



Entail Amendment (Scotland) Act 1875

1875 CHAPTER 61

- 5 Amendment of Section 3 of 11 & 12 Vict. c.36. Consents to disentail estates entailed before 1st August 1848, may be given in course of application, and when such consents are not given, the court may assess the value of the heirs interests and dispense with such consents, on payment or security of such value. In case of nearest heir consent must be given by himself.**

Whereas it is expedient that section three of the Act of the eleventh and twelfth years of the reign of Her Majesty, chapter thirty-six, should be amended: Be it enacted as follows:

- (1) In any application to the Court of Session for authority to disentail an entailed estate in Scotland, holden by virtue of any tailzie dated prior to the first day of August one thousand eight hundred and forty-eight, the consent of any of the heirs of entail mentioned in the recited section entitled to succeed to such estate may competently be given after such application has been presented to the court, and in the course of the same :
- (2) In the event of any of the foresaid heirs, except the nearest heir for the time, whether an heir apparent or not, entitled to succeed, declining or refusing to give or being legally incapable of giving his consent, the court may dispense with such consent in terms of the provisions following; (that is to say.)
 - (a) When any of the foresaid heirs entitled to succeed, except the nearest heir for the time, declines or refuses to give, or is legally incapable of giving his consent, the court shall, on a motion to that effect by the petitioner in the application, and on a statement by him of the declinature or refusal or incapacity of such heir or heirs aforesaid, and after such intimation to the heir or heirs so declining or refusing, or to the guardians or other persons interested in the heir or heirs incapacitated as aforesaid, as the court shall think necessary, ascertain the value in money of the expectancy or interest in the entailed estate with reference to such application of such heir or heirs declining or refusing, or incapacitated to give consent as aforesaid.
 - (b) Upon such value in money being ascertained to the satisfaction of the court, the court shall direct the sum so ascertained to be paid into bank in name of the heir or heirs the value of whose expectancy or interest has been ascertained

Status: This is the original version (as it was originally enacted).

as aforesaid, or that proper security shall be given over the estate which is the subject of application for the amount so ascertained in favour of the heir or heirs aforesaid.

- (c) Upon such value in money being so paid or secured, to the satisfaction of the court, the court shall dispense with the consent or consents of the heir or heirs, the value of whose expectancy or interest has been ascertained as aforesaid, and shall thereupon proceed as if such consent or consents had been obtained : Provided always, that nothing herein contained shall render it competent to dispense with the consent of the nearest heir for the time entitled to succeed to any entailed estate sought to be disentailed.
- (3) So much of the recited section as provides that the heir of entail in possession, being the only heir of entail in existence for the time, shall be unmarried when he exercises the powers conferred upon him by the recited section, is hereby repealed ; but nothing herein contained shall affect the provisions of section eight of the recited Act.