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H E A D S

FOR A

B I L L

TO AMEND

The LAW concerning TAILLIES

In that part of Great Britain called

S C O T L A N D.

By the Faculty of ADVOCATES.

EDINBURGH:

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H E A D S

F O R

A B I L L, &c.

I. **B**Y an Act of the Parliament of
Scotland, in the year 1685,
C. 22. it was “ Enacted and declared,
“ that it should be lawful to his Ma-
“ jesty’s subjects to taillie their estates,
“ and to substitute heirs in these
“ Taillies, with such provisions and
“ conditions as they should think fit,
“ and to affect the said Taillies with
“ irritant and resolute clauses; de-
“ claring, That it should not be lawful
“ to the Heirs of Taillie, to sell or dis-
“ pone the said lands, or any part
“ thereof;

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“ thereof; or to contract debt, or to
 “ do any other deed, whereby the
 “ same may be evicted from the other
 “ Substitutes in the Taillies, or the suc-
 “ cession frustrated or interrupted; and
 “ declaring all such deeds to be in
 “ themselves void; and that the next
 “ Heir of Taillie may, immediately,
 “ upon contravention, pursue declara-
 “ tors thereof, and serve himself Heir
 “ to the person who died last inest in
 “ the fee, and did not contraveen,
 “ without necessity any ways to repre-
 “ sent the contraveener.” And by
 which Act, it was also provided and
 declared, “ That such Taillies only
 “ should be allowed, in which the fore-
 “ said irritant and resolute clauses
 “ are inserted in the procuratories of
 “ resignation, charters, precepts and
 “ instruments of sasine, and the Taillie
 “ once produced before the Lords of
 “ Session judicially; and that the same
 “ should be recorded in the Register
 “ appointed

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“ appointed to be kept for that effect:
 “ And that the said provisions and irri-
 “ tant clauses should be repeated in all
 “ the subsequent conveyances of the
 “ said taillied estate; which clauses are
 “ declared to be real and effectual,
 “ not only against the contraveeners
 “ and their Heirs, but also against their
 “ creditors and other singular succes-
 “ sors whatsoever;” as in the said Act
 at more length is contained.

II. UNDER the authority of the afore-
 said Act, a great part of the lands in
Scotland are already subjected to such
 Taillies, with prohibitive, irritant, and
 resolute clauses, restraining the Heirs of
 Taillie, to the most remote generations,
 from alienating or incumbering the
 same, or any part thereof. And as
 such clauses and provisions are, by ex-
 perience, found to be attended with
 many ill consequences, both to public
 and private interest;

III.

III. FOR remedy thereof, it is PROPOSED, that from and after the day of next to come, in this present year it shall not be lawful for any person or persons, proprietors of lands or heritages in that part of *Great Britain* called *Scotland*, by any settlement, disposition, bond of Taillie, or other deed, to be by him or them executed, of all, or any part of their said lands or estates, to burden or affect the said Settlements, with any prohibitive, irritant, or resolute clauses, so as to limit and restrain any of the Heirs of Taillie not in life at the time of making such Settlement, or not specially named therein, from alienating such lands, in whole or in part, for just and necessary causes, or for a true price, or other valuable consideration, paid for the same; or from granting wadsets, and other real securities upon, or out of the same; or from charging

charging the same with debts, as such Heir of Taillie shall think proper.

IV. AND it is hereby PROPOSED, That all such prohibitive, irritant, and resolute clauses, contained in any such Taillie or Settlement, of date posterior to the said day of shall be held void, and of no force or effect whatsoever, with respect to such Heirs as aforesaid.

V. PROVIDED, nevertheless, That it shall be lawful for, and in the power of, every such proprietor of lands or estates in *Scotland*, by such Taillie or Settlement, to impose prohibitive, irritant, and resolute clauses to their full extent, as they might have done before making this (proposed) Act, upon any Heir or Heirs of Taillie, who shall be in life at the time of making such Settlement, and therein specially named: And in case of contravention, not only to irritate and resolve the right of the Heir so contravening, but also to annul the debts and other deeds of contravention,

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vention, so far as the same may affect, charge, or burden such taillied lands or estate: Provided such Taillies shall be, in other respects, completed and perfected, according to the directions of the aforesaid Act of 1685, in all points; and that the said prohibitive, irritant, and resolute clauses, shall be ingrossed in the procuratories of resignation, charters, precepts, and instruments of sasine, whereby, or under which, any of the said Heirs of Tailie shall, or may, hold or enjoy such taillied lands or estates.

VI. PROVIDED always, that, from and after the said day of , it shall not be lawful for any such proprietors of lands or heritages, in that part of *Great Britain* called *Scotland*, in any settlement, disposition, bond of Tailie, or other deed to be by him or them executed, of all or any part of their said lands or estates, to limit or restrain, by any prohibitive, irritant,

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tant, or resolute clauses, or in any other manner whatever, their Heirs of Tailie from granting leases of all or any part of the lands or heritages contained in such Deed of Tailie, for any life or lives, not exceeding lives, or for any term of years, not exceeding years; such leases being always granted for a rent or tack-duty not under what the lands so leased do pay or yield at the time of granting the same; or from providing the husbands or wives of such respective Heirs of Tailie in such jointure or jointures, or liferent provisions, as they shall think proper; the same not exceeding one third of the free rent of such lands or estate, after deduction of other jointures and liferent provisions, and of the interest of such debts, real or personal, as shall then be chargeable on the respective estates; or from granting provisions to their children, the same not exceeding three years free rent of

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such

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such land or estate, after deduction of the interest of such debts, real or personal, as aforesaid. And all such prohibitive, irritant, and resolute clauses, contained in any such Deed of Tailie or Settlement, to be made or executed after the said day of , shall be held void and of no force or effect whatever.

VII. AND, in order to give all possible security to purchasers, creditors, and others contracting *bona fide* with the persons in possession of such tailed estates, and to prevent, as far as may be, their being deceived or defrauded, it is further PROPOSED, That it be enacted, that no prohibitive, irritant, or resolute clauses, contained in any Tailie to be made and executed after the said day of , shall be of force or avail against purchasers, creditors, or others contracting with the Heirs of Tailie in possession of such estates, until such time as the

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the said Tailie shall be not only recorded in the Register of Tailies, according to the directions of the aforesaid Act of 1685, but also until such time as infestment shall be thereupon taken; and all the prohibitive, irritant, and resolute clauses be ingrossed in the instrument of sasine, and the sasine recorded in the proper Register.

VIII. AND it is further PROPOSED, with respect to all such Tailies as shall be made and executed after the said day of , That the contravention of any of the conditions or prohibitions therein contained, shall only operate an irritancy or forfeiture of the right of the person contravening, and shall not affect the heirs, tho' descended of the body of the contraveener, any law, custom or usage, or any provision in the Tailie to the contrary notwithstanding.

IX. UNDER the authority of the aforesaid Act of 1685, many Tailies have

have been made, containing prohibitive, irritant, and resolute clauses, which are hereby proposed to be prohibited and restrained for the future. And as it is reasonable, so far as may be consistent with the rights and interests of the several Heirs of Taillie now alive and existing, to introduce and establish an uniformity and equality between the Taillies already made and those to be made, after the said day of _____, by reducing the limitations and restrictions of the Taillies already made within reasonable bounds, it is PROPOSED, That all Taillies already made, and established, pursuant to the directions of the said Act 1685, shall subsist, and stand in full force, and have effect, with and under the exception after mentioned, during the lives and existence of all, or any of the Heirs of Taillie called to the succession by any such Deeds of Taillie, who shall be in life upon the said day of _____ : But that, from and after _____

after the death of the longest liver of the said Heirs of Taillie respectively, all prohibitive, irritant, and resolute clauses, contained in any such Deed of Taillie or Settlement already made and established, other than those which are by this Act authorized and allowed with respect to future Taillies, shall from thenceforth cease and determine, and have no force or effect whatever.

X. PROPOSED, That, notwithstanding any such prohibitive, irritant, and resolute clauses, contained in any Taillies already made and established, pursuant to the directions of the said Act of 1685, it shall be lawful for the respective heirs in possession, by virtue of such Taillies, to grant leases of all, or any part of the lands or heritages therein contained, for any life or lives, not exceeding _____ lives; or for any term of years, not exceeding the term of _____ years: Such leases being always granted for a rent or tack-duty,

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duty, not under what the lands so leased do pay or yield at the time of granting such leases, or from providing the husbands or wives of the respective Heirs of Tailie, in such jointure or jointures, or liferent provision, as they shall think proper, the same not exceeding one third of the free rent of such lands or estates, after deduction of other jointures and liferent provisions, and the interest of such debts, real or personal, as shall then be chargeable thereupon; or from granting provisions to their children, the same not exceeding three years free rent of such lands, after deduction of the interest of such debts as aforesaid.

XI. PROPOSED, That where lands or estates, whether contained in Taillies already made under the authority of the said Act of 1685, or to be made under the authority of this Act, shall be lawfully charged with debts and incumbrances, it shall be lawful for the
Heirs

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Heirs of Tailie, possessed of such lands or estates, to sell by public roup or auction, such part of the said tailed lands and estates, as may be sufficient to satisfy and pay the said debts and incumbrances. Providing always, That such sale shall be made only by the authority of the Court of Session, upon a summons of sale against all the subsequent Heirs of Tailie then in life; and that the price shall be applied, by direction of the said Court, in payment of the said debts, and defraying the expences of the said sale: And such sale so made, shall not only be a sufficient security to the respective purchasers, but also shall not operate any irritancy, contravention, or forfeiture of the right of the Heir who shall make such sale, any thing herein contained, or in any other law, or usage, or any provision in the Tailie to the contrary notwithstanding.

XII.

XII. THAT it be PROVIDED, That nothing herein contained shall be construed to repeal or alter the said Act of 1685, in any of the heads, articles, clauses, or provisions thereof, other than those herein before mentioned; but the said Act shall remain in full force, as to all such heads, articles, clauses, or provisions, concerning which no provision is made in this Act, or which are not inconsistent therewith, in the same way and manner, as if this Act had never been made.

F I N I S.