

A P P E N D I X.

I. *Charter of lands held soccage. Referred to p. 11. § 35.*

From the original.

SCIANT presentes et futuri, quod ego Rogerus, filius Filippi Deu, dedi et concessi, et hac carta mea spontanea voluntate confirmavi, Dunecano, filio Edwardi de Nevelyn *, totum pratum inter divisas de Kinglafs, et inter pratum monacorum de Culenrofs, in territorio de Karedene, per easdem divisas per quas probi homines de Karedene, in presentia Filippi Deu patris mei, perambulaverunt: Tenendum et habendum in libero fochagio fibi et heredibus suis, vel suis assignatis, et assignatorum heredibus, predictum pratum, et unum toftum et croftum ex opposito condam domus patris mei, de me, et heredibus meis, in feudo et hereditate, libere et quiete, plenarie et honorifice, et cum communi pastura totius tenementi, et cum omnimodo jure quod in predictis terris habui, vel habere potui; et cum libertatibus et assiametis predicto tenemento pertinentibus, vel pertinere valentibus, libere, integre, et quiete, ab omni seculari servitio, auxilio, et exercitu, et quiete ab omni escaeta et custodia heredum fuorum, vel heredum fuorum assignatorum, preterita, presentia, vel futura, penes me et heredes meos: Reddendo inde annuatim unum denarium argenti ad festum Sancti Servani, pro omni seculari servitio, exactione, et demanda: Preterea do et concedo, in quantum possum, pro me et heredibus meis, Duncano, et heredibus suis, vel suis assignatis, et assignatorum heredibus, liberam potestatem ad edificandum, hospitandum intra predictas terras, prout melius et plenius ad eorum placita voluerint; una cum rationabilibus viis factis per visum proborum hominum, in eundo cum plautris, quadrigis, et aliis rebus, et avariis, versus predictas terras, et redeundo quotienscunque voluerint: Ego etiam Rogerus Deue, et heredes mei, predicto Dunecano, et heredibus suis, vel suis assignatis, contra omnes homines et feminas in perpetuum warrantizabimus hæc. Hiis testibus, Rogero Avenel Vicecomite de Linlitqu tunc Radulfo Nobili — — — ferviente Regis, Laurencio Lunel, Petro filio Hahilbrid, Henrico, Waltero, Daniel, tingtoribus, Ricardo focio Regis, Steffano de Aula, et aliis.

II. *Charter by James IV. to Lady Margaret Stewart, by which, as well as by the charter mentioned in Mr Hay's Vindication of Elizabeth More, it appears, that legitimation per subsequens matrimonium was rejected by the ancient law of Scotland, p. 12. § 35.*

From the record of charters in the laigh parliament-house, b. 15. N° 90.

Jacobus, Dei gratia, Rex Scottorum, omnibus probis hominibus totius terre sue, clericis et laicis, salutem. Sciatis nos dedisse, concessisse, et hac presenti carta nostra hereditarie confirmasse, dilecte consanguinee nostre Margarete Stewart, filie dilecti consanguinei et consilarii nostri Mathei Comitiss de Levenax, Domini Dernlie, totas et integras terras et baronias de Bigar et Thankertoun, cum tenentibus, tenandriis, libere tenen. serviitiis, patronatuum juribus, advocacionibus et donationibus ecclesiarum et capellaniarum earundem, cum suis pertinen. jacen. infra vic. nostrum de Lanark; que fuerunt dilecti consanguinei nostri Johannis Domini Flemyng prius hereditarie, et quas ipse per fultem et baculum, ac procuratores suos ad hoc legitime constitutos, et suas paten. literas, in manibus nostris, apud Edinburgh, fursum reddidit, pureque simpliciter resignavit, ac totum jus

* f. Strevelyn.

et clameum que in eisdem habuit, seu habere potuit, pro se, et heredibus suis, omnino quietum clamavit imperpetuum: Tenendas et habendas totas et integras predict. terras et baronias de Bigare et Thankertoun, cum tenentibus, tenan. libere tenen. serviciis, advocacionibus, donacionibus, et patronatuum juribus ecclesiarum et capellaniarum earund. cum suis pertinent. dicte Margarete Stewart, et heredibus masculis inter ipsam et dictum Johannem Dominum Flemyng procreatis, seu procreandis, de nobis, et successoribus nostris, in feodo, hereditate, ac liberis baroniis, imperpetuum; qua Margareta, et dictis heredibus suis masculis, deficient. iterum reversur. dicto Johanni Domino Flemyng, et heredibus suis masculis; per omnes rectas metas suas antiquas et divisas, prout jacent in longitudine et latitudine, in boscis, planis, mareis, viis, semitis, aquis, stagnis, rivolis, pratis, pascuis et pasturis, molendinis, multuris, et eorum sequelis, aucupationibus, venationibus, piscationibus, petariis, turbariis, carbonariis, lapicidiis, lapide et calce, fabrilibus, brasinis, brueriis et generis, cum curiis, et earum exitibus, herezeldis, bludwitis, et merchetis mulierum, cum furca, fossa, fok, fak, tholl, theme, infangtheif, outfangtheif, pitt, et gallows, cum communi pastura, libero introitu et exitu, ac cum omnibus aliis et singulis libertatibus, commoditatibus, et asiamenis, ac justis suis pertinent. quibuscunque, tam non nominatis quam nominatis, tam subtus terra quam supra terram, procul et prope, ad predictas terras et baronias, cum tenentibus, tenan. libere tenentium serviciis, advocacionibus, donacionibus, et patronatuum juribus ecclesiarum et capellaniarum earundem, cum suis pertinent. spectan. seu juste spectare valen. quomodolibet, in futurum, libere, quiete, plenarie, integre, honorifice, bene, et in pace, sine aliquo impedimento, revocatione, contradictione, aut obstaculo aliquali: Reddendo inde annuatim prefata Margareta, et heredes sui masculi predicti, quibus deficient. dictus Johannes Dominus Flemyng, et heredes sui quicunque, nobis, et successoribus nostris, jura et servicia dictarum terrarum et baroniarum, cum omnibus suis pertinent. predict. ante prefatam resignacionem nobis inde fact. debita et consueta. Insuper si contingat aliquos filios et proles masculos, unum aut plures, inter ipsos Johannem et Margaretam procreari, antequam legitima dispensatio matrimonii inter eosdem ad istas partes a curia Romana devenerit, et desuper executum fuerit, et ante complementum et solemnizationem contractus predicti matrimonii in faciem ecclesie, nos, ex nostris gratia et favore specialibus, pro nobis, heredibus et successoribus nostris, nunc prout extunc et e converso, dedimus et concessimus, et hac presenti carta nostra damus et concedimus, dicto filio et filiis, et prolibus masculis, uni aut pluribus, inter predict. Johannem et Margaretam, ut premittitur, procreatis, seu procreandis, liberam facultatem, plenariam potestatem, et licenciam specialem, ut ipsi, et eorum aliquis, libere et licite disponere valeant, et valeat, ad eorum libitum voluntatis, in toto tempore vite ipsorum, sive egri fuerint, sive sani, sive in tempore mortis eorum, de omnibus et singulis terris suis, tenementis, annuis redditibus, possessionibus ubicunque, infra regnum nostrum existent. ac de omnibus et singulis bonis, mobilibus et immobilibus, quesitis seu querendis, cuicunque persone, sive quibuscunque personis, prout eis, sive eorum alicui, magis videbitur expediens, conveniens, et optimum, non obstant. quod si contingat ipsos bastardos procreari, et privilegiis juris nobis super escheatis bastardorum concess. ; ac etiam dict. filium et filios, ac proles legitimos fecimus et legitimavimus, et hac presenti carta nostra facimus et legitimamus, dictis terris et baroniis de Bygar & Thankertoun, cum tenentibus, tenandriis, libere tenen. serviciis, patronatuum juribus, advocacionibus, et donacionibus ecclesiarum et capellaniarum earundem, libere gaudend. et possidend. et post prefate Margarete eorum matris decessum, secundum tenorem carte nostre desuper conficiende legitime eisd. succedend.

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ac omnes actus legitimos in iudicio et extra iudicium exercend. ac omnibus aliis hereditatibus, terris, possessionibus, dignitatibus, honoribus, officiis, et privilegiis libere gaudend. in omnibus, et per omnia, ac si de legitimo thoro essent procreati; etiam ex nostre Regie Majestatis plenitudine dict. filium seu filios, et proles masculos, legitimum et legitimos fecimus, sic quod eorum alter alteri, licet bastardi fuerint, succedere valeat, deficient. heredibus suis legitimis de eorum corporibus legitime procreandis, in omnibus et singulis terris suis, tenementis, annuis redditibus, hereditatibus, possessionibus, et bonis, mobilibus et immobilibus, hereditariis, questis seu querendis, non obstan. bastardiis suis, et privilegiis juris, predict. Ac etiam nos, pro nobis et successoribus nostris, dedimus et concessimus, et hac presenti carta nostra damus et concedimus, dict. filiis, et prolibus masculis, et eorum alicui, omne jus, clameum, titulum juris, et eschaetam, que nos, aut successores nostri, habemus, seu habere poterimus, aut poterint, aliquibus terris, tenementis, annuis redditibus, possessionibus, bonis, mobilibus et immobilibus, dictorum filiorum, et prolium masculorum, aut eorum alicujus, ut nostra eschaeta, ratione bastardie, ac eisdem renunciavimus, et quietum clamavimus, et hac presenti carta nostra renunciamus, et quietum clamamus, hujusmodi prolibus masculis, et eorum alicui, pro perpetuo; cum plenaria potestate eis, et eorum alicui, desuper disponend. prout eis ut videbitur magis expediens et optimum, sine aliquo obstaculo, clameo, impedimento, et revocatione, per nos, heredes aut successores nostros, dictis filiis, et prolibus masculis, aut eorum alicui, seu persone aut personis, cui vel quibus, ipsos de dictis terris suis, tenementis, annuis redditibus, seu bonis, disponere contigerint aut contigerit quovismodo inde faciend. in futurum. In cujus rei testimonium, presenti carte nostre magnam sigillum apponi precipimus. Testibus, &c. apud Edinburgh, duodecimo die mensis Martii, anno Domini millesimo quingentesimo octavo, et regni nostri vicefimo primo.

III. *Declaration by a bailie, in a separate writing, that he had given possession to the vassal, p. 195. § 33.*

From the original, in the hands of James Erskine of Cardross, Esq;

UNiversis quorum intererit, ad quorum notitiam presentes lettere pervenerint, Willielmus de Preston de Benyne, et ballivus magnifici et potentis Domini, ac Domini mei metuendissimi, Domini Archibaldi Comitis de Douglas, in hac parte, de terris de Tulyalon, cum pertinentiis, per suam literam ballivi constitutus, salutem. Quia carissimus consanguineus meus Dominus Johannes de Edmondston, Miles, Dominus ejusdem, quinto die mensis Aprilis, anno Domini millesimo quadringentesimo decimo, apud forsetum de Tulyalon, quandam literam sayfine, sigillo dicti Domini mei Comitis de Douglas roboratam, et mihi in hac parte ballivo constituto pro sayfina hereditaria dicto Domino Johanni adhibenda directam presentavit: Quibus vero literis, tam ballivi quam sayfine, in presentia plurium testium subscriptorum perlectis, predictus Dominus Johannes a me petiit, ut de dicta auctoritate ballivi michi in hac parte commissa, de predictis literis plenariam facerem executionem, et sibi sayfinam hereditariam de predictis terris de Tulyalon, cum pertinentiis, et de forseto ejusdem, cum secundum formam et tenorem cartarum dicti Domini Comitis de Douglas inde sibi confectarum, adhiberem; et incontinenti ego dictus Willielmus de Preston, ad instantiam dicti Domini Johannis de Edmondston, virtute dicti officii ballivi michi in hac parte ordinati, ipsum predictum Dominum Johannem de Edmondston, in predictas terras de Tulyalon cum pertinentiis, et in forsetum ejusdem cum pertinentiis, secundum formam et tenorem dicta-

rum cartarum, hereditarie factivi et investivi, et in corporalem possessionem introduxi, hiis testibus, Domino Johanne Senescallo de Innermeth, Milite, Domino Willielmo de Hutton, rectore ecclesie parochialis de Tulyalon, Andrea Ilaak, Johanne de Preston, Roberto de Preston, et Alexandro de Cragy, cum multis aliis. In cujus rei testimonium, sigillum meum presentibus apposui, et ad majorem hujus rei evidentiam sigillum dicti Domini Johannis Senescalli, gratia testimonii, presentibus apponi cum instantia procuravi, anno, die, mense, et loco supra dictis.

IV. *Notarial instrument of seisin before the return of James I. from England, the period when these instruments are supposed to have been introduced into this country, p. 196. § 34.*

From the original in the hands of the Earl of Strathmore.

IN Dei nomine, Amen. Per presens publicum instrumentum cunctis pateat evidenter, Quod anno ab incarnatione Domini m^occccmo quarto, mensis Novembris die xvi. indictione xiii. pontificatus sanctissimi in Christo patris, ac Domini nostri Domini Benedicti, divina providentia Pape, xiiii^omi anno ximo. In mei notarii publici, et testium subscriptorum, presencia, personaliter constituti nobiles et discreti viri, viz. Willelmus de Arnote, filius et heres Domini Henrici de Arnote, Militis, Domini ejusdem, tanquam attornatus Georgii de Abernethy, filii et heredis quondam Johannis de Abernethy de Kynnalty, ut per litteram de attornato de capella Domini nostri Regis, testimonio magni sigilli sui sigillatam, et per me notarium hic subscriptum, in presencia testium subscriptorum, lectam et publicatam, clare apparuit manifestum, et Willelmus Wyffchart, ballivus in hac parte nobilis Domini et potentis Domini Willelmi de Abernethy, Militis, Domini de Sawletoun et de Rethy, ficut per litteram dicti Domini Willelmi, suo sigillo sigillat. cum affixione cere rubre, infra cujus sculpturam continebatur quoddam scutum, continens quendam leonem, cum una benda, cujus circumscriptio erat, *S. Willi de Abernethy*, ut prima facie apparuit; cujus tenor, de verbo ad verbum, sequitur, et est talis. “Wills de Abernethy, Dominus de Sawltoun, de Rethy, et de Kynnalty, dilecto nostro Willo Wyffchart, ballivo nostro in hac parte de predictis terris de Rethy et Kynnalty, salutem in auctore salutis. Sciatis, quod quondam Johannes de Abernethy, pater Georgii de Abernethy latoris presentium, obiit vestitus et factus, ut de feodo, ad fidem et pacem Domini nostri Regis, de terris de Kynnalty, cum pertinenciis, ex dono nostro, per albam firmam unius denarii, prout in carta nostra de predictis terris confecta plenius continetur: Quare vobis mandamus et precipimus, quatenus Georgio predicto, vel suo certo attornato latori presentium, statum, possessionem, et faisinam hereditariam de predictis terris, visis presentibus, habere faciatis indilate, salvo jure cujuslibet, capientes securitatem pro duplicatione albe firme nostre unius denarii; ad quam faisinam, ut predicatur, tradendam vobis potestatem nostram committimus per presentes. In cujus rei testimonium, sigillum nostrum presentibus est affixum, apud Perth, ximo die mensis Novembris, anno Domini m^occccmo quarto.” Quibus vero litteris lectis et publicatis, ut premittitur, omni circumstantia, accedensque personaliter dictus Wills Wyffchart, potestatem habens, ut prescribitur, ad capitale messuagium de Kynnalty, tradensque Willo de Arnote antedicto, tanquam attornato predicti Georgii, statum, possessionem, et faisinam hereditariam, cum terra et lapide, ut moris est, de predictis terris de Kynnalty, cum pertinenciis, salvo jure cujuslibet, capiensque pro faisina unum bovem nigrum, cum albis maculis, viz. vulgariter *don gariit*. Super quibus omnibus et singulis dictus Wills de Ar-

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note peçit a me notario publico hic subscripto sibi fieri prefens publicum instrumentum. Acta fuerunt hec ad capitale messuagium de Kynnalty, sub anno, die, mense, indictione, et pontificatu quibus supra, paulo post ortum solis ejusdem diei, presentibus discretis viris, viz. Willo de Ramsay f. Michael. Ramsay de Banf, Willo Wyffchart de Logy, Thoma f. Joh. Willo f. Joh. Willo Hawden, Joh. de Benyftoun, Joh. f. Nich. de Alycht, Bernardo f. Johis, Thoma f. Rogeri, Roberto f. Johis, et Andrea f. Johis, et aliis testibus ad premissa vocatis specialiter et rogatis.

Et ego Johes Symonis clericus Dunkelden. dyoc. publicus auctoritate imperiali notarius, premissis omnibus et singulis dum sic ut superscribuntur agerentur et fierent, una cum prenomatis testibus, prefens interfui; eaque omnia et singula sic fieri, vidi, scivi, et audiui, et in hanc publicam formam redegei, manuque mea propria scripsi, signoque meo solito et consueto signavi, per predictum Willm. de Arnot requisitus et rogatus, in testimonium veritatis omnium premissorum.

V. *Rollment of court, referred to, p. 577. § 65.*

From the original in the hands of Archibald Stirling of Keir, Esq;

Curia vicecomitatus de Dunbartan, tenta in prætorio burgi ejusd. die penultimo mensis Novembris, anno Domini millesimo quingentesimo tricesimo secundo, coram honorabili viro Willmo Strivelyng de Glorat, vicecomite deput. dicti vicecomitatus; curia affirmata.

THE quhilk day, anens our Soverane Lordis letteris purchest be Andro Strivelyng of Ballindrot, and Elizabet Gowbrayt, bearand in effect, yat it was humblye meint and shawin to his Grace, and Lordis of counfall, That quhair the saidis Andro and Elizabet ar ayiris to umq^{ll} Thomas Gowbrayt of Ballindroch, and be ryght thair of hes divers actionis to persew, and thair pertiis objectis to answer to yam thairinto, becaus yei haif not in wryt documentis to shaw to verife, yat they ar the saidis ayiris, and yai may not enter be brevis of inquest ayiris to na landis, yat pertenit to the said Thomas, for he aneit all his heretage under reverfionis, and sa wes disseit quhan he decefit, as is allegt; chargeand thairfor the sherrieff of Dunbarten, and his deputis, to take cognitioun in that mater, and to warn all perties thairto haifand enteres therintil, be oppin proclamatoun, and giff it beis fundin that the saidis Andro and Elizabet ar neirist and lauchfull ayiris to the said umq^{ll} Thomas, that they giff to tham thair rolment of court, as beis fundin be the said cognitioun ottentyklye on the saidis Andro and Elizabethis expensis, for verificatioun of thair interes; as at mair lyntht in the saidis letteris ar contenit: for executioun of quhilk, the said sherrieff-deput had passit himself to the merkat-croce of the said burgh, the nynt day of the said moneth, and gart proclaime and reyd oppinlye the saidis letteris for warnyng of all personis haifand entres, that the cognitioun wald be taken after the form thair of be hym, the said penult day of Nouember, as his indorfatioun, wretten on the back of the saidis letteris, buyr; at qlk day the saidis Andro comperit, for hymself, and as procurator for the said Elizabet, be hyr mandat shawin be hym in jugment and admittit; and thair desyrit that the said shereff-deput wald tak the sayd cognitioun efter the form of the saidis letteris; the quhilk petitioun the said shereff-deput thocht resonabil, and maid call giff onye uther perteis haifand entres wald compeir; and nane uther compeirit; quharfor he tewk cognitioun in the said mater, and fand that the saidis Andro and Elizabet

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wor neireft and lauchfull ayris to the faid umqⁿ Thomas Gowbrayt ; and thairfor ordanit that ane rollment of court fould be extrakit and gevin to them attentiklye thairupon. *Extractum de libro actorum dicte curie, per me Thomam Bifchop notarium publicum, clericum ejusd. sub meis figno et fubfcriptione manualibus.*

Thomas Bifchop notarius publicus, et clericus dicte curie.

VI. *Service of the heirs-portioners of Duffgal, in 1271, by which it appears that general services were then in ufe, though from the preceding article it would feem that they were not known about the middle of the 16th century.*

From the chartulary of Paisley, fol. 114.

Litera Domini Regis et vicecomit. de Dunbarton de inquisitione.

Omibus Christi fidelibus prefens 'fcriptum vifuris vel audituris, Walterus Senefcallus, Comes de Mentheth, falutem in Domino fempiternam. Noverit univerfitas veftra, me mandatum Domini mei Alexandri, Dei gracia, illuftris Regis Scocie recepiſſe, in hec verba. "Alexander, Dei gracia, Rex Scocie, Waltero Comiti de Mentheth dilecto et fideli fuo vicecomiti, et ballivis fuis de Dunbretan, falutem. Mandamus vobis et precipimus, quatenus per probos et fideles homines patrie, diligenter et fideliter inquiri faciatis, fi Maria, fponſa Johannis de Wardroba, et Elena fponſa Bernardi de Erth, ac Forveleth fponſa Norrini de Monorgund, filie quondam Finlai de Camfi, fint legitime et vere heredes quondam Dufgalli, fratris Maldoveni, Comitis de Levenax ; et dictam inquisitionem diligenter factam, et in ſcriptis redactam, ſub figillo noſtro, et figillis eorum qui dicte inquisitione faciende intererint, ad capellam noſtram, mitti faciatis ; et hoc breve, teſte meipſo, apud Kinclewin, xxiii. die Aprilis, anno regni noſtri xx^o fecundo." Hujus igitur auctoritate mandati per ſacramenta Dominorum Hugonis Flandrenſis, Alexandri de Dunhon, Roberti de Culthon, Militum, Gilberti filii Abſolonis, Duncan filii Ameledy, Malcolmi de Druman, Malmor dicti juvenis, Gilmythel, Machedolf, Ade dicti juvenis, Duncan filii Gilchriſt, Thome filii Somerledy, Neuyne Mackeſſan, Maldoveny Macdauy, Hectoris Macfouhyn, Eugenii aurifabri, ſuper premiſſis, diligentem feci inquisitionem, per quorum ſacramenta ad ſancta Dei euangelii corporaliter preſtita, veraciter didici et compertus ſum, predictas mulieres veras et legitimas heredes eſſe prenominati Dufgalli, per lineam confanguinitatis decedendo, ex parte Malcolmi fratris predicti Dufgalli, et avi predictarum mulierum et ipſum Dufgallum uxorem deſponſatam minime habuiſſe : et ne dicta inquisicio per me facta ceca oblivione depereat, gratia majoris teſtimonii, tam ego, quam predicti Milites, nec non et Duncanus filius Ameledy, et Malcolmus de Druman, prefens ſcriptum figillorum noſtrorum apoſitione roboravimus. Acta apud Dunbertan, die Veneris proxima ante feſtum Sancti Dunſtani, Archiepiſcopi, anni gracie milleſimi ducentefimi ſeptuageſimi primi, hiis teſtibus, Domino Johanne de Herchin, Milite, Domino Adam capellano caſtri de Dunberton, Gilpatrick Macmolbrid, Ricardo de Dunydovery, Nicholao filio Germani, Udardo dicto Selyman, Uilelmo de Cragbayth, Clemente de Dumbertan, Waltero de Oreis Hingelramo de Monte Acuto, et aliis multis.

Abſtract

Abstract of the act 10° Geo. III. c. 51. for encouraging the improvement of lands in Scotland held under settlements of strict entail.

IT is enacted, That proprietors of entailed estates in Scotland, may grant leafes, for any number of years not exceeding thirty-one, or for fourteen years and one existing life, or for two existing lives ; provided that in leafes for two lives the tenant be taken bound to inclose one third of the lands in ten years, two thirds in twenty, and the whole in thirty years ; and in leafes for any term of years exceeding nineteen, to inclose one third of the lands before the expiration of one third of such term, two thirds before the expiration of two thirds, and the whole before the expiration of the term of such lease ; no inclosure comprehending more than forty acres, unless the lands be improper for culture by the plough ; and the fences to be kept and left in good repair by the tenant.

2. Proprietors of entailed estates may grant building-leafes for any number of years not exceeding ninety-nine ; provided that a lease of no more than five acres be granted to one person, and that the lease contain a condition, That it shall be void if one dwelling-house at least, not under the value of L. 10, be not built on each half-acre within ten years from the date of the lease, and if all the houses built be not kept in tenantable repair.

3. Provided, That no lease be granted of the manor-place, with the offices, gardens, and adjacent inclosures, that have been usually in the natural possession of the proprietor ; and that building-leafes be not granted of any lands within 300 yards of the manor-place.

4. Provided, That no lease be granted till the former lease be determined, or if for a term certain, be within a year of being determined ; that the rent in the new lease be not under that in the former, and that no fine or grassum be taken by the granter.

5. Enacted, That every proprietor of an entailed estate, who lays out money in inclosing, planting, or draining, or in erecting farm-houses, and offices for the same, shall be a creditor to the succeeding heirs of entail for three fourths of the money so laid out.

6. Provided, *1mo*, That the claim against the succeeding heir shall not exceed four years free rent of the entailed estate as at the first term of Whitsunday after the death of the heir who expended the money.

7. *2do*, That notice of the intended improvements be made in writing, three months at least before they are begun, to the next heir after the heirs of the proprietor's body ; or if that heir be not within Great Britain or Ireland, to his nearest relation by the father, or to his factor or attorney ; and a copy of the notice lodged with the sheriff or steward clerk of the county where the lands lie.

8. *3tio*, That annually, within four months after Martinmas, an account of the sums expended during the year preceding that term, with the vouchers, be lodged with the sheriff or steward clerk.

9. *4to*, That when a sum equal to four years free rent shall have been expended, and shall remain a subsisting charge against the succeeding heirs, it shall not be lawful for the subsequent heirs to expend any more under the authority of this act.

10. Enacted, That the sheriff or steward clerks shall record the said accounts, vouchers, and copies of notice, and either make the record patent, or give extracts when desired.

11. Enacted, That the executors or assigns of the heir who expended the money in improvements, may, after one year from his death, demand payment from the succeeding heir, with interest from the term when that heir's

right to the rents commenced; and in case of non-payment, sue him before the court of session; and on obtaining decree, use all diligence for recovering payment, except adjudication against the entailed estate improved; and in all questions of competition for the rents of the entailed estate, those in the right of this claim shall be preferred to the other creditors of the heir in possession.

12. Provided, That the heir in possession shall be discharged upon his effectually conveying to the creditor in the sums laid out in improvements, one third of the clear rents of the entailed estate during his life, or till the money so due shall thereby be paid off.

13. Enacted, That if the money due for improvements be not recovered from the heir immediately succeeding, those in the right of it may sue either the successors of that heir in any other estate, or the heir of entail succeeding to him, and use all kinds of diligence for recovery, except adjudication against the entailed estate; and shall be intitled to a preference upon the rents of the entailed estate to the personal creditors of the heir in possession; and in like manner they may sue every succeeding heir of entail, and with the same preference.

14. Provided the heir first succeeding to him who expended in improvements, and the successors of that heir, shall be bound to relieve all subsequent heirs of such part of the debt incurred by improvement of the entailed estate, as shall be paid by them, to the extent of one third of the rents, which have come to the use of the first succeeding heir, or of his heirs or executors; and when that is exhausted, then the next succeeding heir, and his successors, shall be bound to relieve all subsequent heirs, to the extent of one third of the rents which have come to their use; and the same relief shall be competent to every succeeding heir against the successors of the preceding.

15. Provided, That the successors of an heir of entail in any other than the entailed estate, sued on account of improvements, shall be discharged, upon making payment of one third of the rents of the entailed estate which have come to the use of that heir or his successors.

16. Enacted, That the person having a claim on account of improvements, shall be obliged, within two years after the death of him who made the improvements, to demand payment from the succeeding heir; and in case of non-payment within six months after the elapse of said two years, to institute an action in the court of session, and proceed, without delay, to recover decree, and do exact diligence for making payment effectual: and if he fail, or allow the succeeding heir to die without recovering to the amount at least of one third of the rents that may have become due to that heir, then, though he may sue the heir's successors in any other than the entailed estate to that amount, he shall have no claim against the subsequent succeeding heir of entail, except for the surplus.

17. Enacted, That if the heir first succeeding to him who made the improvements, shall not live long enough to be indemnified of what he has paid on that account, by one third of the rents that shall come to his use, or that of his successors, these shall be creditors for the balance to the succeeding heir of entail; and relief shall, in like manner, be competent to the successors of every heir of entail in the same circumstances.

18. Enacted, That the money expended for improvements shall not be made a ground for adjudging the estate improved.

19. Enacted, That if the succeeding heir of entail shall have right to the claim for improvements, then the claim shall be extinguished, and never set up against the succeeding heir.

20. Enacted,

20. Enacted, That if any heir of entail shall refuse to pay the money required of him for improvements, and if decree shall be recovered for the full sum demanded, then the defender shall be liable for full costs of suit.

21. Enacted, That an heir of entail, after having completed the improvement of all or any part of the estate, may bring an action before the court of session, or the sheriff, in which he shall call the heir next intitled to succeed after the heirs of his own body, for ascertaining the amount of the charge against the succeeding heirs of entail; and the decree, if pronounced by the sheriff, shall be final, unless suspended within six months; and if by the court of session, whether in the first instance or upon review, final, unless an appeal is brought within twelve months.

22. Enacted, That every heir of entail who lays out money in building or repairing a mansion-house, or offices, upon his estate, or in adding to them, shall be a creditor to the next succeeding heir of entail for three fourths of the money expended by him.

23. Provided, *imo*, That the sums so laid out shall not be effectual to constitute a claim against the succeeding heir for more than two years free rent of the estate, as at the first term of Whitsunday after the death of the heir who expended the money claimed.

24. *2do*, That notice be given, and the copies recorded, in the same manner as directed with regard to improvements of the lands.

25. Enacted, Those in the right of the claim on account of that expence, may demand payment from the succeeding heir, after one year from the death of him who expended the money, with interest from the term at which the heir's right to the rent commenced; and, in default of payment within three months of such requisition, may sue the heir, in the same way as directed with regard to improvements.

26. Enacted, That the same rules of relief among succeeding heirs, of preference, and in subjecting defenders to the payment of costs, and for ascertaining the amount of the sum laid out, shall take place with regard to the money laid out in this way, as with respect to the expence of improvements.

27. Enacted, That it shall be lawful for heirs of entail to make exchanges of land for the conveniency or advantage of their estates, and for the improvement of the country.

28. Provided, That not more than thirty acres of arable land, or one hundred acres of grounds improper for culture by the plough, of such entailed estates, shall be given in exchange; and that an equivalent in land contiguous to the entailed estate with which the exchange is made, shall be received in place of that given in exchange; and for ascertaining the value of the lands to be exchanged, application shall be made to the sheriff or steward of the county where the entailed estate lies, who thereupon shall appoint two or more skilful persons to adjust the value of the lands; and upon their settling the marches, and reporting upon oath that the exchange will be just and equal, the sheriff or steward shall authorise the exchange to be made by a contract of excambion; and that being executed, and recorded in the sheriff or steward books within three months after the execution thereof, shall be effectual; the land given in exchange to the entailed estate shall thenceforth be held a part thereof, and that given from it held as out of the entail.

29. Enacted, That this act shall extend to all tailzies, whether made prior or posterior to the act 1685.

Abstract of the act 12° Geo. III. c. 72. for rendering the payment of the creditors of insolvent debtors more equal and expeditious, &c.

IT is enacted, That when any debtor in Scotland shall suffer his effects to be poinded, or shall be under diligence by horning and caption, and shall be imprisoned, or retire to a sanctuary, or fly or abscond, or defend his person by force, or, being out of Scotland, and intitled to privilege, shall be under diligence by letters of horning and caption, and shall have his effects arrested, the court of session in time of session, or the Lord Ordinary in time of vacation, shall, upon summary application by the creditor on whose debt the diligence proceeded, sequestrate the debtor's personal estate, appoint a factor, and ordain the debtor to convey his estate to him.

2. In the nomination of a factor, the court shall prefer the person presented by a majority concurring in the application, or producing their grounds of debt.

3. The factor shall advertise a meeting of the creditors, in order to continue the factor appointed, or chuse another; and the person chosen by a majority in value of the creditors shall be factor.

4. The court may, at the suit of the creditor who applies for the sequestration, make interim orders for preventing the debtor from secreting or dilapidating his effects.

5. The factors to have the same power, and to be subject to the same duties, incumbent on factors appointed by the court for the management of sequestrated estates of persons absent, or incapable of management.

6. The factor immediately to publish an advertisement, requiring the creditors to produce their claims, and vouchers of their debt, in the hands of the clerk of the sequestration; and certifying such as shall not so produce, and also make oath upon the verity of their debts, within nine calendar months from the sequestration, that they shall not be intitled to any share in the first distribution of the debtor's estate.

7. An oath by creditors residing abroad, taken before any magistrate where they are resident for the time, or an oath of credulity by their factors in Scotland, shall be sufficient; and an oath of credulity by any of the curators or factors of such of the creditors as are under age, shall be sufficient.

8. The factor shall, within ten days after the lapse of nine months from the date of the sequestration, give in a state of the debtor's funds, and notify that he has done so by an advertisement; and the court, after allowing the creditors twenty days, to see and object to the state, shall order a rateable distribution of such part of the estate as has been converted into money; and in case any of the claims are objected to, the share corresponding to these debts, shall be lodged with the Bank of Scotland, or Royal Bank, or with any banking company, by direction of the court, till the objections are determined; and if the nine months shall expire during the vacation, the accounts shall be presented to the Lord Ordinary; who shall order them to be seen and objected to by the creditors against the first federunt-day of next session.

9. Within ten days of eighteen calendar months from the date of the sequestration, the factor shall make up a second state of his accounts, and the court shall order a second distribution.

10. Such part of the debtor's personal estate as has not after the lapse of eighteen months been converted into money, shall, after recovery thereof, be distributed among the creditors, at such times as the court shall direct, the factor being bound to give in his accounts within the first ten federunt-days

days of each session, of the monies recovered by him since last accounting, till all the funds be divided.

11. Such creditors only as shall have produced their grounds of debt, and proved the verity thereof, before the day fixed for each distribution, shall be intitled to a share in such distribution. Such creditors as shall not, shall only be intitled to a share corresponding to the balance then due to the other creditors, in any distribution to be made after their grounds of debt are produced, and the verity of them proved.

12. The factor must find security for performance of his duty. If he fail in his duty, he shall be liable in a penalty, not under L. 5, nor exceeding L. 30. If he embezzle or conceal any part of the debtor's estate, he shall be liable in treble the value, to be applied in payment to the creditors. He shall not keep in his hands above L. 100 at a time; the residue to be lodged with any of the banks, or with a banking-company, as before directed. He to have allowance for his trouble at the discretion of the court, not exceeding 5 *per cent.* of the sums recovered. He may be removed by the court upon cause shewn.

13. Creditors in debts not yet due, may draw their share upon discounting the interest. The shares of creditors not called for at the distribution, to be lodged with the banks, or a banking-company, as before directed, and advertisement made, as the court shall direct.

14. Debts intitled to a preference by the law of Scotland, not altered by the act, to be preferred; and if any doubts arise, the debts intitled to preference to be lodged with one of the banks, or a banking-company.

15. The factor may submit to arbitration, or compound, or sell by auction, any claims competent to the debtor.

16. Creditors may attend the meetings either in person or by proxy. No creditor shall have a vote, whose debt does not exceed L. 10. The minutes subscribed by the preses shall bear faith.

17. Arrestments within thirty days, before an application for a sequestration, shall give no preference. The arrestee, or the arrester, if he has recovered, shall pay or deliver to the factor, as if no such arrestment had been used.

18. No pinding not completely executed within thirty days before an application for a sequestration, shall give any right to the pinder. He shall be obliged to deliver the goods, or, if they are sold or disposed of, account for the appraised value, to the factor.

19. No payments made by the debtor to his creditors, nor any sale of goods, or conveyance of debts, except for a fair and adequate price paid in money, after application for a sequestration, shall be effectual. The factor may recover such sums paid, effects delivered, or debts conveyed, as if there had been no such transaction.

20. The arresters and pinders deprived of the benefit of their diligence; and persons deprived of the benefit of any sale or conveyance, to be intitled to the expence they may have *bona fide* incurred.

21. Not only the creditor who uses the diligence that founds an application for a sequestration, but any other creditors, may apply, provided the application be made within thirty days from the execution of the diligence.

22. Debtors who know themselves to be failing in their credit and circumstances, may apply for a sequestration.

23. Debtors who shall not make a fair surrender of their personal estate, books, and writings, or shall not comply with what is required of them by this act, shall be punished as fraudulent bankrupts.

24. Nothing in the act shall prevent or affect any diligence or other proceedings against the real or heritable estates of debtors.

25. The furplus of the debtor's personal estate, after payment of debts and expence, to be paid to the debtor.

26. Though the debtor should die during the subsistence of the sequestration, the proceedings notwithstanding to be followed out.

27. No fee to be paid for an oath, or productions, unless the debt exceed L. 10.

28. Though an appeal should be taken, the court may make interim orders to prevent embezzlement or dilapidation.

29. Horning and caption, if the imprisonment of the debtor has been prevented by a protection from the court of session, shall be deemed equal to imprisonment in questions upon the act 1696.

30. Two thirds in value of the creditors may, either at the first meeting, or at any subsequent one called for that purpose, upon thirty days notice, chuse a trustee; and the court, upon the minutes of the creditors, with an acceptance by the trustee, being produced, shall make an order, declaring the personal estate of the bankrupt within Scotland vested in the trustee, and directing the factor to convey to the trustee all the personal estate of the bankrupt out of Scotland, so far as had not been recovered, and to deliver every part of the bankrupt's personal estate, and pay the balance that shall appear due upon his accounts, he receiving such sum for his trouble as the court shall direct.

31. These trustees may chuse a factor, for whom they shall be answerable, and give him a reward for his trouble, not exceeding five *per cent.* of the money recovered by him.

32. Two thirds of the creditors in value may remove the trustee, and appoint others in his place, as they may do upon the death of the former; provided it be done at a meeting whereof previous notice has been given twice at least by advertisement forty days before the meeting.

33. The minutes of the meeting of the creditors appointing trustees shall be evidence in courts of justice, and the trustees shall be liable to perform all the conditions specified in the minutes in which they are appointed, and shall be bound to account for the legal interest of all the money that shall appear to be in their hands at any time exceeding L. 100.

. By the same statute, promissory notes are put on a footing with bills, as to diligence, interest, indorsation, and the privileges of indorseees.

And it is provided, That bills and promissory notes shall not be effectual to produce diligence or action after six years from the term of payment; the six years to run from the 15th May 1772, as to bills or notes of a date prior to that day; it being still competent to prove, that the debts are resting and owing by the oath or writ of the debtor. Bank-notes, or post-bills, are excepted; nor are the years of the creditors minority to be computed.

Inland bills and promissory notes must be protested within the days of grace to preserve recourse; but it is sufficient if the dishonour is notified within fourteen days after the protest; without prejudice to the notification of the dishonour of foreign bills within such time as is required by usage.

Summary execution by horning, or other diligence, shall pass upon bills, whether foreign or inland, and whether accepted, or protested for non-acceptance, and on promissory notes duly negotiated, not only against the accepters or granters, but likewise against the drawer and all indorseees jointly and severally, except the indorsation be qualified to be without recourse. Summary execution shall be competent to an indorsee, though the protest has not been taken in his name, and though the bill be not reconveyed to him by indorsation, if he produce a receipt for the value by act of honour, or a missive letter from the protesting indorsee, mentioning the dishonour.

The act to be in force only for seven years from the 15th May 1772, and to the end of the then next session of parliament.