



CHAP. 4.

An Act to amend "An Act to authorise the borrowing of A.D. 1870.
 " money on the security of the entailed estate of Downie
 " Park in the county of Forfar, or the sale of a portion of
 " the estate, for the purpose of paying the debts and
 " legacies affecting the same;" and to make further pro-
 vision for the sale of the estate. [1st August 1870.]

WHEREAS an Act was passed in the twenty-eight and twenty-
 ninth year of the reign of Her present Majesty, intituled
 "An Act to authorise the borrowing of money on the security of 28 & 29 Vict.
 " the entailed estate of Downie Park in the county of Forfar, or c. 8.
 " the sale of a portion of the estate, for the purpose of paying the (Private.)
 " debts and legacies affecting the same," herein-after called the
 recited Act:

And whereas by the first section of the recited Act it is provided,
 that it should be lawful for James Joseph Hamilton Lawson, Esquire,
 formerly residing at Wardie, near Edinburgh, now deceased, and
 Thomas Lyell, Esquire, of Shielhill, Kirriemuir, Forfarshire, as
 the trustees under the trust disposition and settlement recited in
 the said Act, executed by Lieutenant-Colonel William Rattray, of
 Downie Park in the county of Forfar, sometime in the Honourable
 East India Company's Artillery Establishment, dated the ninth day
 of December one thousand eight hundred and fifteen, and recorded
 along with the codicil, also therein recited, in the books of Council
 and Session at Edinburgh, the seventeenth day of March one
 thousand eight hundred and twenty, or the survivor of them (in the
 recited Act called the trustees), with the consent and concurrence of
 the curator bonis for the time being of John Hamilton Rattray, the
 heir of entail in possession of the entailed estate of Downie Park,
 described in the recited Act, who is a lunatic, to borrow for the
 purposes and subject to the provisions of the recited Act the sum
 required to pay the debts and legacies specified in the schedule
 thereto annexed, and the interest due and to become due thereon,
 and the costs and charges of applying for and obtaining the recited
 Act and incidental thereto, and of carrying the same into effect, and
 to charge the fee and rents of the said entailed estate of Downie

A.D. 1870.

Park, other than and except the mansion house and offices and east and west gardens, amounting in all to thirty acres of ground around the house, with the said sum or any part thereof, by granting, with the consent and concurrence of the said curator bonis for the time being, a bond and disposition in security or bonds and dispositions in security over the said estate, excepting as aforesaid, for the money so borrowed, with the interest thereof at any rate not exceeding five pounds per centum per annum, from the date at which such money is advanced until repaid, and with corresponding penalties in case of nonpayment, and every such bond and disposition in security may be in ordinary form, binding the heir of entail in possession and the heirs of entail entitled to succeed to the said estate, in their order successively, to repay the principal sum therein contained, with interest and penalties, and may contain a power of sale and other clauses usual in bonds and dispositions in security granted over estates in Scotland held in fee simple, and the said curator bonis for the time being is by the recited Act authorised to give his consent and concurrence to the borrowing of money and the granting of bonds and dispositions in security, as therein-before provided :

And whereas by the third section of the recited Act it is provided, that if the trustees think it more expedient to raise the sum required for the purposes before specified, or any part thereof, by the sale of part of the entailed estate instead of by borrowing money as therein-before provided, they may, with the consent and concurrence of the curator bonis for the time being of the said John Hamilton Rattray, which consent and concurrence the said curator bonis is thereby authorised to give, apply to the Court of Session in Scotland, by summary petition, for authority to sell such portions of the said estate, other than and except the said mansion house, offices, east and west gardens, and ground around the house, as may be necessary to raise the said sum or part thereof; and on such application being presented the said Court may make such orders and take such proceedings as they think fit, and may grant authority to the trustees to sell, by public auction or by private sale, and on such terms and conditions as may be directed or approved by the said Court, such portions of the said estate, except as aforesaid, as may be disposed of to the greatest advantage and with the least injury to the interests of the heirs of entail, and to grant dispositions, conveyances, and all other deeds necessary for effecting such sales; and it shall not be necessary to have the consent to such application of any of the heirs of entail entitled to succeed to the said estate, or to make any intimation or advertisement of such application :

And whereas by the fifth section of the recited Act it is provided that the trustees shall, as soon as conveniently may be after receiving the money by the recited Act authorised to be raised by

A.D. 1870.

borrowing or sale, pay the debts and legacies specified in the schedule to the recited Act annexed, so far as legally due and payable, with the interest due thereon, to the parties respectively entitled thereto; and by the eighth section of the recited Act it is provided, that the money raised by the trustees, or by any heir of entail in possession of the said estate, or his curator bonis or other lawful guardian, by borrowing or by sale of portions of the said estate as therein provided, shall be applied in payment of the said debts and legacies specified in the said schedule, and the interest due and to become due thereon, and the costs and charges of applying for and obtaining the recited Act and incidental thereto, and of carrying the same into effect, and to no other purpose whatsoever:

And whereas by the eleventh section of the recited Act it is provided, that in the case of the sale of any portion of the said estate under the provisions thereof any surplus of the price shall remain after payment of the said debts and legacies and interest and costs and charges as before specified, such surplus shall be applied under the direction of the Court of Session in the same manner and to the same purposes as any surplus of the price of lands sold may be applied under the provisions of the Public Act, eleventh and twelfth Victoria, chapter 36:

And whereas by the twelfth section of the recited Act it is provided, that if the said James Joseph Hamilton Lawson and Thomas Lyell, or either of them, should resign the office of trustee under the recited Act, which they are respectively thereby authorised to do, or should die or become incapable of acting in the trust thereby created, before the purposes thereof are carried into effect, the Court of Session, on the application by summary petition of the surviving trustee, or of any of the heirs of entail in possession of or entitled to succeed to the said estate, or of any person beneficially interested in the trusts created by the said trust disposition and settlement, or by the recited Act, may appoint one or more fit persons to be a trustee or trustees, to act along with or after the surviving trustee in carrying into effect the purposes and provisions of the recited Act; and the trustee or trustees so to be appointed shall have and be subject to all the powers, authorities, privileges, and obligations which are thereby conferred and imposed on the trustees appointed by the recited Act; and any two of the trustees appointed or to be appointed as aforesaid, while more than two are alive and acting, shall be a quorum.

And whereas by the seventeenth section of the recited Act it is provided, that whereas Major (now Lieutenant-Colonel) Thomas Rattray, of the Bengal Staff Corps, one of the heirs of entail entitled to succeed to the said entailed estate, was in India at the date of the passing of the recited Act, and his consent thereto had not been proved, therefore the recited Act should not, nor should any of the

A.D. 1870. — provisions therein contained, operate as against the said Thomas Rattray, or the heirs male of his body, until the said Thomas Rattray, or, in the event of his decease, until the heir male of his body, being of lawful age, should signify his consent to the recited Act, by writing under his hand, attested by one or more witness or witnesses, and such consent should be registered as a probative writ in the books of Council and Session at Edinburgh, and from and after the registration of such consent the same should be deemed and taken as part of the recited Act, and should be as conclusive and binding upon the said Thomas Rattray and the heirs male of his body as if such consent had been obtained and proved before the passing of the recited Act:

Lieutenant-Colonel Rattray's consent to the recited Act.

And whereas the said Thomas Rattray executed a consent to the recited Act in the form and attested in the manner thereby prescribed, which consent is dated the fourth day of September one thousand eight hundred and sixty-five, and was registered as a probative writ in the books of Council and Session at Edinburgh on the twenty-seventh day of October one thousand eight hundred and sixty-five:

Death of James J. H. Lawson and action in Court of Session.

And whereas the said James Joseph Hamilton Lawson died on the eleventh day of May one thousand eight hundred and sixty-six, and the said Thomas Lyell, as sole surviving trustee, proceeded to carry into effect the purposes and provisions of the recited Act, and he and the curator bonis for the said John Hamilton Rattray raised an action in the Court of Session against the legatees under the said trust disposition and settlement, in order to obtain the decision of the Court on a question as to the period at which the legacies vested; and final judgment in that action was pronounced on the twenty-second and twenty-seventh days of February and twentieth day of March, and extracted on the fourteenth day of April one thousand eight hundred and sixty-eight:

Appointment of curator bonis to John Hamilton Rattray.

And whereas the said John Hamilton Rattray, the heir of entail in possession of the said entailed estate, is still a lunatic, and Edward Chancellor, writer to the signet in Edinburgh, was, on the twentieth day of March one thousand eight hundred and sixty-seven, appointed by the Court of Session to be his curator bonis in the room of the said James Joseph Hamilton Lawson:

Appointment of new trustees under trust disposition and settlement and recited Act.

And whereas on the twenty-fourth day of April one thousand eight hundred and sixty-nine the said Thomas Lyell, with concurrence of the said Edward Chancellor as curator bonis to the said John Hamilton Rattray, presented a petition to the Court of Session, under the twelfth section of the recited Act, and under "The Trusts (Scotland) Act, 1867," for the appointment of John Glencairn Carter Hamilton, of Dalzell, Member of Parliament, and Kenneth Mackenzie, chartered accountant in Edinburgh, to be trustees under the said trust disposition and settlement, and also for carrying into effect the

provisions of the recited Act, to act along with, or after, the said Thomas Lyell, with the powers, privileges, and immunities conferred and under the obligations imposed by the recited Act, on the trustees thereby appointed; and by interlocutor dated the twenty-seventh day of May one thousand eight hundred and sixty-nine, the Court of Session appointed the said John Glencairn Carter Hamilton and Kenneth Mackenzie to be trustees under the said trust disposition and settlement, with all the powers incident to that office, and also to be trustees under the recited Act, with the powers and for the purposes therein specified:

A.D. 1870.

And whereas by minute of resignation dated the ninth day of March one thousand eight hundred and seventy the said Thomas Lyell resigned as from the date thereof the office of trustee under the said trust disposition and settlement, of the said Lieutenant-Colonel William Rattray, and he also thereby resigned the office of trustee under the recited Act, and the said John Glencairn Carter Hamilton and Kenneth Mackenzie are the sole surviving and acting trustees under the said trust disposition and settlement and under the recited Act:

Resignation of Thomas Lyell.

And whereas the amount of the debts, legacies, and expenses for the payment of which the said estate was authorised to be charged, or part of which was authorised to be sold, in the manner provided by the recited Act, amounted with interest at the first day of February one thousand eight hundred and seventy to twelve thousand eight hundred and sixty-four pounds four shillings and ninepence; but the trustees had in hand a sum arising from accumulation of rents and interest thereon to the amount of two thousand one hundred and sixty-four pounds four shillings and ninepence, leaving the sum of ten thousand seven hundred pounds to be raised for payment of the said debts, legacies, and expenses, and interest thereon:

Sum to be raised for payment of debts, legacies, and expenses.

And whereas the rental of the said estate, after deducting public burdens, amounts to about six hundred and seventy pounds a year, and in the present position of the said estate it would be more expedient and more beneficial to the said John Hamilton Rattray and the heirs of entail, entitled to succeed to the said estate, to raise the said sum by selling than by borrowing money under the provisions of the recited Act, but an advantageous sale could not be effected of a portion of the said estate, nor otherwise than by a sale of the said estate as a whole, with the mansion house and grounds:

More expedient to sell the estate than to borrow money.

And whereas by the provisions of the recited Act the said mansion house, offices, east and west gardens, and ground around the house are excepted from the powers of sale conferred by the recited Act, and the trustees are therefore prevented from selling the whole of the said estate:

Exceptions from powers of sale.

And whereas it is expedient and would be for the advantage of the said John Hamilton Rattray and the heirs of entail, entitled to

Expediency of selling the

A.D. 1870.
 whole of the
 estate.

succeed to the said estate, if the recited Act were amended, and if powers were granted to the trustees to sell the whole of the said estate under the provisions and for the purposes of the recited Act, and to invest the surplus of the price obtained therefor, after payment of the said debts, legacies, and expenses and other claims on the said trust estate, in the purchase of other lands to be entailed in terms of the deed of entail by the said Lieutenant-Colonel William Rattray, dated the ninth day of December one thousand eight hundred and fifteen, and recited in the said Act, or on heritable security in Scotland, until lands suitable for such purchase can be found; but these objects cannot be effected without the authority of Parliament:

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, as follows:

Power to
 trustees to
 sell the en-
 tailed estate.

1. The trustees may, with the consent and concurrence of the curator bonis for the time being of the said John Hamilton Rattray, which consent and concurrence the said curator bonis is hereby authorised to give, apply to the Court of Session in Scotland by summary petition for authority to sell the entailed lands and estate of Downie Park described in the recited Act, with the mansion house on the said estate, offices, east and west gardens, and ground around the house; and on such application being presented the said Court may make such orders and take such proceedings as they think fit, and may grant authority to the trustees to sell the said estate, by public auction or by private sale, and on such terms and conditions as may be directed or approved by the said Court, and to the trustees and the said curator bonis to grant dispositions, conveyances, and all other deeds necessary for effecting such sales; and it shall not be necessary to have the consent to such application of any of the heirs of entail entitled to succeed to the said estate, or to make any intimation or advertisement of such application.

Estate when
 sold to be
 freed from
 debts and
 fetters of
 entail.

2. The said estate when sold under the authority of this Act and of the Court of Session, as herein-before provided, shall be freed and discharged of all the debts and legacies specified in the schedule annexed to the recited Act, and all interest due or to become due thereon, and of all other debts and claims due or owing by the said Lieutenant-Colonel William Rattray, or his heirs and representatives, or his trust estate, and of the burdens, provisions, conditions, restrictions, and clauses irritant and resolute contained in the said deed of entail or the said trust disposition and settlement recited in the said Act; and the disposition and conveyance to the purchaser thereof shall be granted and executed by the trustees and the curator bonis

for the time being of the said John Hamilton Rattray, and shall confer on such purchaser a valid title in fee simple to the lands so purchased by him, freed and discharged of all the said debts, legacies and claims, and of the said burdens, provisions, conditions, restrictions, and clauses irritant and resolutive.

A.D. 1870.

3. In the event of the powers and provisions of this Act not being fully carried into effect by the trustees during the life of the said John Hamilton Rattray, it shall be lawful for the heir of entail in possession of the said estate, or his curator or other lawful guardian, if he is in minority or under any legal disability or incapacity, to apply for and obtain the authority of the Court of Session to sell and convey the said estate in the same form and manner and with the same powers as is herein provided with respect to the selling and conveying of the said estate by the trustees.

Powers of this Act may be exercised by heir of entail in possession, if not executed by trustees.

4. The money raised by the trustees, or by any heir of entail in possession of the said estate or his curator bonis or other lawful guardian, by the sale of the said estate as herein-before provided, shall be applied by such trustees, or heir of entail, or curator, or other lawful guardian in payment of the debts and legacies specified in the schedule annexed to the recited Act, and the interest due and to become due thereon, and the costs and charges of applying for and obtaining this Act and incidental thereto, and of carrying into effect the recited Act and this Act: Provided that the purchaser of the said estate shall not be in any way concerned with or bound to see to the application of the price paid by him.

Application of money raised.

5. The surplus of the price of the said estate which may remain after payment of the said debts and legacies and interest and costs and charges, as before specified, shall be applied under the direction of the Court of Session, upon the Court being satisfied that the said debts and legacies and interest and costs and charges have been paid, in the purchase of other lands to be entailed in terms of the said deed of entail by the said Lieutenant-Colonel William Rattray mentioned in the recited Act; and until suitable lands for such purchase are found such surplus may be invested on heritable security in Scotland, by the trustees, or in the event of a sale of the said estate by an heir of entail in possession as herein-before provided, by trustees to be appointed by the said Court under the provisions of "The Entail Amendment (Scotland) Act, 1868;" and until such surplus is applied in the purchase of land to be entailed, the free annual proceeds thereof shall be paid or applied to or for behoof of the said John Hamilton Rattray, or the person who would be the heir in possession if such lands were purchased and entailed.

Application of surplus of price of estate.

6. The lands to be purchased as herein-before provided shall be entailed on the same series of heirs, and with and under the same

Deed of entail to be

A.D. 1870.
 ———
 executed and
 recorded.

provisions, conditions, restrictions, and clauses irritant and resolute as are specified and contained in the said deed of entail by the said Lieutenant-Colonel William Rattray, or with and under such other clauses and provisions as may by the law of Scotland be equivalent thereto; and the deed of entail of the said lands to be executed by the trustees or the heir of entail in possession shall be approved by the Court of Session, and shall be recorded in such manner as the said Court shall direct; and the ninth day of December one thousand eight hundred and fifteen, being the date of the said deed of entail by the said Lieutenant-Colonel Rattray, shall, in any question or matter relating to the said surplus or the lands to be purchased as herein-before provided, be held to be the date of the deed of entail of the said last-mentioned lands, whatever be the actual date thereof.

Part of
 third section
 repealed.

7. So much of the third section of the recited Act as provides that the mansion house on the said estate, offices, east and west gardens, and ground around the house shall not be sold is hereby repealed.

Recited Act
 to remain in
 force.

8. The recited Act, except in so far as repealed or altered by this Act, shall remain in force, and shall be read and construed along with this Act as one Act; and the expression "the trustees" in the recited Act and this Act shall mean the said John Glencairn Carter Hamilton and Kenneth Mackenzie or the trustees for the time being acting under and in the execution of the recited Act and this Act.

General
 saving.

9. Saving and reserving always to the Queen's most Excellent Majesty, her heirs and successors, and to all other persons or bodies politic or corporate, their heirs and successors, executors, administrators, and assigns (save and except the said John Hamilton Rattray and the heirs of entail entitled to succeed to the said estate), all such right, title, interest, claim and demand whatsoever, in, to, or out of the said estate, as they or any of them had before the passing of this Act, or might claim or demand if this Act had not been passed.

Expenses of
 Act.

10. The costs and charges of applying for and obtaining this Act and incidental thereto shall be paid by the trustees out of the money to be raised by them under the provisions of the recited Act or this Act, or out of any other money in their hands belonging to the said trust estate.

Act as
 printed by
 Queen's
 printers to be
 evidence.

11. This Act shall not be a Public Act, but shall be printed by the several printers to the Queen's most Excellent Majesty duly authorised to print the statutes of the United Kingdom; and a copy thereof so printed by any of them shall be admitted as evidence thereof by all judges, justices, and others.