



Titles to Land Consolidation (Scotland) Act 1868

1868 CHAPTER 101 31 and 32 Vict

1 Short title.

This Act may be cited for all purposes as “The Titles to Land Consolidation (Scotland) Act 1868.”

2 Commencement of Act.

This Act shall take effect from and after the thirty-first day of December one thousand eight hundred and sixty-eight, unless in so far as it is herein appointed to take effect at an earlier date.

3 Interpretation of terms.

The following words and expressions in this Act, and in the schedules annexed to this Act, shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

The words “superior,” “vassal,” “grantor,” “grantee,” “disponer,” “disponee,” “legatee,” “adjudger,” and “purchaser” shall extend to and include the heirs, successors, and representatives of such superior, vassal, grantor, grantee, disponer, disponee, legatee, adjudger, or purchaser respectively; and the word “successors” shall extend to and include heirs, disponees, assignees legal as well as voluntary, executors, and representatives:

F1

.....
The words “Sheriff of Chancery” shall extend to and include the Sheriff of Chancery and his substitute under this Act, or under the Act of the tenth and eleventh Victoria, chapter forty-seven; and the word “Sheriff” shall extend to and include [F2the Sheriff Principal . . . F3 of any sheriffdom . . . F3 and the Sheriff] and the Sheriff of Chancery and his substitute:

The words “Sheriff Clerk of Chancery” shall extend to and include the Sheriff Clerk of Chancery acting under this Act, or who acted under the M1 Act of the tenth and eleventh Victoria, chapter forty-seven, and the depute of such

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Sheriff Clerk; and the words “Sheriff Clerk” shall extend to and include the Sheriff Clerk of Chancery and [^{F4}the Sheriff Clerk . . . ^{F3} of the sheriff court district concerned] . . . ^{F3} and their respective deputies:

The words “Crown writ” shall extend to and include all charters, precepts, and writs from Her Majesty, and from the Prince; . . . ^{F3}; and the word “Prince” shall extend to and include the Prince and Steward of Scotland and his successors:

The word “charter” and the word “writ” shall each extend to and include all Crown writs, and all charters, precepts, and writs from subject superiors:

The word “deed” and the word “conveyance” shall each extend to and include all charters, writs, dispositions, whether containing a warrant or precept of sasine or not, and whether inter vivos or mortis causa, and whether absolute or in trust, feu contracts, contracts of ground annual, heritable securities, reversions, assignations, instruments, decrees of constitution relating to land to be afterwards adjudged, decrees of adjudication for debt, and of adjudication in implement, and of constitution and adjudication combined, whether for debt or implement, decrees of declarator and adjudication, decrees of sale, and decrees of general and of special service, whether such decrees contain warrant to infeft or precept of sasine or not, and the summonses, petitions, or warrants on which any such decrees proceed, warrants to judicial factors, trustees, or beneficiaries of a lapsed trust, to make up titles to lands, and the petitions on which such warrants proceed, writs of acknowledgment, contracts of excambion, deeds of entail, procuratories of resignation ad remanentiam, and all deeds, decrees, and writings by which lands, or rights in lands, are constituted or completed or conveyed, or discharged, whether dated, granted, or obtained before or after the passing of this Act, and official extracts of all deeds and conveyances; and all codicils, deeds of nomination, and other writings annexed to or endorsed on deeds or conveyances or bearing reference to deeds or conveyances separately granted, and decrees of declarator naming or appointing persons to exercise or enjoy the rights or powers conferred by such deeds or conveyances, shall be deemed and taken for the purposes of this Act to be parts of the deeds or conveyances to which they severally relate, and shall have the same effect in all respects as to the persons so named and appointed as if they had been named and appointed in the deeds or conveyances themselves:

The words “deed of entail” shall extend to and include all deeds and conveyances of lands under the fetters of a strict entail, and all procuratories, bonds, and contracts by which lands are settled under such fetters:

The word “instrument” shall extend to and include all notarial instruments authorized by this Act, or by any of the Acts hereby repealed, and also all instruments of sasine, instruments of resignation ad remanentiam, instruments of resignation and sasine, and instruments of cognition and sasine, and instruments of cognition:

The words “heritable security” and “security” shall each extend to and include all heritable bonds, bonds and dispositions in security, bonds of annual rent, bonds of annuity, and all securities authorized to be granted by the seventh section of the ^{M2}Debts Securities (Scotland) Act 1856, and all deeds and conveyances whatsoever, legal as well as voluntary, which are or may be used for the purpose of constituting or completing or transmitting a security over lands or over the rents and profits thereof, as well as such lands themselves and the rents and profits thereof, and the sums, principal, interest, and penalties secured by such securities, but shall not include securities by way of ground

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annual, whether redeemable or irredeemable, or absolute dispositions qualified by back bonds or letters:

The word “creditor” shall extend to and include the party in whose favour an heritable security is granted, and his successors in right thereof:

The word “debtor” shall include the debtor and his successors:

The word “lands” shall extend to and include all heritable subjects, securities, and rights:

The words “notary public” shall be held to mean a notary public duly admitted to practise in Scotland:

The word “petitioner” shall extend to and include any person who may have presented or may present a petition within the meaning of this Act, or of any Act hereby repealed:

The words “judicial factor” shall extend to and include judicial factors or curators bonis to persons under incapacity,^{F5} . . . , factors loco absentis, and all judicial managers:

The words “infert” and “infertment” shall extend to and include the due registration, in the appropriate register of sasines, of any deed or conveyance, whether before or after the commencement of this Act, by which registration a real right to lands has been or shall be constituted.

Textual Amendments

- F1** Definition repealed by Statute Law Revision Act 1893 (c. 14)
- F2** Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), s. 4(2), **Sch. para. 1**
- F3** Words repealed by Statute Law Revision Act 1893 (c. 14)
- F4** Words substituted by virtue of Local Government (Scotland) Act 1973 (c. 65), **Sch. 27**, Pt. I para. 1(3)
- F5** Words in s. 3 repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(2), 11(2), **Sch. 2** (with s. 1(3))

Marginal Citations

- M1** 1847 c. 10.
- M2** 1856 c. 91.

4 †Acts specified in Schedule (A.) repealed.

.....^{F6} every Act or Acts, and such parts of every Act or Acts, as shall be inconsistent with this Act, shall be and the same are hereby repealed.^{F6}

Textual Amendments

- F6** Words repealed by Statute Law Revision Act 1893 (c. 14)

Modifications etc. (not altering text)

- C1** Unreliable Marginal Note.

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5 **In conveyances of land, etc. not held burgage, certain clauses may be inserted in the short forms given in Schedule (B.) No. 1.**

It shall not be necessary to insert in any conveyance of lands in Scotland . . . ^{F7} a clause of obligation to infeft, or a precept of sasine, or warrant of infeftment; and in any conveyance of such lands in which all or any of the following clauses are necessarily or usually inserted, (videlicet,) a clause declaring the term of entry, a clause expressing the manner of holding, . . . ^{F7} a clause of assignation of writs and evidents, a clause of assignation of rents, a clause of obligation to free and relieve of feu duties and casualties due to the superior, and of public burdens, a clause of warrandice, a procuratory or clause of registration for preservation or for preservation and execution, it shall be lawful and competent to insert all or any of such clauses in the form or as nearly as may be in the form No. 1 of Schedule (B.) hereunto annexed; and all or any of such clauses, if so inserted in any such conveyance, or in any conveyance dated after the thirtieth day of September one thousand eight hundred and forty-seven, shall have the meaning and effect assigned to them in the sixth and eighth sections of this Act, and shall be as valid, effectual, and operative, to all intents, effects, and purposes, as if the same had been expressed in the fuller mode or form generally in use prior to the said thirtieth day of September one thousand eight hundred and forty-seven.

Textual Amendments

F7 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

6 **Import of clause expressing manner of holding.**

If the lands have been or shall be conveyed to be holden a me only, the clause so expressing the manner of holding shall imply that the lands are to be holden from the grantor of and under his immediate lawful superiors, in the same manner as the grantor or his predecessors or authors held, hold, or might have holden the same, . . . ^{F8}

Textual Amendments

F8 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

7 **In conveyances of burgage property certain clauses may be inserted in the forms given in Schedule (B.) No. 2.**

It shall not be necessary to insert in any conveyance of lands in Scotland held by burgage tenure a clause of obligation to infeft, or a procuratory or clause of resignation; and every conveyance of such lands shall imply that the lands thereby conveyed are to be holden of Her Majesty in free burgage, for service of burgh used and wont; and in any conveyance of such lands in which all or any of the following clauses are necessarily or usually inserted, (videlicet,) a clause declaring the term of entry, a clause of obligation to free and relieve of ground annual, cess, annuity, and other public burdens, a clause of assignation of rents, a clause of assignation of writs and evidents, a clause of warrandice, and a clause of registration for preservation and execution, it shall be lawful and competent to insert all or any of such clauses in the form or as nearly as may be in the form No. 2. of schedule (B.) hereto annexed; and all or any of such clauses, if so inserted in any such conveyance, or in any similar conveyance dated after the thirtieth day of September one thousand eight hundred and forty-seven,

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shall have the meaning and effect assigned to them in the eighth section of this Act, and shall be as valid, effectual, and operative to all intents and purposes as if they had been expressed in the fuller mode or form generally in use prior to the said thirtieth day of September one thousand eight hundred and forty-seven.

8 Import of clauses in schedule (B.) Nos. 1 & 2.

.....^{F9} the clause of assignation of writs and evidents in forms Nos. 1 and 2 of schedule (B.) hereto annexed shall, unless specially qualified, be held to import an absolute and unconditional assignation to such writs and evidents, and to all open procuratories, clauses, and precepts, if any, and as the case may be, therein contained, and to all unrecorded conveyances to which the disponer has right; and the clause of assignation of rents in these forms shall, unless specially qualified, be held to import an assignation to the rents to become due for the possession following the term of entry, according to the legal and not the conventional terms, unless in the case of forehand rents, in which case it shall be held to import an assignation to the rents payable at the conventional terms subsequent to the date of entry; and the clause of warrandice in these forms shall, unless specially qualified, be held to imply absolute warrandice as regards the lands and writs and evidents, and warrandice from fact and deed as regards the rents; and the clause of obligation to free and relieve from feu duties, casualties, and public burdens, in form No. 1 of schedule (B.) hereto annexed, shall, unless specially qualified, be held to import an obligation to relieve of all feu duties or other duties and services or casualties payable or prestable to the superior, and of all public, parochial, and local burdens due from or on account of the lands conveyed prior to the date of entry; and the clause of obligation to free and relieve from ground annuals, cess, annuity, and other public burdens, in form No. 2 of schedule (B.) hereto annexed, shall, unless specially qualified, be held to import an obligation to relieve of all ground annuals, cess, annuity, and other public, parochial, and local burdens, due from or on account of the lands conveyed prior to the date of entry; and the clause of consent to registration in these two forms shall, unless specially qualified, have the meaning and import and effect assigned to them in the one hundred and thirty-eighth section of this Act.

Textual Amendments

F9 Words in s. 8 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

9 Conditions of entail may, in conveyances of entailed lands, be inserted by reference merely.

It shall not be necessary, in any conveyance or deed of or relating to lands held under a deed of entail, or of or relating to lands obtained by excambion in exchange for lands held under any deed of entail, or of or relating to lands purchased or acquired for the purpose of being added to any estate held under any deed of entail, or entailed on the heirs and under the conditions specified in any deed of entail, to insert the destination of heirs, or the conditions, provisions, and prohibitory, irritant, and resolute clauses, or clause authorizing registration in the register of tailzies, contained in any such deed of entail, provided the same shall in such conveyance or deed be specially referred to, as set forth at full length in such deed of entail recorded in the register of tailzies, if the same shall have been so recorded, or as set forth at full length in any conveyance or deed recorded in the appropriate register of sasines and forming part of the progress of title deeds of the said lands held under such deed of entail, such reference being

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made, as nearly as may be, in the terms set forth in schedule (C.) hereto annexed; and the reference to such destination, or to such conditions, provisions, and prohibitory, irritant, and resolutive clauses, or clause authorizing registration in the register of tailzies, if so made in any such conveyance or deed, whether dated prior or subsequent to the commencement of this Act, shall be equivalent to the full insertion thereof, and shall, to all intents and in all questions whatever, whether inter haeredes or with third parties, have the same legal effect as if the same had been inserted exactly as they are expressed in the recorded deed of entail, conveyance, or deed referred to, notwithstanding any law or practice to the contrary, or any injunction to the contrary contained in such deed of entail, or any enactments or provisions to the contrary contained in the Entail Act 1685, or in any other Act or Acts of the Parliament of Scotland or Great Britain, or of the United Kingdom of Great Britain and Ireland, now in force.

10 Real burdens may be referred to as already in the register of sasines.

Where lands are or shall hereafter be held under any real burdens or conditions or provisions or limitations whatsoever appointed to be fully inserted in the investitures of such lands, it shall, notwithstanding such appointment, and notwithstanding any law or practice to the contrary, not be necessary in any conveyance or deed of or relating to such lands to insert such real burdens or conditions or provisions or limitations, provided the same shall in such conveyance or deed be specially referred to as set forth at full length in the conveyance or deed of or relating to such lands recorded in the appropriate register of sasines wherein the same were first inserted, or in any such conveyance or deed of subsequent date recorded as aforesaid, and forming part of the progress of titles of the said lands, such reference being made in the terms or as nearly as may be in the terms set forth in schedule (D.) hereto annexed; and the reference to such real burdens or conditions or provisions or limitations if so made in any such conveyance or deed, whether dated prior or subsequent to the commencement of this Act, shall be held to be equivalent to the full insertion thereof, and shall, to all intents and in all questions whatever, whether with the disponent or superior or third parties, have the same legal effect as if the same had been inserted exactly as they are expressed in the recorded conveyance or deed referred to, notwithstanding any law or practice or Act or Acts of Parliament to the contrary.

.....
Modifications etc. (not altering text)
C2 S. 10 excluded by [Land Registration \(Scotland\) Act 1979 \(c. 33\), s. 15\(2\)\(a\)](#)

11 F10

.....
Textual Amendments
F10 S. 11 repealed by [Conveyancing \(Scotland\) Act 1874 \(c. 94\), s. 61](#)

12 Clause directing part of conveyance to be recorded.

Immediately before the testing clause of any conveyance of lands, it shall be competent to insert a clause of direction, in or as nearly as may be in the form No. 1 of schedule (F.) hereto annexed, specifying the part or parts of the conveyance which the grantor

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thereof desires to be recorded in the register of sasines; and when such clause is so inserted in any conveyance, whether dated before or after the commencement of this Act, and with a warrant of registration thereon, in which express reference is made to such clause of direction (such warrant being in the form as nearly as may be of No. 2 of schedule (F.) hereto annexed), is presented to the keeper of the appropriate register of sasines for registration, such keeper shall record such part or parts only, together with the clause of direction and the testing clause and warrant of registration; and in the absence of such express reference in the warrant of registration as aforesaid, such conveyance shall be engrossed in the register as if it had contained no clause of direction; and the recording of such part or parts of the conveyance, together with the clause of direction, and the testing clause, and the warrant of registration, as before provided, shall have the same legal effect as if, at the date of such recording, a notarial instrument containing such part or parts of the conveyance had been duly expedite and recorded in the appropriate register of sasines in favour of the person on whose behalf the conveyance is presented: Provided that, notwithstanding such clause of direction, it shall be competent for the person entitled to present the conveyance for registration to record the whole conveyance, or to expedite and record a notarial instrument thereon, as after provided, in the same manner as if the conveyance had contained no such clause of direction; and where such notarial instrument shall be expedite no part or parts of the conveyance directed to be recorded shall be omitted from such instrument.

13 Several lands conveyed by the same deed may be comprehended under one general name.

Where several lands are comprehended in one conveyance in favour of the same person or persons, it shall be competent to insert a clause in the conveyance, declaring that the whole lands conveyed and therein particularly described shall be designed and known in future by one general name to be therein specified; and on the conveyance containing such clause, whether dated before or after the commencement of this Act, or on an instrument following thereon, whether dated before or after the commencement of this Act, and containing such particular description and clause, being duly recorded in the appropriate register of sasines, it shall be competent in all subsequent conveyances and deeds and discharges, of or relating to such several lands, to use the general name specified in such clause as the name of the several lands declared by such clause to be comprehended under it; and such subsequent conveyances and deeds and discharges of or relating to such several lands under the general name so specified shall be as effectual in all respects as if the same contained a particular description of each of such several lands, exactly as the same is set forth in such recorded conveyance or instrument: Provided always, that reference be made in such subsequent conveyances and deeds and discharges to a prior conveyance or instrument recorded as aforesaid, in which such particular description and clause are contained: Provided also, that it shall not be necessary in such clause to comprehend under one general name the whole lands contained in the conveyance in which such clause is inserted, but that it shall be competent to comprehend certain lands under one general name and certain other lands under another general name, it being clearly specified what lands are comprehended under each general name; and such reference shall be in or as nearly as may be in the terms set forth in schedule (G.) hereunto annexed.

Modifications etc. (not altering text)

C3 S. 13 excluded by [Land Registration \(Scotland\) Act 1979 \(c. 33\), s. 15\(1\)](#)

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14 Certain clauses in entails no longer necessary.

Where a deed of entail contains an express clause authorizing registration of the deed in the register of tailzies, it shall not be necessary to insert clauses of prohibition against alienation, contracting debt, and altering the order of succession, and irritant and resolutive clauses, or any of them; and such clause of registration contained in any deed of entail of lands not held by burgage tenure dated on or after the first day of October one thousand eight hundred and fifty-eight, or of lands held by burgage tenure dated on or after the tenth day of October one thousand eight hundred and sixty, shall have in every respect the same operation and effect as if such clauses of prohibition, and such irritant and resolutive clauses, had been inserted in such deed of entail, any law or practice to the contrary notwithstanding.

15 Instrument of sasine no longer necessary, but conveyance may be recorded instead.

It shall not be necessary towards obtaining infefment in land to expedite and record in the case of lands not held by burgage tenure an instrument of sasine, or, in the case of lands held by burgage tenure, an instrument of resignation and sasine, on any conveyance or deed of or relating to such lands, but it shall be competent and sufficient for the person or persons in whose favour the conveyance or deed has been or shall be granted or conceived, instead of expediting and recording such instrument of sasine or of resignation and sasine, to record the conveyance or deed itself in the appropriate register of sasines; and the conveyance or deed being presented for registration in such register, with a warrant of registration thereon, in or as nearly as may be in the form No. 1. of schedule (H.) hereto annexed, and being so recorded along with such warrant, shall have the same legal force and effect in all respects as if the conveyance or deed so recorded had been followed by an instrument of sasine in the case of lands not held by burgage tenure, or, in the case of lands held by burgage tenure, by an instrument of resignation and sasine expedite in favour of the person on whose behalf the conveyance or deed is presented for registration, and recorded in the appropriate register of sasines at the date of recording the said conveyance or deed; and where it is desired to give investiture propriis manibus, it shall be competent for the person in whose favour the conveyance or deed has been or shall be granted or conceived to record the conveyance or deed itself in the register of sasines applicable to the lands therein contained, with a warrant of registration thereon in or as nearly as may be in the form of No. 3 of schedule (H.) hereto annexed, signed by such person, and such conveyance or deed being so recorded along with such warrant shall have the same legal force and effect in all respects as if the conveyance or deed so recorded had been followed by an instrument of sasine, or of resignation and sasine propriis manibus expedite in favour of the wife of such person and signed by such person, and recorded at the date of recording the said conveyance or deed according to the law and practice heretofore in force.

16 F11

Textual Amendments
F11 Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. (E.), (I.), (R.), (T.) Nos.1, 3, (V.), (AA.) Nos. 1, 2 repealed by Statute Law Revision Act 1893 (c. 14); and s. 16 expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(2), 77(2)(a)(d), Sch. 13 Pt. 1 (with ss. 58, 62, 75)

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17 Not necessary to record the whole conveyance or discharge.

Where it is not desired to record in the register of sasines the whole of a conveyance or deed, or the whole of a discharge, of or relating to lands, it shall be competent and sufficient to expedite and record in the appropriate register of sasines a notarial instrument setting forth generally the nature of the conveyance or deed or discharge, and containing those portions of the same by which the lands are conveyed or discharged, and by which real burdens, conditions, provisions, or limitations are imposed or discharged; and where by any conveyance or deed or discharge separate lands or separate interests in the same lands are conveyed or discharged in favour of the same or different persons, it shall not be necessary to record the whole of such conveyance or deed or discharge, but it shall be competent and sufficient to expedite and record as aforesaid a notarial instrument, setting forth generally the nature of the conveyance or deed or discharge, and containing the part or parts of the conveyance or deed or discharge by which particular lands are conveyed or discharged in favour of the person or persons in whose favour the notarial instrument is expedite, and the part of the conveyance or deed or discharge which specifies the nature and extent of the right and interest of such person or persons, with the real burdens, conditions, provisions, and limitations, if any; and such notarial instrument shall be in or as nearly as may be in the form of schedule (J.) hereto annexed; and upon such notarial instrument or any similar notarial instrument expedite in virtue of any of the Acts of Parliament hereby repealed being so recorded, the person or persons in whose favour the same has been or shall be expedite and so recorded shall be in the same position as if at the date of such recording the conveyance or deed or discharge on which it proceeds, along with a warrant of registration thereon, had been recorded in the appropriate register of sasines in favour of such person or persons.

18 Instrument of resignation ad remanentiam unnecessary, but in place thereof conveyance in favour of superior may be recorded.

It shall not be necessary to expedite and record an instrument of resignation ad remanentiam on any procuratory of resignation ad remanentiam, or on any conveyance containing an express clause of resignation ad remanentiam, but it shall be competent and sufficient for the superior in whose favour the resignation under such procuratory or conveyance is authorized to be made to record in the appropriate register of sasines such procuratory or conveyance, with a warrant of registration thereon in the form, or as nearly as may be in the form No. 1 of schedule (H.) hereto annexed, or to expedite and record a notarial instrument as nearly as may be in the form of schedule (J.) hereto annexed; and such procuratory or conveyance and warrant or such notarial instrument, being so recorded, shall have the same effect as if, at the date of such recording, an instrument of resignation ad remanentiam in favour of the party on whose behalf the same is so recorded had been expedite on such procuratory or conveyance, and had been recorded in the appropriate register of sasines: Provided always, that nothing herein contained shall prevent an instrument of resignation ad remanentiam being expedite and recorded on a conveyance granted prior to the first day of October one thousand eight hundred and fifty-eight, and containing a clause of resignation in the form authorized by the Act of the tenth and eleventh Victoria, chapter forty-eight; and that all instruments of resignation ad remanentiam may be in or as nearly as may be in the form of schedule (K.) hereto annexed; and when in such form, whether expedite before or after the commencement of this Act, the same may, with warrant of registration thereon, be recorded in the appropriate register of sasines at any time during the life of the party in whose favour the resignation is made, and the date of

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presentment and entry set forth on any instrument of resignation in such form by the keeper of the register shall be the date of the resignation and of the instrument.

[^{F12}19 Notarial instruments in favour of general disponees.

Where a person shall have granted or shall grant a general disposition of his lands, whether by conveyance mortis causa or inter vivos, or by a testamentary deed or writing within the sense and meaning of the twentieth and twenty-first sections of this Act, and whether such general disposition shall extend to the whole lands belonging to the grantor, or be limited to particular lands belonging to him, with or without full description of such lands, and whether such general disposition shall contain or shall not contain a procuratory or clause of resignation, or a precept of sasine, or an obligation to infest, or a clause expressing the manner of holding, it shall be competent to the grantee under such general disposition to expedite and record in the appropriate register of sasines a notarial instrument, in or as nearly as may be in the form of schedule (L.) hereto annexed; and on such notarial instrument or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed being so recorded, such grantee shall be in all respects in the same position as if a conveyance of the lands contained in such notarial instrument had been executed in his favour by the grantor of the general disposition . . . ^{F13}, and as if such conveyance had been followed, . . . ^{F13} by an instrument of sasine of the said lands in favour of such grantee, . . . ^{F13} expedite and recorded in the appropriate register of sasines at the date of recording such notarial instrument: Provided always, that where such notarial instrument shall be expedite by a person other than the original grantee under such general disposition, it shall set forth the title or series of titles by which the person in whose favour it is expedite acquired right to such general disposition, and the nature of his right.]

Textual Amendments

- F12** S. 19 repealed except in relation to general dispositions by conveyance inter vivos by [Succession \(Scotland\) Act 1964 \(c. 41\), s. 37, Sch. 3](#)
- F13** Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

20 De praesenti words, or words of style, unnecessary in mortis causa deeds.

From and after the commencement of this Act it shall be competent to any owner of lands to settle the succession to the same in the event of his death, not only by conveyances de praesenti, according to the existing law and practice, but likewise by testamentary or mortis causa deeds or writings, and no testamentary or mortis causa deed or writing purporting to convey or bequeath lands which shall have been granted by any person alive at the commencement of this Act, or which shall be granted by any person after the commencement of this Act, shall be held to be invalid as a settlement of the lands to which such deed or writing applies on the ground that the grantor has not used with reference to such lands the word “dispone,” or other word or words importing a conveyance de praesenti; and where such deed or writing shall not be expressed in the terms required by the existing law or practice for the conveyance of lands, but shall contain with reference to such lands any word or words which would, if used in a will or testament with reference to moveables, be sufficient to confer upon the executor of the grantor, or upon the grantee or legatee of such moveables, a right to claim and receive the same, such deed or writing, if duly executed in the manner required or permitted in the case of any testamentary writing by the law of Scotland,

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shall be deemed and taken to be ^{F14}valid as a settlement on a grantee or legatee of the lands to which it applies; and the executor of the grantor may complete title to such lands by expeding and recording a notarial instrument as aforesaid]: Provided always, that nothing herein contained shall be held to confer any right to such lands on the successors of any such grantee or legatee who shall predecease the grantor, unless the deed or writing shall be so expressed as to give them such right in the event of the predecease of such grantee or legatee.

Textual Amendments

F14 Words substituted by [Succession \(Scotland\) Act 1964 \(c. 41\), s. 37, Sch. 2 para. 8](#)

21 Trustee or executor to apply lands for purposes of trust or will.

Where such testamentary or mortis causa deed or writing shall be conceived in favour of a grantee as trustee or executor of the grantor, and shall not be expressed to be wholly in favour of such trustee or executor for his own benefit, such trustee or executor shall apply such whole lands for the purposes specified in such deed or writing; and where such purposes cannot, in whole or in part, be carried into effect, or where no purposes with reference to such lands have been or shall be specified in such deed or writing, such trustee or executor shall convey such lands, or so much thereof, or shall apply so much of the proceeds thereof, if such lands shall have been sold and realized by him, as may not be required for the purposes of such deed or writing, to or for behoof of the person or the successors of the person who, but for the passing of this Act and the granting of such deed or writing, would have been entitled to succeed to such lands on the death of such grantor.

22 ^{F15}

Textual Amendments

F15 [S. 22, Sch. \(M.\)](#) repealed by [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c. 35\), s. 48, Sch. 11 Pt. II](#)

23 Notarial instruments in favour of parties acquiring rights to unrecorded conveyances.

It shall be competent to any person having right to an unrecorded deed or conveyance originally granted in favour of another person to expedite a notarial instrument, in or as nearly as may be in the form of schedule (N.) hereto annexed, setting forth the deed or conveyance and the title or series of titles by which he acquired right to the same, and the nature of his right, and to record the deed or conveyance, with warrant of registration thereon, in the form or as nearly as may be in the form of No. 2. of schedule (H.) hereto annexed, and also the notarial instrument, in the appropriate register of sasines; or where it is not desired to record the whole of the deed or conveyance, it shall be competent to expedite a notarial instrument, in or as nearly as may be in the form of schedule (J.) hereto annexed, setting forth generally the nature of the deed or conveyance, and containing those portions of the deed or conveyance by which the lands in regard to which the said instrument is expedite are conveyed, and by which real burdens, conditions, provisions, or limitations, if any, are imposed, and

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also setting forth the title or series of titles by which the party acquired right to the deed or conveyance, and to record such notarial instrument in the appropriate register of sasines; and on the deed or conveyance, with such warrant of registration thereon, and such notarial instrument in the form of the said schedule (N.), or any similar deed or conveyance, with warrant of registration and notarial instrument expedite in virtue of any Act of Parliament hereby repealed, being so recorded, or on such notarial instrument in the form of the said schedule (J.), or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed, being so recorded, the person, in whose favour the deed or conveyance and instrument, or the instrument, have or has been or shall be expedite and so recorded shall be in the same position as if the original deed or conveyance had been granted to himself, and, along with a warrant of registration thereon, had been recorded in the manner herein-before provided, of the date of recording the deed or conveyance and notarial instrument, or the notarial instrument.

[^{F16}24] **Mode of completing title by a judicial factor on a trust estate, &c.**

Where in a petition to the Court of Session for the appointment of a judicial factor authority has been or shall be asked for the completion of a title by such factor to any lands forming the whole or part of the estate to be managed by such judicial factor, or where a judicial factor has applied or shall apply, by petition or note to the said Court, for authority to complete a title to such lands, either in his own person as judicial factor, or in the person of any [^{F17}person under legal disability by reason of nonage], or [^{F18}person suffering from mental disorder within the meaning of the ^{M3}Mental Health (Scotland) Act 1960] to whom he may have been appointed judicial factor, and where any petition or note has specified and described or shall specify and describe the lands to which such title is to be completed, or has referred or shall refer to the description of the same, in the form, or as nearly as may be in the form . . . ^{F19} of schedule (G.) hereto annexed, as the case may be, the warrant granted for completing such title shall also so specify and describe the lands to which such title is to be completed, or shall so refer to the description thereof; and such warrant shall be held to be a conveyance in due and common form of the lands therein specified in favour of such judicial factor granted by the person, whether in life or deceased, whose estate is under judicial management, or where the estate is that of a [^{F17}person under legal disability by reason of nonage], or [^{F18}person suffering from mental disorder within the meaning of the ^{M4}Mental Health (Scotland) Act 1960] in whose person a title has not been made up, such warrant shall be held to be such a conveyance in favour of the [^{F17}person under legal disability by reason of nonage], or [^{F18}person suffering from mental disorder within the meaning of the Mental Health (Scotland) Act 1960] or of the judicial factor appointed to such [^{F17}person under legal disability by reason of nonage], or [^{F18}person suffering from mental disorder within the meaning of the ^{M5}Mental Health (Scotland) Act 1960] as the case may be, granted by a predecessor or author having such title, or where such judicial factor has been or shall be appointed on an estate which shall have been vested in a trustee or former judicial factor, such warrant shall be held to be such a conveyance granted by such trustee or former factor, whether in life or deceased, for the purposes of such estate or trust, or factory . . . ^{F19} and such warrant may, with warrant of registration thereon, be recorded in the appropriate register of sasines as a conveyance in favour of such judicial factor, or [^{F17}person under legal disability by reason of nonage], or [^{F18}person suffering from mental disorder within the meaning of the Mental Health (Scotland) Act 1960] or of the factor on his estate, and being so recorded shall have the same force and effect as if at the date of such recording such conveyance had been granted to the judicial factor, or [^{F17}person under legal disability by reason of nonage], or [^{F18}person suffering from mental disorder within the meaning

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of the Mental Health (Scotland) Act 1960] or the judicial factor appointed to such [^{F17}person under legal disability by reason of nonage], or [^{F18}person suffering from mental disorder within the meaning of the Mental Health (Scotland) Act 1960] as the case may be, and recorded in the appropriate register of sasines: Provided always, that for enabling the person in whom such lands were last vested, or his representatives, or other parties interested, to bring forward competent objections against such warrant being granted, or claims upon the estate, the Court shall order such intimation and service of the petition or note as to them shall seem proper: Declaring always, that the whole enactments and provisions herein contained shall extend and apply to all petitions to and warrants by the Court of Session under [^{F20}the ^{M6}Trusts (Scotland) Act 1921] unless in so far as such provisions and enactments may be inapplicable to the form or objects of such petitions or warrants.]

Textual Amendments

- F16** S. 24 substituted by Titles to Land Consolidation (Scotland) Amendment Act 1869 (c. 116), s. 3
- F17** Words in s. 24 substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), **Sch. 1 para.19** (with s. 1(3))
- F18** Words substituted by Mental Health (Scotland) Act 1960 (c. 61), **Sch. 4**
- F19** Words repealed by Statute Law Revision Act 1893 (c. 14)
- F20** Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 17(2)(a)

Modifications etc. (not altering text)

- C4** S. 24 amended by Conveyancing (Scotland) Act 1924 (c. 27), s. 5(3)(b); applied *ibid.*, s. 24(6)

Marginal Citations

- M3** 1960 c. 61.
- M4** 1960 c. 61.
- M5** 1960 c. 61.
- M6** 1921 c. 58.

25 Mode of completing title by a trustee in sequestration, and by liquidators of joint stock companies.

It shall be competent to a trustee on a sequestrated estate, or to liquidators, official or voluntary, appointed for the purpose of winding up a joint stock company, to expedite a notarial instrument, setting forth the act and warrant of confirmation in favour of such trustee, or the appointment of such liquidators, official or voluntary, respectively, and specifying the lands belonging to the bankrupt or company to which a title is to be completed, and the title by which such lands are held by the bankrupt or company, in or as nearly as may be in the form of schedule (O.) hereto annexed, and when the lands consist of heritable securities by a notarial instrument in or as nearly as may be the form of schedule (LL.) hereto annexed, and to record such notarial instrument in the appropriate register of sasines; and on such notarial instrument or any similar notarial instrument expedite in virtue of any Act of Parliament hereby repealed being so recorded, the trustee or liquidators in whose favour the same shall have been or shall be so recorded shall be held to be in all respects in the same position as if the bankrupt or company, or any previous trustee or liquidator had granted a conveyance of the lands contained in the notarial instrument in favour of such trustee or such liquidators, . . . ^{F21} and as if such conveyance had been recorded or followed by an instrument of sasine, . . . ^{F21} or notarial instrument, in favour of such trustee or of such

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liquidators, duly expedite and recorded in the appropriate register of sasines at the date of recording such notarial instrument.

Textual Amendments

F21 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

26 Heritable property conveyed for religious or educational purposes to vest in disponees or their successors.

Wherever lands have been or may hereafter be acquired by any congregation, society, or body of men associated for religious purposes, or for the promotion of education, including the general assemblies, synods, and presbyteries of the Established Church of Scotland, and of all other Presbyterian churches in Scotland, as a chapel, meeting house, or other place of worship, or as a manse or dwelling house for the minister of such congregation or society or body of men, or offices, garden, or glebe for his use, or as a schoolhouse or schoolmaster's house, garden, or playground, or as a college, academy, or seminary, or as a hall or rooms for meeting for the transaction of business, or as part of the property belonging to such congregation, society, or body of men, and wherever the conveyance or lease of such lands has been or may be taken in favour of the moderator, minister, kirk session, vestrymen, deacons, managers, or other office bearers or office bearer of such congregation or society or body of men, or any of them, or of trustees appointed or to be from time to time appointed, or of any party or parties named in such conveyance or lease in trust for behoof of the congregation or society or body of men, or of the individuals comprising the same, such conveyance, when recorded with warrant of registration thereon in terms of this Act, or when followed by notarial instrument expedite, and with warrant of registration thereon recorded in terms of this Act, or such lease, shall not only vest the party or parties named therein in the lands, thereby feued, conveyed, or leased, but shall also, after the death or resignation or removal from office of such party or parties, or any of them, effectually vest their successors in office for the time being chosen and appointed in the manner provided or referred to in such conveyance or lease, or if no mode of appointment be therein set forth or prescribed, then in terms of the rules or regulations of such congregation or society or body of men, in such lands, subject to such and the like trusts and with and under the same powers and provisions as are contained or referred to in the conveyance or lease given and granted to the parties disponees or lessees therein, and that without any transmission or renewal of the investiture whatsoever, anything in such conveyance or lease contained to the contrary notwithstanding: And the provisions of this section shall apply also to all trusts for the maintenance, support, or endowment of ministers of religion, missionaries, or schoolmasters, or for the maintenance of the fabric of churches, chapels, meeting houses, or other places of worship, or of manses or dwelling houses or offices for ministers of the gospel, or of schoolhouses or schoolmasters houses, or other like buildings.

VALID FROM 28/11/2004

^{F22}26A Application for declarator of succession as heir in general or to specified lands

On an application being made by any person having an interest, the Sheriff of Chancery may, if satisfied that—

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- (a) such deceased person as may be specified in the application died before 10th September 1964 and that person either—
 - (i) was domiciled in Scotland at the date of his death; or
 - (ii) was the owner of lands situated in Scotland to which the application relates; and
- (b) the applicant, or as the case may be such person as may be specified in the application, has succeeded as heir to that deceased, and is either—
 - (i) heir in general; or
 - (ii) heir to such lands as may be specified in the application, grant declarator that the applicant, or as the case may be such person as may be specified in the declarator, is the heir in general or heir to the lands so specified.]

Textual Amendments

F22 Ss. 26A-26C inserted (*prosp.*) by 2000 asp 5, ss. 68, 77(2)(a) (with ss. 58, 62, 75)

VALID FROM 28/11/2004

[^{F23}26B Application for declarator of succession as heir to last surviving trustee under a trust

On an application being made under this section, the Sheriff of Chancery may, if satisfied that—

- (a) such deceased person as may be specified in the application was the last surviving trustee named in, or assumed under, a trust;
- (b) the trust provides for the heir of such last surviving trustee to be a trustee;
- (c) either—
 - (i) the trust is governed by the law of Scotland; or
 - (ii) lands subject to the trust and to which the application relates are situated in Scotland; and
- (d) the applicant has succeeded as heir to the deceased, grant declarator that the applicant is the heir of the deceased and accordingly is a trustee under the trust.]

Textual Amendments

F23 Ss. 26A-26C inserted (*prosp.*) by 2000 asp 5, ss. 68, 77(2)(a) (with ss. 58, 62, 75)

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VALID FROM 28/11/2004

[^{F24}26C Construction of reference to service of heir

A reference in any enactment or deed to a decree of service of heir (however expressed) shall include a reference to a declarator granted under section 26A or 26B of this Act.]

Textual Amendments

F24 Ss. 26A-26C inserted (*prosp.*) by 2000 asp 5, ss. 68, 77(2)(a) (with ss. 58, 62, 75)

[^{F25}27 Services to proceed by petition to the Sheriff.

It shall not be competent to issue brieves from Chancery for the service of heirs, or for any person to obtain himself served heir by virtue of any such brieve, or otherwise than according to the provisions of this Act; and every person desirous of being served heir to a person deceased, whether in general or in special, and in whatsoever character, and whether the lands which belonged to such person deceased were held by burgage tenure or were not held by burgage tenure, shall present a petition of service to the Sheriff in manner herein-after set forth.]

Textual Amendments

F25 Ss. 27–38, 40–48, 50, Schs. (P), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F26}28 Petition to be presented to the Sheriff of the county or to the Sheriff of Chancery.

In every case in which a general service only is intended to be carried through, such petition shall be presented to the sheriff of the county within which the deceased had at the time of his death his ordinary or principal domicile, or, in the option of the petitioner, to the Sheriff of Chancery, and if the deceased had at the time of his death no domicile within Scotland, then in every such case to the Sheriff of Chancery; and in every case in which a special service is intended to be carried through, such petition shall be presented to the Sheriff within whose jurisdiction the lands or the burgh containing the lands in which the deceased person died last vest and seised are situated, or, in the option of the petitioner, to the Sheriff of Chancery, and in the event of the lands being situated in more counties than one, or in more burghs than one, if such burghs are in different counties, then in every such case to the Sheriff of Chancery.]

Textual Amendments

F26 Ss. 27–38, 40–48, 50, Schs. (P), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law

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Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F27}29 **Nature and form of petition.**

Every petition for service shall be subscribed by the petitioner; or by a mandatory specially authorized for the purpose, and shall be in the form or as nearly as may be in the form of one or other of the schedules (P.) and (Q.) hereunto annexed, and shall, under the exceptions after mentioned, set forth the particulars which, according to the law and practice existing prior to the fifteenth day of November one thousand eight hundred and forty-seven, had been in use to be set forth with reference to a service sought to be carried through in any claim presented to a jury summoned under a brieve of inquest, and shall pray the sheriff to serve the petitioner accordingly: Provided always, that it shall not be necessary in such petition to set forth in any case the value of the lands either according to new or old extent, or the valued rent thereof, or of whom the lands are held, or by what service or tenure they are held, or in whose hands the same have been since the death of the ancestor, or whether or how long the same have been in non-entry, or that the petitioner is of lawful age, or that the ancestor died at the faith and peace of the Sovereign, but that in setting forth the death of the ancestor there shall also be set forth the date at or about which the said death took place, and in cases of general service, except as herein-after provided, the county or place in which the deceased at the time of his death had his ordinary or principal domicile, and that in every case in which the petitioner claims to be served heir of provision, or of taillie and provision, whether in general or special the deed or deeds under which he so claims shall be distinctly specified.]

Textual Amendments

F27 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F28}30 **Service not to proceed till publication be made.**

When any petition of service shall be presented to the Sheriff of any county, the service shall not proceed until publication shall be made in such county, nor until the Sheriff clerk of the county shall have received from the Sheriff clerk of Chancery official notice that publication has been made edictally in Edinburgh; and when such petition shall be presented to the Sheriff of Chancery, the service shall not proceed until publication has been made edictally in Edinburgh, nor until the Sheriff clerk of Chancery shall have received official notice that publication has been made in the county of the domicile of the party deceased, when such domicile was within Scotland, or the county or counties in which the lands are situated, as the case may be; and the edictal publication in Edinburgh shall be at the office of the keeper of edictal citations in the General Register Office, and in the same mode and form as in edictal citations; and in the county of the domicile, and in the county or counties where the lands are situated, by

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affixing on the doors of the court-house, or in some conspicuous place of the court or of the office of the Sheriff clerk of the county, as the Sheriff may direct, a short abstract of the petition, and there shall be no farther publication; and the form of such abstract, and the mode or form of the official notice of such publications, shall be those fixed and declared by the Court of Session by act of sederunt, in virtue of the powers herein-after mentioned.]

Textual Amendments

F28 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

Modifications etc. (not altering text)

C5 Reference to office of the Keeper of the Record of Edictal Citations to be construed as reference to office of such clerks and officers of the Court of Session as may be appointed from time to time: Reorganisation of Offices (Scotland) Act 1928 (c. 34), s. 8, S.R. & O. 1929/588 (Rev. XIX, p. 785: 1929, p. 1305) and Public Records (Scotland) Act 1937 (c. 43), s. 13.

[^{F29}31] Caveats to be received.

The Sheriff clerk shall be bound to receive any caveat against any petition of service to be presented to him, and on the receipt of the petition of service referred to in the caveat, or of any official notice of any such petition which may be communicated to such Sheriff clerk, such Sheriff clerk shall within twenty-four hours thereafter write and put into the post office a notice of such petition, addressed either to the agent by whom or to the person on whose behalf the caveat is entered, as may be desired in such caveat, and according to the name and address which shall be stated in such caveat, the Sheriff clerk receiving therefor a fee for his own use of such amount as shall be fixed by act of sederunt as aforesaid.]

Textual Amendments

F29 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F30}32] Petition of service to be equivalent to a brieve and claim.

A petition of service so presented shall, after expiration of the period herein-after mentioned, be equivalent to and have the full legal effect of a brieve of service duly executed, and of a claim duly presented to the inquest, according to the law and practice existing prior to the fifteenth day of November one thousand eight hundred and forty-seven; and every petition of service, without further publication than is herein provided and has been or may be directed by act of sederunt, shall be held as

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duly published to all parties interested, and the decree to follow upon such petition shall not be questionable or reducible upon the ground of omission or inaccuracy in the observance by any officer or official person of any of the forms or proceedings herein prescribed, or which have been or shall be prescribed by act of sederunt made in relation to petitions of service.]

Textual Amendments

F30 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F31}33 Procedure before the Sheriff, and the effect of his judgment.

In regard to all petitions of service presented to the Sheriff of Chancery or to the Sheriff of a county respectively, where the deceased died in Scotland, no evidence shall be led and no decree pronounced thereon by such Sheriff until after the lapse of fifteen days from the date of the latest publication, or where publication is to be made in Orkney or Shetland, or the petition is presented to the Sheriff of Orkney or Shetland, until after the lapse of twenty days from such date; and in regard to all petitions of service to be presented to the Sheriff of Chancery where the deceased died abroad, no evidence shall be taken and no decree pronounced thereon by him until after the lapse of thirty days from such date; and it shall be lawful, after the lapse of the times respectively above mentioned, to the Sheriff to whom such petition of service shall have been presented, by himself, or by the provost or any of the bailies of any city or royal or parliamentary burgh, or by any justice of the peace for any part of the United Kingdom, wherever such justice of the peace may happen to be for the time, whether within the United Kingdom or abroad, or by any notary public, all of whom are hereby authorized to act as commissioners of such Sheriff without special appointment, or by any commissioner whom such Sheriff may appoint, to receive all competent evidence, documentary and parole; and any parole evidence so received shall be taken down in writing according to the practice in the Sheriff courts of Scotland existing prior to the first day of November one thousand eight hundred and fifty-three, and a full and complete inventory of the documents produced shall be made out, and shall be certified by the Sheriff or his commissioner aforesaid; and on considering the said evidence the Sheriff shall, without the aid of a jury, pronounce decree, serving the petitioner in terms of the petition, in whole or in part, or refusing to serve the said petitioner, and dismissing the petition, in whole or in part, as shall be just; and the said decree shall be equivalent to and have the full legal effect of the verdict of the jury under the brieve of inquest according to the law and practice existing prior to the said fifteenth day of November one thousand eight hundred and forty-seven.]

Textual Amendments

F31 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a

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trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F32}34 **Case where domicile of party is unknown.**

Where a general service only is intended to be carried through by an heir, it shall not be necessary, if the deceased died upwards of ten years prior to the date of presenting the petition for general service as heir to him, to state or prove the county within which the deceased had his ordinary or principal domicile at the time of his death, or that such domicile was furth of Scotland; but in such cases it shall be sufficient (so far as regards the domicile of the deceased) for the heir to state in his petition, and if required in the court of service to make oath, that he is unable to prove at what place the deceased had his ordinary or principal domicile at the time of his death: Provided always, that in every such case, and in every case of general service where it is doubtful in what county the deceased had his ordinary or principal domicile, the petition for general service as heir to the deceased shall be dealt with, and all relative procedure shall be regulated, in or as nearly as may be in the same manner as if it had been proved that the deceased had at the time of his death his ordinary or principal domicile furth of Scotland.]

Textual Amendments

F32 Ss. 27–38, 40–48, 50, Schs. (P), (Q) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F33}35 **Competing petition may be presented, and Sheriff, after receiving evidence, give judgment.**

It shall be lawful to any person who may conceive that he has a right to be served preferable to that of the person petitioning the Sheriff as aforesaid also to present a petition of service to the Sheriff in manner and to the effect aforesaid, and the same shall be proceeded with in manner herein-before directed; and it shall be lawful to the Sheriff, if he shall see cause, at any time before pronouncing decree in the first petition, to sist procedure on the first petition in the meantime, or to conjoin the said petitions, and thereafter to proceed to receive evidence in manner herein-before directed, allowing each of the parties not only a proof in chief with reference to his own claim, but a conjunct probation with reference to the claims of such other parties; and the Sheriff shall after receiving the evidence, pronounce decree on the said petitions, serving or refusing to serve as may be just, and shall at the same time dispose of the matter of expenses; and when the accounts thereof shall be audited and taxed in manner after provided, such Sheriff shall decern for the same.]

Textual Amendments

F33 Ss. 27–38, 40–48, 50, Schs. (P), (Q) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide;

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and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F34}36 **Recording and extract of judgment.**

On the application of the petitioner in whose favour a decree shall have been pronounced by the Sheriff, the Sheriff clerk shall forthwith transmit to the office of the director of Chancery the petition on which such decree was pronounced, together with such decree, the proof taken down in writing as aforesaid, and the inventories of written documents made up and certified as aforesaid, and also all other parts or steps of the process, excepting any original documents or extracts of recorded writs produced therewith, which after decree is pronounced shall be returned, on demand, to the parties producing the same; and on the proceedings being so transmitted to Chancery such decree shall be recorded by the director of Chancery or his depute, in the manner and form directed or approved of or to be directed or approved of from time to time by the Lord Clerk Register; and on such decree being so recorded the director of Chancery, or his depute, shall prepare an authenticated extract thereof, and, where such decree shall have been pronounced by the Sheriff of Chancery, shall deliver such extract to the party or his agent, and in all other cases shall transmit such extract without delay, and without charge or expense against the party in respect of the transmission and re-transmission, to the Sheriff clerk of the county, to be by him delivered to the party or his agent in the Sheriff court; and such proceedings and decrees shall, both prior and subsequent to the said transmission, be at all times patent and open to inspection in the office of the Sheriff clerk and of the director of Chancery respectively; and certified copies shall be given to any party demanding the same, on payment of such fees as shall be fixed by act of sederunt as aforesaid; and in cases where an heir is served to an ancestor in several separate lands or estates under the same petition, it shall be competent for such heir to obtain separate extract decrees under the said petition applicable to one or more of such parcels of lands or separate estates, provided a prayer to that effect is inserted in the petition for service.]

Textual Amendments

F34 Ss. 27–38, 40–48, 50, Schs. (P), (Q) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F35}37 **The extract decree to be equivalent to an extract retour.**

The decree of service so recorded and extracted shall have the full legal effect of a service duly retoured to Chancery, and shall be equivalent to the retour of a service under the brieve of inquest according to the law and practice existing prior to the fifteenth day of November one thousand eight hundred and forty-seven; and the extract of such decree, or any second or later extract thereof, under the hand of the proper officer entitled to make such extracts for the time, shall be equivalent to and have the full legal effect of the certified extract of the retour formerly in use according to the law and practice existing prior to the said fifteenth day of November one thousand

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eight hundred and forty-seven; and the decree of service so recorded and extracted shall not be liable to challenge nor be set aside except by a process of reduction, to be brought before the Court of Session as heretofore in use with regard to services duly retoured to Chancery.]

Textual Amendments

F35 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F36}38] **Transmission of records.**

The book or books in Chancery in which such decree shall be recorded as aforesaid shall be entitled the “Record of Services,” and shall be the book or books presently in use as the “Record of Services” under the said recited Act tenth and eleventh of the reign of Her present Majesty, chapter forty-seven, and such other book or books as shall be from time to time issued under the direction and authority of the Lord Clerk Register, for which no more than the prime cost shall be charged; and it shall not be lawful for the director of Chancery to use any other book or books in framing the said records; and the said book or books shall have an index or abridgment connected therewith, to be prepared in Chancery in the form and manner at present in use, or in any other form and manner to be pointed out or approved of by the Lord Clerk Register; and such index or abridgment shall be completed as soon as possible after the end of each year, and shall be printed and published, and printed copies thereof shall be distributed and disposed of in the manner at present in use, or in such other manner as shall be directed or approved of by the Lord Clerk Register: Provided always, that if a more general distribution or publication of such index or abridgment than to the official individuals to be fixed by the Lord Clerk Register shall be made, then and in that case copies of the index or abridgment aforesaid shall be sold to the public at the lowest rate which will defray the expense of printing the same; and an account of the sums to be received shall be exhibited by the director of Chancery, and be examined and audited along with his other accounts; and such index or abridgment shall be so prepared, printed, and distributed at latest by the first day of July in each year, beginning with the year one thousand eight hundred and sixty-nine; and the said record of services and other proceedings shall be at all times patent and open to inspection in the office of Chancery, on payment of such a fee as shall be regulated by act of sederunt as aforesaid, and extracts from the said record, or certified copies of the said proceedings, shall be given to any one demanding the same, on payment of such fees as shall be fixed by act of sederunt as aforesaid; and the director of Chancery shall have the power and is hereby required to direct and regulate the Sheriff clerks in the several counties and the Sheriff clerk of Chancery in regard to the manner of arranging and transmitting the petitions of service and procedure thereon, and also to prepare and furnish to the Sheriff clerks of the several counties the requisite printed forms of the intimations to be sent by them through the post office to the Sheriff clerk of Chancery when petitions of service shall be presented in their respective courts, or when they shall have received notice to publish petitions that have been presented to the Sheriff of Chancery.]

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Textual Amendments

F36 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), **Sch.3** are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

39 **F37**

Textual Amendments

F37 S. 39 repealed by Statute Law Revision Act 1950 (c. 6); and expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(1)(2), 77(2)(a)(c)(d), Sch. 12 Pt. 1 para. 8(11), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

[**F38** **40** **No person entitled to oppose a service who could not appear against a brieve of inquest.**

No person shall be entitled to appear and oppose a service proceeding before the Sheriff in terms of this Act who could not competently appear and oppose such service if the same were proceeding under the brieve of inquest according to the law and practice existing prior to the fifteenth day of November one thousand eight hundred and forty-seven; and all objections shall be presented in writing, and shall forthwith be disposed of in a summary manner by the Sheriff, but without prejudice to the Sheriff, if he see cause, allowing parties to be heard viva voce thereon.]

Textual Amendments

F38 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), **Sch.3** are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[**F39** **41** **Appeal for jury trial.**

In all cases in which competing petitions presented to the Sheriff in terms of the last-recited Act or of this Act have been or shall be conjoined as aforesaid, or in which any person has competently appeared or shall competently appear to oppose any petition of service presented to the Sheriff in terms of the said recited Act or of this Act, it shall be competent to any of the parties, at any time before proof is begun to be taken by the Sheriff in manner before provided, to remove the proceedings to the Court of Session, by a note of appeal in or as nearly as may be in the form of a note of appeal under the ^{M7}Court of Session Act 1868, which note of appeal shall be proceeded with in like manner with notes of appeal presented with a view to jury trial against judgments of the Sheriff courts of Scotland, and such judgment shall be pronounced on the said note

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of appeal as shall be just; and in the event of it appearing proper that the cause should be tried by a jury, the same shall be tried according to the law and practice in trials by jury of causes in the Court of Session, and the jury shall be chosen and summoned in like manner as on such trials; and the verdict to be returned by the jury shall be equally final and conclusive with the verdicts returned in trials by jury in the said Court, but with all and the like remedies by bill of exceptions, motion for new trial, or otherwise, competent in regard to such verdicts: Provided always, that in every case in which the jury shall find a verdict, or in which the Court shall pronounce a judgment, in favour of a party petitioning to be served, the Court shall, at the same time with applying such verdict, or pronouncing such judgment, remit to the Sheriff from whom the cause was appealed, or before whom such petitions or petition would have depended if the same had not been advocated or appealed before the commencement of this Act, with instructions to pronounce a decree serving the said party in terms of this Act, which decree may thereafter be extracted, and the extract thereof recorded and given out, in manner and to the effect before provided.]

Textual Amendments

F39 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

Marginal Citations

M7 1868 c. 100.

[^{F40}42] Where Sheriff refuses to serve petitioner, &c., judgment may be reviewed.

In every case in which the Sheriff, acting under the said Act of the tenth and eleventh of Her Majesty Queen Victoria, chapter forty-seven, or under this Act, . . . ^{F41} shall pronounce a decree refusing to serve a petitioner, or dismissing his petition, or repelling the objection of an opposing party, it shall be lawful to bring the said decree under review of the Court of Session, by a note of appeal in or as nearly as may be in the form of a note of appeal under the ^{M8}Court of Session Act 1868: Provided always, that such note shall be presented within fifteen, or, where the proceedings have been taken in the courts of Orkney or Shetland, twenty days from the date of the said judgment; and that where the decree has been pronounced after opposition duly entered or in competition, such note shall be intimated to the opposite party; and such note shall be proceeded with in like manner with notes of appeal against final judgments of the Sheriff courts; and it shall be competent to the Court of Session, if it shall appear necessary for the right determination of the cause, to allow further or additional evidence to be taken in any way or form in which evidence may be competently taken in ordinary civil causes depending before the said Court, or to appoint the cause, or special issues therein, to be tried by a jury; and such jury trial shall proceed in the same manner, and to the like effect, and with all and the like remedies, as are before provided, and such judgment shall be pronounced on such note of appeal as shall be just: Provided always, that in every case in which the Sheriff has refused to serve, but in which the Court of Session shall determine that the party ought to be served, a remit shall be made to the Sheriff from whom such petition has been or shall be appealed, or before whom the same, if not advocated or appealed before

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the commencement of this Act, would have depended, with instructions to pronounce a decree serving the said party in terms of this Act, which decree may be thereafter recorded and extracted in manner and to the effect before provided: Provided also, that nothing herein contained shall prejudice the right of any person whose petition of service shall be refused without any opposing or competing party having appeared and been heard on the merits of the competition to present a new petition at any time thereafter, or the right of either party in any of the proceedings authorized in the court of the Sheriff by this Act or the said Act of the tenth and eleventh of Her Majesty, chapter forty-seven, to bring under challenge whatever decree may have been or may be pronounced therein, by process of reduction before the Court of Session, on any competent ground.]

Textual Amendments

- F40** Ss. 27–38, 40–48, 50, Schs. (P), (Q) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.
- F41** Words repealed by Statute Law Revision Act 1893 (c. 14)

Marginal Citations

- M8** 1868 c. 100.

[^{F42}43 Procedure when a decree of service is brought under reduction.

In every case in which a process of reduction of any decree of service pronounced by any Sheriff acting under the said last-recited Act or this Act has been or shall be brought before the Court of Session, it shall be competent to the said Court, if it shall appear necessary for the right determination of the cause, either to allow further or additional evidence to be taken in any way or form in which evidence may be competently taken in ordinary civil causes depending before the said Court, or to appoint the cause, or special issues therein, to be tried by a jury; and such jury trial shall proceed in the same manner, and to the like effect, and with all and the like remedies, as are before provided in regard to jury trials under notes of appeal, and such judgment shall be pronounced in the said process as shall be just: Provided always, that wherever the decree of the Sheriff brought under reduction has proceeded on competing petitions conjoined as aforesaid, and the Court of Session shall determine that a different person shall be served from the person preferred by the Sheriff, a remit shall be made to the Sheriff acting under this Act before whom the said competing petitions depended, or to the Sheriff before whom the same would have depended if the said decree had not been pronounced before the commencement of this Act, with instructions to pronounce a decree serving such different person in terms of this Act, which decree may be thereafter recorded, and an extract thereof given out, in manner and to the effect above provided; and in any case of reduction of a service the judgment shall unless and until reversed by the House of Lords on appeal be conclusive, as between the parties to the suit, against the party whose service is reduced, and shall have the same effect as if the action had contained a conclusion of declarator that the party served was not entitled to be served in the character claimed, and judgment had been pronounced in terms of that conclusion.]

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Textual Amendments

F42 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), **Sch.3** are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F43}44] Forms and effect of procedure in the Court of Session.

All proceedings authorized by the present Act to be taken in the Court of Session in reference to appeals from the Sheriff or to reduction of decrees of service shall commence and be carried on in the same manner with proceedings of the same description in ordinary civil causes; and all judgments to be pronounced by the Court of Session in such proceedings in terms of this Act, or in the corresponding proceedings in terms of the said last-recited Act, shall be equally final and conclusive as the judgments pronounced by the said Court in ordinary civil causes, and shall not be liable to review by reduction or otherwise, save and except to such extent and effect as judgments by the said Court in ordinary civil causes are so liable: Provided always, that it shall be competent to appeal against the said judgments to the House of Lords in like manner as against judgments of the Court in ordinary civil causes aforesaid.]

Textual Amendments

F43 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), **Sch.3** are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

[^{F44}45] The Court of Session Act 1868, to apply to appeals and reductions, &c. under this Act.

The whole provisions of the ^{M9}Court of Session Act 1868, shall, in so far as possible, apply to notes of appeal and processes of reduction under this Act, and to all advocations from the Sheriff and to all processes of reduction of decrees of service in dependence in the Court of Session at the commencement of this Act, and to all advocations which may after the commencement of this Act come before the Inner House of the Court of Session by report or reclaiming note from any Lord Ordinary: Provided always, that the advocations depending before the Outer House of said Court at the commencement of this Act shall be disposed of in the Outer House according to the law and practice existing prior to the commencement of the said Court of Session Act 1868.]

Textual Amendments

F44 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), **Sch.3** are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law

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Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

Marginal Citations

M9 1868 c. 100.

[^{F45}46] **A decree of special service, besides operating as a retour, shall have the operation and effect of a disposition from the deceased to his heirs and assignees.**

On being recorded and extracted as aforesaid, every decree of special service pronounced in virtue of the said recited Act tenth and eleventh of the reign of Her present Majesty, chapter forty-seven, in favour of any person who shall be in life at the passing of this Act, and every decree of special service to be pronounced in virtue of this Act, shall, to all intents and purposes, unless and until reduced, be held equivalent to and have the full legal operation and effect of a disposition in ordinary form of the lands contained in such service, granted by the person deceased being last feudally vest and seised in the said lands to and in favour of the heir so served, and to his other heirs and successors entitled to succeed under the destination of the lands contained in the deceased's investiture thereof, but under the whole conditions and qualifications of such investiture as set forth or referred to in such extracted decree, containing the various clauses set forth in No. 1 of schedule (B.) hereto annexed . . . ^{F46} although the deceased should have died in nonage, or been of insane mind, or laboured under any disability whatever; and as if a disposition had been granted in these terms by the deceased when of full age and capacity to grant it; . . . ^{F46} and in order that the feudal title may be completed in the person of the heir so served, it shall be lawful and competent for him to use such extracted decree in the same manner and to the same effect as if such extracted decree were actually a disposition of the nature above mentioned, and in particular he shall be entitled to record the same in the appropriate register of sasines as a conveyance under this Act, along with a warrant of registration thereon on his behalf; and such extracted decree and warrant of registration, upon being so recorded in favour of such heir, shall form as effectual an investiture in favour of such heir in the lands, where the same are held by burgage tenure, as if cognition and entry had taken place in due form, and an instrument of cognition and sasine in regard to such lands and in favour of such heir had at the date of so recording such extracted decree and warrant, or such instrument of sasine, been expedite and recorded in the burgh register of sasines, according to the law and practice prior to the first day of October one thousand eight hundred and sixty, and in the lands . . . ^{F46} as if such investiture had been created by a disposition from the deceased as aforesaid, recorded, with warrant of registration thereon as aforesaid, in the appropriate register of sasines, in favour of such heir at the date of recording the said extracted decree of service; and in order that the feudal title to said lands may be completed in the person of the said heirs and successors and assignees of the heir so served not having completed a feudal title thereto in his own person, it shall be lawful and competent to such heirs, successors, and assignees to use such extracted decree as if the same had been an unrecorded conveyance of the said lands in favour of the heir so served to which they had acquired right, and to complete their titles to said lands in the manner and to the effect provided by this Act in the case of a party having right to an unrecorded conveyance, . . . ^{F46} Provided that nothing herein contained shall be held to repeal or alter an Act of the Parliament of Scotland passed in the year one thousand six hundred and sixty-one, intituled "Act concerning appearand heirs, their payment

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of their predecessors and their own debts,” or an Act of the said Parliament passed in the year one thousand six hundred and ninety-five intituled “Act for obviating the frauds of appearand heirs.”]

Textual Amendments

- F45** Ss. 27–38, 40–48, 50, Schs. (P), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.
- F46** Words repealed by Statute Law Revision Act 1893 (c. 14)

[^{F47} 47 A special service not to infer a general representation, either active or passive.

No decree of special service obtained in virtue of the said recited Act tenth and eleventh of the reign of Her present Majesty, chapter forty-seven, or to be obtained in virtue of this Act, shall operate or be held as equivalent to or as implying a general service to the deceased in the same character, except as to the particular lands therein embraced;
... ^{F48}]

Textual Amendments

- F47** Ss. 27–38, 40–48, 50, Schs. (P), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.
- F48** Words repealed by Statute Law Revision Act 1893 (c. 14)

[^{F49} 48 Petitioner for special service may petition for general service.

In any petition for special service, in whatever character, it shall be competent to the petitioner to pray for general service in the same character as that in which special service is sought, and decree may be pronounced in terms of such prayer as well as for special service; and no further notice or publication of the petition of service shall in such case be necessary than is hereby required for such petition of special service.]

Textual Amendments

- F49** Ss. 27–38, 40–48, 50, Schs. (P), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), Sch.3 are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

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49 F50

Textual Amendments

F50 Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. (E.), (I.), (R.), (T.) Nos.1, 3, (V.), (AA.) Nos. 1, 2 repealed by Statute Law Revision Act 1893 (c. 14); and expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(1)(2), 77(2)(a)(c)(d), Sch. 12 Pt. 1 para. 8(11), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

[^{F51}**50** **Jurisdiction of the Sheriff of Chancery.**

The Sheriff of Chancery appointed or to be appointed in virtue of this Act shall have and possess such and the like authority and jurisdiction to entertain, try, and adjudicate, but in the manner prescribed and directed by this Act, all questions of and relating to the service of heirs, as the Sheriff of Chancery appointed in virtue of the said recited Act tenth and eleventh of the reign of Her present Majesty, chapter forty-seven, or any sheriff or judge ordinary, now has and possesses in any case competent before such sheriff or judge ordinary, or in any case now or formerly competent before the Sheriff of Edinburgh acting on special commission; and such Sheriff of Chancery shall hold his court in any court room within the Parliament or new Session House of Edinburgh which has been or may be assigned by the Lords of Session for that purpose, or in any other place which may be so assigned.]

Textual Amendments

F51 Ss. 27–38, 40–48, 50, Schs. (P.), (Q.) which were repealed by Succession (Scotland) Act 1964 (c. 41), **Sch.3** are revived, without prejudice to Succession (Scotland) Act 1964 (c. 41), s. 37(1)(d), by Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55), s. 6—(a) in so far as they provide; and (b) for the purpose only of providing a procedure whereby the heir of a last surviving trustee in a trust, called as heir of provision in the trust destination, may establish his entitlement to act as trustee by having himself served as heir in general to the last surviving trustee.

51 **Power to the Court of Session to pass acts of sederunt.**

It shall be competent to the said Court of Session and they are hereby authorized and required from time to time to pass such acts of sederunt as shall be necessary or proper for regulating in all respects the proceedings under this Act before the Sheriff of Chancery or Sheriffs of counties, and following out the purposes of this Act in regard of these proceedings, and regulating the times at which the Sheriff of Chancery shall hold his courts, and the fees to be paid in respect of any of the proceedings to be taken in virtue hereof; and the charges to be made by agents and solicitors, whether in the inferior court or Court of Session, for any proceedings under this Act, shall be audited and taxed in the same manner as charges for other judicial proceedings in the said Courts respectively are audited and taxed: Provided always, that accounts of expenses in the Sheriff Court of Chancery shall be audited and taxed by the auditor of the Court of Session, and the decree for such expenses shall be extractable by the extractor of the Court of Session in the same manner as a decree of that Court, and all such decrees shall be held to be interim decrees, and the warrants shall, after extract, be retransmitted to the Sheriff Clerk of Chancery.

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52 F52

Textual Amendments

F52 Ss. 52, 54, 55, 151, 153, repealed by Statute Law (Repeals) Act 1975 (c. 10), **Sch. Pt. XIV**

53 F53

Textual Amendments

F53 Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. (E.), (I.), (R.), (T.) Nos.1, 3, (V.), (AA.) Nos. 1, 2 repealed by Statute Law Revision Act 1893 (c. 14)

54, 55. F54

Textual Amendments

F54 Ss. 52, 54, 55, 151, 153, repealed by Statute Law (Repeals) Act 1975 (c. 10), **Sch. Pt. XIV**

56, 57. F55

Textual Amendments

F55 Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. (E.), (I.), (R.), (T.) Nos.1, 3, (V.), (AA.) Nos. 1, 2 repealed by Statute Law Revision Act 1893 (c. 14)

58 F56

Textual Amendments

F56 Ss. 58, 60, 61, 84–86, 101–103, 125, 128, 160, Schs. (U.), (W.), (DD.), (EE.), (II.) repealed by Succession (Scotland) Act 1964 (c. 41), s. 37, **Sch. 3**

59 Unnecessary to libel and conclude for decree of special adjudication.

“Whereas it is inconvenient in practice to libel and conclude for general adjudication of lands as the alternative only of special adjudication, in terms of an Act of the Parliament of Scotland passed in the year one thousand six hundred and seventy-two:” It shall not be necessary to libel or conclude for special adjudication, and it shall be lawful to libel and conclude and decern for general adjudication without such alternative, anything in the said last-recited Act of the Parliament of Scotland, or in any other Act or Acts of the Parliament of Scotland or of Great Britain or of the United Kingdom of Great Britain and Ireland, to the contrary notwithstanding.

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60, 61. ^{F57}

Textual Amendments

F57 Ss. 58, 60, 61, 84–86, 101–103, 125, 128, 160, Schs. (U.), (W.), (DD.), (EE.), (II.) repealed by Succession (Scotland) Act 1964 (c. 41), s. 37, **Sch. 3**

[^{F58}62 Effect of a decree of adjudication or sale.

In all cases a decree of adjudication, whether for debt or in implement, or a decree of constitution and adjudication, whether for debt or in implement, if duly obtained in the form prescribed by this Act, or obtained, if prior to the commencement of this Act, in the form then in use, or a decree of declarator and adjudication, or a decree of sale, shall, except in the case where the subjects contained in the decree of adjudication, or of constitution and adjudication, or of declarator and adjudication, are heritable securities, be held equivalent to and shall have the legal operation and effect of a conveyance in ordinary form of the lands therein contained granted in favour of the adjudger or purchaser by the ancestor of such apparent heir, or by the owner or proprietor in trust or otherwise, and whether in life or deceased, of the lands adjudged, or by the seller of the lands sold, although [^{F59}under legal disability by reason of nonage] or of insane mind . . . ^{F60} and it shall be lawful and competent to such adjudger or purchaser to complete feudal titles to said lands, not only by infertment on such decree as a conveyance or by using it, for the purpose of infertment, as an assignation or as one of a series of assignations of an unrecorded conveyance, as the case may be, in the manner provided by this Act ^{F60}]

Textual Amendments

- F58** S. 62 which was substituted by Conveyancing (Scotland) Act 1874 (c. 94), s. 62 is now repealed in so far as relating to any such decree as is therein mentioned obtained in relation to lands forming part of the estate of a deceased person by Succession (Scotland) Act 1964 (c. 41), s. 37, **Sch. 3**
- F59** Words in s. 62 substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), **Sch. 1 para. 20** (with s. 1(3))
- F60** Words repealed by Statute Law Revision (No. 2) Act 1893 (c. 54)

63 Signatures for Crown writs abolished.

It shall not be necessary, in order to the obtaining of any Crown writ, that any signature shall be presented and passed in Exchequer, or that any precept shall be framed and issued thereon as preliminary to the granting of such writ, and all Crown writs shall be obtained in the manner directed by this Act, and not otherwise.

64 Crown writs to be obtained by lodging a draft thereof and note along with the title deeds.

Any person seeking to obtain a Crown writ shall lodge or cause to be lodged in the office of the presenter of signatures a draft of the proposed writ, as prepared by his agent, being a writer to the signet, whose signature shall be endorsed thereon, together with a short note, in the form, or as nearly as may be in the form, of schedule (S.) hereto annexed, praying for a Crown writ in terms of the said draft; and the date of

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lodging such note shall be marked thereon by the presenter of signatures or his clerk; and along with such note and draft there shall be lodged the last Crown writ and retour or decree of service of the lands, and all the title deeds of the lands subsequent thereto, together with evidence of the valued rent when necessary, and an inventory and brief of the titles, according to the practice heretofore in use.

65 Draft Crown writ to be revised.

The draft Crown writ so lodged shall be forthwith revised by the presenter of signatures, who shall require the attendance of the agent of the person applying for the writ for the purpose of receiving his explanations; and the presenter of signatures shall thereafter proceed with the revision of the said draft, making such alterations and corrections as are necessary; and he shall, after his final revisal of such draft, authenticate each page thereof, and the several alterations and corrections thereon, if any, with his initials, and shall mark on such draft that the same has been revised by him, and also the date when such revisal was completed; and the fees on signatures payable prior to the first day of October one thousand eight hundred and forty-seven to the presenter of signatures shall be chargeable on the draft writ to be lodged and revised as aforesaid, and all other fees payable prior to that date to the officers of Exchequer on signature shall cease and determine.

66 Rectification of mistakes in former titles.

If it shall appear that any mistake has occurred in the terms of the last Crown writ or retour or decree of service, to the prejudice of the Crown, the person applying for the writ shall further, on requisition made to him or his agent to that effect, by order of the presenter of signatures, lodge the prior title deeds of the said lands, and any other title deeds of and concerning the same, in so far as such title deeds may be in his possession or at his command, and in so far as the same may be necessary for the due revisal of the said draft on behalf of the Crown, and for the rectification of such mistake, which may be rectified accordingly; and, on the other hand, if the vassal shall allege any mistake to have occurred in the terms of the last Crown writ or retour or decree of service to his prejudice, the person applying for the writ shall be entitled, without such requisition, to lodge a note explaining the alleged mistake, and produce the prior titles of the said lands, and any other title deeds or other deeds of and concerning the same, in so far as these may be necessary for the due revisal of the said draft and the rectification of such mistake, which may be rectified accordingly; but no such rectification shall in either case be allowed, nor the draft be held as finally revised or authenticated as such, until the same shall have been reported by the presenter of signatures to and approved of by the Lord Ordinary in Exchequer causes appointed in terms of the ^{M10}Exchequer Court (Scotland) Act 1856.

Marginal Citations

M10 1856 c. 56.

67 †Intimation of proposed rectification to be made to solicitor for Commissioners of Woods and Forests.

In every case where the draft of any Crown writ shall be laid before the Lord Ordinary in Exchequer causes, as before provided for, intimation thereof and of the relative

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report by the presenter of signatures, or note, as the case may be, shall be made by the agent applying for the writ to the solicitor in Scotland for [^{F61}the Crown Estate Commissioners], and the Lord Advocate shall be entitled to appear in name and on behalf of the Crown, and on behalf of the said Commissioners, or either of them, in all future proceedings relating to the said Crown writ; and the Lord Ordinary, before finally approving of any such draft writ, shall be satisfied that one calendar month's previous notice in writing of such draft having been laid before him has been given to the said solicitor, accompanied by a copy of the said draft writ, and of the report by the presenter of signatures, or note, as the case may be.

Textual Amendments

F61 Words substituted by virtue of S. R. & O. 1924/1370 (Rev. V, p. 443: 1924, p. 228), [Crown Estate Act 1956 \(c. 73\)](#), [s. 1\(1\)\(7\)](#) and [Crown Estate Act 1961 \(c. 55\)](#), [s. 1\(1\)](#), [Sch. 2 para. 4\(1\)](#)

Modifications etc. (not altering text)

C6 Unreliable Marginal Note.

68 Presenter of signatures, &c. may refer to copy of writ when withheld.

When the last Crown writ or retour or decree of service shall be withheld by the person applying as aforesaid, or cannot be so lodged from being in the possession of the proprietor of other lands therein contained, or from any other good cause, it shall be competent for the presenter of signatures, or for the person applying as aforesaid, to refer to the copy thereof engrossed in the register of the Great Seal, or in the register of retours or record of services, and to procure exhibition thereof as evidence of the terms of such last Crown writ or retour or decree of service; and the Lord Clerk Register is hereby authorized and required to make such regulation as will enable the exhibition thereof to be obtained for the purpose aforesaid, upon the joint application of the person so applying and of the presenter of signatures.

Modifications etc. (not altering text)

C7 Functions of Lord Clerk Register in regard to public registers, records and rolls of Scotland now exercisable by Keeper of the Records of Scotland: [Lord Clerk Register \(Scotland\) Act 1879 \(c. 44\)](#), [s. 6](#), [Reorganisations of Offices \(Scotland\) Act 1928 \(c. 34\)](#), [s. 5](#) and [Public Registers and Records \(Scotland\) Act 1948 \(c. 57\)](#), [s. 1\(3\)](#)

69 Amount of Crown duties to be fixed.

The presenter of signatures shall also, with the aid of the auditor of Exchequer, ascertain and fix the amount of composition or other duties due and payable to the Crown on granting such writ, and the amount of the same shall be marked on the said draft, and certified by the signatures of the said auditor of Exchequer and of the presenter of signatures; and in ascertaining and fixing the amount of such composition and other duties payable to the Crown there shall be no charge added for the expense of collecting the same, any law or practice to the contrary notwithstanding.

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70 Clerk's fees.

The person applying for such Crown writ shall be bound to pay to the clerk of the presenter of signatures the fees to be fixed in manner herein-after provided, which fees shall be paid over by such clerk to the Director of Chancery, who shall be accountable therefor.

71 Copy of revised draft to be furnished to the party.

Such revised draft shall, so long as it is retained in the office of the presenter of signatures, be there open to the inspection of the party applying for the Crown writ or his agent, and a copy thereof shall be furnished on demand on payment of the fees to be fixed as herein-after directed.

72 If no objections, the revised draft to be attested, and the Crown writ prepared.

Where no objections shall be stated to the draft as so revised, a docquet shall be put thereon certifying that the same is approved, which docquet shall be signed by the agent applying for the Crown writ and by the presenter of signatures, and the date of signing the same thereon set forth; and such draft, so docquetted, shall, without being given up to the party applying for the said writ or his agent, be officially transmitted by the presenter of signatures to the office of the Director of Chancery; . . . ^{F62} and such draft shall form a valid and sufficient warrant for the immediate preparation of the writ in Chancery in terms of such draft.

Textual Amendments

F62 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

73 Crown writs may be applied for at any time.

It shall be competent to apply for any Crown writ in manner before directed, and to revise the draft of the same, and in the event of the same being docquetted as revised and approved in manner aforesaid to prepare and deliver the writ, as hereinafter directed at any period of the year, and notwithstanding that it shall not then be term time of the Court of Session acting as the Court of Exchequer in Scotland under the ^{M11}Exchequer Court (Scotland) Act 1856.

Marginal Citations

M11 1856 c. 56.

74 Objections, if any, to draft Crown writ to be by a note.

It shall be lawful for the person applying for the Crown writ, if dissatisfied with the draft revised as aforesaid, to state objections thereto or against the amount of duties and composition thereon marked as payable; and such objections shall be set forth in a short written note of objections, without argument, to be lodged in the office of the presenter of signatures, subscribed by the agent of such person; and the date of lodging such note of objections shall be marked thereon by the presenter of signatures or his clerk.

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75 Objections, how to be disposed of.

Where any note of objections shall be so lodged, such note shall, together with the whole other proceedings, be laid before the said Lord Ordinary in Exchequer causes, and the said Lord Ordinary shall hear the person so objecting, by himself, his counsel or his agent, being a writer to the signet, and shall also hear any report or statement by the presenter of signatures; and wherever it shall appear to the said Lord Ordinary that the said objections should to any extent receive effect he shall cause such alterations and corrections as shall appear to him proper, either with reference to the terms of the said draft, or to the amount of duties or other payments marked thereon as payable, to be made on such draft, or to be expressed in a separate paper marked as relative thereto, and shall authenticate such draft and relative paper with his signature; and the said Lord Ordinary shall at the same time pronounce a judgment or deliverance, to be written on the note of objections, appointing the writ as so altered and corrected, to be prepared and executed; and the judgment or deliverance so pronounced shall form a valid and sufficient warrant for the preparation in Chancery of the writ, as altered and corrected.

76 Procedure if objections repelled.

Wherever the said Lord Ordinary shall be of opinion that the said objections should not to any extent receive effect, he shall pronounce a judgment, to be written on the said note of objections, repelling the said objections; and the judgment or deliverance so pronounced shall form a valid and sufficient warrant for the preparation in Chancery of the writ as revised by the presenter of signatures in manner before directed.

77 Refusal to revise, how to be complained of.

Wherever the presenter of signatures shall be of opinion that the person applying for the Crown writ has not produced a title sufficient to show that he has right to obtain the same, the presenter of signatures shall mark on the said draft that the same is refused for want of sufficient production of titles, adding thereto his signature and the date of affixing the same; and his clerk shall intimate such refusal to the agent of the said person, and shall on demand return the draft to such agent; and in every such case it shall be competent for the person who shall have applied for the writ to bring such refusal under review of the said Lord Ordinary by a note of objections lodged in manner aforesaid; and the said Lord Ordinary shall, after considering such note, and hearing parties thereon in manner aforesaid, sustain or repel the objections, or pronounce such judgment or deliverance thereon as shall be just; and if the said Lord Ordinary shall be of opinion that a sufficient title has been shown to authorize the writ being granted, he shall in that case remit to the presenter of signatures to proceed with the revisal of the draft in manner before mentioned.

78 Crown writ as revised to be engrossed and delivered.

As soon as the draft Crown writ shall have been docketed as revised and approved in manner before provided, or, in the case of objections being stated, as soon as the same shall have been disposed of by the said Lord Ordinary in manner before directed, the said draft shall be officially transmitted by the presenter of signatures to the office of the Director of Chancery; . . . ^{F63} and immediately thereafter the writ shall be engrossed in the office of the director of Chancery in terms of the draft as finally adjusted, signed, and officially transmitted as aforesaid, and shall be signed by the Director of Chancery, or his depute or substitute; and it shall not be necessary to have the seal appointed by

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the Treaty of Union to be kept and used in Scotland in place of the Great Seal thereof formerly in use affixed to any writs from Her Majesty, or the seal of the Prince if the writs be of lands holden of the Prince, and a separate seal be then in use for such writs, affixed to any writs from the Prince, unless the receivers of such writs shall require the appropriate seal to be affixed; and when the appropriate seal is so required and affixed, the fact shall be stated at the conclusion of the writ, and the date on which the seal is actually appended stated; and all Crown writs shall be in all respects as valid and effectual without the seal as if the same had been appended thereto; and the writ, when signed, or, if required, signed and sealed, as the case may be, shall be recorded in Chancery in manner hereafter provided, and shall be thereafter delivered to the person applying for the same, or his agent, in like manner in all respects, and on payment of the same fees and charges, as at present used and observed and payable, and the date of signing, or of sealing when the seal is appended, shall in all cases be held and expressed to be the date of the writ: Provided always, that before the writ shall be so delivered payment shall be made to the officers who are or may be entitled to receive the same of the amount of duties and compositions payable to Her Majesty or the Prince, ascertained and fixed as aforesaid; and a record of the amount of duties payable to Her Majesty or the Prince shall be kept in Chancery, so as to form a charge against the officer or other person appointed to receive the same.

Textual Amendments
F63 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

79 Crown writ to be valid.

The engrossed Crown writ, signed, or signed and sealed, recorded and delivered as aforesaid, shall be in all respects a warrant for infeftment in the lands described or referred to in the said writ, as valid and effectual as any Crown writ of the same description hitherto in use to be granted, and notwithstanding that the same has not followed on any signature presented and passed in Exchequer or precept directed thereon, any law or usage heretofore existing to the contrary notwithstanding.

80 **F64**
82.

Textual Amendments
F64 Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. (E.), (I.), (R.), (T.) Nos. 1, 3, (V.), (AA.) Nos. 1, 2 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#); and ss. 80-82 expressed to be repealed (*prosp.*) by [2000 asp 5](#), ss. 76(1)(2), 77(2)(a)(c)(d), Sch. 12 Pt. 1 para. 8(14), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

[^{F65}83 †Crown writs and Crown charters may be in the forms given in Schedule (T).

..... ^{F66} Crown charters of any ^{F66} denomination or nature, except Crown precepts or Crown writs of clare constat, may be in forms as nearly approaching as may be to the examples given in ^{F66} schedule (T.), the necessary alterations being made as the denomination or nature of

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the particular.^{F66} charter may require; and
all.^{F66} Crown charters, including Crown
precepts and Crown writs of clare constat, when granted in or as nearly as may be in
any of the forms provided by this Act, shall have the same force and legal effect in
all respects as if the same had been granted in any corresponding forms heretofore in
use or competent, and shall be read and construed as largely and beneficially in all
respects for the holders thereof as if the same had been expressed in and had contained
the whole terms and words which are now used, or were used prior to the first day of
October one thousand eight hundred and forty-seven, in granting such Crown writs or
charters:^{F66}]

Textual Amendments
F65 S. 83 repealed so far as relating to Crown precepts and Crown writs of clare constat with savings by
Succession (Scotland) Act 1964 (c. 41), s. 37, Sch. 3
F66 Words repealed by Statute Law Revision Act 1893 (c. 14)
Modifications etc. (not altering text)
C8 Unreliable Marginal Note.

PROSPECTIVE

84—
86. ^{F67}

Textual Amendments
F67 Ss. 63-116 repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss.
71, 77(2), sch. 12 para. 8(14), sch. 13 Pt. 1 (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

87 Register of Crown writs to be kept.

The Director of Chancery, or his depute or substitute, shall enter or cause to be entered
in a book, to be kept for the purpose, and entitled “The Register of Crown Writs,” the
whole Crown writ at full length^{F68} Provided always, that no Crown writ entered
in the register of Crown writs before the commencement of this Act shall be held
to be invalidly entered in such register, although the whole of such writ has been so
entered, anything in the^{M12}Titles to Land (Scotland) Act 1858, notwithstanding; and
it is hereby provided that extracts from the said register of Crown writs, certified by
the Director of Chancery or his depute or substitute, shall make faith in judgment in
all cases except in case of improbation.

Textual Amendments
F68 Words repealed by Statute Law Revision Act 1893 (c. 14)

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Marginal Citations

M12 1858 c. 76.

88 †Crown charters or writs of novodamus, how to be obtained.

In every case in which a Crown charter . . . ^{F69} of novodamus, or a Crown charter . . . ^{F69} containing any new or original grant, shall be sought, the person applying for the same shall, previously to lodging the note before mentioned in the office of the presenter of signatures, obtain the consent and approbation of [^{F70}the Crown Estate Commissioners] or any one of them, and of the Board of Trade, under the hand of their secretary for the time being, and written evidence of such consent shall be produced along with the note to be lodged as aforesaid in the office of the presenter of signatures; and the charter . . . ^{F69} shall be revised and engrossed as in the ordinary case, but the same shall be lodged with the Queen's and Lord Treasurer's Remembrancer, and be by him transmitted for the Sign Manual of Her Majesty, and the signatures of Her Majesty's Treasury, or in case such charter . . . ^{F69} be of lands holden of the Prince, and His Royal Highness being then of full age, for the consent and approbation of the Prince, signified under his Sign Manual, after which the proper seal shall, if desired, be attached to such charters or writs, and the other procedure shall be as is provided in regard to Crown writs generally.

Textual Amendments

F69 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

F70 Words substituted by virtue of S. R. & O. 1924/1370 (Rev. V, p. 443: 1924, p. 228), [Crown Estate Act 1956 \(c. 73\)](#), [s. 1\(1\)\(7\)](#) and [Crown Estate Act 1961 \(c. 55\)](#), s. 1(1), [Sch. 2 para. 4\(1\)](#)

Modifications etc. (not altering text)

C9 Unreliable Marginal Note.

C10 Functions of Board of Trade now exercisable concurrently by Secretary of State: [S.I. 1970/1537](#), [art. 2\(1\)](#)

C11 Functions of Queen's and Lord Treasurer's Remembrancer now exercisable by Secretary of State for Scotland: [S.I. 1974/1274](#), [art. 2](#)

89 ^{F71}

Textual Amendments

F71 [Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. \(E.\), \(I.\), \(R.\), \(T.\) Nos.1, 3, \(V.\), \(AA.\) Nos. 1, 2](#) repealed by [Statute Law Revision Act 1893 \(c. 14\)](#); and s. 89 expressed to be repealed (*prosp.*) by [2000 asp 5](#), [ss. 76\(1\)\(2\), 77\(2\)\(a\)\(c\)\(d\)](#), [Sch. 12 Pt. 1 para. 8\(14\)](#), [Sch. 13 Pt. 1](#) (with [ss. 58, 62, 75](#))

90 Writs to be in the English language.

All Crown writs and instruments following thereon, or relating thereto, shall be expressed in the English language.

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91 Court of Session to frame regulations.

The Court of Session performing the duty of the Court of Exchequer as aforesaid shall be and they are hereby authorized from time to time to frame and enact by rule of Court all such regulations as shall seem to them proper for giving effect to the purposes of the present Act, so far as they have reference to entries with the Crown; and the said Court shall forthwith frame and enact a rule of Court fixing and determining the fees to be paid on the various Crown rents, steps of procedure, and other matters hereby authorized with reference to such entries, but such rule of Court shall be subject to revision by the Court at any time or times thereafter.

92 F72

Textual Amendments
F72 S. 92 repealed by Statute Law Revision Act 1875 (c. 66); and s. 92 expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(1)(2), 77(2)(a)(c)(d), Sch. 12 Pt. 1 para. 8(14), Sch. 13 Pt. 1 (with ss. 58, 62, 75)

93 Power to Prince and Steward of Scotland to appoint his own presenter of signatures, &c.

Notwithstanding anything in this Act contained, it shall be lawful for the Prince, being of full age, at any time or times hereafter to appoint his own presenter of signatures, and other officer or officers of Exchequer and Chancery, to discharge, in regard to all charters and precepts or writs of lands holden of him, the duties hereby assigned to the presenter of signatures and other officers of Her Majesty's Exchequer and Chancery respectively; and in case of the office of presenter of signatures, or any such other office in Exchequer or Chancery as aforesaid for the Prince, being conferred on the person holding the corresponding office for the Crown, such officer shall be bound to act for the Prince without additional salary; and the fees hereby authorized to be levied in respect of all charters and writs from the Prince shall in that case be paid into the Consolidated Fund; but if any such appointment by the Prince shall be conferred upon a different person, the person so appointed shall draw for his own use such of the said fees as shall arise from the duties performed by him in respect of such charters and writs.

94, 95. F73

Textual Amendments
F73 Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. (E.), (I.), (R.), (T.) Nos. 1, 3, (V.), (AA.) Nos. 1, 2 repealed by Statute Law Revision Act 1893 (c. 14); and ss. 94, 95 expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(2), 77(2)(a)(d), Sch. 13 Pt. 1 (with ss. 58, 62, 75)

96 Substitute to be appointed to Sheriff of Chancery, &c. in event of absence or disability.

In the event of the temporary absence or disability of the Sheriff of Chancery . . . F74, it shall be competent to the Lord Justice General and President of the Court of Session to

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appoint a properly qualified person to act as substitute to the Sheriff of Chancery . . .
^{F74} such person receiving from the Sheriff of Chancery . . . ^{F74} such remuneration for
 so acting as shall be fixed by the said Lord Justice General and President of the Court
 of Session.

Textual Amendments
F74 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

97— ^{F75}
 99.

Textual Amendments
F75 Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. (E.), (I.), (R.), (T.) Nos.1, 3, (V.), (AA.) Nos. 1, 2 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#); and ss. 97-99 expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(2), 77(2)(a)(d), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

100 All writs and charters from subject superior may refer tenendas and reddendo.
 ^{F76} in granting all writs and charters by subject
 superiors it shall be competent and sufficient to refer to the tenendas and reddendo of
 the lands therein contained, as set forth at length either in the writ or charter produced
 to the superior in terms of this Act, or in any charter or other writ recorded in any
 public register; ^{F76}

Textual Amendments
F76 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

101— ^{F77}
 103.

Textual Amendments
F77 Ss. 58, 60, 61, 84-86, 101–103, 125, 128, 160, Schs. (U.), (W.), (DD.), (EE.), (II.) repealed by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37, **Sch. 3**; and ss. 101-103 expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(2), 77(2)(a)(d), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

104 Where subject superior’s title incomplete, owner may in certain cases apply to Lord Ordinary on the Bills to ordain superior to complete his title and grant an entry under pain of forfeiture.
 Where the person having right to the superiority of any lands, which superiority is not defeasible at the will of the vassal or disponee, shall not have completed his feudal title thereto so as to enable him to enter any heir or disponee of the vassal last publicly infeft in the said lands, or any adjudger or other party deriving right from or through such vassal, where such heir, disponee, adjudger, or other party, if such person had

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been infeft in the superiority, would have been entitled to compel entry in virtue of this Act, or of an Act passed in the twentieth year of the reign of His Majesty King George the Second, or otherwise, it shall be competent to such heir, disponee, adjudger, or other party, provided the annual reddendo attached to such superiority shall not exceed five pounds sterling in value or amount, to present a petition to the Lord Ordinary on the Bills, in the form or as nearly as may be in the form No. 1. of schedule (X.) hereto annexed, praying for warrant of service on such person, and for decree in the terms set forth in such petition, and the Lord Ordinary on the Bills shall pronounce an order for service of such petition, in terms or as nearly as may be in terms of the interlocutor No. 2. of schedule (X.) hereto annexed: and if after such service, and the expiration of the days of intimation, such person shall not comply with the demand of the petition by completing his title and granting entry to the petitioner as aforesaid, or shall not show reasonable cause to the Lord Ordinary why he delays or refuses so to do, he shall, for himself and his heirs, whether of line, conquest, taillie, or provision, forfeit and amit all right to the said superiority, and the Lord Ordinary shall pronounce decree or judgment accordingly to the effect of entitling the petitioner, and his heirs and successors in the said lands, in all time thereafter to hold the same as vassals immediately of and under the next over superior by the tenure and for the reddendo by and for which the forfeited superiority was held, all in the form or as nearly as may be in the form No. 3 of schedule (X.) hereto annexed; and such decree or judgment, and any similar decree or judgment which may have been pronounced under any of the Acts of Parliament hereby repealed, when extracted and recorded in the register of sasines appropriate to the lands, shall be held absolutely to extinguish such right of superiority, and shall enable the petitioner to apply to such over superior, as his immediate superior, for an entry accordingly; and it is hereby provided, that in the renewed investiture to be so obtained by the petitioner under the authority of the said decree or judgment, the tenendas and reddendo contained in the title deeds of the forfeited superiority shall be inserted in room of those contained in the investiture of the petitioner's predecessor or author, and the lands shall be held by the petitioner and his successors according to the tenure of the forfeited superiority in all time thereafter; and the writ in the petitioner's favour shall be expressed, as nearly as may be, in one or other of the forms given in schedule (AA.) hereto annexed.

105 Owner may in such case apply to Lord Ordinary on Bills to authorize application for an entry by the Crown or mediate over superior as in vice of the recusant superior.

If in the case aforesaid the annual reddendo shall exceed in value or amount the sum of five pounds sterling, or, in the option of the said heir, disponee, adjudger, or other party, whether the said annual reddendo shall exceed the said sum of five pounds sterling or not, it shall be lawful for such heir, disponee, adjudger, or other party to present a petition to the Lord Ordinary on the Bills, in the form or as nearly as may be in the form of No. 1. of schedule (Y.) hereto annexed, praying for warrant and decree as there set forth, and the Lord Ordinary shall pronounce an order for service, in the terms or as nearly as may be in the terms of the interlocutor given in No. 2. of schedule (Y.) hereto annexed; and if after such service and expiration of the days mentioned in such order of service such person shall not comply with the demand of the petition by completing his title and granting entry to such petitioner as aforesaid, or shall not show reasonable cause to the Lord Ordinary why he delays or refuses so to do, he shall, for himself and his heirs, whether of line, conquest, taillie, or provision, forfeit and amit all right to the dues and casualties payable on the entry of such petitioner, who shall also be entitled to retain his feu duties or other annual prestations until fully paid and indemnified for all the expenses of the petition and procedure thereon, and all

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the expenses of completing his title in terms of this Act; and the Lord Ordinary shall pronounce interim decree to that effect, and grant interim warrant for such petitioner applying for and obtaining an entry from the Crown, or, in the option of the petitioner, from the mediate over superior as acting in the vice of such superior, all in the form or as nearly as may be in the form of No. 3. of schedule (Y.) hereto annexed; and any petitioner who shall obtain such decree under this Act, or who shall have obtained a similar decree under a petition presented in virtue of any of the Acts of Parliament hereby repealed, shall be entitled forthwith to lodge, along with an extract of the said decree, in the office of the presenter of signatures, a draft of a proposed writ from the Crown, as in vice of such superior, with a short note in terms of this Act; and such writ, for which the said extract decree shall be a sufficient warrant may be in or as nearly as may be in one or other of the forms given in schedule (Z.) hereunto annexed, and shall be as effectual as if granted by the mediate superior of the feu duly infeft in the superiority; and, when there is a mediate over superior duly infeft, such extract decree shall, in the option of the petitioner, be directed against such mediate over superior, and shall be a sufficient warrant for letters of horning to charge such mediate over superior to enter the petitioner, by granting a valid writ as in vice of such superior; and after completion of his title the petitioner shall be entitled, if he thinks fit, to lodge, as part of the proceedings under his petition, an account of the expenses of that process, and of completing his title, and the Lord Ordinary shall, if required on the part of such petitioner, modify the amount thereof, and decern for retention as aforesaid, in the form of No. 4. of schedule (Y.) hereto annexed.

106 Lands to be held temporarily of the Crown or mediate superior.

The lands and others contained in such writ to be so obtained shall be holden of the Crown, or the mediate over superior, as in the vice of the unentered immediate superior, while and so long as he and his successors, the immediate superiors thereof, shall remain unentered, and thereafter until a new entry in favour of the vassal or his successors shall become requisite.

107 The party in right of the superiority may lodge a minute tendering relinquishment of his right, and if accepted by the petitioner the Lord Ordinary may interpone his authority.

When a petition shall be presented as aforesaid praying for warrant of service and for decree against any person so having a right to the superiority of any lands, and not having completed his feudal title thereto, whether the annual reddendo shall be above or below the value or amount of five pounds sterling, it shall be competent for him, at any time before expiration of the days of intimation, or before interim decree shall have been extracted as aforesaid, to lodge, as part of the proceedings under such petition, a minute, signed by himself or by his mandatory or agent duly authorized by him in writing, stating that he tenders relinquishment of the right of superiority which he holds on apparenancy in favour of the petitioner and his heirs and successors, and such minute shall be in the form or as nearly as may be in the form No. 1. of schedule (BB.) hereto annexed; and if the petitioner shall, by himself or his counsel or agent, subscribe or endorse upon such minute an acceptance of the same in the form or as nearly as may be in the form No. 2. of schedule (BB.) hereto annexed, the Lord Ordinary is hereby authorized and required, on the petitioner's motion, to interpone his authority to such minute and acceptance, and to decern and declare the right of superiority thus relinquished to be extinguished, to the effect of making the petitioner and his successors in the said lands hold the lands as vassals immediately of and under

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the superior of the relinquished superiority in permanency and by the tenure and for the reddendo by and for which such relinquished superiority was held, the decree so to be pronounced to be in the form or as nearly as may be in the form No. 3. of schedule (BB.) hereto annexed; and the said decree, when extracted, and recorded in the appropriate register of sasines, shall entitle the petitioner and his foresaids to apply for an entry to such superior accordingly as his immediate superior; and in the renewed investiture to be obtained by the petitioner under the authority of the said decree, the tenendas and reddendo contained in the title deeds of the relinquished superiority shall be inserted in room of those contained in the investiture of the petitioner's predecessor or author, and the lands shall be held by himself and his successors, according to the tenure of the relinquished superiority, in all time thereafter; and the writ in the petitioner's favour may be expressed in one or other of the forms given in schedule (AA.) hitherto annexed; but nothing herein contained shall be held as rendering it imperative on the petitioner to accept of the offered relinquishment, and to take the place of his immediate superior, it being hereby provided that if he prefers it he shall be entitled to refuse the same, and to complete his title by entry from the Crown, or the mediate over superior, as in the vice of his immediate superior.

108 Over superior's rights not to be extended or affected.

The investiture thus completed upon the forfeiture of such heir apparent, or upon the relinquishment of the superiority by such heir apparent, and acceptance by the petitioner, shall in all respects, and to all intents and purposes, be as effectual as if such apparent heir had completed his titles to the superiority, and thereafter conveyed the same to the petitioner, and the latter, after completing his titles under the over superior, had resigned ad remanentiam in his own hands: Provided always, that the title so completed shall not in any respect extend the interests of such over superior, and that he shall be entitled to no more than the casualties, whether taxed or untaxed, to which he would have been entitled if such apparent heir had remained his vassal.

109 Vassal obtaining or accepting forfeiture or relinquishment of superiority to be liable for its value, but forfeiture, &c. not to infer representation.

In the case of such forfeiture or relinquishment of superiority by any apparent heir in manner above mentioned, the vassal obtaining or accepting the same, and making up titles under the over superior, shall be liable, but subject always to retention of expenses as aforesaid, for the value of the said superiority to the said heir apparent, or any person in his right, or having interest, as accords of law; and such forfeiture or relinquishment by such heir apparent shall not infer a passive representation on his part, nor any liability for the debts of the person last infeft therein, beyond the price, if any, which he may receive for such forfeiture or relinquishment; and the vassal, if he accepts thereof, shall not be accountable in any case for more than the value or price of the forfeited or relinquished right.

110 Mode of relinquishing superiorities.

In order to facilitate still further the extinguishing of mid-superiorities not defeasible by the vassal, it shall be competent to any subject superior, whether himself entered with his superior or not, and whatever the annual value of the reddendo may be, to relinquish his right of superiority in favour of his immediate vassal, by granting a deed of relinquishment in the form or as nearly as may be in the form of No. 1. of schedule (CC.) hereto annexed; and on the deed of relinquishment being accepted

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by the vassal, by an acceptance written on such deed in the form or as nearly as may be in the form No. 2. of schedule (CC.) hereto annexed, and being followed by a writ of investiture by the over superior as herein-after provided, also written upon the deed of relinquishment, and on such deed, with the acceptance and writ of investiture written thereon, whether dated prior or subsequent to the commencement of this Act, and warrant of registration on behalf of the vassal, also written thereon, being thereafter recorded in the appropriate register of sasines, the superiority so relinquished shall be held to be extinguished, and the vassal and his successors in the lands shall hold the same as immediate vassals of the over superior by the tenure and for the reddendo by and for which such relinquished superiority was held, and the vassal and his foresaids shall be entitled to apply for an entry to such over superior accordingly as his immediate superior; and such relinquishment by a superior who shall not have completed his title to the superiority relinquished shall not infer a passive representation on his part, nor any liability for the debts of the person last infest therein, beyond the price or consideration, if any, which he may receive for such relinquishment.

111 Investiture by over superior.

On the application of the vassal in the relinquished superiority, and on production by him of the deed of relinquishment, and acceptance thereof, whether dated prior or subsequent to the commencement of this Act, and on his paying or tendering such duties and casualties as may be exigible by the over superior, the over superior shall be bound to receive the vassal as his immediate vassal by writ of investiture in or as nearly as may be in the form of No. 3. of schedule (CC.), to be written on the deed of relinquishment, and the tenendas and reddendo contained in the title deeds of the relinquished superiority shall be inserted therein in room of those contained in the former investiture held under the relinquished superiority; and where the lands are held of the Crown, such writ of investiture shall be obtained from Chancery, in the same manner as is herein-before directed in regard to confirmations written on the deeds confirmed: Provided always, that the party applying for such writ of investiture shall lodge or cause to be lodged in the office of the presenter of signatures a draft of the proposed writ, in the same manner as when a Crown writ is applied for under the provisions of this Act; and the deed of relinquishment with the acceptance thereon shall be officially transmitted to the Director of Chancery, and the Crown writ of investiture engrossed thereon, and recorded in the same manner in which Crown writs are to be recorded, and shall thereafter be delivered to the vassal or his agent on payment of the same fees as are now payable for recording a writ or charter in Chancery; and the investiture completed upon such relinquishment of the superiority shall be as effectual as if the grantor of the deed of relinquishment had completed his title to the superiority, and had thereafter conveyed the same to the vassal, and the latter, after having completed his titles under the over superior, had resigned ad remanentiam in his own hands: Provided always, that the investiture so completed shall not in any respect extend the rights or interests of such over superior, and that he shall be entitled to no more than the duties and casualties, taxed or untaxed, to which he would have been entitled if the grantor of the deed of relinquishment had remained or entered as his vassal.

112 Applications of price of entailed superiorities.

Where the right of superiority, or the dues and casualties payable in respect thereof, forfeited or relinquished under the provisions of this Act, shall form part of an estate

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held under a deed of strict entail, such forfeiture or relinquishment shall not operate as a contravention of such entail, anything contained in the deed of entail or any Act of Parliament notwithstanding; and the price agreed to be paid for such superiority so forfeited or relinquished, if any, shall be consigned by the vassal in one of the chartered banks in Scotland, subject to the orders of the Court of Session, and shall be applicable and applied in such and the like manner and to such and the like purposes as purchase money or compensation coming to parties having limited interests is made applicable, under the ^{M13}Lands Clauses Consolidation (Scotland) Act 1845, or any Act altering or amending the same, or under the ^{M14}Entail Amendment Act 1848 or under the ^{M15}Entail Amendment Act 1853; and for that purpose it shall be competent to the heir of entail in possession to present a summary petition to the Court of Session, praying to have the price so applied, and such petition shall set forth the names, designations, and places of abode of those heirs of entail whose consents would be required to the execution of an instrument of disentail; and on such petition being served on such parties, and being intimated in the minute book and on the walls in common form, it shall be competent for the Court to direct the price to be applied to such of the said purposes as may appear to them to be most expedient: Provided always, that where the sums agreed to be paid for all the superiorities which form part of an entailed estate shall not in all exceed the sum of two hundred pounds, such sum shall belong to the heir in possession, and the Court shall direct such sums to be paid to him: Provided also, that the price of such superiorities may be applied by the heir in possession to such purposes and in such manner as may be authorized by any private Act of Parliament authorizing the sale of the entailed estate or any portion thereof, and the application of the price thereof; and where the lands of which the superiority is so forfeited or relinquished shall be held by the vassal under a deed of strict entail, the vassal in such lands shall be entitled and he is hereby authorized to grant a bond and disposition in security over the entailed estate for the full amount of the price paid for the forfeited or relinquished superiority, together with all expenses incurred in the relative proceedings, including the estimated expense of such bond and disposition in security; and his granting such bond and disposition in security shall not operate as a contravention of such entail, anything contained in the deed of entail or any Act of Parliament notwithstanding: Provided always, that such bond and disposition in security shall be granted with the consent of those heirs of entail whose consents would be required to the execution of an instrument of disentail of the lands, or under the authority of a judicial warrant or decree of the Court of Session pronounced on a summary petition by the heir of entail in possession praying for such warrant; and the proceedings under such petition shall be the same or as nearly as may be the same as the proceedings under a petition to charge an entailed estate with provisions to younger children, as authorized by the ^{M16}Entail Amendment Act 1848, and the ^{M17}Entail Amendment Act 1853: Provided always, that it shall not be necessary that such petition be publicly advertised in the Gazette or any newspaper, but that service and intimation only shall be made in common form.

Marginal Citations

- M13** 1845 c. 19.
- M14** 1848 c. 36.
- M15** 1853 c. 94.
- M16** 1848 c. 36.
- M17** 1853 c. 94.

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113 Providing for payment in lieu of casualties of superiority in case of lands conveyed for religious purposes.

Where no agreement shall have been made or shall be made with the superior of lands of the nature referred to in the twenty-sixth section of this Act for a periodical or other payment in lieu of the casualty or composition payable by law or in terms of the investiture upon the entry of heirs and singular successors, or where the casualty and composition shall not have been taxed, and where by law and under the terms of the investiture composition as on the entry of a singular successor would be or but for the provisions of the said section would have been payable upon the entry of any party or parties as successors to the party or parties in whose name the titles shall have been expedite and recorded as provided by the said section, it shall be lawful for such superior, at the death of the existing vassal in such lands, and at the expiration of every period of twenty-five years thereafter, so long as such lands shall belong to or be held for behoof of such congregation or society or body of men, to demand and take from such congregation or society or body of men or other party or parties to whom such lands may have been or shall be feued or conveyed, or by whom the same may be held for their behoof, a sum corresponding to the casualty or composition, if any such shall in the circumstances be due, which would have been payable upon the entry of a singular successor therein; and such payments shall be in full of all casualties of entry and composition payable to the superior for or furth of such lands, while the same shall remain the property or be held for behoof of such congregation or society or body of men, and the superior shall have all such and the like preference and execution for the recovery of such sums as superiors have for the recovery of casualties of superiority according to law: Provided always, that where such casualty or composition shall not have been taxed in the investiture, and the lands so feued or conveyed shall not be situated in a town or village or in the immediate vicinity thereof, the casualty or composition payable therefor shall be held to be the annual rent or annual value of the lands so feued or conveyed, if let as an agricultural subject at the time when such casualty or composition shall become due and exigible in virtue of this Act.

[^{F78} 114 †Writs of confirmation &c. by subject superiors to be tested.

.....^{F79} writs of clare constat, and all other writs or charters granted in terms of this Act by subject superiors, shall be authenticated in the form required by the law of Scotland in the case of ordinary conveyances.]

Textual Amendments

F78 S. 114 repealed in so far as relating to writs of clare constat and writs of acknowledgment by Succession (Scotland) Act 1964 (c. 41), s. 37, Sch. 3

F79 Words repealed by Statute Law Revision Act 1893 (c. 14)

Modifications etc. (not altering text)

C12 Unreliable Marginal Note.

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Textual Amendments

- F80** Ss. 16, 49, 53, 56, 57, 80–82, 89, 94, 95, 97–99, 115, Schs. (E.), (I.), (R.), (T.) Nos.1, 3, (V.), (AA.) Nos. 1, 2 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#); and s. 115 expressed to be repealed (*prosp.*) by [2000 asp 5, ss. 76\(2\), 77\(2\)\(a\)\(d\)](#), [Sch. 13 Pt. 1](#) (with [ss. 58, 62, 75](#))

[^{F81} 116 †Stamp duty on writs of confirmation, &c. 1857 c. 26.

The stamp duty chargeable on . . . ^{F82} writs of clare constat, and writs of investiture, granted or to be granted in virtue of this Act, except Crown writs, and on writs of acknowledgment under the Registration of Leases (Scotland) Act, shall be the same as that chargeable on . . . ^{F82} precepts of clare constat by subject superiors, and the said duty may be paid by means of adhesive stamps to be provided for that purpose by the Commissioners of Inland Revenue, who may from time to time make such rules as may seem fit for regulating the use of such stamps, and for insuring the proper cancellation thereof.]

Textual Amendments

- F81** S. 116 repealed in so far as relating to writs of clare constat and writs of acknowledgment by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37, [Sch. 3](#)
F82 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

- C13** Unreliable Marginal Note.

117 †Heritable securities to form movable estate; except where conceived in favour of heirs, excluding executors, and quoad fiscum.

From and after the commencement of this Act no heritable security granted or obtained either before or after that date shall, in whatever terms the same may be conceived, . . . ^{F83}, be heritable as regards the succession of the creditor in such security, and the same, . . . ^{F83}, shall be movable as regards the succession of such creditor, . . . ^{F83} provided that all heritable securities shall continue, and shall be heritable quoad fiscum, . . . ^{F84}; and that no heritable security, whether granted before or after marriage, shall to any extent pertain to the husband jure mariti, where the same is or shall be conceived in favour of the wife, or to the wife jure relictæ, where the same is or shall be conceived in favour of the husband, unless the husband or relict has or shall have right and interest therein otherwise; declaring nevertheless, that this provision shall in no way prejudice the rights and interests of wife or husband, or of the creditors or either, in or to the by-gone interest and annual rents due under any such heritable security and in bonis of the husband or wife respectively prior to his or her death; and further provided, that where legitim is claimed on the death of the creditor no heritable security shall to any extent be held to be part of the creditor's movable estate in computing the amount of the legitim.

Textual Amendments

- F83** Words repealed by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37, [Sch. 2 para. 4](#), [Sch. 3](#)
F84 Words repealed by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37, [Sch. 3](#)

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Modifications etc. (not altering text)

C14 Unreliable Marginal Note.

[^{F85} 118 Bonds and dispositions in security may be granted in the form No. 1. of Schedule (FF.)

From and after the commencement of this Act it shall be lawful and competent for any person entitled to grant an heritable security by way of bond and disposition in security to grant the same in the form or as nearly as may be in the form No. 1 of schedule (FF.) hereto annexed; and the registration in the appropriate register of sasines of such bond and disposition in security, or of any bond and disposition in security, granted according to any of the forms competent, or in use prior to the commencement of this Act, shall be as effectual and operative to all intents and purposes as if such bond and disposition in security had contained . . . ^{F86} an obligation to infeft, . . . ^{F86} and precept of sasine, and . . . ^{F86} all in the words and form in use prior to the thirtieth day of September one thousand eight hundred and forty-seven, and as if sasine . . . ^{F86} had been duly made, accepted, and given thereon in favour of the original creditor, and an instrument of sasine, . . . ^{F86} as the case may be, in favour of such creditor had been duly recorded in the appropriate register of sasines of the date of the registration of the said bond and disposition in security as aforesaid.]

Textual Amendments

F85 S. 118 substituted by [Titles to Land Consolidation \(Scotland\) Amendment Act 1869 \(c. 116\)](#), s. 6

F86 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

C15 S. 118 excluded by [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c. 35\)](#), s. 32, [Sch. 8 para. 7](#)

[^{F87} 119 Explanation of clauses in Schedule (FF.) No. 1.

The import of the clauses of the form of No. 1 of the said schedule (FF.) occurring in any bond and disposition in security, whether granted before or after the commencement of this Act, shall be as follows, videlicet, the clause obliging the grantor to pay the amount due under the bond, principal, interest, and penalty to the creditor, his heirs, executors, or assignees, shall, unless where executors are excluded, be held to import an obligation to pay the same to the creditor and his representatives in mobilibus and his assignees, and where there is or shall be such exclusion, to the creditor and his heirs and assignees, the clause disposing the lands to such creditor and his foresaids heritably shall, unless where executors are excluded, be held to import a disposition of such lands to such creditor and his representatives in mobilibus and his assignees, and where there is or shall be such exclusion to such creditor and his heirs and assignees in security, in manner specified in the bond and disposition in security, with all the rights and powers at present competent to a creditor and his heirs under such a security; the clause of assignation of rents shall be held to import an assignation to the creditor and his representatives in mobilibus or his heirs, as the case may be, and to his assignees, to the rents to become due or payable from and after the date from which interest on the sum in the security commences to run, in the fuller form generally in use prior to the thirtieth day of September one thousand eight hundred and forty-

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seven, including therein a power to the creditor and his foresaids to insure all buildings against loss by fire, and on default in payment to enter into possession of the lands disposed in security, and uplift the rents thereof, or to uplift the rents thereof if the lands are not disposed in security, and to make all necessary repairs on the buildings, subject to accounting to the debtor for any balance of rents actually recovered beyond what is necessary for payment to such creditor and his foresaids of the sums, principal, interest, and penalty, due to him or them under such security, and of all expenses incurred by him or them in reference to such possession, including the expenses of management, insurance, and repairs; and the clause of assignation of writs shall be held to import an assignation to the creditor and his foresaids to writs and evidents to the same effect as in the fuller form generally in use in a bond and disposition in security, with power of sale, prior to the thirtieth day of September one thousand eight hundred and forty-seven; and the clause of warrandice shall be held to import absolute warrandice as regards the lands and the title-deeds thereof, and warrandice from fact and deed as regards the rents; and clause consenting to registration for preservation and execution shall have the meaning and effect assigned to such clause in the one hundred and thirty-eighth section of this Act; the clauses reserving right of redemption and obliging the grantor to pay the expenses of assigning or discharging the security, and, on default in payment, granting power of sale, shall have the same import, and shall be in all respects as valid, effectual, and operative as if it had been in such bond and disposition in security specially provided and declared that the lands and others thereby disposed should be redeemable by the grantor from the grantee, at the term and place of payment, or at any term of Whitsunday or Martinmas thereafter, upon premonition of three months, to be made by the grantor to the grantee personally, or at his dwelling place, if within Scotland, and if furth thereof at the time, then at the office of the keeper of the record of edictal citations within the General Register House, Edinburgh, in presence of a notary public and witnesses; and that by payment to him of the whole principal sum payable under the bond and disposition in security, interest due thereon, and liquidated expenses, and termly failures corresponding thereto, if incurred; and in case of his absence or refusal to receive the same, by consignment thereof in the bank specified in the security, if any bank shall be so specified, and if not, then in one or other of the banks in Scotland incorporated by Act of Parliament or Royal Charter, having an office or branch at the place of payment; to be made furthcoming on the peril of the consigner; the place of redemption to be within the office of such bank or branch thereof; and as if it had been thereby further provided and declared that any discharge and renunciation, disposition and assignation, or other deed necessary to be granted by the grantee upon the grantor making payment and redeeming as aforesaid, and also the recording thereof, should always be at the expense of the grantor; and as if it had been thereby further provided and declared, that if the grantor should fail to make payment of the sums that should be due by the personal obligation contained in the said bond and disposition in security, within three months after a demand of payment intimated to the grantor,^{F88} . . . although subject to any legal incapacity, personally or at his dwelling place if within Scotland, or if furth thereof at the office of the keeper of the record of edictal citations above mentioned, in presence of a notary public and witnesses, and which demand for payment may be in or as nearly as may be in the form of No. 2 of schedule (FF.) hereto annexed, and a copy thereof certified by such notary public in the form of No. 3 of schedule (FF.) hereto annexed, or where such demand has been intimated to more persons than one, a copy so certified of the demand intimated to one of such persons, with a certificate by such notary public that a similar demand has been intimated to the other persons, and stating the names and designations of such persons and the dates and places of intimation to them, shall be sufficient evidence of such demand, then and in that case it should be lawful to, and in the power of, the grantee, immediately after the expiration

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of the said three months, and without any other intimation or process at law, to sell and dispose, in whole or in lots, of the said lands and others, by public roup at Edinburgh or Glasgow, or at the head burgh of the county within which the said lands and others, or the chief part thereof, are situated, or at the burgh or town sending or contributing to send a member to Parliament, or at the burgh or town which may have previously adopted the ^{M18}General Police and Improvement (Scotland) Act 1862, or part thereof, which, whether within or without the country, shall be nearest to such lands or the chief part thereof, on previous advertisement, stating the time and place of sale, and published once weekly for at least six weeks subsequent to the expiry of the said three months, in any newspaper published in Edinburgh or in Glasgow, and in every case in a newspaper published in the county in which such lands are situated, or if there be no newspaper published in such county, then in any newspaper published in the next or a neighbouring county, and a certificate by the publishers of such newspapers for the time shall be prima facie evidence of such advertisement, the grantee being always bound, upon payment of the price, to hold count and reckoning with the grantor for the same, after deduction of the principal sum secured, interest due thereon, and liquidated penalties corresponding to both which may be incurred, and all expenses attending the sale; and for that end to enter into articles of roup, to grant dispositions containing all usual and necessary clauses, and in particular a clause binding the grantor of the said bond and disposition in security, in absolute warrandice of such dispositions, and obliging him to corroborate and confirm the same, and to grant all other deeds and securities requisite and necessary by the laws of Scotland for rendering such sale or sales effectual, in the same manner and as amply in every respect as the grantor could do himself; and as if it had been thereby further provided and declared that the said proceedings should all be valid and effectual, whether the debtor in the said bond and disposition in security for the time should be [^{F89}subject to any legal incapacity or not], and that such sale or sales should be equally good to the purchaser or purchasers as if the grantor himself had made them, and also that in carrying such sale or sales into execution it should be lawful to the grantee to prorogue and adjourn the day of sale from time to time as he should think proper, previous advertisement of such adjourned day of sale being given in the newspapers above mentioned once weekly for at least three weeks; and as if the grantor had bound and obliged himself to ratify, approve of, and confirm any sale or sales that should be made in consequence thereof, and to grant absolute and irredeemable dispositions of the lands and others so to be sold to the purchaser, and to execute and deliver all other deeds and writings necessary for rendering their rights complete.]

Textual Amendments

- F87** S. 119 was substituted by Titles to Land Consolidation (Scotland) Amendment Act 1869 (c. 116), s. 7 and repealed in so far as relating to heritable securities from which executors are excluded by Succession (Scotland) Act 1964 (c. 41), s 37, **Sch. 3**; amended by Conveyancing (Scotland) Act 1924 (c. 27), s. 25; excluded by Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), s. 32, **Sch. 8 para. 8**
- F88** Words in s. 119 repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(2), 11(2), **Sch. 2** (with s. 1(3))
- F89** Words in s. 119 substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(1), 11(2), **Sch. 1 para. 21** (with s. 1(3))

Modifications etc. (not altering text)

- C16** References to office of the Keeper of the Record of Edictal Citations to be construed as references to office of such clerks and officers of the Court of Session as may be appointed from time to time:

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Reorganisation of Offices (Scotland) Act 1928 (c. 34), s. 8, S.R. & O. 1929/588 (Rev. XIX, p. 785: 1929, p. 1305) and Public Records (Scotland) Act 1937 (c. 43), s. 13

Marginal Citations

M18 1862 c. 101.

120 Securities may be registered during lifetime of grantee, or title completed after his death.

Heritable securities, whether dated before or after the commencement of this Act, may be registered in the appropriate register of sasines at any time during the lifetime of the grantee, and shall in competition be preferred according to the date of the registration thereof: Provided always, that if an heritable security has not been so registered in the lifetime of the grantee, such heritable security shall be as full and sufficient warrant for completion of the title in favour of the party having right thereto as if it had been a bond and disposition in security, containing precept of sasine and other clauses, in the ordinary form in use prior to the thirtieth day of September one thousand eight hundred and forty-seven, which title may be completed as after provided, or by service or notarial instrument, as the circumstances of the case may require.

121 Sale carried through in terms of this Act to be valid to the purchaser.

Any sale duly carried through in terms of the heritable security and of this Act, or partly in terms of any Act now in force and partly in terms of this Act if the proceedings shall have been begun before the commencement of this Act, shall be as valid and effectual to the purchaser as if made by the grantor of the security himself, and that whether the grantor shall have died before or after such sale, and without the necessity of confirmation by him or his successors, and notwithstanding that the party debtor in the security and in right of the lands at the time shall be ^{F90} . . . subject to any legal incapacity: Provided always, that nothing herein contained shall be held to affect or prejudice the obligation of the grantor and his successors to execute, or the right of the creditor or purchaser to require the grantor and his successors to execute, any deed or deeds which, independently of this enactment, would at common law be necessary for rendering the sale effectual, or otherwise completing in due form the titles of such purchaser.

Textual Amendments

F90 Words in s. 121 repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(2), 11(2), Sch. 2 (with s. 1(3))

Modifications etc. (not altering text)

C17 S. 121 excluded by Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), s. 32, Sch. 8 para. 9

122 Creditors selling to count and reckon for the surplus of the price and to consign the same in the bank.

The creditor, upon receipt of the price, shall be bound to hold count and reckoning therefor with the debtor and postponed creditors, if any such there be, or with any other party having interest, and to consign the surplus which may remain, after

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deducting the debt secured, with the interest due thereon and penalties incurred and expenses in reference to the possession of the estate if such creditor has been in possession, including expense of insurance, repairs, and management, and whole expenses attending such sale, and after paying all previous incumbrances and the expense of discharging the same, in one or other of the said banks, or in a branch of any such bank, in the joint names of the seller and purchaser, for behoof of the party or parties having best right thereto; and the particular bank in which such consignation is to be made shall be specified in the articles of roup.

Modifications etc. (not altering text)

C18 S. 122 excluded by [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c. 35\)](#), s. 32, [Sch. 8 para. 10](#)

123 On sale, &c. lands to be disencumbered of the security.

Upon a sale being carried through in terms of this Act, and upon consignation of the surplus of the price, if any be, as aforesaid, the disposition by the creditor to the purchaser shall have the effect of completely disencumbering the lands and others sold, of all securities and diligences posterior to the security of such creditor, as well as of the security and diligence of such creditor himself.

Modifications etc. (not altering text)

C19 S. 123 excluded by [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c. 35\)](#), s. 32, [Sch. 8 para. 11](#)

124 Securities to be transferred in the form prescribed.

Where an heritable security, whether dated before or after the passing of this Act, has been constituted by infeftment, whether such infeftment has been taken by recording the security or an instrument thereon in the appropriate register of sasines in terms of this Act or any of the repealed Acts, or by any mode competent or in use prior to the thirtieth day of September one thousand eight hundred and forty-seven, in the appropriate register of sasines, the right of the creditor therein may be transferred, either in whole or in part, by an assignation or other conveyance in the form, or as nearly as may be in the form of schedule (GG.) hereto annexed; and on such assignation or conveyance being recorded in the appropriate register of sasines, the said security or part of such security, as the case may be, shall be transferred to the assignee as effectually as if such security had been disposed and assigned, and the disposition and assignation or conveyance had been followed by sasine duly recorded, according to the law and practice prior to the first day of October one thousand eight hundred and forty-five, at the date of recording such assignation or conveyance; and such assignee or disponee shall thereupon be held to be as fully entered as if he had obtained a renewal of the investiture in his favour, according to the law and practice in use before that date: Provided always, that where the assignation or conveyance of an heritable security constituted as aforesaid is contained in any other conveyance or deed, it shall not be necessary to record the whole of such conveyance or deed, but it shall be sufficient to expedite and record in the appropriate register of sasines a notarial instrument in the form or as nearly as may be in the form of schedule (HH.) hereto annexed, and upon such notarial instrument being recorded, the person or persons

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expeding the same shall be in the same position as if the assignation or conveyance of the heritable security on which it proceeds had been itself recorded as of the date of recording the said instrument.

Modifications etc. (not altering text)

C20 S. 124 excluded by [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c. 35\)](#), s. 32, **Sch. 8 para. 12**

125 ^{F91}

Textual Amendments

F91 Ss. 58, 60, 61, 84–86, 101–103, 125, 128, 160, Schs. (U.), (W.), (DD.), (EE.), (II.) repealed by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37, **Sch. 3**; and s. 125 expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(2), 77(2)(a)(d), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

126 **Completion of title of executors, &c. of creditor dying intestate.**

Upon the death of any creditor who shall die intestate in right of an heritable security constituted by infeftment as aforesaid . . . ^{F92} it shall be competent to the executors duly confirmed to such deceased creditor to complete a title to such security by expeding and recording an instrument under the hands of a notary public in the form or as nearly as may be in the form set forth in schedule (JJ.) hereto annexed; and when the executors (being more than one) duly confirmed as aforesaid shall not be entitled to the deceased's movable estate wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of the said executors and the survivors or survivor of them; and on such instrument being recorded in the appropriate register of sasines such executors or executor shall be held to be vested with the full right of the creditor in such security, and to be entered with the superior in the same manner and to the same effect as the original creditor himself.

Textual Amendments

F92 Words repealed by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37, **Sch. 3**

[^{F93} **127** **Executor nominate or disponee mortis causa may complete title by notarial instrument.**

Upon the death of any creditor in right of an heritable security constituted by infeftment as aforesaid from which executors shall not have been excluded, and who shall die leaving a testamentary or mortis causa deed or writing naming executors, or disposing or bequeathing his movable estate, or disposing or bequeathing the security, it shall be competent for the executors, duly confirmed, or for the disponees, or for the legatees, as the case may be, to complete a title thereto by expeding and recording in the appropriate register of sasines an instrument under the hand of a notary public in the form or as nearly as may be in the form of schedule (KK.) hereto annexed; and when such executors or disponees, or legatees, being more than one, shall not be entitled to such security wholly for their own beneficial interest, it shall be competent

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to take such notarial instrument in favour of such executors or disponees or legatees, and the survivors and survivor of them, unless such a destination be expressly excluded by the terms of the deed or writing; and where any creditor has died or shall die before the commencement of this Act, in right of such an heritable security, and leaving a mortis causa conveyance thereof, or of his heritable estate generally, or where any creditor shall die thereafter in right of such an heritable security from which executors shall have been excluded and leaving such a mortis causa conveyance, or a testamentary deed or writing within the meaning of the twentieth section of this Act, it shall be competent to the grantee or legatee under such mortis causa conveyance or testamentary deed or writing to complete a title to the security by notarial instrument as aforesaid; and on such instrument being so recorded the executors, disponees, legatees, or grantees, as the case may be, in whose favour such instrument has been expedited, shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself.]

Textual Amendments

F93 S. 127 which was substituted by [Conveyancing \(Scotland\) Act 1874 \(c. 94\)](#), s.64 is now repealed except in so far as providing for the completion of title by executors by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37, [Sch. 3](#)

128 ^{F94}

Textual Amendments

F94 Ss. 58, 60, 61, 84–86, 101–103, 125, 128, 160, Schs. (U.), (W.), (DD.), (EE.), (II.) repealed by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37, [Sch. 3](#)

[^{F95}129 **Adjudgers may complete their title by recording abbreviate of adjudication.**

In all cases of adjudication, whether for debt or in implement, or of constitution and adjudication whether for debt or in implement, in which the adjudger has obtained a decree of adjudication or of constitution and adjudication in the manner and to the effect provided by this Act, or in cases of declarator and adjudication, where the subjects contained in any such decree are heritable securities, it shall be competent for the adjudger to complete his title to such securities by recording either the abbreviate of adjudication or an extract of such decree in the appropriate register of sasines, in either of which cases he shall be in the same position as if an assignation of such heritable securities had been granted in his favour by the ancestor or person or creditor in trust or otherwise, and whether in life or deceased, whose estate is adjudged, and as if such assignation had been duly recorded in the appropriate register of sasines at the date of so recording such abbreviate or such extract decree.]

Textual Amendments

F95 S. 129 was substituted by [Conveyancing \(Scotland\) Act 1874 \(c. 94\)](#), s. 65 and repealed so far as relating to actions of constitution and adjudication by [Succession \(Scotland\) Act 1964 \(c. 41\)](#), s. 37 [Sch. 3](#)

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[^{F96}130 **Unregistered security or assignation to be available to executors, &c. of grantee.**

In the event of an heritable security from which executors shall not have been excluded, dated before or after the commencement of this Act, not being constituted by infertment during the lifetime of the grantee, or of any assignation, dated before or after the commencement of this Act, of a security from which executors shall not have been excluded, but which has been constituted by infertment, not being completed by infertment during the lifetime of the assignee, and where such grantee or assignee shall be in life at, or at any time subsequent to, the commencement of this Act, such security or assignation shall form a warrant for an instrument in the form or as nearly as may be in the form of schedule (MM.) hereto annexed, under the hands of a notary public, being passed upon the same in favour of the executors of the creditor, duly confirmed, whether the same be executors nominate or executors dative, or in favour of the disponees or assignees of such security, or of the moveable estate of such creditor under any deed or conveyance inter vivos or mortis causa, or in favour of any legatees of such security; and where such executors or disponees or assignees, being more than one, shall not be entitled to such security wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of such executors or disponees or assignees, and the survivors or survivor of them, unless such a destination be expressly excluded by the terms of the conveyance or deed or writing; and where executors shall be excluded from such security, or the creditor has died before the commencement of this Act, the security or assignation, as the case may be, shall form a warrant for a notarial instrument as aforesaid, in favour of any disponees or assignees or legatees of such security, or of the heritable estate of such creditor under any deed or conveyance by him inter vivos or mortis causa, or under any testamentary deed or writing by him within the meaning of the twentieth section of this Act, or in favour of the heirs of such creditor having right to the security by decree of general or special service as heir to such creditor; and on such instrument being recorded in the appropriate register of sasines, the executors or disponees, or assignees or legatees or heirs, as the case may be, in whose favour such instrument is expedite, shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself.]

Textual Amendments

F96 S. 130 was substituted by Titles to Land Consolidation (Scotland) Amendment Act 1869 (c. 116), s. 8 and repealed, except in so far as providing for the completion of title by executors and by disponees or assignees under a deed or conveyance inter vivos, by Succession (Scotland) Act 1964 (c. 4), s. 37, Sch. 3

131 Act not to affect liability of debtors on their lands.

Nothing contained in this Act shall affect or interfere with the present law and practice in regard to the liability of the lands contained in any security, or of the debtor, or with the rights and remedies of the creditor, or of the creditors of the creditor.

132 How any heritable security may be renounced or discharged.

Any heritable security, whether dated before or after the commencement of this Act, constituted by infertment as aforesaid, may be effectually renounced and discharged, in whole or in part, and the lands therein contained effectually disburdened of the same, by a discharge in the form or as nearly as may be in the form of schedule (NN.)

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hereto annexed, and by the registration of such discharge in the appropriate register of sasines, as aforesaid.

Modifications etc. (not altering text)

C21 S. 132 excluded by [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c. 35\)](#), s. 32, **Sch. 8 para. 13**

133 Heritable security how restricted.

Any heritable security constituted as aforesaid may be restricted, as regards any portion of the lands therein contained, by a deed of restriction in the form or as nearly as may be in the form of schedule (OO.) hereto annexed, and on such deed of restriction being recorded in the appropriate register of sasines, the security shall be restricted accordingly to the lands therein contained, other than those discharged by such deed of restriction, which lands thereby discharged shall be released from the security to the same effect as if the same had never been contained in such security.

Modifications etc. (not altering text)

C22 S. 133 excluded by [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c. 35\)](#), s. 32, **Sch. 8 para. 14**

134 Act to apply to all heritable securities.

The whole provisions, enactments, and forms of this Act relative to bonds and dispositions in security shall be taken to apply and shall apply as nearly as may be to all heritable securities, unless in so far as such provisions, enactments, or forms may be inapplicable to the form or objects of such securities.

135 Parties may use the present forms if they see fit.

Nothing in this Act contained shall prevent the constitution, transmission, or extinction of heritable securities in the forms in use prior to the first day of October one thousand eight hundred and forty-five.

136 ^{F97}

Textual Amendments

F97 S. 136 repealed by [Burgh Registers \(Scotland\) Act 1926 \(c. 50\)](#), **Sch. 2**; and s. 136 expressed to be repealed (*prosp.*) by [2000 asp 5](#), ss. 76(2), 77(2)(a)(d), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

137 Act to apply to lands held by any description of tenure.

The whole of this Act shall apply to lands by whatever tenure the same may be held, except in so far as any of the provisions of this Act shall be limited expressly or by necessary implication to lands held by one particular tenure.

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138 Short clauses of consent to registration may be used in any deed.

The short clauses of consent to registration for preservation, and for preservation and execution, contained in forms numbers 1 and 2 of schedule (B.) hereto annexed, when occurring in any deed or conveyance under this Act, or in any deed or writing or document of whatsoever nature, and whether relating to lands or not, shall unless specially qualified import a consent to registration and a procuratory of registration in the books of council and session, or other judges books competent, therein to remain for preservation; and also, if for execution, that [^{F98}, upon the issue of an extract containing a warrant for execution, all lawful execution shall pass thereon].

Textual Amendments

F98 Words substituted by Debtors (Scotland) Act 1987 (c. 18, SIF 45:2), s. 108(1), **Sch. 6 para. 7**

Modifications etc. (not altering text)

C23 S. 138 excluded by Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), s. 32, **Sch. 8 para. 15**

^{F99}**139**

Textual Amendments

F99 S. 139 repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10(2), 11(2), **Sch. 2** (with s. 1(3)) and expressed to be repealed (1.8.1995) by 1995 c. 7, s. 14(2), **Sch. 5** (with ss. 9(3)(5)(7), 13, 14(3))

140 Additional sheets may be added to writs.

In all cases where writs or deeds of any description are by this or any other Act permitted or directed to be engrossed on any conveyance or deed, it shall be competent, when necessary, to engross such deeds or writs on a sheet or sheets of paper, or of whatever other material the conveyance itself consists, added to such conveyance, provided that the engrossing of the deed or writ shall be commenced on some part of the conveyance or deed itself on which it is permitted or directed to be engrossed; and the first of such additional sheets shall be chargeable with the stamp duty applicable to the writ or deed partly engrossed thereon, and subsequent sheets (if any) shall be chargeable with the appropriate progressive duty.

[^{F100}**141** †**All deeds, &c. recorded in register of sasines to have warrants of registration endorsed, except certain burgage deeds.**

All conveyances and deeds, and all writings whatsoever which may be recorded in any register of sasines, shall, previous to being presented for registration, have a warrant of registration endorsed or written thereon in or as nearly as may be in such one or other of the forms of warrants of registration contained in the following schedules hereto annexed, viz. schedule (F.) No. 2, and schedule (H.) Nos. 1, 2, and 3, as may be applicable to the particular conveyance, deed, or writing so to be presented, which warrant shall in every case specify the person or persons on whose behalf the conveyance, deed, or writing is presented for registration, and . . . ^{F101} the register or

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registers of the county or counties, . . . ^{F101} in which the lands to which such conveyance or deed or writing has reference are situated, and shall be signed by such person or persons, or by his or their agent or agents, and in the latter case the warrant may be signed either by an individual agent or by the subscription of any firm of which such agent may be a partner: . . . ^{F102} Provided always, that where registration has been or shall be made in any particular register of sasines, it shall be sufficient that such register is specified in the warrant of registration without any specification of a county or counties.]

Textual Amendments

- F100** S. 141 substituted by Titles to Land Consolidation (Scotland) Amendment Act 1869 (c. 116), s. 9
F101 Words repealed by Burgh Registers (Scotland) Act 1926 (c. 50), Sch. 2
F102 Proviso repealed by Conveyancing (Scotland) Act 1874 (c. 94), s. 33

Modifications etc. (not altering text)

- C24** Unreliable Marginal Note.
C25 S. 141 amended by Conveyancing (Scotland) Act 1924 (c. 27), s. 10(7)

142 Recording of conveyances in the register of sasines authorized.

All conveyances and deeds, and all instruments hereby authorized to be recorded in the register of sasines, may, with warrants of registration written thereon respectively, be recorded at any time in the life of the person on whose behalf the same shall be presented for registration, in the same manner as instruments of sasine, . . . ^{F103} or notarial instruments, are at present recorded, and the same when presented for registration shall be forthwith shortly registered in the minute books of the said register in common form, and shall with all due despatch be fully registered in the register books, and thereafter redelivered to the parties with certificates of due registration thereon, which shall specify the date of presentation, and the book and folios in which the engrossment has been made . . . ^{F104} and shall be probative of such registration, and when so registered shall in competition be preferable according to the date of registration, and the date of entry in the minute book shall be held to be the date of registration: Provided, that where two or more deeds or conveyances . . . ^{F105} shall be received by the keeper of the register of sasines [^{F106}on the same day], the entries thereof in the presentment book and minute book shall be of the same year, month, [^{F106}and day], and such deeds and conveyances shall be deemed and taken to be presented and registered contemporaneously; . . . ^{F107}

Textual Amendments

- F103** Words repealed by Statute Law Revision Act 1893 (c. 14)
F104 Words repealed retrospectively by Public Registers and Records (Scotland) Act 1950 (14 Geo. 6 c. 11), Sch.
F105 Words repealed by Land Registration (Scotland) Act 1979 (c. 33), Sch. 4
F106 Words substituted by Land Registration (Scotland) Act 1979 (c. 33), Sch. 2 para. 2
F107 Words repealed by Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35), Sch. 11 Pt. III

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143 Conveyances and instruments may be recorded of new.

In case of any error or defect in any instrument or in the recording of any deed or conveyance, or of any warrant of registration, recorded or to be recorded in any register of sasines, or in any warrant of registration thereon, or in the recording of such warrant, it shall be competent of new to make and record such instrument, or of new to record the deed or conveyance with the original or a new warrant of registration, as the case may require.

144 Recorded instruments not to be challenged on the ground of erasures.

The ^{M19}Erasures in Deeds (Scotland) Act 1836, shall extend and be applicable to all instruments.

Marginal Citations

M19 1836 c. 33.

145 Not competent to challenge existing warrants of registration on certain grounds.

It shall not be competent to challenge the validity of any existing warrants of registration upon conveyances under the Titles to Lands (Scotland) Acts, of the twenty-first and twenty-second years of the reign of Her present Majesty, chapter seventy-six, and the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-three, hereby repealed, or the real rights completed in the persons of those in whose favour the said conveyances are recorded by the registration thereof in the appropriate register of sasines, on the ground that the said warrants of registration are disconform to the terms of the schedules annexed to the said Acts, provided that the said warrants contain the name of the party or parties on whose behalf the warrant is written, and contain the designation of such party or parties, or refer to the same as given in the conveyance on which such warrants are engrossed, and are signed by the party or parties themselves, or by his or their agent or agents, either individually or as a partnership; and the designation “agent” or “agents,” without any further designation, shall be valid and sufficient in the case of all warrants expedite in virtue of the said repealed Acts.

146 Obligations appointed to be inserted in instruments of sasine shall be inserted in notarial instruments.

Where any real burden, condition, provision, or limitation, or other matter has been or shall be appointed to be inserted or referred to in the instruments of sasine or of resignation ad remanentiam, or other instruments applicable to any lands, such real burden, condition, provision, or limitation, or other matter shall be inserted or referred to in manner provided by this Act in every instrument applicable to such lands to be expedite in virtue of this Act, and in every conveyance or deed of or relating to such lands the registration of which in the register of sasines is by this Act equivalent to infetment or resignation ad remanentiam: Provided always, that where such real burdens, conditions, provisions, limitations, or other matters have been already inserted in any conveyance or deed or instrument recorded in the appropriate register of sasines, it shall not be necessary to insert the same at length in any subsequent conveyance or deed or instrument, provided the same be therein referred to in manner

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provided, in the ninth or tenth sections of this Act, as the circumstances of the case may require.

Modifications etc. (not altering text)

C26 S. 146 applied by [Conveyancing \(Scotland\) Act 1924 \(c. 27\), ss. 3, 6\(1\)](#); excluded by [Land Registration \(Scotland\) Act 1979 \(c. 33\), s. 15\(2\)\(a\)](#)

147 Prohibition against sub-infeudation not to be affected.

Where the investiture of any lands has imposed or shall impose a prohibition against sub-infeudation or against alternative holding, nothing contained in this Act shall operate to authorise sub-infeudation or an alternative holding in respect to such lands; and nothing in this Act contained shall be construed to take away or impair any of the rights or remedies competent to a superior against his vassal lying out unentered.

148 ^{F108}

Textual Amendments

F108 S. 148 repealed by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\), s. 75\(2\), Sch. 8](#)

^{F109}**149**

Textual Amendments

F109 S. 149 repealed (1.8.1995) by [1995 c. 7, s. 14\(2\), Sch. 5](#)

150 Debts affecting lands exchanged for other lands to affect such other lands in lieu thereof.

When any lands disposed before or after the commencement of this Act, under the authority of an Act of Parliament, in excambion for other lands, are burdened with debts, the lands so disposed shall, from and after the date of registration, whether before or after the commencement of this Act, in the appropriate register of sasines of the contract or deed of excambion of such lands, be freed and disburdened of such debts so far as previously affecting the same, and shall be burdened with the debts, if any, which previously affected the lands acquired in exchange for the same, in the order of preference in which such debts were a burden upon such last-mentioned lands: Provided always, in the case of excambions after the thirty-first day of December one thousand eight hundred and sixty-eight, that before any such excambion is authorized (in addition to such procedure as may be prescribed by such Act) such intimation as the Court of Session may consider necessary shall be made to all creditors having interest, and such creditors shall be entitled to state any objections thereto, of which the Court shall judge: Provided also, that in such contract or deed of excambion, whether executed before or after the commencement of this Act, or in a schedule subscribed as relative thereto, and declared to be part thereof, and recorded therewith, there have been or shall be set forth as to each of the said debts the following particulars; namely,

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the amount of the debt, the date of recording the writ by which its constitution was originally published, the register in which the same was so published, the name and designation of the original creditor, and, if the debt has been transferred, the name and designation of the creditor understood to be in right thereof for the time, and the date of recording the writ whereby his right was published, and the register in which the same was so published: Provided further, that in such contract or deed of excambion such debts have been or shall be expressly declared to burden the lands to which the same are transferred as aforesaid.

151 ^{F110}

Textual Amendments

F110 Ss. 52, 54, 55, 151, 153, repealed by Statute Law (Repeals) Act 1975 (c. 10), **Sch. Pt. XIV**; and s. 151 expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(2), 77(2)(a)(d), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

152 **Provision for lands in the burgh of Paisley held by booking tenure.**

All the provisions of this Act applicable to lands held by the ordinary burgage tenure shall be applicable also to lands in the burgh of Paisley held by the peculiar tenure of booking; and all the provisions of this Act applicable to . . . ^{F111} instruments of sasine . . . ^{F111} and registers of sasines, respectively, of lands held burgage, shall be applicable also to booking . . . ^{F111} and to extract bookings, and to the register of booking, respectively, of lands in the said burgh of Paisley held by said tenure of booking: . . . ^{F111}

Textual Amendments

F111 Words repealed by Statute Law Revision Act 1893 (c. 14)

153 ^{F112}

Textual Amendments

F112 Ss. 52, 54, 55, 151, 153, repealed by Statute Law (Repeals) Act 1975 (c. 10), **Sch. Pt. XIV**; and s. 153 expressed to be repealed (*prosp.*) by 2000 asp 5, ss. 76(2), 77(2)(a)(d), **Sch. 13 Pt. 1** (with ss. 58, 62, 75)

154 **Official acts of town clerks and keepers of registers of sasines not to be affected by their personal interests in recorded writs.**

It shall be competent for the town clerk of any burgh to expedite and record, and for the keeper of any burgh or other register of sasines, reversions, &c. to record, any conveyance or deed in which such town clerk or keeper may be personally interested, either individually or as trustee for another or otherwise; and no conveyance or deed expedite or recorded prior to the date of the passing of this Act, or which may hereafter be expedite or recorded, shall be challengeable or in any way affected by reason of personal interest in the town clerk or keeper of the register by whom the same has been

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expede or recorded as aforesaid: Provided, that this enactment shall not prejudice or affect any action or proceeding which may have been instituted prior to the passing of this Act.

Modifications etc. (not altering text)

- C27** References to specified officers to be construed as references to proper officers of authority: Local Government: (Scotland) Act 1973 (c. 65), Sch. 27 para 2.

155 Inhibitions to take effect from date of registration of notice, &c.

It shall be competent, before or after execution of any inhibition, whether by separate letters or contained in a summons before the Court of Session, to register in the general register of inhibitions a notice thereof, setting forth the names and designations of the persons by and against whom the same is raised, and the date of signing the same, in the form or as nearly as may be in the form of schedule (PP.) hereto annexed; and where any such inhibition and the execution thereof shall be duly registered in the general register of inhibitions not later than twenty-one days from the date of the registration therein of such notice thereof, such inhibition shall take effect from the date when such notice was registered as aforesaid, but otherwise only from the date of the registration of such inhibition and the execution thereof; and no inhibition shall have any effect against any act or deed done, committed, or executed prior to the registration of such notice thereof, or of such inhibition and the execution thereof, as the case may be.

Modifications etc. (not altering text)

- C28** S. 155 applied by Criminal Justice Scotland Act 1987 (c. 41, SIF 39:1), s. **11(2)**
- C29** S. 155 applied Criminal Justice Act 1988 (c. 33, SIF 39:1), s. **92(2)(3)**
- C30** S. 155 applied (temp.) by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), ss. 13(8), 27(5), **Sch. 4 para. 16(3)**
S. 155 applied (prosp.) by 2000 c. 11, ss. 23, 128, **Sch. 4 para. 21(3)**
S. 155 applied (17.12.2001) by 2001 asp 13, s. 20, **Sch. 6 para. 6(3)** (with s. 29); S.S.I. 2001/456, **art. 2**
S. 155 applied (S.) (prosp.) by Proceeds of Crime Act 2002 (c. 29), s. **123(4)**, 458(1)
S. 155 applied (prosp.) by Proceeds of Crime Act 2002 (c. 29), s. **258(4)**, 458(1)
- C31** S. 155 extended (with modifications) (31.3.1996) by 1995 c. 20, ss. 98(2), 110(1), **Sch. 4**, paras. 1(2), 2(2), 3(2); S.I. 1996/517, **art. 3(2)** (which amending Act was repealed (1.4.1996) by 1995 c. 40, s. 6(1), Sch. 5 (with **Sch. 3**, paras. 3, 16))
- C32** S. 155 extended (31.3.1996) by 1995 c. 20, ss. 103(1)(2), 110(1), **Sch. 4**, paras. 1(2), 2(2), 3(2); S.I. 1996/517, **art. 3(2)** (which amending Act was repealed (1.4.1996) by 1995 c. 40, s. 6(1), Sch. 5 (with **Sch. 3**, paras. 3, 16))
- C33** S. 155 extended (31.3.1996) by 1987 c. 41, s. **28A** (as inserted (31.3.1996) by 1995 c. 20, s. 113(3), **Sch. 5**, para. 26); S.I. 1996/517, **art. 3(2)** (which insertion fell (1.4.1996) by reason of the repeal of the 1995 Act by 1995 c. 40, s. 6(1), Sch. 5 (with **Sch. 3**, paras. 3, 6))
- C34** S. 155 extended (1.4.1996) by 1995 c. 43, ss. **37(2)**, 50(2)
- C35** S. 155 extended (1.4.1996) by 1995 c. 43, ss. **32(2)**, 50(2)

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156 Short form of letters of inhibition.

Letters of inhibition may be in the form as nearly as may be of the schedule (QQ.) to this Act annexed; and letters of inhibition in such form shall have all the like force and effect as letters of inhibition in the form in use at the passing of this Act.

157 No inhibition to have effect against acquirenda, unless in case of heir under entail or other indefeasible title.

No inhibition to be recorded from and after the thirty-first day of December one thousand eight hundred and sixty-eight shall have any force or effect as against any lands to be acquired by the person or persons against whom such inhibition is used after the date of recording such inhibition, or of recording the previous notice thereof prescribed by this Act, as the case may be: Provided always, that where such inhibition is used against a person or persons who shall thereafter succeed to any lands which, at the date of recording the inhibition or previous notice thereof, as the case may be, were destined to such person or persons by a deed of entail, or by a similar indefeasible title, then and in that case such inhibition shall affect the said person or persons in so far as regards the lands so destined, and to which he or they shall succeed as aforesaid, but no further.

^{F113}**158 Inhibitions on depending summons to be recalled on petition to Lord Ordinary.**

.....

Textual Amendments

F113 S. 158 repealed (S.) (5.9.1994) by S.I. 1994/1443, art. 3(2), Sch. 4

159 Litigiosity not to begin before date of registration of notice of summons.

It shall be competent to register in the general register of inhibitions a notice of any signeted summons of reduction of any conveyance or deed of or relating to lands, and in the register of adjudications a notice of any signeted summons of adjudication or of constitution and adjudication combined for debt or in security or in implement, which notice shall set forth the names and designations of the pursuer and defender of such action and the date of signeting such summons [^{F114}and contain a description of the lands to which the summons relates] in the form or as nearly as may be in the form of schedule (RR.) hereto annexed; and no summons of reduction, constitution, adjudication, or constitution and adjudication combined, shall have any effect in rendering litigious the lands to which such summons relates, except from and after the date of the registration of such notice.

Textual Amendments

F114 Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 36:1), s. 59, Sch. 2 para. 4

Modifications etc. (not altering text)

C36 S. 159 amended by Conveyancing (Scotland) Act 1924 (c. 27), s. 44(6)

*Status: Point in time view as at 01/08/1995. This version of this Act contains provisions that are not valid for this point in time.
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160 **F115**

Textual Amendments
F115 Ss. 58, 60, 61, 84–86, 101–103, 125, 128, 160, Schs. (U.), (W.), (DD.), (EE.), (II.) repealed by Succession (Scotland) Act 1964 (c. 41), s. 37, **Sch. 3**

161 Judgment of Lord Ordinary on the Bills subject to review of Inner House, and judgments in certain cases to be final.

Any judgment pronounced by the Lord Ordinary in virtue of this Act shall be subject to review by a reclaiming note in ordinary form; and the judgment of either division of the Court upon such reclaiming note, or upon any advocacy or appeal, shall be subject to review by appeal to the House of Lords, or in any other competent mode or form; but the judgments of the Lord Ordinary and of the Court respectively, if not so brought under review, and whether the same shall have been pronounced in absence of the respondent or not, shall be final, and not subject to review in any mode or form whatever: Provided always, that the judgments of the Lord Ordinary in petitions relating to the forfeiture or relinquishment of superiority under this or any of the repealed Acts, if not so brought under review, and the judgment of either division of the Court of Session upon a reclaiming note against such judgment of the Lord Ordinary, whether such judgment shall have been pronounced in absence of the respondent or not, shall be final and conclusive, and not subject to review in any mode or form whatever; and it shall be competent to the Lord Ordinary, or to either division of the Court reviewing any judgment of the Lord Ordinary, if it shall appear to him or them to be just in the whole circumstances of the case, to find and decern in ordinary form for the expenses of any proceedings.

162 Court of Session may fix and regulate fees.

..... ^{F116} the Court of Session. ^{F116} may meet for the purpose of passing and may pass all such acts of sederunt and rules of court as they deem proper for carrying into effect the purposes of this Act, and that either during session or vacation, and may from time to time repeal acts of sederunt and rules of court or alter such acts and rules of court and tables of fees:

Provided, that all acts of sederunt and rules of court passed under the authority of this Act shall, ^{F117} be laid before both Houses of Parliament; ^{F117}.

Textual Amendments
F116 Words repealed by Statute Law (Repeals) Act 1975 (c. 10), **Sch. Pt. XIV**
F117 Words repealed by Statute Law (Repeals) Act 1986 (c. 12), s. 1(1), **Sch. 1 Pt. XII**

163 Old forms of conveyances may be used.

Nothing contained in this Act shall prevent the constitution, transmission, completion, or extinction of land rights, or of securities affecting lands, in the forms which

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were in use or competent for these purposes prior to the passing of the Acts hereby repealed, except in so far as such prior forms are hereby expressly abolished; and, notwithstanding the repeal of the said Acts, the same shall be held to be still in force so far as regards any reference which may be made to them or any of them in any Statute not hereby repealed, and to the effect of giving full effect to such reference.

Status:

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Changes to legislation:

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