



Conveyancing (Scotland) Act 1874

1874 CHAPTER 94

4 Renewal of investiture abolished. Infetment to imply entry with superior. Implied entry not to affect rights of superiors to feu-duties, &c. Action in lieu of a declarator of non-entry

When lands have been feued, whether before or after the commencement of this Act,—

- (1) It shall not, notwithstanding any provision, declaration, or condition to the contrary in any statute in force at the passing of this Act, or in any deed, instrument, or writing, whether dated before or after the passing of this Act, be necessary, in order to the completion of the title of any person having a right to the lands in whole or in part, whether such right shall have been acquired by succession, bequest, gift, or conveyance, that he shall obtain from the superior any charter, precept, or other writ by progress; and it shall not be competent for the superior in any case to grant any such charter, precept, or other writ by progress : Provided always, that nothing in this Act contained shall prevent the granting of charters of novodamus or precepts or writs from Chancery or of clare constat, or writs of acknowledgment:

Infetment to imply entry with superior.

- (2) Every proprietor who is at the commencement of this Act or thereafter shall be duly infet in the lands shall be deemed and held to be, as at the date of the registration of such infetment in the appropriate register of sasines, duly entered with the nearest superior whose estate of superiority in such lands would according to the law existing prior to the commencement of this Act have been not defeasible at the will of the proprietor so infet, to the same effect as if such superior had granted a writ of confirmation according to the existing law and practice, and that whether the superior's own title or that of any, over superior has been completed or not, but such implied "entry shall not be held to confer or confirm any rights more extensive than those contained in the original charter or feu right of the lands or in the last charter or other writ by which the vassal was entered therein: Provided always, that nothing herein contained shall be held to validate any subfeu in cases where subinfeudation has been effectually prohibited; and provided further, that notwithstanding such implied entry, the proprietor last entered in the lands, and his heirs and representatives, shall continue personally liable to the superior for payment of the whole feu-duties affecting the said lands, and for performance of the whole obligations of the feu, until notice of

the change of ownership of the feu shall have been given to the superior; but without prejudice to the superior having all his remedies against the entered proprietor under the entry implied by this Act, and without prejudice also to the right of the proprietor last entered in the lands and his foresaids to recover from the entered proprietor of the lands all feu-duties which such proprietor last entered in the lands or his foresaids may have had to pay in consequence of any failure or omission to give such notice ; and for this purpose all the remedies competent to the superior for recovery of feu-duties shall by virtue of this Act be held to be assigned to the proprietor last entered in the land and his foresaids to the effect of enabling them to recover payment of any sums so paid by them as aforesaid, but that always under reservation of, and without prejudice to the superior's rights, remedies, and securities for making effectual and recovering all other feu-duties due and to become due to him; and such notice may be in the form of Schedule A. hereto annexed, or as nearly in that form as the circumstances in each particular case will permit. In the event of the proprietor last entered in the lands or his foresaids desiring to preserve evidence of his or their having sent such notice, it shall be sufficient if a copy of such notice, certified by the sender thereof as having been delivered or put into the post office by him in presence of two witnesses, who shall also subscribe the certificate, is preserved, or that the notice is acknowledged by the superior or his agent to have been received, either on a duplicate thereof or by a separate acknowledgment, and the superior or his agent on receiving such intimation in duplicate, with a fee of five shillings, shall, if required, be bound to return one of the copies with an acknowledgment of intimation thereon subscribed by him :

Implied entry not to affect rights of superiors to feu-duties, &c.

- (3) Such implied entry shall not prejudice or affect the right or title of any superior to any casualties, feu-duties, or arrears of feu-duties which may be due or exigible in respect of the lands, at or prior to the date of such entry; and all rights and remedies competent to a superior under the existing law and practice or under the conditions of any feu right, for recovering, securing, and making effectual such casualties, feu-duties, and arrears, or for irritating the feu ob non solutum canonem, and all the obligations and conditions in the feu rights prestable to or exigible by the superior, in so far as the same may not have ceased to be operative in consequence of the provisions of this Act or otherwise, shall continue to be available to such superior in time coming; but provided always, that such implied entry shall not entitle any superior to demand any casualty sooner than he could, by the law prior to this Act or by the conditions of the feu right, have required the vassal to enter or to pay such casualty irrespective of his entering:

Action in lieu of a declarator of non-entry.

- (4) No lands shall, after the commencement of this Act, be deemed to be in non-entry, but a superior who would but for this Act be entitled to sue an action of declarator of non-entry against the successor of the vassal in the lands, whether by succession, bequest, gift, or conveyance, may raise in the Court of Session against such successor, whether he shall be infeft or not, an action of declarator and for payment of any casualty exigible at the date of such action, and no implied entry shall be pleadable in defence against such action ; and any decree for payment in such action shall have the effect of and operate as a decree of declarator of non-entry, according to the now existing law, but shall cease to have such effect upon the payment of such casualty, and of the expenses (if any) contained in said decree; but such payment shall not prejudice the right or title of the superior to the rents due for the period while he is in possession of the lands under such decree nor to any feu-duties or arrears thereof which may be due or exigible at or prior to the date of such payment, or the rights and remedies

competent to him under the existing law and practice for recovering and securing the same; and the summons in such action may be in or as nearly as may be in the form of Schedule B. hereto annexed.