

**A TREATISE ON THE DEED OF ENTAIL:
EMBRACING, COMMENTARIES ON
THE AMENDMENT ACT OF 1848, AND
PRIOR ACTS ON THE SUBJECT OF
ENTAILS**

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A Treatise on the Deed of Entail: Embracing, Commentaries on the Amendment Act of 1848,
and Prior Acts on the Subject of Entails by Alexander Duff

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ALEXANDER DUFF

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ON THE
DEED OF ENTAIL,

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ON THE AMENDMENT ACT OF 1848, AND PRIOR
ACTS ON THE SUBJECT OF
ENTAILS.

WITH
AN APPENDIX,
CONTAINING THE ACTS, FORMS OF THE DEED, &c.

BY ALEXANDER DUFF,
WRITER TO THE SIGNET,
AUTHOR OF "A TREATISE ON FEUDAL CONVEYANCING;" "COMMENTARIES
ON THE RECENT STATUTES RELATIVE TO CONVEYANCING," &c.

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PREFACE.

THE great and important changes produced by the recent Statute on the law and practice connected with Entails, have laid on me the duty of revising the Chapter on the Deed of Entail contained in my Treatise on FEUDAL CONVEYANCING. In adding to the work a Commentary on the Statutes, and more particularly on the Act of the late Session of Parliament, which contains so many provisions of a highly complex kind, I was not insensible to the difficulty of the task, but ventured to rely on a continuance of that indulgence with which the Profession have received my former endeavours to assist in the application of important Statutes to practice.

The references to cases contained in the *New Series* of Court of Session Reports, are marked by the letters N. S. In other respects, authorities are referred to as in my former works.

In commenting on the numerous Acts relating to the subject of Entails, I have availed myself of the mode already in some measure in use, of referring to the particular Act by the title or name of the Peer or Member of Parliament by whom it was promoted. For the liberty I have thus taken, the great convenience of the method will, I trust, be my excuse.

EDINBURGH,
6th October 1848.



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TREATISE
ON THE
DEED OF ENTAIL.

1. INTRODUCTORY REMARKS, (a.)—1. *Entails prior to the Statute of 1685.*—Entails, in the strict sense of the term, are destinations protected by certain clauses called irritant and resolutive, which, if they do not derive their whole effect from statute, appear at least to have with much hesitation been admitted by our common law. It was naturally a principal object with a powerful aristocracy to transmit their estates to a long line of successors, unincumbered with the debts and obligations, and unaffected by the political offences of the individual heirs into whose possession they should descend; and as liferents in perpetuity were unknown in practice, the end to be attained was an effectual mode of restraining the power of alienation inherent in the right of property. *Inhibition*, which is a mere personal prohibition, and *interdiction*, which strikes at deeds granted without the consent of the judicial advisers of the interdicted, were resorted to without permanent effect; the former being available only when passing upon onerous deeds, which entails, unless mutual, are not considered to be (b); and the latter being subject to relaxation at the discretion of the Judge (c). They were at best but effectual against the persons interdicted or inhibit-

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