

**THE ENTAIL (SCOTLAND) ACT,
1882 (45 AND 46 VICTORIA,
CHAPTER 53) WITH NOTES AND
AN INDEX OF THE WHOLE ENTAIL
STATUTES**

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The Entail (Scotland) Act, 1882 (45 and 46 Victoria, Chapter 53) with Notes and an Index of the whole entail statutes by John Philp Wood

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JOHN PHILP WOOD

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(45 AND 46 VICTORIA, CHAPTER 53.)

WITH

NOTES

AND

AN INDEX OF THE WHOLE ENTAIL STATUTES.

BY

JOHN PHILP WOOD,

WRITER TO THE SIGNET.



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INTRODUCTION.

THE most important provisions of the Entail (Scotland) Act, 1882, are as follows:—

(1) It is made competent for the heir in possession of any entailed estate in Scotland who is of full age, whatever the date of the entail, to disentail the estate without the consent of the nearest heir, provided that, in the cases where the consent of the nearest heir would formerly have been necessary, the value of his expectancy or interest be ascertained, and paid or secured (sects. 3 and 13).

(2) It is rendered competent for any heir of entail, or the guardians of a minor heir, to apply to the Court for an order of sale of the estate, or a part of it (sect. 19). Full provisions are made by the subsequent sections for the administration of the fund to arise through such sale. It was formerly only competent to sell an entailed estate, or a portion of it, to pay entailer's debts, &c.; but the power conferred by the present statute is not so restricted. The Court is to have, however, a certain discretion as to giving the power craved, specially when the application is made by or on behalf of a married woman, minor, pupil, or other person under disability (sect. 21). It is also provided that the proceeds of an estate so sold can

be disentailed in the same way as the estate itself could have been (sect. 27).

(3) The creditor of any heir in possession in respect of debt incurred after the passing of the Act, is now entitled to force the granting of a security to him upon the estate, and compel a disentail. Further, the trustee on the sequestrated estate of any heir in possession, sequestrated for debt incurred after the passing of the Act, is authorised to apply for disentail (sect. 18).

There are, besides, various subsidiary provisions, of which the following may be here mentioned:—

Heirs in possession under entails dated on or after 1st August 1848, are empowered to sell, grant feus and long leases, and charge with debts and incumbrances, and for improvement expenditure, and to convey, bequeath, or assign the amount of such expenditure in the same way as if the entail were dated before said date (sect. 4).

Applications under the 1875 and 1878 Acts, for authority to charge with improvement expenditure, and for authority to grant leases, may be made in the Sheriff-Court (sect. 5).

Three-fourths of the sum authorised to be borrowed for improvements may be charged on the estate (sect. 6, subsect. 1).

An authority to feu or grant leases is made available to succeeding heirs (sect. 6, subsect. 3).

A lease may be granted at a diminished rent, and a new lease may be contracted for two years before the expiration of the current lease (sects. 8 and 9).

The guardians of a minor or pupil are empowered

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to present to the Court any entail petition, except an application for disentail (sect. 11).

Provision is made for the cases where an heir in possession, or an heir whose consent is required, shall have disappeared (sects. 14, 15, and 16).

It has not been thought necessary to print the prior entail statutes. These will be found collected and annotated in Mr. Rankine's "Law of Land Ownership," and (except the short Act of 1878) in Mr. Cowan's "Land Rights," second edition, 1876.

Mr. Alexander Ritchie, S.S.C., has been kind enough to read the proof, and make several important suggestions.

The Index of the Entail Acts will, it is hoped, be found useful.

EDINBURGH, 30th September 1882.

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