



ANNO SEPTIMO

GULIELMI IV. REGIS.

Cap. 14.

An Act for enabling the Trustees of *William Elliott Lockhart* deceased, of *Borthwickbrae*, to sell the Lands of *Old Melrose* and Part of the Estate of *Borthwickbrae* to pay the Debts affecting the same. [10th June 1837.]

WHEREAS *William Elliott Lockhart* Esquire, of *Borthwickbrae*, since deceased, by a Disposition and Deed of Entail bearing Date the Twenty-third Day of *January* One thousand eight hundred and nineteen, and registered in the Books of Council and Session the Twenty-seventh Day of *March* One thousand eight hundred and thirty-seven Years, conveyed, alienated, and disposed to and in favour of himself in Liferent, and to *Allan Elliott*, his eldest Son procreated of the Marriage betwixt him and Mrs. *Marianne Elliott Lockhart*, his Spouse, and the Heirs whatsoever of his Body, in Fee; whom failing, to *Walter Elliott Lockhart*, his Second Son, and the Heirs whatsoever of his Body; whom failing, to *William Elliott*, his Third Son, and the Heirs whatsoever of his Body; whom failing, to *Gilbert Elliott*, his youngest Son, and the Heirs whatsoever of his Body; whom failing, to any other Son or Sons to be procreated of his then present or any subsequent Marriage, according to their Right of Primogeniture, and the Heirs whatsoever of the Bodies of such Son

Entail of
Borthwick-
brae and
Flex.

[Private.]

or Sons ; whom failing, to *Jane Elliott* his eldest Daughter, and the Heirs whatsoever of her Body ; whom failing, to *Margaret Elliott*, his youngest Daughter, and the Heirs whatsoever of her Body ; whom failing, to any other Daughter or Daughters to be procreated of his then present or any subsequent Marriage, and to the Heirs whatsoever of the Bodies of such Daughter or Daughters ; whom failing, to Mrs. *Margaret Elliott* alias *Simpson*, his Sister German, Widow of *David Simpson* Esquire, of *Tiviotbank*, and to the Heirs whatsoever of her Body ; whom failing, to his own nearest Heirs and Assignees whatsoever ; the eldest Heir Female excluding all other Heirs Portioners, and succeeding without Division, as often as the Lands and others therein mentioned should devolve upon Heirs Female, and the Right of Primogeniture taking place among Female Heirs in the same Manner as the Law has appointed the same to take place among Males, throughout the whole Course of the foresaid Succession ; all and whole the Lands of *Borthwick*, *Borthwickbrae*, *Slack*, and West Side of *Howcleugh*, Stock and Teinds of the same, with Houses, Biggings, Yards, Parts, Pendicles, and Pertinents of the same, lying within the Parishes of *Wilton* and *Roberton* and Sheriffdom of *Selkirk*, with the Ground Right, Property, and Superiority thereof, with the Feu Duties of the said Lands payable for all Years by gone and to come, which Lands and others above written are more fully described in manner after mentioned ; *videlicet*, the West Part, commonly called West Side of *Borthwickbrae*, as sometime possessed by *Adam Potts*, and likewise the Inclosures commonly called the Parks of *Borthwickbrae* and Corn Land of the same consisting of the particular Parts following ; *videlicet*, the old Park, *Kellahill Park*, Two new Parks lying betwixt the Road from the Village of *Burnfoot* to *Borthwickbrae* and the said old Park, the East Park, commonly called *Easter Park*, *Queensknow* and *Spout Parks*, and the Corn Land above the Kirk Road, all which Parks and Corn Land last above described were sometime possessed by *John Elliott*, Father of the said *William Elliott Lockhart*, and which, with the West Side of *Borthwickbrae*, sometime possessed by *Adam Potts*, as before mentioned, comprehend the one Half of the whole Lands above mentioned, or thereby ; as also the Lands called East Side of *Borthwickbrae* and *Banks*, with Two Parks next the Herd's House, which comprehend the West Side of *Howcleugh*, and Part of the Lands of *Slack* and *Borthwickbrae*, as the same were sometime possessed by *James Laidlaw*, as also the Lands of *Borthwick Burnfoot*, sometime possessed by *Robert Cowan*, as also the Lands lying betwixt the Kirk Road and Water of *Borthwick*, and the whole Lands beyond the said Water adjoining to the Marches between the said Lands of *Borthwickbrae* and Lands of *Chisholm* and *Parkhill*, sometime possessed by the said *John Elliott*, and which Three Possessions of *James Laidlaw*, *Robert Cowan*, and *John Elliott* comprehend and nearly make up the other Half Part of the said Lands ; as also all and whole the Lands of *Wester Ale Moor*, with Houses, Biggings, Mosses, Muirs, Meadows, Parks, Pendicles, and Pertinents of the same, lying within the Parish and Shire of *Selkirk* ; as also all and whole the Lands of *Flex*, with Houses, Biggings, Yards, Tofts, Crofts, Annexis, Connexis, Parts, Pendicles, and whole Liberties and Privileges of the same, extending to a Five
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Merk Land of old Extent, lying within the Barony and Parish of *Harwick* and Shire of *Roxburgh*, with the Teinds thereof, both Parsonage and Vicarage; as also all and whole the Property as well as the Superiority of the Lands of *Wester Essenside*, and these Parts of the Lands of *Wall* called *Leaphill Langhope*, Meadow and Corn Land of the same; as also all and whole the Lands of *Burnfoot Mill*, Mill Lands and Multures thereof, with the Teinds, Parsonage and Vicarage, of all the said Lands, lying within the Parish of *Ashkirk* and Shire of *Roxburgh*, together with all Right, Title, Interest, Claim of Right, Property, and Possession, petitory or possessory, which he the said *William Elliott Lockhart*, his Predecessors and Authors, Heirs and Successors, had, have, or could anywise claim or pretend thereto or to any Part thereof in Time coming; but always with and under the Conditions, Provisions, Limitations, Restrictions, Clauses irritant and resolute, Declarations, Powers, and Faculties, set forth in the said Deed of Entail, and such as are usual in Settlements of Land in strict Entail in the Law and Practice of *Scotland*: And whereas the said *William Elliott Lockhart*, by another Disposition and Deed of Entail dated the Twenty-third Day of *January* One thousand eight hundred and nineteen, and registered in the Books of Council and Session the Twenty-seventh Day of *March* One thousand eight hundred and thirty-seven Years, conveyed, alienated, and disposed to and in favour of himself in Liferent, and to *Walter Elliott*, his Second Son procreated of the Marriage betwixt him and Mrs. *Marianne Lockhart*, then *Elliott*, and the Heirs whatsoever of his Body, in Fee; whom failing, to *William Elliott*, his Third Son, and the Heirs whatsoever of his Body; whom failing, to *Gilbert Elliott*, his youngest Son, and the Heirs whatsoever of his Body; whom failing, to *Allan Elliott*, then his eldest Son, and the Heirs whatsoever of his Body; whom failing, to *Jane Elliott*, eldest Daughter of his said Marriage, and the Heirs whatsoever of her Body; whom failing, to *Margaret Elliott*, his Second Daughter, and the Heirs whatsoever of her Body; whom failing, to any other Daughter or Daughters of his then present or any subsequent Marriage, and to the Heirs whatsoever of the Bodies of such Daughter or Daughters; whom failing, to Mrs. *Margaret Elliott* alias *Simpson*, his Sister German, Widow of the late *David Simpson* Esquire, of *Tiviotbank*, and the Heirs whatsoever of her Body; whom failing, to his own nearest Heirs and Assignees whatsoever; the eldest Heir Female excluding all other Heirs Portioners, and succeeding without Division, as often as the said Lands and others should devolve upon Heirs Female, and the Right of Primogeniture taking place among Female Heirs in the same Manner as the Law has appointed the same to take place among Males, throughout the whole Course of the foresaid Succession; all and whole the Town and Lands of *Old Melrose*, with Houses, Biggings, Gardens, Woods, Crofts, Yards, Common Pasturage, and whole Pertinents and Privileges of the same, with the Teind Sheaves and other Teinds, as well Parsonage as Vicarage, thereof, together also with the Salmon Fishings and other Fishings whatsoever belonging to the same, used and wont, between the *Newstead Mill* and the March set down between *Bymerside* and *Old Melrose*, and hail Pertinents thereof, lying within the Lordship of *Melrose* and Sheriffdom of *Roxburgh*, with the Loft and Seat in the Kirk of *Melrose*, and Burial Place in the Churchyard

Entail of
Old Melrose.

Trust Deed
of Borth-
wickbrae and
Flex.

Churchyard thereof, pertaining to the said Lands; as also all and whole these Two Husband Lands in *Eildon* now called *Peasehill*, with the Teind Sheaves, as well Parsonage as Vicarage, of the same included, Tofts, Crofts, Parts, Pendicles, and hail Pertinents thereof whatsoever, lying within the Town and Territory of *Eildon*, Lordship and Regality of *Melrose*, and Shire of *Roxburgh*, together with all Right, Title, Interest, Claim of Right, Property, and Possession, petitory or possessory, which he the said *William Elliott Lockhart*, his Predecessors and Authors, Heirs and Successors, had, have, or could anyways claim or pretend thereto or to any Part thereof in Time coming; but always with and under the Conditions, Provisions, Limitations, Restrictions, Clauses irritant and resolute, Declarations, Powers, and Faculties as set forth in the said Deed of Entail, and such as are usual in Settlements of Land in strict Entail by the Law and Practice of *Scotland*: And whereas the said *William Elliott Lockhart*, by a Trust Deed dated the said Twenty-third Day of *January* One thousand eight hundred and nineteen, and registered in the Books of Council and Session the Thirteenth Day of *April* One thousand eight hundred and thirty-three, conveyed his Lands and Estate of *Borthwickbrae*, *Flex*, and others above described, and his whole other Real and Personal Property (excepting the Lands and Estate of *Old Melrose*, also above described), to the following Trustees; *videlicet*, *Marianne Elliott Lockhart*, his Wife, *Sir Alexander Muir Mackenzie* of *Delvine*, Baronet, the Honourable *James Clerk Rattray*, one of the Barons of His Majesty's Court of Exchequer in *Scotland*, *William Bertram* Esquire, of *Nisbet*, (all since deceased,) *John Corse Scott* Esquire, of *Sinton*, and *John Tod*, Writer to the Signet, and to the Survivors or Survivor of them, any Three being a Quorum; with Powers of Management and for the Purposes following; *videlicet*, first, for Payment of Debts, Funeral Expences, and Expences of executing the Trust; second, for Payment of Bequests and Provisions granted or to be granted to younger Children, and particularly of Ten thousand Pounds Sterling to be divided equally among *William* and *Gilbert* and *Jane* and *Margaret Elliott*, the Testator's younger Children, payable and to pay Interest from the first Term of *Whitsunday* or *Martinmas* after the Testator's Death, the Share of any Child succeeding to the said Entailed Estates of *Borthwickbrae* or *Old Melrose*, or dying, to be divided among the Survivors; and the Daughters, and Survivor of them, while unmarried, to have besides an Annuity of One hundred Pounds from the Heir of *Borthwickbrae*; and these Provisions were declared to be over and above any Sums payable to the younger Children from the Estate of *Cleghorn* belonging to their Mother; third, the Trustees were directed to convey to the said *Marianne Elliott Lockhart*, in addition to the Provisions contained in her Contract of Marriage, the Dwelling House, Stable, and Pertinents in *George Square*, (liferented by Mrs. *Simpson*, Sister of the Testator,) and also to make over to her all the Furniture and other Effects at *Cleghorn*, and all the executry Rents of that Estate; fourth, the said Trustees were thereby directed to entail *Wester Essenside* and *Burnfoot* as a Surrogatum for the Balance of the Price of certain Lands sold for Redemption of the Land Tax of the Estate of *Cleghorn*, but which was afterwards done, so far as necessary, by the Testator himself; fifth, it was thereby provided, that the Heirs of En-
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tail should have Possession of *Borthwickbrae* House with its Pertinents, with One hundred and fifty Acres of Ground contiguous, or in lieu thereof an Annuity of Two hundred Pounds Sterling; and lastly, after all the Debts due by the Testator were paid, and Discharges thereof recorded (Annuities excepted), the Trustees are directed to divest themselves and convey the said Lands and Estates of *Borthwickbrae*, *Flex*, and others, in Terms of and under the Conditions and Provisions of the said Deeds of Entail, in favour of the Heir for the Time; to record the Entails, and to complete proper feudal Titles in the Person of the Heir; which Trust Deed contains Obligation to infest, Procuratory of Resignation, Precept of Sasine, and other usual Clauses: And whereas by a Codicil annexed to the said Trust Deed dated the Twenty-eighth Day of *October* One thousand eight hundred and twenty-nine, and registered of the Date of Registration of the said Trust Deed, the said *William Elliott Lockhart* limited the Sum for younger Children to Seven thousand Pounds, and the Provisions in their Favour from the *Cleghorn* Estates were thereby directed to be imputed in part thereof, except Annuities, of which Sum of Seven thousand Pounds the Testator's Third Son *William* was to receive Three thousand Pounds, unless in the Events of his succeeding to the said Estate of *Old Melrose*, or of his dying unmarried or intestate, in any of which Events the said Provision was appointed to revert to the Heir of Entail in the Estate of *Borthwickbrae*, and the remaining Four thousand Pounds were directed to be divided equally between the said *William Elliott Lockhart's* Two Daughters, each having Power to dispose of One Half; and the other Half, if they should die unmarried, to descend to the Heir of *Borthwickbrae*; and it was further provided that the Annuity of One hundred Pounds provided to the Testator's Daughters and the Survivor of them, by the said recited Trust Deed, should be in addition to an Annuity of equal Amount secured to them from the Estate of *Cleghorn* while unmarried, but that no Interest or Annuity should be payable while they resided with their Parents or the Survivor of them: And whereas, by a supplementary Trust Deed dated the Twenty-ninth Day of *March* One thousand eight hundred and thirty, and recorded in the Books of Council and Session the Thirteenth Day of *April* One thousand eight hundred and thirty-three, the said *William Elliott Lockhart* deceased conveyed to the Trustees above named, with the Exception of the said *John Corse Scott* and the Addition of *John Romanes*, the Lands and Estate of *Old Melrose* and *Peasehill*, above described, with Directions to convey the same, in Terms of the Entail of the said Estate before recited, to the said *Walter Elliott*, his Second Son, upon his agreeing to pay or provide for a Debt which amounted to Ten thousand Pounds contracted by the said *William Elliott Lockhart* deceased, and heritably secured over the said Estate of *Old Melrose*, but in case he should decline to take the Property on these Conditions, or should not satisfy the said Trustees within One Year or Eighteen Months after the Death of the said *William Elliott Lockhart* (which Period was by an after Codicil prolonged to Four Years) that he could provide for the Liquidation of the Debt affecting the said Lands and Estate, either during his own Lifetime or at the Period of his Decease, they were directed to entail the said Estate of *Old Melrose* in the same Way and on the same Series of Heirs as the said Estate of *Borthwickbrae*.

Codicil to the Trust Deed of *Borthwickbrae* and *Flex*.

Supplementary Trust Deed conveying *Old Melrose* to the above-named Trustees.

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Codicil to
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Deed of Old
Melrose.

in which Case the said *Walter Elliott* was to receive a pecuniary Provision of Two thousand Pounds ; and the said Trustees were thereby further authorized to entertain any Proposal by the said *Allan Elliott Lockhart* for denuding themselves of the said Trust Estates, either in whole or in part, in case he could satisfy them that he had provided, by Insurances or otherwise, for the whole Debts and Provisions which could be made to affect the said Estates, and the former Provision of Three thousand Pounds to *William Elliott* was thereby restricted to Two thousand Pounds ; and the said *John Corse Scott* was withdrawn from being a Trustee, and *John Romanes*, Writer in *Edinburgh*, added to the Number of Trustees : And whereas, by a Codicil annexed to the said supplementary Trust Deed dated the Twenty-third Day of *May* One thousand eight hundred and thirty-two, and registered the said Thirteenth Day of *April* One thousand eight hundred and thirty-three, the said *William Elliott Lockhart* deceased, in addition to the Trustees before named, thereby appointed his eldest Son the said *Allan Elliott Lockhart* to be one of their Number, with the same Powers in all respects as were given to the other Trustees, and he also prolonged the Time allowed to his Son the said *Walter Elliott* for providing for the Liquidation of the Debt affecting the Estate of *Old Melrose* to Four Years : And whereas the said *William Elliott Lockhart* having departed this Life on or about the Sixth Day of *August* One thousand eight hundred and thirty-two, the said *Walter Elliott*, who had gone to *India*, has, by Deed executed by him at *Madras* the Second Day of *January* One thousand eight hundred and thirty-seven Years, renounced and discharged all Right, Title, and Interest which he could claim to the said Lands and Estate of *Old Melrose* and *Peasehill*, and betaken himself to the said pecuniary Provisions of Two thousand Pounds : And whereas in consequence of the said *Walter Elliott* having declined to take the said Estate of *Old Melrose*, and of his having failed to clear the said Estate of the Debt affecting the same, or to grant Security therefor within the Period limited by the supplementary Trust Disposition and Codicil thereto above recited, the said Lands and Estate of *Old Melrose* fell under the Trust Purposes of the said *William Elliott Lockhart* deceased, which required that after clearing off the Debts the said Lands and Estate should be entailed on the same Series of Heirs and in like Manner as the Lands and Estate of *Borthwickbrae* and *Flex* : And whereas the Debts and Provisions left by the said *William Elliott Lockhart* affecting or which might be made to affect the said Estates amounted to Twenty-nine thousand Pounds or thereby, and after Deduction of the Executry and other Funds the Debt still remaining due amounts to Twenty-two thousand Pounds or thereby, as stated in a Schedule marked (A.) hereunto annexed ; and there are Annuities due and payable out of the said Lands of One hundred Pounds to the said *Jane Elliott Lockhart* and *Margaret Elliott Lockhart* and the Survivor of them, and Fifty Pounds to the said Mrs. *Margaret Simpson* : And whereas the Amount of the net Rental or annual Produce of the Estates left by the said *William Elliott Lockhart*, according to the Schedule marked (B.) hereunto annexed, is, of *Borthwickbrae* and *Flex* Eight hundred Pounds, and of *Old Melrose* Three hundred Pounds, making together One thousand one hundred Pounds, or thereby : And whereas the Amount of the Interest of the Debt at Five *per Cent.* would be about One thousand one hundred Pounds, so that

the Rental or Income of the Estate would barely suffice to pay the Interest of the Debt, exclusive of the Annuities, thereby leaving no Means whatever for reducing the Amount of Principal, and in case of the Rents falling there would not be any Funds for paying even the Interest: And whereas of the Persons named Trustees by the said recited Deeds none survived the said *William Elliott Lockhart*, except the said Mrs. *Marianne Elliott Lockhart* and Sir *Alexander Muir Mackenzie* Baronet (both also since deceased), and the said *John Tod*, *John Romanes*, and *Allan Elliott Lockhart*: And whereas the said surviving Persons so nominated Trustees, *videlicet*, *John Tod*, *John Romanes*, and *Allan Elliott Lockhart*, accepted of the said Office of Trustees; but upon entering upon the Management of the said Trust Estates it was found by the said Trustees that from the large Amount of Debt left by the said deceased *William Elliott Lockhart*, and the free Income of his said Estates being so small, they could anticipate no Termination of the Trust, and having no Power to sell any Part of the said Trust Estates, they could see no Means of administering the Estates beneficially for the Heirs of Entail, and bringing the said Trust to a final Termination, without the Aid and Authority of Parliament: And whereas the said Estates, which are all liable for the Debts of the said *William Elliott Lockhart*, the Testator and Entailer, might, may, and necessarily will be evicted and adjudged for Payment thereof, and thus, in addition to the Principal and Interest of such Debts, there will come to be exigible out of the said Estates a large additional Sum of Accumulations, Penalties, Expence of the Diligence and legal Proceedings used by the Creditors in the Recovery of their Debts by the Sale of the said Estates: And whereas in these Circumstances, and as the Lands of *Old Melrose* and *Flex* lie discontinuous and at a Distance from the Family Estate of *Borthwickbrae*, the said Lands of *Old Melrose* and *Flex* may be sold at advantageous Prices, and probably so as to extinguish the Debt, it would be greatly for the Benefit of the said *Allan Elliott Lockhart* and the other Heirs of Entail, if Leave were given to sell the same, and to apply the Price thereof towards the Payment of the said Debt, so as to leave the Estate of *Borthwickbrae* free and unincumbered; but as no Power to sell the said Lands is conferred by the said recited Deeds, or exists in the said Trustees, and as such Purpose therefore cannot be effected without the Aid and Authority of Parliament, May it therefore please Your Majesty that it may be enacted; and be it enacted by the King'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, That from and after the passing of this Act it shall and may be lawful for the said Trustees, and the Survivors or Survivor of them, and such other Person or Persons as may hereafter be assumed by them in virtue of the Powers granted by the before recited Trust Deed, or their Quorum aforesaid, to apply by Petition to the Court of Session in *Scotland*, in either of the Divisions thereof, praying the said Court to inquire into and take an Account of the Debts and Obligations of the said *William Elliott Lockhart* deceased, affecting or capable of being made to affect the Lands and Estates herein-before described, which the said Court are hereby authorized and required to do; and the said Court having by Interlocutors or

Trustees who survived.

Trustees empowered to sell Old Melrose and Flex.

Judgments

Judgments fixed and ascertained the Amount of such Debts and Obligations, it shall thereafter be competent and lawful to the said Trustees, or their Quorum, to sell and dispose of the said Lands and Estate of *Old Melrose* and *Flex*, as the same are hereinbefore described, and as set forth in the Schedules marked (C.) and (D.) hereunto annexed, by exposing the same to Sale in whole, or in such Lot or Lots as they may think proper, and that either by public Auction or Sale or private Bargain, as the said Trustees shall think fit, with Power to them to adjourn such Sale from Time to Time as they shall judge expedient: Provided always, that previous Notice of all such intended Sales and of such adjourned Sale or Sales by public Auction shall be given as often and in such Newspapers published in *Scotland* as the said Trustees shall think necessary and proper; but declaring that it shall not be necessary to give any such Notice previous to selling by private Bargain at or above any Price at which the Lands may have been previously set up to public Auction without being sold.

Purchase Money to be paid into Bank, and Conveyance to be granted by Trustees.

II. And be it enacted, That when such Sale or Sales shall be effected, the Money arising therefrom shall be paid by the Purchaser or Purchasers, without Fee or Reward, into the Bank of *Scotland*, Royal Bank of *Scotland*, Bank of the *British Linen Company*, Commercial Bank of *Scotland*, or National Bank of *Scotland*, in the Name of the said Trustees, and shall when so paid in produce the highest Rate of Interest that can for the Time be obtained for the same, which shall by the said Trustees be annually accumulated and added to the Principal Sum until the same shall be applied in extinction of the said Debts specified in the said Schedule (A.) hereunto annexed; and upon the said Price or Prices, and Interest thereon, if due, being paid in as aforesaid, the said Trustees shall execute and deliver to the Purchaser or Purchasers a valid Conveyance or Conveyances of the Lands or Heritages purchased, freed of all the Conditions and Provisions contained in the said Trust Deeds and Deeds of Entail respectively, and of every other Incumbrance, Defect of Title, or Ground of Eviction whatsoever, and containing all usual and necessary Clauses requisite for vesting the Lands so to be sold by the said Trustees in the Purchaser or Purchasers thereof in Fee Simple, and a Clause binding the Heirs, Successors, and Representatives of the said *William Elliott Lockhart* deceased in absolute Warrantice, and the said Trustees in Warrantice from their own Facts and Deeds only; and the Receipt of the Treasurer, Cashier, or Manager of any of the said Banks for the Money paid to such Bank respectively shall be a full and complete Discharge of the Price to such Purchaser or Purchasers, and to his, her, or their respective Heirs, Executors, and Successors whatsoever; and from thenceforth such Purchaser or Purchasers, his, her, or their Heirs, Executors, and Successors, shall be and are hereby absolutely acquitted and discharged of the said Price, and shall not be obliged to see to the Application thereof or of any Part thereof; or be answerable or accountable for any Loss, Misapplication, or Non-application of the same or any Part thereof.

Prices to be applied in Payment of Debts.

III. And be it enacted, That the said Trustees may from Time to Time draw out from the Bank or Banks in which the same may be lodged,

lodged, the Money arising from such Sale or Sales, or so much thereof as may be necessary, and shall apply the same in paying off and extinguishing all the said Debts contained in the said Schedule (A.) hereunto annexed, or any other Debts which affect or can be made to affect the said Lands and Estates, which shall be due after all the Property and Funds which are at the Disposal of the said Trustees shall have been applied, as far as the same will go, in payment thereof, and in payment of the legal Interest accruing on the said Debts, if any, and also such further Sum as shall be sufficient to defray the necessary Charges of obtaining this Act, and of the Proceedings to be had in execution thereof; and the Creditors in the said Debts shall, upon Payment, be bound to execute valid Discharges to the said Trustees for their respective Debts, and where the said Debts are Heritable Debts to grant Discharges, Assignations, or other Deeds necessary for freeing and disburdening the said Lands and Estates of such Heritable Debts.

IV. And be it enacted, That as soon as the said Debts shall be so paid and satisfied it shall and may be lawful for the said Trustees to dispone and convey or to denude themselves of the said Lands and Estate of *Borthwickbrae*, to and in favour of the said *Allan Elliott Lockhart* institute and the other Heirs of Entail to whom the same is destined or appointed to be conveyed by the said existing Deed of Entail of *Borthwickbrae*, and the said Trust Deeds or any of them, in strict Entail, under all the Powers, Provisions, Conditions, Limitations, and Clauses irritant and resolute, and under the Burden of the Payment of the Annuities payable out of the said Trust Estate, so far as the same may be then subsisting, all as directed by the said Trust Dispositions and Codicils thereto, and Deed of Entail of the said Lands and Estate of *Borthwickbrae*; and the said Trustees shall also record the said existing Disposition or Deed of Entail to be executed by them, or cause the same to be forthwith recorded, in the Register of Tailzies, and also obtain Charters and Infeftments in favour of the said institute Heirs of Entail, and cause the Instrument of Sasine to be recorded; and upon the said Trustees denuding as aforesaid the said *Allan Elliott Lockhart*, and failing him the Heir next entitled to succeed to the said Lands and Estates of *Borthwickbrae*, shall be bound to execute and deliver in favour of the said Trustees a full and ample Discharge in favour of themselves, and of their Heirs, Successors, and Representatives, of all their Actings, Management, and Intromissions, and of all the Consequences thereof.

Trustees to convey *Borthwickbrae* to the Heirs mentioned in the Entail thereof.

V. Provided always, and be it enacted, That nothing herein contained shall prejudice or impair the Rights of the Creditors and Annuitants of the said deceased *William Elliott Lockhart*, but the Debts of such Creditors and the said Annuities shall continue, notwithstanding the passing of this Act, until the same shall be extinguished and paid, to affect the Lands and Estates conveyed to the said Trustees, in such and the like Manner as such Debts and Annuities would have affected the same if this Act had not been passed.

Rights of Creditors and Annuitants saved.

VI. And be it enacted, That in case any Surplus shall remain of the Price or Prices of the said Lands and Estates of *Old Melrose* and

Surplus of Price to be applied in

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Purchase of other Lands to be entailed.

Flex, or the Interest of the said Price or Prices, after carrying all the Purposes of this Act into execution, the said Trustees may and shall from Time to Time, and as Opportunities occur, lay out and employ such Surplus in the Purchase of such other Lands and Heritages lying adjacent or contiguous to the said Estate of *Borthwickbrae*, or as conveniently thereto as may be, and shall, at the Sight of the Court of Session, in either of the Divisions thereof, upon a summary Application to be presented for that Purpose, dispoise and convey the Lands and Heritages so to be purchased, together with any Part of the said Lands and Estates hereby authorized to be sold which may not be sold, by a Disposition and Deed of Entail, to the Series of Heirs, and with and under the Conditions, Provisions, Declarations, Reservations, Burdens, Faculties, Restrictions, Limitations, and Clauses irritant and resolute, contained in the said Deed of Entail of the said Lands and Estate of *Borthwickbrae*, and the Disposition or Dispositions and Deed or Deeds of Entail to be executed by the said Trustees shall be so framed as to bind the Institute as well as all the succeeding Heirs of Entail, and the said Trustees shall cause the same to be recorded, and Infestment to be taken thereon and recorded.

Expences of this Act and of Sales to be paid out of Money deposited in Bank.

VII. And be it enacted, That the said Court of Session, in either of the Divisions thereof, do and shall, upon a summary Application of the said Trustees, order and direct the Treasurer, Cashier, Manager, or other proper Officer of any of the said Banks respectively into which Money may have been paid as aforesaid, to pay out of such Monies all the Costs, Charges, and Expences which shall have been incurred in and about applying for, obtaining, and passing this Act; and the said Court, in either of its Divisions, as aforesaid, shall and may also order and direct the said Treasurer, Cashier, Manager, or other proper Officer aforesaid, or any of them respectively, as the Case may be, to pay all the Costs and Charges which shall be incurred in making the Sales hereby directed and authorized to be made, and in all Proceedings and Management in order or relative thereto, in making and completing the Purchases and the Conveyances, Deed of Entail and other Titles or Deeds hereby and by the said Trust Deeds or Deed of Entail of *Borthwickbrae* required to be made, or necessary for giving due Effect to the same, and in the Execution of all and every the Purposes of this Act.

After Purposes of this Act are effected the Court of Session to discharge the Trustees.

VIII. And be it enacted, That as soon as the said Trustees shall, in virtue of the Powers of this Act, have sold the said Lands and Estates hereby authorized to be sold, and applied the Proceeds of such Sale or Sales in payment of the Debts affecting or which might be made to affect the said Estates, and shall also have applied in the Purchase of Lands any Surplus of such Proceeds that may remain after Payment of the said Debts, and dispoised and conveyed the Lands acquired, if any, with such Surplus as aforesaid, together with any Part of the Lands of *Old Melrose* and *Flex* which may not be sold, in strict Entail, in Terms of the said Trust Deeds and Deed of Entail of the Lands of *Borthwickbrae*, to the said *Allan Elliott Lockhart* and the other Heirs of Entail enumerated in the said Deed of Entail of the Estate of *Borthwickbrae*, recorded such Deed of Entail, and caused

Infestment

Infestment to be taken thereon, and the Instrument of Sasine to follow thereon to be recorded, it shall be competent to the said Trustees to apply by summary Petition to the said Court of Session in either of its Divisions for a Discharge and Exoneration of the Transactions and Management of the said Trustees during the Existence of the said Trust, and in relation to the Lands hereby authorized to be sold; and the said Court are hereby empowered and required, after such Investigation as to the said Court shall seem proper and necessary of such Transactions and Management, and of the Accounts of the said Trustees in relation thereto, and after finding the same to be correct and proper, to exonerate and discharge the said Trustees, and to declare them to be quit and discharged thereof and of all the Consequences of the same, and of all Action, Claim, or Demand in respect thereof or in relation thereto, for ever, and to find and declare that any Balance that may remain over that may be ascertained to be too inconsiderable to be vested in Land shall be paid over to the said *Allan Elliott Lockhart*, or the Heir in Possession of the said Entailed Estate of *Borthwickbrae* for the Time.

IX. And be it enacted, That nothing herein contained shall be held or construed to alter, innovate, change, or defeat the said Trust Deeds or Codicils thereto, or the said Deed of Entail of the Lands of *Borthwickbrae*, or the Order of Succession thereby established, excepting in so far as necessary for the Purposes of this Act, and for carrying the same fully into effect; and nothing herein contained shall be held or construed to impair, limit, or annul any of the Powers conferred upon the said Trustees by the said recited Trust Deeds or Codicils thereto; and in the event of the said Trustees assuming a new Trustee or Trustees to act along with them in the Execution of the said Trust, such Trustee or Trustees so assumed shall be entitled and they are hereby empowered to act with or after the Trustees before named in carrying into effect the Purposes of this Act.

Trust Deeds, Codicils, and Deeds of Entail (so far as not altered) to remain in force.

X. And whereas *James Simpson* and *David Simpson*, Two of the Heirs of Entail entitled to succeed to the said Estate of *Borthwickbrae* under the said recited Deed of Entail, are abroad, and cannot be present to give their Consent to the passing of this Act; be it therefore enacted, That this Act shall not be carried into effect unless and until one or other of the said *James Simpson* or *David Simpson* shall, within Three Years after the passing of this Act, signify his Consent to the said Act by Deed to be executed by him before Two Witnesses in the Form prescribed by the Law of *Scotland*, and recorded in the Books of Council and Session in *Edinburgh*, or unless one or other of the said *James* or *David Simpson* shall within the aforesaid Period have departed this Life; and the said Deed shall in all Time thereafter be held and taken to be sufficient Evidence of the Consent of the Person executing such Deed to the passing of this Act as effectually as if his Consent had been previously given.

Act not to be carried into effect until *James* or *David Simpson* shall have signified his Consent thereto.

XI. Saving and reserving always to the King's most Excellent Majesty, His Heirs and Successors, and to all and every other Person or Persons, and Bodies Politic and Corporate, (excepting the said *Allan Elliott Lockhart* and the other Heirs of Entail entitled to succeed

General Saving.

succeed by virtue of the said Trust Deeds and Codicils thereto, and Deed of Entail of the Lands and Estate of *Borthwickbrae*,) all Right, Title, Interest, Claim, and Demand whatsoever in, to, or out of the Lands and Estates hereby authorized to be sold, or the Monies to arise by the Sale thereof, as they or any of them had before the passing of this Act, or could or might have had or enjoyed in case this Act had not been made.

Act to be
printed by
the King's
Printers.

XII. And be it further enacted, That this Act shall be printed by the several Printers to the King's most Excellent Majesty duly authorized 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.

SCHEDULE (A.) to which the foregoing Act refers.

| <i>Debts due by the deceased William Elliott Lockhart, still outstanding.</i> | | | | <i>Annuities due.</i> | |
|---|---|-------|-------|-----------------------|-------|
| <i>I. Debts secured over Old Melrose.</i> | | | | | |
| Miss Dalrymple | - | - | - | £ | s. d. |
| Sir John Inglis's Trustees | - | - | - | 5,000 | 0 0 |
| Colonel Robertson's Trustees | - | - | - | 2,500 | 0 0 |
| Mr. Riddle's Trustees | - | - | - | 1,500 | 0 0 |
| | | | | 1,000 | 0 0 |
| | | | | 10,000 0 0 | |
| <i>II. Personal Debts.</i> | | | | | |
| Mr. Robert Cunningham | - | - | - | 1,000 | 0 0 |
| Mr. John Romanes | - | - | - | 1,000 | 0 0 |
| Misses Scott, Gala | - | - | - | 400 | 0 0 |
| Miss Scott, Ancrum | - | - | - | 600 | 0 0 |
| Miss Campbell | - | - | - | 600 | 0 0 |
| Mrs. William Scott of Melsington | - | - | - | 1,200 | 0 0 |
| Mr. Charles Scott of Tushielaw | - | - | - | 800 | 0 0 |
| Mr. George Nichol | - | - | - | 126 | 0 0 |
| The late Mr. Lockhart's Proportion of Lanark Road Trustees Debt, originally due to the Bank of Scotland | - | - | - | 1,500 | 0 0 |
| Miss Jemima Erskine | - | - | - | 200 | 0 0 |
| Commercial Bank | - | - | - | 800 | 0 0 |
| Bill to William Alexander of Forth | - | - | - | 600 | 0 0 |
| — John Lamb, Esquire | - | - | - | 500 | 0 0 |
| — James Murray, Esquire | - | - | - | 100 | 0 0 |
| — John Forrest, Esquire, Lanark | - | - | - | 200 | 0 0 |
| | | | | 19,426 0 0 | |
| <i>III. Provisions left by the late Mr. Lockhart.</i> | | | | | |
| Provision to Walter Elliott Lockhart | - | £ | s. d. | 2,000 | 0 0 |
| — William Elliott Lockhart | - | 2,000 | 0 0 | 2,000 | 0 0 |
| — Jane Elliott Lockhart | - | 2,000 | 0 0 | 2,000 | 0 0 |
| — Margaret Elliott Lockhart | - | 2,000 | 0 0 | 2,000 | 0 0 |
| | | 8,000 | | 0 | 0 |
| Deduct Three Years clear Rent of the Estate of Cleghorn, which was to be applied pro tanto in payment of the above Provisions | - | 5,325 | 17 6 | 2,674 2 6 | |
| Amount of Debt | - | | | 22,100 2 6 | |

Alexander Tod.

[Private.]

SCHEDULE (B.) to which the foregoing Act refers.

I. Borthwickbrae and Flex.

| Possessions. | Tenants or Possessors. | Yearly Rent. | | |
|-------------------------------|------------------------|--------------|----|----|
| | | £ | s. | d. |
| 1. Borthwickbrae Burnfoot | James Oliver | 272 | 0 | 0 |
| 2. Alemoor | George Nichol | 175 | 0 | 0 |
| 3. Wester Essenside | George Ballantyne | 290 | 0 | 0 |
| 4. Borthwickbrae Haugh | William Lockie | 31 | 0 | 0 |
| 5. Flex | Andrew Ker | 146 | 0 | 0 |
| 6. Borthwickbrae Parks | Let from Year to Year | 55 | 0 | 0 |
| Gross Rental of Borthwickbrae | | 969 | 0 | 0 |

Note.—This does not include Borthwickbrae House and 150 Acres around it, which were specially conveyed to Mr. Allan E. Lockhart, and form no Part of the Trust Estate.

Deduct Public Burdens, &c.

| | £ | s. | d. |
|------------------------------|-----|----|------------------|
| 1. Land Tax, Road Money, &c. | 62 | 6 | 3 $\frac{1}{4}$ |
| 2. Ministers Stipends | 38 | 0 | 11 $\frac{1}{2}$ |
| 3. Poor's Rates | 14 | 15 | 1 |
| 4. School Salary | 6 | 19 | 11 |
| | 122 | 2 | 3 $\frac{1}{4}$ |

Clear Rental of Borthwickbrae and Flex

846 17 8 $\frac{3}{4}$

II. Old Melrose.

| Possession. | Tenant. | Yearly Rent. | | |
|-----------------------------------|-------------------|--------------|----|----|
| | | £ | s. | d. |
| Mansion House, Offices, &c. | Archibald Douglas | 100 | 0 | 0 |
| Farm of Old Melrose and Peasehill | Archibald Douglas | 297 | 10 | 11 |
| Gross Rental of Old Melrose, &c. | | 397 | 10 | 11 |

Deduct Public Burdens, &c.

| | £ | s. | d. |
|-----------------------------|-----|----|-----------------|
| 1. Feu Duty | 31 | 9 | 3 $\frac{1}{4}$ |
| 2. Poor's Rates | 0 | 15 | 6 |
| 3. Tweed Fishery Assessment | 1 | 12 | 0 |
| 4. Statute Labour | 0 | 11 | 7 |
| 5. Stipend | 1 | 17 | 9 $\frac{3}{4}$ |
| 6. Assessed Taxes | 9 | 15 | 3 |
| 7. School Salary | 0 | 1 | 2 |
| 8. Hedger's Wages | £35 | | |
| Off, paid by Tenant | 5 | | |
| | 30 | 0 | 0 |

Clear Rental of Old Melrose, &c.

76 3 0

321 7 11

Clear Rental of Borthwickbrae, Flex, and Old Melrose

£ 1,168 5 7 $\frac{3}{4}$

Alexander Tod.

SCHEDULE (C.) to which the foregoing Act refers.

The Town and Lands of Old Melrose, with the Fishings, and the Two Husband Lands of Eildon now called Peasehill, with their Pertinents, all lying in the Parish of Melrose and Shire of Roxburgh.

John Richardson.

SCHEDULE (D.) to which the foregoing Act refers.

The Lands of Flex, comprehending Broomhill, lying within the Barony and Parish of Hawick and Shire of Roxburgh.

John Richardson.

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Printers to the King's most Excellent Majesty. 1837.

