



CHAP. 1.

An Act for authorising the sale of certain property comprised in the trust disposition and settlement of the late John Brown, of Marlie, and investing the price in land to be entailed in lieu thereof; and for other purposes.

A.D. 1871.

[16th June 1871.]

WHEREAS John Brown, of Marlie, solicitor of the Supreme Courts, and residing in Number four Duke Street, Edinburgh, by his trust disposition and settlement, dated the thirtieth day of August one thousand eight hundred and fifty-one, gave, granted, and disposed to and in favour of William Shaw Soutar, writer in Blairgowrie, whom failing by death or non-acceptance, to and in favour of Patrick James Soutar, writer in Dunfermline, and to the survivor of them in their order, who should accept, with full power to the said William Shaw Soutar or Patrick James Soutar to assume into the trust an additional trustee or trustees as they should think advisable, but always in trust for the ends, uses, and purposes therein-after mentioned, and declaring that the said William Shaw Soutar, whom failing, the said Patrick James Soutar, in their order, or any after trustee or trustees to be assumed, should have full power for the purposes of executing the trust; all and sundry lands and heritages, debts, heritable and movable, heirship movables and whole goods gear, sums of money and effects, and in general his whole means and estate, heritable and movable, of whatever nature or denomination, or wherever situated, then belonging or which should belong to him, the said John Brown, at the time of his death; and the said John Brown did thereby bind and oblige himself, his heirs and successors, to infest his said trustee or trustees in the heritages above disposed requiring infestment, and for that purpose to make, grant, subscribe, and deliver, as therein mentioned, all writs, deeds, and conveyances that might be necessary; and the said John Brown thereby appointed his said trustee or trustees in their order, as above named, to be his sole executor or executors and intromitters with

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his movable means and estate, but declaring the said deed to be granted in trust for the uses and purposes therein mentioned; and the said John Brown thereby directed, the payment, as therein mentioned, of his debts and the investment of the balance of his movable property in the purchase of lands, to be settled with his whole other property held by him heritably; and that his said trustee or trustees, in their order as aforesaid, should take the rights and infestments thereof in the first place in favour of him or them as trustees in their order as aforesaid; and after the payment of his said debts should execute a strict entail of his whole property, including all lands to be acquired as aforesaid, conform to the law of Scotland, containing all clauses irritant and resolute, and particularly against selling or altering the order of succession, which said entail should be made in favour of Allan McLaren Brown, his the said John Brown's nearest male relation by his father's side, he the said Allan McLaren Brown taking simply the name of John Brown, and which entail should be taken in favour of the said Allan McLaren Brown or John Brown, and the heirs male of his body lawfully begotten; whom failing, to the heirs female of the body of the said Allan McLaren Brown or John Brown and their heirs male, and in the event of heirs female succeeding, then and in that case the eldest heir female and the descendants of her body, excluding heirs portioners, and succeeding always without division through the whole course of female succession; whom failing, to the sister of the said Allan McLaren Brown and the heirs male of her body; whom all failing, to the nearest heirs and assignees of the said Allan McLaren Brown:

And whereas the said John Brown died on the seventeenth day of July one thousand eight hundred and fifty-eight, and the said trust disposition and settlement was recorded in the books of Council and Session on the twentieth day of August one thousand eight hundred and fifty-eight:

And whereas all the debts of the said John Brown have been paid, but no entail has yet been executed of any part of the heritable property left by the said John Brown:

And whereas part of the heritable property belonging to the said John Brown at the time of his death consisted of the theatre in Edinburgh, called the Queen's Theatre and Opera House, and the shops and buildings connected therewith, and the area or piece of ground whereon the said theatre, shops, and buildings were erected, held under a feu charter, dated the thirteenth day of November one thousand eight hundred and fifty-four, from the Governors of Heriot's Hospital, and a disposition, dated the twenty-eighth day of May and the first and second days of June one thousand eight hundred and fifty-eight, by the trustees for the shareholders of the said theatre

and premises therewith connected in favour of the said John Brown, but with and under the burdens, conditions, provisoes, stipulations, obligations, and declarations in the last-mentioned disposition mentioned and referred to :

And whereas the theatre, with the shops and buildings connected therewith, which at the time of the death of the said John Brown was standing on the said ground, has been burnt down, and has, with such shops and buildings, been rebuilt at a very considerable cost beyond the sum of fifteen thousand pounds, the amount received from policies of fire insurance thereon, which was much in excess of the sum in which the said theatre, with the said shops and buildings, was insured by the said John Brown :

And whereas the whole of the additional cost, as well as the premiums payable on the said policies of insurance, was defrayed out of the income of the trust property :

And whereas the said theatre (which since it has been rebuilt has been and now is called the Theatre Royal) is now, with the said shops and buildings, insured against fire in several offices, to the amount in the whole of twelve thousand pounds, at a total annual premium of two hundred and fifty-two pounds, which is paid out of such income :

And whereas the said theatre, with the said shops and buildings, is now let to Robert Henry Wyndham, at one thousand one hundred and forty pounds a year :

And whereas, although it has been determined upon a special case by the first division of the Court of Session, that by the law of Scotland the said theatre can be entailed, yet the majority of the Court expressed themselves to the effect that such a property was ill suited to be the subject of an entail :

And whereas it is expedient and would be for the advantage of the said Allan McLaren Brown and the heirs of entail entitled to succeed to the property by the said trust disposition and settlement directed to be entailed, if powers were granted to sell the said theatre and premises, and to invest the proceeds of the sale, after payment of all expenses, in the purchase of land to be entailed pursuant to the directions of the said trust disposition and settlement :

And whereas at the time of the decease of the said John Brown, a house situate in Saint Ann's Street, Clellands Yard, now called James Place, and being immediately at the back of the said theatre, was rented by him, the same being necessary for the convenient occupation of the theatre, which said house has since been purchased by the said Allan McLaren Brown (in order to secure the benefit thereof for the purposes of the said theatre) for the sum of two

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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:

Short title. 1. This Act may be cited for all purposes as "Brown's Estate Act, 1871."

Trustee for carrying Act into execution. 2. The said William Shaw Soutar (the sole acting trustee under the said trust disposition and settlement of the said John Brown) shall be the trustee for carrying this Act into execution, and is herein-after referred to as the trustee.

Power to sell. 3. The trustee may, with the consent in writing of the said Allan McLaren Brown, or other the person for the time being beneficially entitled in possession under the said trust disposition and settlement, or his guardian if in minority, sell the area or piece of ground comprised in the said disposition of the twenty-eighth day of May and the first and second days of June one thousand eight hundred and fifty-eight, and the edifice now called the Theatre Royal, with the shops and buildings connected therewith, erected on the said area or piece of ground, and the furnishings and fittings and movable effects of and in the same, and all the right, title, and interest therein respectively disposed by the said John Brown by his said trust disposition and settlement, or now held thereunder, subject nevertheless to the rights and interests of the said Robert Henry Wyndham as lessee; and, if the trustee and the said Allan McLaren Brown so think fit, the said house in James Place may be included in the sale, and sold with or as part of the theatre, and at one price for the whole property sold.

Purchaser to pay the price into bank, and conveyance to be executed to purchaser. 4. The purchaser shall pay the price into one of the following banks, that is to say, the Bank of Scotland, the Royal Bank of Scotland, the British Linen Company in Scotland, the Commercial Bank of Scotland, the Union Bank of Scotland, and the National Bank of Scotland, in the name of the trustee (which shall, when so paid in, produce the highest interest that can be obtained for the same), and upon such payment the trustee and all proper parties shall execute and deliver to such purchaser a good and effectual conveyance of the

property purchased, containing a receipt for the price thereof, and all necessary and usual clauses, on delivery of which conveyance, and of such conveyance as may be requisite in respect of the said house in James Place (if the same be included in the sale), the purchaser shall give up to the trustee the receipt granted to him by or on behalf of the bank into which the price was paid, and such bank shall thereafter hold the same at the disposal of the trustee.

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5. The receipt for the price granted by the treasurer, cashier, or manager of the bank into which the same is paid shall be a complete discharge to the purchaser for the amount so paid by him, and he shall not be in anywise accountable for the application thereof; and upon making such payment and receiving from the trustee such conveyance as aforesaid, the purchaser shall have right to the property thereby conveyed to him, freed and disburdened of all the debts, demands, provisions, conditions, destinations, and burdens contained in or appointed to be created by the said trust disposition and settlement.

Bank receipt to be a good discharge, and purchaser to have right freed from destinations and burdens.

6. The price of the said property, after payment of all the costs, charges, and expenses by this Act directed to be paid thereout, and payment to the said Allan McLaren Brown of the sum of two hundred and fifty pounds in respect of the said house in James Place (in case such house be included in the sale), shall be applied with the consent in writing of the said Allan McLaren Brown, or other the person who would be heir in possession of the land to be purchased and entailed, or of his guardian if in minority, in the purchase of land in Scotland, with or without a residence thereon.

Price to be invested in land in Scotland.

7. The land to be purchased, as herein-before provided, shall be entailed on the same series of heirs, and with and under the same provisions, conditions, restrictions, and clauses irritant and resolute, as are directed in the said trust disposition and settlement, or with and under such other clauses and provisions as may by the law of Scotland be equivalent thereto.

Deed of entail of purchased land to be executed.

8. Until all the money herein-before directed to be applied in the purchase of land is so applied, the trustee may, with such consent as aforesaid, invest the same, or any part of the said money for the time being unapplied as aforesaid, in Exchequer bills or in consolidated three pounds per centum annuities, and the interest and dividends of the said money, or such part thereof as aforesaid, and of the said Exchequer bills and annuities, shall be paid to the said Allan McLaren Brown, or other the person who would have been entitled to the rents and profits of the area or piece of ground and premises by this Act authorised to be sold, or to his guardian if in minority :

Interim investment of purchase money and application of income.

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Provided always, that if all the said money has not been applied in the purchase of land before the expiration of five years from the time when such money was paid into one of the said banks, then from thenceforth the interest and dividends of the said money, or the part thereof for the time being unapplied as aforesaid, shall be deposited in one of the said banks, or invested in Exchequer bills, or such annuities as aforesaid, by the trustee, with such consent as aforesaid, and accumulate in the way of compound interest, with power to vary the investment or deposit with such consent as aforesaid, until (with the money already invested in land under this Act, if any) a sum equal to the price of the said area or piece of ground and premises (after payment of all costs, charges, and expenses by this Act directed to be paid thereout, and payment to the said Allan McLaren Brown of the sum of two hundred and fifty pounds in case the same becomes payable,) has been invested in land, and when such amount has been so invested the surplus of the trust fund shall be paid to the person or persons who would have been entitled to the rents and profits of the area or piece of ground and premises by this Act authorised to be sold, or to his or their guardian or guardians if in minority, or to the representatives of such person or persons.

The sale or consenting to any deed relating to the same not to infer an irritancy of the entail.

9. Any act done under the powers by this Act conferred, or for giving full effect thereto, shall not infer any irritancy or forfeiture of any right belonging to the said Allan McLaren Brown, or any other person entitled under the said trust disposition, or create or infer any claim of warrandice, recourse, or otherwise, either against the said Allan McLaren Brown or against any succeeding heir of entail joining in or consenting thereto, or against the trustee.

General saving.

10. 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, except the said Allan McLaren Brown, and the heirs of entail entitled to succeed to the property by this Act authorised to be sold, all such right, title, interest, claim, and demand whatsoever in, to, or out of the said property 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.

11. All costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of this Act, and of carrying the same into execution, or otherwise in relation thereto, shall be paid by the trustee out of the money arising from the said sale, or any principal money arising from any investment under this Act.

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12. 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.

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

LONDON: Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1871.

