



Entail Sites Act 1840

1840 CHAPTER 48

An Act to enable Proprietors of Entailed Estates in *Scotland* to feu or lease on long Leases Portions of the same for the building of Churches and Schools, and for Dwelling Houses and Gardens for the Ministers and Masters thereof. [4th August 1840]

WHEREAS it would be for the Advancement of Religion and Education in *Scotland* if the Proprietors of Entailed Estates in that Country were enabled to grant in feu, or tease on long Leases, Portions of such Estates, for the Purpose of building thereon Places of Christian Worship, and Schools and Dwelling Houses for the Ministers and Masters thereof, with suitable Gardens to such Houses :

May it therefore please 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,

Heirs of Entail may grant Leases of Portions of the Estates for Sites of Churches, &c.

That from and after the passing of this Act it shall be lawful to Heirs of Entail for the Time being in Possession of Entailed Estates in *Scotland*, and having made up a feudal Title thereto, if of lawful Age, or if in Pupillarity or Minority, or under mental or other legal Disability, then to the Tutors or Curators or other legal Guardians of such Heir, notwithstanding any prohibitory, irritant, and resolute Clauses contained in any Entail already made and established, or which may hereafter be made and established, pursuant to the Directions contained in an Act of the Parliament of *Scotland* made in the Year One thousand six hundred and eighty-five, intituled *Act concerning Tailzies*, to grant or dispo in feu, or to let or lease for any Period of Endurance, for such yearly Feu Duty or Rent as may be agreed upon, though inadequate and below the just Avail or Value, Portions of such Estates respectively, not exceeding the Extent herein-after mentioned, as the Sites of Places of Public Christian Worship, and Schools, and for Burying Grounds and Playgrounds for such Places of Public Worship and Schools respectively, and also for Dwelling Houses and Gardens for the Ministers and Schoolmasters thereof respectively ; and the Feu Charters or Dispositions or Leases so to be granted shall be good, valid, and effectual to the Grantee or 'Lessee under the same

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against any subsequent Heir of Entail, and the granting of the same shall not infer any Forfeiture, Irritancy, or Claim of Reparation against the Heir granting such Feu or Lease Provided always, that the Sheriff to whom Application shall be made in manner after directed shall be 'satisfied of the Propriety of the Measure in the whole Circumstances ; and that no Grassum, Fine, or other Consideration shall be given or paid therefor to or for the exclusive Benefit or Advantage of the Heir of Entail in Possession granting such Feu or Lease, or of the Heir of Entail consenting thereto as herein-after provided; and provided also, that the Extent of Ground feued or leased shall not exceed One Fourth of an Acre for any One Place of Worship, nor One Acre for any One Burying Ground attached thereto, nor One Eighth of an Acre for any one Dwelling House for a Minister or Schoolmaster, nor One Acre for any Schoolhouse and Playground attached thereto, nor Half an Acre for the Garden attached to such Dwelling Houses respectively.

II Rights of Heir of Entail in Possession not to be prejudiced.

Provided always, and be it enacted, That, nothing herein contained shall prevent or be construed to prevent any Heir of Entail in Possession from exercising any Power of granting Feus and Leases which may be contained in the Entail under which he possesses more extensive than the Power of granting Feus or Leases hereby conferred, and without any Application to the Sheriff hereby directed.

III No Lease to be granted without Permission of Sheriff, who may refuse if he deems it injurious to succeeding Heirs.

And be it enacted, That, previous to the granting any such Feu or Lease, the Heir of Entail intending to grant the same shall present a Petition to the Sheriff of the County within which the Entailed Land to be feued or leased lies, setting forth the particular Description and Extent of Land proposed to be feued or leased, the Purpose to which the same is to be applied, and the Parties in whom it is to be vested in Trust for such Purposes, and praying the Sheriff to interpose his Authority thereto; and such Sheriff shall thereupon, unless the Consent in Writing of the Heir of Entail of lawful Age next in Order of Succession to such Entailed Estate shall be produced with the Petition, order Intimation of such Petition to be made to the said Heir of Entail next in Order of Succession within the United Kingdom, or if out of the United Kingdom then to the Factor or Agent of such next Heir if of lawful Age, and if in Pupillarity or Minority, or under mental or other legal Disability, then to the Tutors or Curators or other legal Guardians of such Heir, and shall, unless such Consent shall be produced, also order Notice of such Petition, in such Terms as he shall direct, to be published in the *Edinburgh Gazette*, and in some One Newspaper, to be fixed on by him, Three Times at Intervals of Fourteen Days ; and upon Production to the Sheriff of such Intimation and Publication, if there be any such Heir in existence and known, or otherwise of such Publication, with a Declaration by the Petitioner, to which he may be required to make Oath, that no such Heir is in existence or known, he shall resume the Consideration of the Petition, and shall institute such Inquiry into the Circumstances of the Case as he shall think necessary ; and after hearing the Heir of Entail to whom Notice shall be so given, if he shall appear to oppose the granting the Prayer of the said Petition, the Sheriff shall, whether Appearance be made or not, if satisfied of the Propriety of the Measure, pronounce a Deliverance interponing his Authority thereto as craved, or under such Limitation or Qualification as he may judge necessary or proper, or he may refuse the Prayer of the Petition if he should deem the granting the Feu or Lease injurious, otherwise than as regards the Feu Duty or Rent as aforesaid, to the Interest of the succeeding Heirs of Entail.

IV Heir of Entail not liable to Forfeiture or Loss of Right by granting Lease.

And be it enacted, That, the Authority of the Sheriff being interponed as aforesaid, it shall be lawful to the Heir of Entail so applying to execute a Feu Charter or Lease, as the Case may be, in conformity with the said Petition and Deliverance thereon, in favour of the Presbytery of the Bounds, or the Trustees or Managers or Directors of the Place of Christian Worship or School respectively, and their Successors in Office, or such other Body as may be selected and agreed upon, in Trust for the Purposes set forth in such Petition ; and such Heir shall not, by the Execution of such Feu Charter or long Lease, incur any Forfeiture, Irritancy, or Loss of Right, any thing in the Deed of Entail under which he holds the Entailed Estate to the contrary notwithstanding.

V Feu Charter, when recorded, to vest Lands in Grantees and their Successors, without Transfer, during the whole Term of Lease.

And be it enacted, That the recording of such Feu Charter in the General Register of Sasines (and the Keepers thereof are hereby authorized and required to register the same) shall, without any infetment thereupon, validly and effectually vest and seise the Grantees in such Charter in the Land thereby conveyed ; and such Feu Charters and Leases shall be effectual to the Successors in Office of the Persons in whose Favour the same shall have been granted for the Trust Purposes for which they were granted, without any Transference or Renewal of the Investiture, in all Time thereafter, as regards such Feu Charters, and during the whole Duration of such Leases.

VI Trustees not to dispoise, &c. Land, or assign Leases.

And be it enacted, That it shall not be competent or lawful to the Parties in whose Favour such Feu Charters or Leases shall have been granted in Trust as aforesaid, or their Successors in Office, to dispoise, let, sub feu or sub-let the Lands so held by them, nor to assign such Leases, nor to borrow Money on the Security of the same, nor to burden the Lands held by them in any way with Debts or Obligations of any Description ; and all Dispositions, Sub-feus, Heritable Bonds or Dispositions in Security, Leases and Sub-leases of the Lands so feued or leased, or Assignations of such Leases, and all Adjudications of such Lands in Implement or for any such Debt or Obligation, shall be null and void to all Intents and Purposes.

VII Lands, or Buildings thereon, not to be used for any Purpose than that for which it was granted.

And be it enacted, That it shall not be lawful to the Parties in whose Favour such Feu Charter or Lease shall have been granted, or their Successors, to divert the Land so feued or leased, or the Buildings erected thereon, to any other Purpose than the Purpose for which the same shall have been feued or leased; and if such Land or Buildings shall at any Time be so diverted, or shall be, for the Period of Five Years, left unemployed for the Purposes for which the same were feued or leased, it shall be competent for the Heir of Entail in Possession for the Time being to apply by Petition to the Sheriff of the County in which the Land or Buildings lie, setting forth the Diversion or Abandonment, and praying to have the Feu Charter or other Right or Lease declared to be forfeited, and the Land therein contained, with the Buildings erected thereon, to belong to the Heirs of Entail of the Estate in relation to which such Feu Charter or Lease was granted, in all Time thereafter, free from and unaffected by such Feu Charter or Lease, and to be again subject to the Destination and Fetters of the Entail of such Estate; and the said Sheriff, after ordering Intimation of such Petition to the Parties at

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the Time in right of such Feu Charter or Lease, if known, and also public Notice to be affixed on the Door of the Parish Church of the Parish within which the Land feued or leased is *quoad sacra* situated, for Three successive Sundays, shall, on Evidence of such Intimation and Publication being produced to him, resume Consideration of the Petition, and shall inquire into the alleged Diversion or Abandonment, and shall hear the Parties in the Right of the Feu Charter or Lease, or any of the Inhabitants of the Parish for whose Behoof the Land is held, and receive any competent Evidence that shall be offered by any of the Parties interested; and if he shall find the Allegation of Diversion or Abandonment proved, he shall pronounce a Deliverance to that Effect, and shall declare the Feu Charter or Lease forfeited, and the Portions of Ground therein contained to belong to the Heirs of Entail aforesaid, in all Time thereafter, free from and unaffected by such Feu Charter or Lease, and subject to the Destination and Fetters of the Entail of the Estate in relation to which such Feu Charter or Lease was granted ; and such Decree of Declarator shall be recorded in the general Register of Sasines, and the Land and Subjects to which the same relates shall be thereafter possessed by such Heirs of Entail accordingly, and as if such Feu Charter or Lease had never been granted.

VIII Act may be altered this Session.

And be it further enacted, That this Act may be amended, altered, or repealed by any Act to be passed in the present Session of Parliament.