belong to the Countess of Hyndford, with the tower, fortalice, manor place, and whole parts and pertinents of the same, which lands were sold by the trustees acting under the settlements of the said Sir John Callander to the Honourable William Fullerton Elphinstone, by disposition dated the third, sixth, and tenth days of November eighteen hundred and thirteen; and in like manner all and whole the lands of Preston Hall, formerly called Little Preston, comprehending the house mains, town mains, mid mains, over mains, Briary baulk, and Wamford, with the manor place, houses, buildings, yards, orchards, corn mill, mill lands, and astricted multures of the said lands of Preston Hall, formerly called Little Preston, coals, collieries, doves, dovecotes, with all and sundry their pertinents whatsoever, with the office of bailliary within the whole bounds of the said lands of Preston Hall, with the whole liberties and privileges thereunto belonging in so far as the same are not abolished, together with the parsonage teinds of the said lands formerly called Little Preston, with the servitude of quarrying limestone within the lands of Cranston and Muttonhole, all lying within the parish of Cranston, late regality of Saint Andrews and county of Edinburgh; and in like manner all and whole those five oxgates of land of Westertown

of Bothkennar, with the pertinents lying within the lordship of Stirling, as also all and whole that oxgate of land called Wester Oxgate, the vicarage glebe of Bothkennar, with the pertinents of the same, formerly occupied by the late John Callander, portioner there, and his tenants, and lying within the shire of Stirling or furth of any part or portion thereof, readiest rents, profits, and duties of the same; declaring, however, that the said annual rent should be restricted to nine hundred and seventy-five pounds sterling in the event of his leaving only two children entitled to said provisions, and to six hundred and fifty pounds sterling in the event of his leaving only one such child, and declaring also that in case the provisions thereby granted should be found to exceed the proportions mentioned in the said deed of entail, and therein-before recited, of the rent or value of the said entailed estates, or to be granted in a form not allowed by the said deed of entail, the provisions thereby granted should not be deemed to be void and null, but the same should only be reducible to such extent as they should be found to exceed the provisions authorised to be granted by the said deed of entail, but no further, or the form should be varied in compliance with what should be held to be the meaning of the said deed of entail, but also in all and whole the said lands, teinds, and others aforesaid, with the pertinents themselves, and that in real security to the said trustees of the foresaid sum of twenty-six thousand pounds sterling annual rents thereof, liquidate expenses and termly failures, in so far as incurred, but restrictable however to the sum of nineteen thousand five hundred pounds sterling in the event of his leaving only two children entitled to said provisions, and to the sum of thirteen thousand pounds sterling in the event of his leaving only one such child, and redeemable always in manner thereunder written, and that by two several infeftments and distinct manners of holding, one thereof to be holden from him and his fore-saids of their immediate lawful superiors of the said lands in like manner as they held the same, and that either by resignation or confirmation, and the other of and under them in free blench for payment of a penny Scots upon the ground of the said lands at Whitsunday yearly, in name of blench duty, if asked only, but redeemable in manner after written; and for accomplishing the said infeftments by resignation he thereby constituted and appointed procurators, with full powers and commission for him duly and lawfully to resign and surrender like as he did thereby resign, surrender, upgive, overgive, and deliver not only all and whole the aforesaid annual rent of one thousand three hundred pounds sterling, restrictable as therein before and after mentioned, or such other annual rent as should by law for the time correspond to the fore-

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said sum of twenty-six thousand pounds sterling, restrictable as therein before and after mentioned, yearly to be uplifted at the terms, by the proportions, and under the penalties before specified during the not redemption, furth of all and sundry the lands, teinds, and other heritages before described, lying as aforesaid, and there held as repeated brevitatis causa, or furth of any part or portion thereof, or readiest rents and duties of the same, but also all and whole the said lands and other heritages before mentioned themselves, in security of the said principal sum, restrictable as aforesaid, annual rent and penalties stipulated for both in the hands of his immediate lawful superiors of the same, in favour and for new infestment thereof to be granted to the said Right Honourable James Andrew Earl of Dalhousie, John Burn Murdoch, Edward Burn, and William Bruce, as trustees foresaid, and their foresaids in legal and proper form, but redeemable in manner after written, and to do and cause to be done everything necessary in the premises which to the office of procuratory in such cases belongs, ratifying thereby whatever his said procurators should lawfully do or cause to be done in the premises; which annual rent, restrictable as aforesaid out of the lands and other heritages above mentioned, and said lands and other heritages themselves, and infestments to follow thereon, he bound and obliged himself and his heirs, executors, and successors, to warrant at all hands and against all mortals; and further, he thereby assigned and disposed to the said trustees and their foresaids not only the whole writs, titles, and securities of the said lands and other heritages conveyed in security as aforesaid, but also as much of the rents thereof as would pay the said principal sum restrictable as aforesaid, annual rents thereof, and penalties to both annexed; and he thereby declared that the provisions granted by the said bond should be in full of all claim for legitim portion natural or bairns part of gear, reserving always full power to himself at any time of his life, etiam in articulo mortis, to revoke, alter, or innovate the said bond, and that by a written declaration under his hand, which is thereby declared sufficient for that effect, and declaring that the said bond, though found in his custody or in the custody of any person to whom he might have thought fit to entrust the same at the time of his death, should have the full strength and effect of a delivered evident, with the not delivery whereof he thereby dispensed for ever, and he consented to the registration thereof in the books of council and session or others competent for preservation, and that letters of horning on six days charge, and all other execution needful, might pass on a decree to be interponed thereto in usual form, and constituted George Monro, Esquire, advocate, his procurator for that purpose; and further he thereby desired and

required baillies thereby specially constituted to the effect after written, that upon sight thereof they should pass to the ground of the several lands above mentioned, respectively and successively, after others, and there give and deliver to the said Right Honourable James Andrew Earl of Dalhousie, John Burn Murdoch, Edward Burn; and William Bruce, as trustees foresaid, or their foresaids, heritable state and sasine, actual, real, and corporal possession not only of all and whole the said annual rent of one thousand three hundred pounds sterling, restrictable as before and after mentioned, or such other annual rent as should by law for the time correspond to the said sum of twenty-six thousand pounds sterling, restrictable as before and after mentioned, yearly to be uplifted at the terms and with the penalties before specified thereto annexed in case of failure, and beginning the first term's payment as aforesaid, furth of all and sundry the lands and other heritages before disposed, lying and described as aforesaid, and there held as repeated, or furth of any part or portion thereof, readiest rents and duties of the same, but also of the said lands, teinds, and other heritages before specified themselves, in security of the payment of the said principal sum of twenty-six thousand pounds sterling, restrictable as before and after mentioned, annual rents and penalties to both annexed; but declaring always, as it was thereby specially provided and declared, that the said security and the infeftment to follow thereon, and all transmissions of the same, should always be postponed and rank posterior to an annuity of two thousand three hundred pounds sterling settled by him on his wife, in the event of her surviving him, under the powers conferred on him by the Act of Parliament passed in the fifth year of the reign of King George the Fourth, chapter eighty-seven, conform to post-nuptial contract of marriage between her and him of date the twenty-first day of December one thousand eight hundred and thirty-eight, or to any other provision which he might thereafter make for his then present or any future wife, and that without regard to the priority of the date of infeftment, which declaration is thereby directed to be inserted in the instrument of sasine to follow thereon, and in all future transmissions of the said bond, and in the sasines to follow on them, under the pain of nullity; and declaring always, as it is thereby expressly provided and declared, that the said annual rent, lands, teinds, and other heritages thereby disposed, out of which the same is upliftable, should be redeemable by the heirs of entail succeeding to him in the said lands and estates, from the said trustees or their foresaids, by payment to them at Edinburgh, or, in case of their absence or refusal to accept, by consignation for their behoof in the hands of the treasurer of the Bank of Scotland for the time, upon the risk of

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the consigner, of the aforesaid principal sum of twenty-six thousand pounds sterling if he should leave three or more children entitled to the provisions before granted, restrictable and to be restricted to the sum of nineteen thousand five hundred pounds sterling if he should leave only two such children, and to the sum of thirteen thousand pounds sterling if he should leave only one such child, with the interest due thereon at the time and penalties corresponding thereto if incurred, and that at the said term of payment, or at any term of Whitsunday or Martinmas thereafter, upon three months premonition, and that by delivery to the said trustees or their foresaids, or to their certain attorney or attornies bearers thereof, of earth and stone of and upon the ground of the said several lands respectively and successively, a penny money for the said annual rent, handfuls of grass and corn for the said teinds, and all other symbols necessary, and for doing whereof he committed to them and each of them full power by that his precept of sasine :

And whereas there was appended to the said trust bond of provision an abstract rental for crop and year one thousand eight hundred and forty of the said entailed estates of Crichton, Prestonhall, Elphinstone, and Westertown, from which it appeared that the total net rental of the same amounted to six thousand seven hundred and three pounds four shillings and fivepence farthing :

Codicil dated
6th Oct.
1853.

And whereas by a codicil annexed to the said trust bond of provision, dated the sixth day of October one thousand eight hundred and fifty-three, and registered therewith in the books of council and session the eighteenth day of April one thousand eight hundred and fifty-four, the said William Burn Callander nominated and appointed Alexander Haig, of Blair Hill, to be an additional trustee for the purposes therein within written, and also as one of the tutors and curators of his children, with the same powers as the trustees and tutors and curators thereby before named :

Codicil dated
22d Oct.
1853.

And whereas by another codicil annexed to the said trust bond of provision, dated the twenty-second day of October one thousand eight hundred and fifty-three, and registered therewith in the books of council and session the eighteenth day of April one thousand eight hundred and fifty-four, the said William Burn Callander nominated and appointed Jaquette Burn Callander, his wife, as an additional trustee for the purposes therein within mentioned, and also as one of the tutors and curators to his children, with the same powers as those therein-before named :

Codicil dated
18th Oct.
1853.

And whereas by a codicil annexed to a post-nuptial contract of marriage between the said William Burn Callander and the said Jaquette Hull or Burn Callander, his spouse, which codicil is dated the eighteenth day of October one thousand eight hundred

and fifty-three, and recorded along with the said post-nuptial contract of marriage in the books of council and session on the eighteenth day of April one thousand eight hundred and fifty-four, they the said William Burn Callander and Jaquette Hull or Burn Callander, considering that since the said post-nuptial contract of marriage was entered into there had been born four children of their marriage, and that he the said William Burn Callander had settled by the said bond of provision, dated the twenty-first day of December one thousand eight hundred and forty-one, the sum of twenty-six thousand pounds, being under four years free rent of his entailed estates, upon their three younger children in terms of the powers conferred on him by the deed of entail under which he held the said estates; considering further that he had also borrowed money and charged the said estates therewith in terms of powers conferred on him by the Acts of Parliament narrated in the several bonds and rentcharges executed by him in favour of the parties holding the same; and considering further that the several sums of interest payable to their said three younger children under the said bond of provision, and to the parties holding the said bonds and rentcharges, formed deductions from the rental in estimating the one third thereof which he, the said William Burn Callander, was entitled to secure to his wife under the Act of Parliament narrated in the said post-nuptial contract of marriage, and that it was right and proper to restrict the therein-before written annuity accordingly, so as to be within his powers as heir of entail in possession of said estates; therefore, in terms of said Act, and in conformity with the abstract rental thereunto appended, and signed by them of even date therewith as relative thereto, they, with mutual assent and consent, agreed that the annuity of two thousand three hundred pounds contained in the said post-nuptial contract of marriage, restricted by codicil of date the fourth day of May one thousand eight hundred and fifty-one to two thousand pounds, should be further reduced and restricted to the sum of one thousand five hundred pounds sterling:

And whereas the said William Burn Callander died on or about the eighth day of April one thousand eight hundred and fifty-four, leaving four children, and no more, him surviving; to wit, John Alexander Burn Callander, William Thomas Burn Callander, Mary Harriet Burn Callander, and Edward Burn Callander:

And whereas the said John Alexander Burn Callander succeeded to the said William Burn Callander, his father, as eldest son, and as such became heir of entail in possession of the said lands and estates of Crichton, Prestonhall, Elphinstone, and Westertown:

And whereas the said Jaquette Burn Callander, Edward Burn,

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and William Bruce accepted of the office of trustees under the said trust bond of provision, and of tutors and curators to the children of the said William Burn Callander, but the said Earl of Dalhousie, John Burn Murdoch, and Alexander Haig declined to act :

Deed dated
6th, 10th,
and 19th
June 1854.

And whereas by deed of assumption and conveyance, dated the sixth, tenth, and nineteenth days of June one thousand eight hundred and fifty-four, the said Jaquette Burn Callander, Edward Burn, and William Bruce assumed Hugh Bruce, advocate, to be a trustee, and to act in the execution of the trust created by the said trust bond of provision, and the title of the said trustees was thereafter completed by an instrument of sasine recorded in the general register of sasines on the second day of August one thousand eight hundred and fifty-four :

And whereas the said John Alexander Burn Callander was a minor at the time when he succeeded to the said estates, and the said Jaquette Burn Callander, Edward Burn, and William Bruce accepted office as his curators nominated by the said William Burn Callander by the said trust bond of provision :

And whereas the said Jaquette Burn Callander, Edward Burn, and William Bruce, as the curators of the said John Alexander Burn Callander during his minority, paid to themselves and the said Hugh Bruce as trustees under the said trust bond of provision for behoof of the said William Thomas Burn Callander, Mary Harriet Burn Callander, and Edward Burn Callander, the half-yearly accruing interest upon the said sum of twenty-six thousand pounds :

And whereas on the thirteenth day of June one thousand eight hundred and fifty-five the said John Alexander Burn Callander, with the consent of his curators, presented a petition to the Court of Session craving authority under the Act eleven and twelve Victoria, chapter thirty-six, intituled "An Act for the amendment of the law of entail in Scotland," to charge the said entailed estates with the amount of provisions herein-before set forth, and in the course of the procedure in the said petition an alleged defect was discovered in the testing clause of the said trust bond of provision which might have been held to affect the validity thereof, and consequently no further proceedings took place in the said petition during the minority of the said John Alexander Burn Callander :

And whereas the said William Bruce died on or about the twenty-ninth day of May one thousand eight hundred and fifty-eight :

And whereas the said John Alexander Burn Callander attained majority on or about the thirteenth day of February one thousand

eight hundred and sixty, and on or about the twenty-eighth day of February one thousand eight hundred and sixty-one he instituted an action of reduction in the Court of Session, wherein he sought that the said trust bond of provision with all that had followed thereon should be reduced and annulled and declared to be null and void on account of the said alleged defect in the testing clause thereof; and in which action the Court of Session assoilzied the defenders, who were the trustees under the said trust bond of provision, from the conclusions of the said action of reduction by a decree dated the seventeenth day of December one thousand eight hundred and sixty-three :

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And whereas the said Edward Burn died on or about the twenty-second day of May one thousand eight hundred and sixty-two :

And whereas by a deed of agreement, dated the twenty-third, twenty-sixth, and twenty-seventh days of February and the twenty-second day of March one thousand eight hundred and sixty-four, entered into between the said Jaquette Burn Callander and Hugh Bruce, the surviving trustees under the said trust bond of provision, with concurrence of the said William Thomas Burn Callander, who had then attained majority, and the said John Alexander Burn Callander, the said John Alexander Burn Callander did thereby on the one part agree to renounce any right of appeal competent to him against the before-mentioned decree of the Court of Session, dated the seventeenth day of December one thousand eight hundred and sixty-three, and did undertake without delay to proceed with the said petition for authority to charge his entailed estates with the amount of said provisions, or to present and carry out a new petition if necessary for that purpose, and immediately on such authority being obtained to grant bond in virtue thereof over said estates, and pay off the said provisions; and further he undertook and obliged himself at the term of Whitsunday then next to pay up to the said trustees the interest due on said provisions from and after the term of Whitsunday one thousand eight hundred and sixty-one, which was in arrear, at the rate of four per centum, in lieu of the rate payable in terms of the said trust bond of provision, together with interest at the same rate on the half-yearly payments of interest due at the term of Martinmas one thousand eight hundred and sixty-one, and subsequent terms of Whitsunday and Martinmas from the respective terms when the said payments fell due until paid; and on the other part the said Jaquette Burn Callander and Hugh Bruce, with concurrence of the said William Thomas Burn Callander, agree to restrict their claim for arrears of interest on said trust bond of provision to interest at the rate of four per centum, from and after the term of Whitsunday one

Deed dated
23d, 26th,
and 27th
Feb. and
22nd March
1864.

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thousand eight hundred and sixty-one, instead of the rate payable in terms of said bond, together with the interest on the termly payments of said interest from the time when they fell due until paid, and further, to relinquish and give up their claim for the expenses of process, amounting to two hundred and nine pounds twelve shillings and threepence sterling, to which they were found entitled by the court in said action of reduction :

And whereas the said Jaquette Burn Callander died on or about the ninth day of May one thousand eight hundred and sixty-four :

And whereas the said John Alexander Burn Callander died on or about the twenty-fifth day of September one thousand eight hundred and sixty-five, without having presented any appeal against the said decree of the Court of Session of date the seventeenth day of December one thousand eight hundred and sixty-three, but without having otherwise carried out any of the obligations undertaken by him by the said recited deed of agreement :

And whereas Henry Callander, an infant of the age of eight years or thereabouts, the only son of the said John Alexander Burn Callander, succeeded to his said father, and is now the heir of entail in possession of the said entailed lands and estates of Crichton, Prestonhall, Elphinstone, and Westertown :

And whereas Mary Frederica Beauclerk Coventry or Callander, the widow of the said John Alexander Burn Callander, Henry Amelius Coventry, Esquire, commonly called the Honourable Henry Amelius Coventry, Henry Amelius Beauclerk Coventry, late a captain in the Grenadier Guards, and the said Edward Burn Callander, are the tutors and curators of the said Henry Callander nominated and appointed by the said John Alexander Burn Callander by his last will and testament, dated the twenty-ninth day of June one thousand eight hundred and sixty-four, and recorded in the books of council and session the ninth day of July one thousand eight hundred and sixty-six :

Deed dated
12th March
1867.

And whereas by disposition and assignation dated the twelfth day of March one thousand eight hundred and sixty-seven, and recorded in the general register of sasines the fifteenth day of April in the year one thousand eight hundred and sixty-eight, the said Hugh Bruce, the then sole surviving and assumed trustee, acting in the trust created by the said bond of provision, upon the narrative of the said bond of provision and of the procedure which had taken place in respect thereof, and on the further narrative that the said William Thomas Burn Callander, Mary Harriet Burn Callander, and Edward Burn Callander (in the said disposition and assignation called Edward Callander) had all then attained majority, whereby

in terms of the said trust bond of provision they had become entitled to be put in possession of their shares of said provisions, and in the right of said bond, and of all claims competent in respect thereof, did thereby dispoise, assign, convey, and make over to and in favour of the said William Thomas Burn Callander, Mary Harriet Burn Callander, and Edward Burn Callander (in the said disposition and assignation called Edward Callander), equally share and share alike, and their respective heirs, executors, or assignees, every right arising to him as trustee foresaid under or by virtue of the said trust bond of provision :

And whereas the said tutors and curators of the said Henry Callander, acting under the advice of counsel learned in the law, declined to make payment to the said William Thomas Burn Callander, Mary Harriet Burn Callander, and Edward Burn Callander, of the sums either of principal or interest provided by the said trust bond of provision, on the ground that the said trust bond of provision was not framed in accordance with the faculties reserved to the granter thereof as heir of entail in possession of the estates under the deed of entail, in virtue of which the said trust bond of provision bore to be granted :

And whereas the said William Thomas Burn Callander and Mary Harriet Burn Callander, and Messieurs Hagart and Burn Murdoch, law agents in Edinburgh, their mandatories, upon the tenth day of June one thousand eight hundred and sixty-eight, raised an action of declarator and payment in the Court of Session against the said Henry Callander as proprietor of the said entailed estates, and his tutors and curators, if he any had, for their interest, concluding that it should be declared that by the said trust bond of provision the said William Burn Callander bound the heirs of entail succeeding to the said entailed estates of Crichton, Prestonhall, Elphinstone, and Westertown to pay to the trustees therein mentioned, for behoof of his younger children, the sum of twenty-six thousand pounds, or such other sum as might amount to four years free rents of the said entailed estates, and that the defender as heir of entail in possession of the said estates was bound to pay to the pursuers, as then in right of two third parts of the said trust bond of provision, the sum of seventeen thousand three hundred and thirty-three pounds six shillings and eightpence, being two third parts of the said sum of twenty-six thousand pounds, or such other sum as might amount to two thirds of four years free rents of the said entailed estates as at the date of the death of the said William Burn Callander, with interest till payment, and that the defenders should be ordained to make payment accordingly ; or otherwise that it should be declared that by the said trust bond of provision the pursuers had been duly

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and effectually assigned into two third parts of one fourth part of the annual rent of the said entailed estates as the same had accrued due since the death of the said William Burn Callander, commencing the said assignation from and after the term of Whitsunday one thousand eight hundred and fifty-four, being the first term after the death of the said William Burn Callander, and that the same subsisted aye and until the said sum of seventeen thousand three hundred and thirty-three pounds six shillings and eightpence, or such other sum as might be found to be two third parts of four years free rents of the said entailed estates as at the date of the death of the said William Burn Callander, should be paid with interest from the date of the death of the said William Burn Callander, and that the defenders should be ordained to make payment accordingly; or otherwise that it should be declared that by the said trust bond of provision the heirs of entail succeeding to the said entailed estates were bound to pay to the pursuers annually the sum of eight hundred and sixty-six pounds thirteen shillings and fourpence, aye and until the said sum of seventeen thousand three hundred and thirty-three pounds six shillings and eightpence, or such other sum as might be found to be two third parts of four years free rents of the said entailed estates as at the date of the death of the said William Burn Callander, should be paid with interest from the date of the death of the said William Burn Callander, and that the defenders should be ordained to make payment accordingly; or otherwise that it should be declared that in virtue of the said trust bond of provision the defenders were liable in payment to the pursuers of the sum of thirteen thousand pounds, or such other sum as might amount to two thirds of three years free rents of the said entailed estates as at the date of the death of the said William Burn Callander, with interest thereon from the date of the death of the said William Burn Callander, and that the defenders should be ordained to make payment accordingly :

And whereas the said Henry Callander and his said tutors and curators appeared and put in defences to the said action, wherein they stated the three pleas in law following; (that is to say,)

I. The alleged bond of provision libelled, being defective in the solemnities required by law, is invalid and ineffectual, as in a question with the pupil defender, and imposes no obligation on him to implement the same to any extent, and the defender should be assoilzied from the whole conclusions of the action :

II. The alleged bond of provision is invalid and ineffectual in so far as regards the said defender and the entailed estates, in respect that it is ultra vires of the granter thereof as heir

of entail in possession of said estates under the deed of entail in virtue of which the alleged bond bears to be granted, and the defender should be assoilzied accordingly :

- III. The said alleged bond cannot be sustained as a bond granted under and in virtue of the Act fifth George the Fourth, chapter eighty-seven, in respect that it was not granted under and in virtue of the powers of that statute, and is so expressed as to exclude the view that it was granted under and in virtue of these powers, and the defenders should therefore be assoilzied from the last alternative conclusion of the action :

And whereas the cause having come to depend before Lord Ormidale, ordinary in the Court of Session, the said Lord Ormidale, upon the twelfth day of December one thousand eight hundred and sixty-eight, pronounced an interlocutor in the following terms :

“ Edinburgh, 12th December 1868.

“ The Lord Ordinary, having heard counsel for the parties
 “ and considered the argument and proceedings, finds that
 “ under the deed of entail in question power is reserved to the
 “ heirs and substitutes of entail, being in the right and possession of the entail lands and estates, to provide their children
 “ other than the heir succeeding to the said estates in portions
 “ or provisions to the extent in case of one such child of two
 “ years free rent, in case of two such children of three years
 “ free rent, and in case of three or more such children of four
 “ years free rent, and that by said deed of entail it is declared
 “ that said provisions should be provided and secured only by
 “ way of infeftment and locality or by assignation to the rents,
 “ mails, and duties of such parts and portions of the entailed
 “ lands as to the granter of said provision should seem meet,
 “ not exceeding a fourth part of the yearly rent of the whole
 “ entailed lands, free of all public burdens and deductions
 “ whatsoever, said provisions to be made payable and to subsist
 “ as mentioned in the deed of entail : Finds that by the bond of
 “ provision libelled on, the deceased William Burn Callander,
 “ as heir of entail in possession for the time of the entailed
 “ estates in question, on the narrative, and in virtue of the
 “ powers conferred on him by the said deed of entail, made
 “ provisions in favour of his three younger children not succeeding to the entailed estates to the effect of entitling the
 “ pursuers as two of said three younger children to two third
 “ parts of four years free rents of the entailed estates, payment thereof to be secured by way of infeftment for an
 “ annual rent as therein mentioned, and subject to the de-

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“ clarification that in case the provisions thereby granted should
 “ be found to exceed the proportions mentioned in the deed
 “ of entail they should not be deemed to be void and null,
 “ but that the same should only be reducible to such extent as
 “ they should be found to exceed the provisions authorised
 “ to be granted by the said deed of entail, but no further;
 “ and that the same be varied in compliance with what
 “ should be held to be the meaning of the deed of entail:
 “ Finds also that by said bond of provision the said deceased
 “ William Burn Callander assigned to his trustees therein
 “ named not only the rights, titles, and securities of the
 “ entailed estates, but also as much of the rents thereof as
 “ would pay the provisions thereby constituted in favour of
 “ his younger children: Finds that by the disposition and
 “ assignation libelled on, executed in favour of the pursuers
 “ by Mr. Hugh Bruce, as the surviving trustee acting under
 “ said bond of provision, they are now directly in right of
 “ the provisions constituted in their favour as aforesaid:
 “ Finds that by judgment of this court, dated in December
 “ one thousand eight hundred and sixty-three, pronounced in
 “ an action of reduction of said bond of provision at the
 “ instance of the eldest son and heir (succeeding to the
 “ entailed estates in question) of the said deceased William
 “ Burn Callander against his trustees, appointed by and acting
 “ under said bond, it was held that the bond was a valid
 “ and operative instrument notwithstanding an alleged de-
 “ fect in its testing clause: Therefore, in these circumstances
 “ repels the defenders first two pleas in law, and appoints
 “ the case to be enrolled in order to be further proceeded
 “ with. R. MACFARLANE.”

And whereas a reclaiming note against the said interlocutor of the said Lord Ormidale was presented for the said defenders to the first division of the Court of Session, and the said reclaiming note having come to be considered, their Lordships of the said first division, upon the twenty-first day of May one thousand eight hundred and sixty-nine, pronounced an interlocutor in the following terms:

“ Edinburgh, 21st May 1869.

“ The Lords having heard counsel on the reclaiming note for
 “ Henry Callander and his tutors against Lord Ormidale’s
 “ interlocutor of twelfth December one thousand eight hun-
 “ dred and sixty-eight, adhere to the interlocutor, in so far it
 “ repels the first plea in law for the defenders, quoad ultra,
 “ recall the said interlocutor, sustain the second and third
 18

“ pleas in law for the defenders, assoilzie the defenders from
 “ the conclusions of the summons, and decern. A.D. 1873.

“ JOHN INGLIS, I.P.D.”

And whereas upon the thirtieth day of July one thousand eight hundred and sixty-nine the said William Thomas Burn Callander and Mary Harriet Burn Callander, and their said mandatories, presented a petition of appeal to the Right Honourable the Lords Spiritual and Temporal, in Parliament assembled, praying that their Lordships would be pleased to reverse, vary, or alter the said interlocutor of the first division of the Court of Session, of date the twenty-first day of May one thousand eight hundred and sixty-nine, or otherwise that their Lordships would give the petitioners such relief in the premises as to their Lordships in their great wisdom should seem meet :

And whereas upon the fourteenth day of February one thousand eight hundred and seventy, answer to the said petition of appeal was made for the said Henry Callander and for his tutors, the said Mary Frederica Beauclerk Coventry or Callander, the Honourable Henry Amelius Coventry, Henry Amelius Beauclerk Coventry, and Edward Burn Callander, and printed cases having been lodged for the parties, the appeal was set down for hearing before their Lordships :

And whereas before the said appeal was considered by their Lordships the proceedings therein were suspended by the consent of parties in order that terms of compromise might be considered, and that such terms of compromise were agreed upon by the advice of the counsel of the parties, and the same were entered into by an indenture made the first day of August one thousand eight hundred and seventy-one, between the said William Thomas Burn Callander and Mary Harriet Burn Callander of the first part, the said Henry Callander of the second part, and the said Mary Frederica Beauclerk Coventry or Callander, Henry Amelius Coventry, and Henry Amelius Beauclerk Coventry, the only acting tutors according to the laws of Scotland of the said Henry Callander, of the third part, by which indenture it was declared, covenanted, and agreed by and between the said parties ; first, that, subject to the reservation therein-after contained, all further proceedings in the said action should be stayed, and the pending appeal to the House of Lords should be suspended as from the day of the date of the said indenture ; second, that the sum of five hundred pounds should, within one month from the date of the royal assent being given to the private Act therein-after referred to, be paid by the parties to the said indenture of the third part, as such tutors and curators as aforesaid, to the said William Thomas Burn Callander

A.D. 1873.

and Mary Harriet Burn Callander in full discharge of all arrears of interest or annuity claimed by them under the said bond of provision up to the twenty-fifth of March one thousand eight hundred and seventy-one; third, that the parties to the said indenture of the third part should, until the said Henry Callander should have attained the age of twenty-one years, or should die under that age, whichever should first happen, pay to each of them the said William Thomas Burn Callander and Mary Harriet Burn Callander, and to their respective executors, administrators, and assigns, an annuity of two hundred and fifty pounds, clear of all deductions, by half-yearly payments on the twenty-fifth of March and the twenty-ninth of September in every year, with a proportionate part for any period less than half a year, the first payments thereof respectively to be made on the twenty-ninth of September then next, one thousand eight hundred and seventy-one; fourth, on the said Henry Callander attaining the age of twenty-one years, or dying under that age, whichever event should first happen, each of them the said William Thomas Burn Callander and Mary Harriet Burn Callander should be entitled to the sum of four thousand pounds amounting together to the sum of eight thousand pounds, with interest thereon at the rate of five pounds per centum till paid, which said sum and interest should in the meantime be charged and secured as a burden on the entailed estates in manner therein-after mentioned, and the same sums of four thousand pounds and four thousand pounds should be interests vested in them respectively, as from the date of the said indenture, and should carry interest from the date when the said annuities should cease to be payable under the article last aforesaid; fifth, that the parties to the said indenture would, in the session of Parliament next ensuing the date of the said indenture, apply for and by every means in their power endeavour to obtain a private Act of Parliament enabling them to carry the said agreement into effect, in which Act should be inserted all necessary and proper provisions for that purpose, and particularly a clause constituting or enabling the parties to the said indenture of the second and third parts, or some or one of them, to constitute the said two sums of four thousand pounds, with interest at five per centum per annum from the time when the same should become raiseable as therein aforesaid, an actual and indefeasible charge in favour of the said parties to the said indenture of the first part respectively, their heirs and assigns, on the said entailed estates or on some sufficient part thereof, according to the law of Scotland, with all the usual and necessary powers and remedies for enforcing the payment thereof; sixth, that if the said parties to the said indenture of the third part should, under the

said Act so to be applied for as therein aforesaid, obtain power to raise out of the said entailed estates, and should actually raise and pay to the said William Thomas Burn Callander and Mary Harriet Burn Callander, or their respective executors, administrators, or assigns, during the pupillarity of the said Henry Callander, the sum of four thousand five hundred pounds each, then and in such case the liability of the said parties to the said indenture of the third part under the covenant to pay the therein aforesaid annuities should cease; that the said sums of four thousand five hundred pounds each should not be subject to any deduction in respect of any amounts previously paid in respect of the said annuities or otherwise under the said agreement; seventh, that the annuities in the said indenture agreed to be paid and the sums of money therein-before agreed to be secured to the said William Thomas Burn Callander and Mary Harriet Burn Callander respectively should be in full discharge of all their claims under the said bond of provision of every nature or kind whatever, and on the said Act being obtained the pending appeal should be abandoned; eighth, that every party to the said indenture should bear his or her own costs of all proceedings which had already taken place in respect of the matters therein aforesaid, and of obtaining or endeavouring to obtain the proposed Act of Parliament, and otherwise howsoever; but in case for any reason whatever the said Act should not be obtained, the parties to the said indenture of the first part should pay the whole of the costs of endeavouring to obtain the same; ninth, that if it should be found impracticable for any reason whatever to obtain the proposed Act of Parliament the said indenture should absolutely cease and determine, and the parties thereto should revert to their original rights without being prejudiced thereby, and the parties thereto of the first part should be at liberty to proceed with the pending appeal in the same manner as if the said indenture had not been made:

And whereas the said Henry Amelius Coventry died on or about the third day of April one thousand eight hundred and seventy-three:

And whereas the said appeal was considered by their Lordships on the twenty-eighth and twenty-ninth days of April one thousand eight hundred and seventy-three, when their Lordships intimated their opinion that the compromise contained in the recited indenture of the first day of August one thousand eight hundred and seventy-one was reasonable and proper to be carried out, and that application might be made to Parliament for an Act to carry the same compromise into effect:

And whereas the said Mary Frederica Beauclerk Coventry or Callander, Henry Amelius Beauclerk Coventry, and Edward Burn

A.D. 1873. Callander, in order to carry into effect the said compromise, are desirous to grant bonds and dispositions in security over the said entailed estates for the sums mentioned in the said indenture, and that it is expedient that they should do so, but the said entailed estates cannot be so burdened nor the said compromise carried into effect without the authority of Parliament :

And whereas it is expedient that provision be made for the payment of the costs, charges, and expenses of all parties with reference to the recited litigation and compromise, and to the passing of this Act, out of money to be raised and secured upon the said entailed estates in manner herein-after mentioned :

And whereas four half-yearly payments of the said two annuities of two hundred and fifty pounds each, which under the said agreement became payable on the twenty-ninth September one thousand eight hundred and seventy-one and twenty-fifth March one thousand eight hundred and seventy-two, and twenty-ninth September one thousand eight hundred and seventy-two, and the twenty-fifth March one thousand eight hundred and seventy-three, have not been paid to the said William Thomas Burn Callander and Mary Harriet Burn Callander, or either of them, and they are now entitled to receive the same, and also the sum of five hundred pounds mentioned in the second clause of the said agreement :

And whereas the said William Thomas Burn Callander and the said Edward Burn Callander are the two next substitute heirs of entail of the said several entailed estates entitled to succeed thereto in case the said Henry Callander should die without issue :

Wherefore, Your Majesty's most dutiful and loyal subjects, the said Mary Frederica Beauclerk Coventry or Callander, Henry Amelius Beauclerk Coventry, and Mary Harriet Burn Callander, do most humbly beseech Your Majesty that it may be enacted ; and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows ; (that is to say,)

Short title.

1. This Act may for all purposes be cited as " Callander's Estates Act, 1873."

Sums to be paid in full of arrears of annuities.

2. Mary Frederica Beauclerk Coventry or Callander, Henry Amelius Beauclerk Coventry, and Edward Burn Callander, as tutors of the said Henry Callander, and all succeeding or other tutors of the said Henry Callander, shall, out of the moneys in their hands arising from the rents of the entailed estates mentioned in the schedule hereto, make the following payments within one calendar month after the passing of this Act ; namely,

To the said William Thomas Burn Callander the sum of five hundred pounds ; A.D. 1873.

To the said Mary Harriet Burn Callander the sum of five hundred pounds ;

such respective sums to be in full discharge of all annuity or interest due to or claimed by them respectively under the said compromise from the twenty-fifth day of March one thousand eight hundred and seventy-one up to the twenty-fifth day of March one thousand eight hundred and seventy-three.

3. Unless within one year and two months after the passing of this Act the costs, charges, and expenses of the said William Thomas Burn Callander and Mary Harriet Burn Callander shall be raised and paid as herein-after provided, the said Mary Frederica Beauclerk Coventry or Callander and Henry Amelius Beauclerk Coventry, as tutors of the said Henry Callander, and all succeeding tutors of the said Henry Callander, shall, out of the moneys now or hereafter in their hands arising from the rents of the said entailed estates, pay the sum of five hundred pounds to the said William Thomas Burn Callander and Mary Harriet Burn Callander, in pursuance of clause two of the aforesaid agreement.

If costs not paid as provided, 500*l.* to be paid.

4. The said Mary Frederica Beauclerk Coventry or Callander, Henry Amelius Beauclerk Coventry, and Edward Burn Callander, as tutors of the said Henry Callander, and any other persons who may become tutors of the said Henry Callander, shall, out of the rents of the aforesaid entailed estates, pay the following annuities from the twenty-fifth March one thousand eight hundred and seventy-three until the said Henry Callander shall attain the age of fourteen years, or shall die under that age; and the said Henry Callander, on his attaining the said age of fourteen years, shall, out of the said rents, pay the said annuities from the said twenty-fifth March one thousand eight hundred and seventy-three until the said Henry Callander shall attain the age of twenty-one years, or shall die under that age,—

Future payment of annuities.

To the said William Thomas Burn Callander, his heirs, executors, administrators, or assigns, the sum of two hundred and fifty pounds per annum ;

To the said Mary Harriet Burn Callander, her heirs, executors, administrators, or assigns, the sum of two hundred and fifty pounds per annum ;

such annuities or yearly sums to be deemed accruing de die in diem, and to be payable clear of all deductions by half-yearly payments on the twenty-fifth March and the twenty-ninth of September in every year, with a proportionate part for any period less than half

A.D. 1873. a year, the first payments thereof respectively to be made on the twenty-ninth of September one thousand eight hundred and seventy-three.

Entailed estates to be charged in security of annuities and of 8,000*l.* in lieu of provisions.

5. The said Mary Frederica Beauclerk Coventry or Callander, Henry Amelius Beauclerk Coventry, and Edward Burn Callander, as tutors of the said Henry Callander, or a majority of the said Mary Frederica Beauclerk Coventry or Callander, Henry Amelius Beauclerk Coventry, and Edward Burn Callander, who shall at the time be alive and acting as tutors of the said Henry Callander, shall, within one calendar month after the passing of this Act, grant, execute, and deliver to each of the said William Thomas Burn Callander and Mary Harriet Burn Callander a bond and disposition, or bonds and dispositions in security, binding and obliging themselves, as the tutors of the said Henry Callander, and the said Henry Callander himself, his heirs, executors, and successors, to make payment to each of the said William Thomas Burn Callander and Mary Harriet Burn Callander, and their respective heirs, executors, administrators, and assigns, of a free yearly annuity or annual rentcharge of two hundred and fifty pounds sterling, and that yearly, until the said Henry Callander shall attain the age of twenty-one, or during his natural life in case he shall die before attaining that age, so long as the said annuity shall remain unredeemed, and that by equal half-yearly payments on the twenty-fifth day of March and twenty-ninth day of September in each year, and the proportional part of the said annuities for the time which may elapse between the last half-yearly payment and the day of the cesser of the said annuity as aforesaid; and also binding and obliging themselves, as the tutors of the said Henry Callander, and the said Henry Callander himself, his heirs, executors, and successors, and also the heirs of entail of the said lands and estates in their order successively, to make payment at the head office of the Bank of Scotland in Edinburgh to each of the said William Thomas Burn Callander and Mary Harriet Burn Callander, and their respective heirs, executors, administrators, and assigns, of the sum of four thousand pounds on the said Henry Callander attaining the age of twenty-one, or dying before attaining that age, with legal interest from the time of payment until paid, and with the usual penalties and termly failures, and disposing and alienating the said lands and estates mentioned in the schedule hereto in security of the said annuities, and of the two several sums of four thousand pounds, with interest and penalties as aforesaid, and may contain all clauses usual in bonds and dispositions in security granted over estates in Scotland held in fee simple; and it is hereby provided, that upon the said bond and disposition in security, or bonds and dispositions

in security, being presented by or on behalf of the said William Thomas Burn Callander and Mary Harriet Burn Callander, or either of them, or by or on behalf of any person or persons acquiring right thereto from them or either of them, for his or her interest respectively, for registration in the register of sasines, and upon the said bond and disposition in security, or bonds and dispositions in security, being recorded in the said register, every claim arising to the said William Thomas Burn Callander and Mary Harriet Burn Callander, or to him or to her individually, or to his or her heirs, executors, administrators, or assigns, as the case may be, under or by virtue of the said trust bond of provision granted by the said William Burn Callander, their father, shall cease and determine, and the same shall be and is hereby extinguished from and after the date or dates of recording the said bond and disposition in security, or bonds and dispositions in security, in the said register of sasines: Provided always, that it shall be lawful for the said Mary Frederica Beauclerk Coventry or Callander, Henry Amelius Beauclerk Coventry, and Edward Burn Callander, or such majority as aforesaid, or the acting tutors of the said Henry Callander for the time being, and it shall likewise at any time after the pupillarity of the said Henry Callander, and during his minority, be lawful for the said Henry Callander, with consent of his curators for the time, or a majority of their number, which consent they are hereby authorised and required to give when desired by the said Henry Callander, to raise on the security of the said estates the said two several sums of four thousand five hundred pounds mentioned in the said deed of agreement, and to grant, execute, and deliver to the lender or lenders a bond and disposition in security, or bonds and dispositions in security, binding the said Henry Callander and the heirs of entail succeeding to him in the said lands, for repayment of the sum or sums so borrowed as aforesaid, with interest thereon at the rate of not exceeding five pounds per centum per annum from the time of payment until paid, and with a fifth part more of the said principal sum or sums of liquidate penalty in case of failure in payment of the same, and disposing, burdening, or charging the said lands and estates in the schedule hereto for security of the same, which bond and disposition in security, or bonds and dispositions in security, may contain all clauses usually contained in bonds and dispositions in security over lands in Scotland held in fee simple; and the said two several sums of money of four thousand five hundred pounds shall be applied in payment to the said William Thomas Burn Callander and Mary Harriet Burn Callander, in redemption of the said two several annuities of two hundred and fifty pounds, and of the said two several sums of four thousand

Power to
redeem by
raising
9,000*l.* on
security of
estates.

A.D. 1873.

pounds, and when and so soon as the said sum of four thousand five hundred pounds is raised and paid to the said William Thomas Burn Callander, the charge of four thousand pounds, and the annuity of two hundred and fifty pounds by this Act secured in his favour, and every other claim arising to him under or by virtue of the said trust bond of provision granted by the said William Burn Callander, his father, shall cease and determine, and in like manner when and so soon as the said sum of four thousand five hundred pounds is raised and paid to the said Mary Harriet Burn Callander, the charge of four thousand pounds and the annuity of two hundred and fifty pounds by this Act secured in her favour, and every claim arising to her under or by virtue of the said trust bond of provision granted by the said William Burn Callander, her father, shall cease and determine.

Saving
existing
debts on
entailed
estates.

6. Nothing in this Act shall prejudice or affect any annuities, charges, or incumbrances affecting the said entailed estates, or the rents and profits thereof, previous to the passing of this Act, and notwithstanding anything in this Act contained the said annuities, charges, and incumbrances shall have priority over the annuities and charges created by this Act on the said entailed estates.

Saving
clause.

7. Saving always to the Queen's most Excellent Majesty, her heirs and successors, and to every other person and body politic and corporate, and their respective heirs, successors, executors, and administrators (other than the persons by this Act expressly excepted out of this general saving), all such estate, right, title, interest, claim, and demand whatsoever of, in, to, or out of the said lands and heritages now or hereafter to become subject to the uses of the said recited bond of provision, or any part or parts thereof, as they or any of them had before the passing of this Act, or would, could, or might enjoy if this Act were not passed.

Exceptions
from saving
clause.

8. The following persons are excepted out of the general saving clause in this Act contained, and they accordingly are the only persons bound by this Act; (that is to say,) the several parties to the said indenture dated the first day of August one thousand eight hundred and seventy-one, and the heirs of entail of the said entailed estates.

How costs
to be borne.

9. Subject as herein-after mentioned, the costs, charges, and expenses preliminary to and of and incidental to the preparing of and applying for, and the obtaining and passing of this Act, shall be paid as follows: one half thereof by the said William Thomas Burn Callander and Mary Harriet Burn Callander in equal proportions, and the remaining half thereof by the tutors, out of the

funds and revenues of the said Henry Callander : Provided always, that such costs, charges, and expenses, and the costs, charges, and expenses of all parties as between solicitor and client of and incident to the aforesaid proceedings, appeals, and compromise may, with the concurrence of the said Edward Burn Callander as one of the next heirs of entail, be raised and paid out of the said entailed estates by a charge which shall be subject in all respects to the charges mentioned in this Act, and for this purpose the said Mary Frederica Beauclerk Coventry or Callander and Henry Amelius Beauclerk Coventry, or the acting tutors of the said Henry Callander for the time being, or a majority of them, may concur with the said Edward Burn Callander in raising the amount of such costs, charges, and expenses, not exceeding 2,500*l.*, on the security of the said estates, and grant, execute, and deliver to the lender or lenders a bond and disposition in security, or bonds and dispositions in security, binding the said Henry Callander and the heirs of entail succeeding him in the said lands and estates in their order successively in repayment of the sums so borrowed as aforesaid, with interest thereon at the rate of not exceeding five per centum per annum from the time of advance until paid, and with a fifth part more of the said principal sum or sums of liquidate penalty in case of failure in payment of the same, and dispoing, burdening, or charging the said lands and estates in schedule hereto in security of the same, which bond and disposition in security, or bonds and dispositions in security, may contain all clauses usually contained in bonds and dispositions in security over lands in Scotland held in fee simple.

10. Upon such costs, charges, and expenses being paid out of money so raised on the security of the said estates, the aforesaid sum of five hundred pounds mentioned in clause 2 of the said agreement of compromise shall cease to be due or become payable, and shall be absolutely extinguished as a debt. If costs paid, 500*l.* not to be payable.

11. This Act shall not be a public Act, but shall be printed by the several printers to the Queen's most Excellent Majesty duly authorised to print the statutes of the United Kingdom, and a copy thereof so printed by any of them shall be admitted as evidence thereof by all judges, justices, and others. Act as printed by Queen's printers to be evidence.

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SCHEDULE referred to in the foregoing Act.

PRIMO. All and whole the barony, patronage, teinds, and other heritages after written, viz., all and whole the lands and barony of Crichton, comprehending those parts and portions of the lands, lordship, and barony of Crichton after mentioned, viz., all and whole the lands of Wester Crichton and Castlemains of Crichton, with all and singular those houses and parcels or riggs of land and lands of Curryhill or Ludgate which sometime pertained or were reputed to pertain in property to the deceased John Thomson, and the lands which sometime pertained or were reputed to pertain in property to the deceased James Pentland, which are all parts and portions of the said lands of Wester Crichton and Castlemains of Crichton, with the castle, tower, fortalice, and manor place of the said lands, and with the houses, buildings, gardens, and pertinents of the same; the lands of Easter Crichton and the lands of Sauchnell or Sauchland, comprehending the lands of Faladam and Mid-Crichtondean, with the pendicles of the same, all lying within the parish and lordship of Crichton and sheriffdom of Edinburgh, as also the advocation, donation, and right of patronage of the provostship of Crichton, prebendaries and chaplainries of the same, and all other lands, tenements, houses, roods, acres of land, and others, lying within the provostship of Crichton or pertaining to the same, of whatsoever nature, tenure, or designation the same are, which are here held as specified, notwithstanding the generality foresaid; also the kirklands now called Rosehill or Provost Place pertaining to the said provostship, and the teind sheaves and other teinds included, never before separated from the stock and whole pertinents of the same, with multures, sucken, and sequels, woods, fishings, parts, pendicles, tenants, tenandries, and services of free tenants of the whole foresaid lands, as the same were erected and united into one whole and free barony, called the Barony of Crichton, conform to charter under the great seal in favour of the deceased Sir Adam Hepburn of Humbie, one of the Senators of the College of Justice, in life rent, and the deceased Thomas Hepburn, his eldest son, in fee, dated the fourteenth day of August in the year one thousand six hundred and forty-nine; as also all and whole seven eighth parts of the lands of Turnedykes, with houses, buildings, yards, parts, pendicles, and pertinents of the same, which sometime pertained to Archibald Waddell, portioner or reputed portioner of Turnedykes, and lying within the lordship and barony of Crichton and sheriffdom of Edinburgh foresaid; as also all and whole the lands of Turnedykes as the same were possessed by Sir James Primrose of Carrington, Baronet, and his tenants, with houses, buildings, yards, tofts, crofts, parts, pendicles, and all proper pertinents of the same, as well under as above ground, with the privilege and liberty of digging turf, commonly called divots, annually, for supporting and repairing the houses upon the said lands in that part of the muir of Crichton commonly called Stoneyhill; as also all and whole the tiends, great and small, parsonage and vicarage, of the lands, barony, and others foresaid, all lying within the barony and parish of Crichton and sheriffdom of Edinburgh, all which lands,

teinds, right of patronage, and others foresaid, were united, annexed, and incorporated or were reputed so to be into the said barony of Crichton, conform to charter under the great seal in favour of the now deceased Mark Pringle, Esquire, of Crichton, dated the twenty-sixth day of July in the year one thousand seven hundred and thirty-eight; as also all and whole the lands and estate of Longfaugh and Crichtondean, and others after specified, which pertained or were reputed to pertain to the deceased James Edmonston of Crichtondean, writer in Edinburgh, viz., all and whole that part of the said lands and barony of Crichton, commonly called Templehouse or Templelands, sometime possessed by Gersham Young, with the well called Blindwell, and such parts of the lands of Bankhead as are parts of the said barony lying upon the east side of the line of march mentioned in the rights and infeftments of the same; as also all and whole that piece of land of the mains of East Crichton, commonly called Ker's Green, lying upon the east side of that croft, called Houp, extending to three acres three roods and thirty-one falls, bounded in the manner mentioned in the rights and infeftments of the same, together with the mills, multures, sequels, and pertinents of the said lands of Templehouse, and the foresaid parts of the lands of Bankhead and mains of East Crichton, with the teinds, parsonage and vicarage, of the same, but with and under the burden of forty merks, Scots money, annually of stipend to the minister of the gospel at Crichton, in full satisfaction of all stipends and annual teind duties, or future augmentations of stipend and all other burdens or impositions whatsoever, all lying within the lordship, barony, and sheriffdom aforesaid; as also all and whole the lands of Crichtondean and Longfauch, with houses, buildings, gardens, parts, pendicles, and pertinents of the same, with the privilege of digging turf in that part of the common of Crichton called Stoneyhill, for supporting the houses upon the said lands of Crichtondean and Longfaugh, together with the teinds, parsonage and vicarage, of the said lands, and with the mills, multures, and sequels of the same; but excepting always from the foresaid lands and barony of Crichton the lands of Blackcastleford, with the mill thereof, lands of Ford Whitehouse, otherwise Ugston Lochquarrit and Hagbrae, which were formerly parts of the said barony of Crichton, but were disjoined from the same before the date of the foresaid charter in favour of the said deceased Mark Pringle; as also excepting twenty acres or thereby of the lands of Turniedykes disposed by the deceased John Pringle, of Crichton, to James Dewar of Vogree, but including two acres one rood and twenty-four falls or thereby of the lands of Halywellhaugh, part of the lands of Vogree, with the teinds and pertinents of the same lying within the parish of Borthwick and sheriffdom of Edinburgh, acquired by the said deceased John Pringle from the said James Dewar in part commutation and excambion for the said twenty acres of the lands of Turniedykes conform to disposition dated the twenty-fourth day of May in the year one thousand seven hundred and sixty-four. And also, Secundo, all and whole the lands of Elphinstone, with houses, buildings, yards, orchards, mills, mill lands, multures, coals, coal-pits, tenants, tenandries, and services of free tenants, annexis, connexis, and whole parts, pendicles, and pertinents of the same whatsoever, lying within the lordship and barony of Tranent, late regality of Seton and constabulary of Haddington, and within the sheriffdom of Edinburgh; excepting always (first) the lands now commonly called the farm of Elphinstone Tower, bounded on the east by the road leading from Musselburgh by Harrysburn, Westpark, and the western extremity of the

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village of Elphinstone to Bellyford; on the south, by the boundary between the estate of Elphinstone and the lands of Cousland; and on the west and north partly by the boundary with the lands of Carberry, and partly by the boundary with the lands which pertained to the Countess of Hyndford, with the tower, fortalice, manor place, and whole parts and pertinents of the same, which parts above excepted were sold by the trustees under the settlements of the late Sir John Callander of Westertown, Baronet, to the Honourable William Fullerton Elphinstone, by disposition dated the third, sixth, and tenth days of November in the year eighteen hundred and thirteen; and excepting also (second) the parts and portions following of the said lands of Elphinstone, videlicet, all and whole that portion of the farm of South Elphinstone sometimes occupied by William Collman, tenant therein, of old called the Mill Mains of Elphinstone, which lands are bounded on the west by the Tower Farm of Elphinstone, now or lately the property of John Fullerton Elphinstone, Esquire, on the north partly by the feus in the village of Elphinstone, and partly by the high road running through the estate of Elphinstone, and dividing the lands last above described from the farm of Cinderhall or North Elphinstone, on the east partly by a field of the farm of Buxley, called Westward, and partly by the lands of Ormiston, and on the south by the lands of Ormiston, and which lands consist of two hundred and ninety-one acres three roods and thirty-four poles of English measure, and the various fields thereof are called by the following names; viz., Triangle Park, Whinniebrae Park, Chapelyard Shot, Chapelyard South Shot, Clover Knowe, Town Park, Town Meadow, Watergang Park, Mains Park, houses and yards, back of the mains, Bog Meadow Park, Mains Meadow, Loan-side, and Dickson's Rig, Old Mill Shot, Mill Meadow Green, Leitch, and Hartley's Hole; as also excepting (third) all and whole the following parts and portions of the lands of Buxley sometime occupied by John Durie, tenant therein, which are bounded on the west partly by the road leading from Ormiston to Tranent, and partly by a new fence erected or to be erected between the lands above described and a part remaining entailed of the field called "the Meadows," on the north by the lands of Tranent formerly the property or reputed property of John Cadell, afterwards of Robert Tennant, Esquire; on the east by part of the lands of Winton, and on the south by the lands of Ormiston, and which lands extend to one hundred and forty-eight acres and twenty-eight poles, English measure, and the various fields thereof called by the following names, videlicet, Barn Yard Shot, the Onstead of Buxley with the ground connected with it, Old Buxley, Lintlee, Muirpack, Brownsknow, Winton Shot, Lochside, Coldhame, and four acres two roods and thirty-four poles of the east part of the field called "the Meadows," all which lands form part of the said lands and estate of Elphinstone lying and described as aforesaid, and which lands above described and excepted in the second and third places also form parts of the said lands and estate of Elphinstone lying within the lordship and barony of Tranent, late regality of Seton, and constabulary of Haddington and sheriffdom of Edinburgh, and were by a contract of excambion dated twentieth July eighteen hundred and forty-three, and registered in the sheriff court books of Edinburgh on second August, and in the sheriff court books of Haddington on eighth August, eighteen hundred and forty-three, entered into under authority of the Court of Session between the deceased William Burn Callander, as heir of entail in possession of the lands and others

before described, and himself as proprietor of certain other lands held by him in fee simple disposed from him and the heirs of entail entitled to succeed to him in the said entailed estates to and in favour of himself and his heirs and assignees whomsoever, but under reservation to himself and the said heirs of entail of the whole coal of every description under the foresaid lands, with liberty to work, win, and carry away the same, and to make roads for that purpose on payment of surface damages, as the same may be ascertained by arbiters mutually chosen, and in the event of their differing in opinion, by an oversman to be named by them, which lands and others it was thereby declared should, in terms of the Act of Parliament therein recited, be held as out of the entail under which they were previously held, and should be liberated from all the prohibitive, irritant, and resolute clauses thereof; and in like manner all and whole (tertio) the lands of Prestonhall, formerly called Little Preston, comprehending the house mains, town mains, mid mains, over mains, Briary baulk, and Wamford, with the manor place, houses, buildings, yards, orchards, corn mill, mill lands, and astricted multures of the said lands of Prestonhall, formerly called Little Preston, coals, collieries, doves, dovecots, with all and sundry their pertinents whatsoever, with the office of bailliary within the whole bounds of the said lands of Prestonhall, with the whole liberties and privileges thereunto belonging, in so far as the same are not abolished, together with the parsonage teinds of the said lands, formerly called Little Preston, with the servitude of quarrying limestone within the lands of Cranston and Muttonhole, all lying within the parish of Cranston, late regality of Saint Andrews, and county of Edinburgh; and in like manner (quarto) all and whole five oxgates of land of Westertown Bothkennar, with the pertinents lying within the lordship and sheriffdom of Stirling; as also all and whole that oxgate of land called Wester Oxgate, of the vicarage glebe of Bothkennar, with the pertinents of the same, formerly occupied by the late John Callander, portioner or reputed portioner there, and his tenants, lying within the shire of Stirling; but excepting always from the lands and others before described the mansion house on the lands and estate before described called the mansion house of Prestonhall with the offices and policies thereof.

