



Entail Act 1838

1838 CHAPTER 70

An Act to extend the Powers of an Act of the Sixth and Seventh Year of the Reign of His late Majesty, in relation to granting Tacks and making Excambions by Heirs of Entail. [4th August 1838]

WHEREAS an Act was passed in the Sixth and Seventh Year of the Reign of His late Majesty, intituled *An Act to grant certain Powers to Heirs of Entail in Scotland, and to authorize the Sale of Entailed Lands for the Payment of certain Debts affecting the same* : And whereas the Powers granted by the said Act are granted only to Heirs in Possession under Entails made and established pursuant to an Act passed in the Parliament of *Scotland* in the Year Sixteen hundred and eighty-five, intituled *Act concerning Tailzies*; and it is expedient that the Powers of granting lacks and making Excambions, conferred by the said first-recited Act, should be extended to Heirs in Possession of Entailed Estates under Deeds of Entail not recorded in Terms of the said second-recited Act:

Be it therefore 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,

Powers and Provisions of recited Acts, as to Tacks and Excambions, further extended.

That all the Powers of granting Tacks and of making Excambions conferred by the said first-recited Act upon Heirs of Entail in Possession of Entailed Estates, in virtue of any Deed of Entail made and established, or which may hereafter be made and established, pursuant to the Directions of the said second-recited Act, shall extend and are hereby extended to Heirs of Entail in Possession of Entailed Estates under Deeds of Entail not recorded in Terms of the said second-recited Act; and all the Powers, Provisions, and Clauses contained in the said first-recited Act, in relation to the granting Tacks and making Excambions, shall, except as herein otherwise provided, extend to and be as good, valid, and effectual for carrying this Act into execution as if the same had been repeated and re-enacted in the Body of this Act.

II Contracts of Excambion to be recorded in Sheriff Court Books.

Provided always, and be it enacted, That all Contracts of Excambion to be executed in virtue of the Powers of this Act shall be recorded in the Sheriff Court Books of each of the Shires or Stewartry in which the Lands or Heritages excambed are situated, and shall thereupon be effectual to all Intents and Purposes, without the Necessity of being recorded in the Register of Tailzies, as by the said first-recited Act required.

III Where Deed of Entail is recorded after making an Excambion, any Contract entered into shall be registered at the same Time.

And be it enacted, That in case any Excambion shall be made of Lands held under a Deed of Entail which has not been recorded in the Register of Entails, and such Deed of Entail shall, after such Excambion, be recorded in the said Register, it shall be incumbent upon the Party registering the Entail to register also at the same Time in the said Register of Entails any Contract or Contracts of Excambion of any Part or Parts of the Entailed Estate entered into before the Registration of the Deed of Entail as aforesaid, and failing the Registration of such Contract or Contracts, such Deed of Entail, in so far as regards any such Excambion made before the Registration, shall be deemed and taken to be unrecorded in the said Register of Entails.