

ANNO DECIMO & UNDECIMO

VICTORIÆ REGINÆ.

****

CAP. XLVII.

An Act to amend the Law and Practice in *Scotland* as to the Service of Heirs. [25th *June* 1847.]

WHEREAS it is expedient to amend the Law and Practice in *Scotland* relative to the Service of Heirs: May it therefore please Your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Fifteenth Day of *November* One thousand eight hundred and forty-seven the Practice of issuing Brieves from Chancery for the Service of Heirs shall cease, and it shall not be competent to any Person to obtain himself served Heir by virtue of any such Brieve, or otherwise than according to the Provisions of this Act.

From 15th Nov. 1847 the Practice of issuing Brieves from Chancery for Service of Heirs shall cease.

II. And be it enacted, That from and after the Date aforesaid every Person desirous of being served Heir to a Person deceased, whether in general or in special, and in whatsoever Character, shall, instead of applying, as heretofore, for a Brieve from Chancery, present a Petition of Service to the Sheriff in manner herein-after set forth.

Services to proceed by Petition to the Sheriff.

III. And

Petition to be presented to the Sheriff of the County or to the Sheriff of Chancery.

III. And be it enacted, That 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 to be appointed under the Authority of this Act, 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 other Heritages are situated, or, in the Option of the Petitioner, to the Sheriff of Chancery, and in the event of the Lands or Heritages being situated in different Counties then in every such Case to the Sheriff of Chancery.

Nature and Form of the Petition.

IV. And be it enacted, That such Petition shall be subscribed by the Petitioner, or by a Mandatory specially authorized for the Purpose, and shall be in the Form, or as nearly so as the Case will admit, of one or other of the Schedules (A.) and (B.) hereunto annexed, and shall, under the Exceptions after mentioned, set forth the Particulars which, according to the Law and Practice heretofore existing, have 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 that in every Case in which the Petitioner claims to be served Heir of Provision, whether in general or special, the Deed or Deeds under which he so claims shall be distinctly specified.

Conditions of Entail and other Conditions may be referred to instead of being inserted at length.

V. And be it enacted, That in all Cases of Special Service, where the Lands are held under a Deed of Entail, it shall be lawful and competent in such Petition of Service, and in the Decree of Service to follow thereon, and in the Precepts, Sasines, or other Instruments necessary to complete the Investiture of the Lands which shall follow on such Decree, to omit the full Insertion of the Conditions and Provisions, and prohibitory, irritant, and resolutive Clauses of such Deed of Entail, provided such Conditions and Provisions, and prohibitory, irritant, and resolutive Clauses, shall be therein specially and directly referred to as set forth at full Length in the recorded Instrument of Sasine in favour of the deceased Person served to, or as set forth at full Length in the Deed of Entail itself, if the same shall have been recorded in the Register of Tailzies, or as set forth at full Length in any recorded Instrument of Sasine forming a Part of the Title Deeds of the Lands held under such Deed of Entail, such Reference being made

made in the Form or as nearly as may be in the Form shown in Schedule (B.) hereunto annexed; and the Reference thus made to such Conditions and Provisions, and prohibitory, irritant, and resolutive Clauses, shall be held legally equivalent to the full Insertion thereof, and shall to all Intents, and in all Questions whatever, whether *inter hæredes* or with Third Parties, have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Deed or Instrument referred to, notwithstanding of any Injunction to the contrary contained in such Deed of Entail, and notwithstanding of any Law or Practice to the contrary, and notwithstanding the Enactments or Provisions to the contrary contained in an Act of the Parliament of *Scotland* made in the Year One thousand six hundred and eighty-five, intituled *Act concerning Tailzies*, or in any other Act or Acts of the Parliament of *Scotland* or of *Great Britain* now in force, all which are hereby repealed to the Extent of making this Enactment operative, but no further.

Burdens, Conditions, and Limitations may be referred to.

VI. And be it enacted, That in all Cases of Special Service, where the Lands are held under any Real Burdens or Conditions 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 now existing, be lawful and competent in the Petition of Service, and in the Decree of Service to follow thereon, and in the Precepts, Sasines, or other Instruments necessary to complete the Investiture which shall follow on such Decree, to omit the full Insertion of such Real Burdens or Conditions or Limitations; provided such Real Burdens or Conditions or Limitations shall be therein specially and directly referred to as set forth at full Length in the recorded Instrument of Sasine in favour of the deceased Person served to, or as set forth at full Length in the recorded Instrument of Sasine or of Resignation *ad remanentiam* of the said Lands in which the same were first inserted, or in any other intermediate recorded Instrument of Sasine, such Reference being made in the Form or as near as may be in the Form shown in Schedule (B.) hereunto annexed; and the Reference thus made to such Real Burdens or Conditions or Limitations shall be held as legally equivalent to the full Insertion thereof, and to all Intents and in all Questions whatever, whether with the Disponer or Superior or Third Parties, shall have the same legal Effect as if the same had been inserted exactly as they may be expressed in the recorded Instrument referred to, notwithstanding any Law or Practice or any Act or Acts of Parliament to the contrary, all which are hereby repealed to the Extent of making this Enactment operative, but no further.

Services not to proceed till Publication be made.

VII. And be it enacted, That when any such Petition 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 shall have been made edictally in *Edinburgh*, nor until the Sheriff Clerk of Chancery

Chancery shall have received official Notice that Publication has been made in the County of the Domicile of the Party deceased, 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 affixing on the Doors of the Court-house, or in some conspicuous Place of the Court, or of the Office of the Sheriff Clerk, 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 fixed and declared by the Court of Session, in virtue of the Powers herein-after mentioned.

Caveats to be received.

VIII. And be it enacted, That the Sheriff Clerk of Chancery to be appointed in virtue of this Act, and the Sheriff Clerks of each County, shall be bound to receive any Caveat against any Petition of Service to be presented to them respectively, 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 of Chancery or such Sheriff Clerks respectively, such Sheriff Clerk of Chancery or Sheriff Clerks 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, according to the Name and Address which shall be stated in such Caveat, the Clerk receiving therefor a Fee for his own Use of such Amount as shall be fixed by Act of Sederunt as aforesaid.

Petition of Service to be equivalent to a Brieve and Claim.

IX. And be it enacted, That 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 heretofore existing; and every Petition of Service, without further Publication than is herein provided and may be directed by Act of Sederunt, shall be held as 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 shall be prescribed by Act of Sederunt made in relation to such Petitions of Service.

Procedure before the Sheriff, and the Effect of his Judgment.

X. And be it enacted, That 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, nor 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 Thirty Days from such Date, and in regard to all Petitions of Service to be presented to the Sheriff of Chancery where

where the Deceased died abroad, no Evidence shall be taken nor Decree pronounced thereon by him until after the Lapse of Thirty Days from the Date of Publication in *Edinburgh*; 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 Burgh, who is hereby authorized to act as Commissioner of such Sheriff without special Appointment, or by any Commissioner whom such Sheriff may appoint, to receive all such Evidence, documentary and parole, as according to the Law and Practice heretofore existing might competently be laid before the Jury summoned under the Brieve of Inquest, and any parole Evidence so received shall be taken down in Writing according to the existing Practice in the Sheriff Courts of *Scotland*, 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 Judgment, 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 Judgment 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 heretofore existing.

Competing Petition may be presented, and Sheriff, after receiving Evidence, give Judgment.

XI. And be it enacted, That it shall be lawful to any Person who may conceive that he has 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 which shall be proceeded with in manner herein-before directed; and it shall be lawful to the Sheriff, if he shall see Cause, to sist Procedure on the first Petition in the meantime, and to conjoin the said Petitions, and thereafter to proceed to take Evidence in manner herein-before directed, allowing to each of the Parties not only a Proof in chief with reference to his own Claim but a conjunct Probation with reference to the Claim of such other Parties; and the Sheriff shall, after receiving the Evidence, pronounce Judgment on the said Petitions, serving or refusing to serve as may be just, and shall at the same Time dispose of the Matter of Expences.

Recording and Extract of Judgment.

XII. And be it enacted, That on the Application of the Petitioner in whose Favour a Judgment shall have been pronounced by the Sheriff as aforesaid the Sheriff Clerk shall forthwith transmit to the Office of the Director of Chancery the Petition on which such Judgment was pronounced, together with such Judgment, the Proof taken down in Writing as aforesaid, and the Inventories of written Documents made up and certified as aforesaid, and also any other Parts or Steps of the Process, excepting any original Documents or Extracts of recorded Writs produced therewith, which after Judgment is pronounced shall be returned, on Demand, to the Parties producing the same; and on the Proceedings being so transmitted to Chancery such Judgment shall be recorded by the Director of Chancery, or his Depute, in the Manner and Form to be directed or

approved of from Time to Time by the Lord Clerk Register; and on such Judgment being so recorded the Director of Chancery, or his Depute, shall prepare an authenticated Extract thereof, and transmit the same without Delay, and without Charge or Expense against the Party in respect of the Transmission and Retransmission, 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 Judgment 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 as aforesaid.

The Extract Decree to be equivalent to an Extract Retour.

XIII. And be it enacted, That 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 heretofore existing; 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 now in use according to the existing Law and Practice; 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.

Transmission of Records.

XIV. And be it enacted, That the Book or Books in Chancery in which such Decree shall be recorded as aforesaid shall be 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 be intituled "The Record of Services," and shall have an Index or Abridgment connected therewith, to be prepared in Chancery in the Form and Manner to be pointed out or approved of by the Lord Clerk Register; and such Index 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 such 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 other 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 Expence 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 forty-eight; 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, 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, by virtue of the Powers herein conferred; 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.

Clerks of Chancery to be remunerated for keeping Register, &c. by Act of Sederunt.

XV. And be it enacted, That the Amount of the Remuneration to the Clerks of Chancery for keeping the Record of Services, and arranging the Warrants, and preparing the Indexes and Abridgments, shall be fixed by Act of Sederunt, to be made by the Lords of Council and Session in virtue of the Powers herein conferred; and such Remuneration, together with the Expence of printing the Index or Abridgment aforesaid, shall be paid from the Fees collected in the Office of Chancery, and an Account thereof shall be exhibited by the Director of Chancery, and be examined and audited along with his other Accounts.

No Person entitled to oppose a Service who could not appear against a Brieve of Inquest.

XVI. And be it enacted, That 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 proceeding under the Brieve of Inquest according to the Law and Practice heretofore existing; 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 *vivâ voce* thereon.

Proceedings may be advocated for Jury Trial.

XVII. And be it enacted, That in all Cases in which there are competing Petitions conjoined as aforesaid, or in which any Person has competently appeared to oppose any Petition of Service presented to the Sheriff in Terms of this Act, it shall be competent to such of the Parties as may conceive the Case proper to be disposed of by Jury Trial, at any Time before the Proof is begun to be taken by the Sheriff in manner before provided, to present a Note of Advocation to the Court of Session praying the Court to advocate the Proceedings in order that the Case may be tried by a Jury, which Note of Advocation shall be proceeded with in like Manner with Notes of Advocation presented with a view to Jury Trial against Judgments of the Sheriff Courts of *Scotland* according to the existing Practice, and such Judgment shall be pronounced on the said Note of Advocation as shall be just; and in the event of its appearing proper that the Case should be tried by a Jury, the Lord President of either of the Two Divisions of the said Court, or such other of the Lords of Session as the Court may appoint, or as may be arranged by the Lord President of the Division, shall be the Judge at the Trial and preside thereat

thereat in like Manner as is done according to the existing Practice in Trials by Jury, 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 at present 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 at present competent: Provided always, that in every Case in which the Jury shall find a Verdict in favour of a Party petitioning to be served the Court shall, at the same Time with applying such Verdict, remit to the Sheriff from whom the Case was advocated, 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.

Where Sheriff refuses to serve Petitioner, &c. Judgment may be reviewed.

XVIII. And be it enacted, That in every Case in which the Sheriff has refused to serve a Petitioner, or dismissed his Petition, or repelled the Objection of an opposing Party, it shall be lawful to bring the said Judgment under Review by Note of Advocation presented to the Court of Session: Provided always, that such Note shall be presented within Fifteen, or, where the Proceedings have been taken in the Courts of *Orkney* or *Shetland*, Thirty Days from the Date of the said Judgment; and that where the Judgment has been pronounced after Opposition duly entered or in competition, such Note shall be intimated to the opposite Party, and a Bond of Caution for Expences be lodged with the Sheriff Clerk, in like Manner and under the same Regulations as in the Case of Advocations of final Judgments of the Sheriff Courts of *Scotland* according to the presently existing Practice, and such Note shall be proceeded with in like Manner with the Notes of Advocation against final Judgments aforesaid; and it shall be competent to the said Court, if it shall appear necessary for the right Determination of the Case, to allow further or additional Evidence to be taken, or to remit to the Sheriff to take the same, or to appoint the Case, or special Issues therein, to be tried by a Jury in manner and to the Effect and with all and the like Remedies as are before provided, and such Judgment shall be pronounced on such Note of Advocation 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 be of opinion that the Party ought to be served, a Remit shall be made to the Sheriff, 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 hereby authorized in the Court of the Sheriff to bring under Challenge whatever Judgment may be pronounced therein, by Process of Reduction before the Court of Session on any competent Ground.

Procedure when a Decree of Ser-

XIX. And be it enacted, That in every Case in which a Process of Reduction of any Decree of Service shall be brought before the Court of Session it shall be competent to the said Court, if it shall appear necessary

necessary for the right Determination of the Case, either to allow further or additional Evidence to be taken in such Manner as may appear proper, or to appoint the Case, 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 Advocation, and such Judgment shall be pronounced in the said Process as shall be just: Provided always, that wherever the Judgment 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 should be served from the Person preferred by the Sheriff, a Remit shall be made to the Sheriff, with Instructions to pronounce a Decree serving the said Person in Terms of this Act, which Decree may be thereafter recorded, and an Extract thereof given out in manner and to the Effect before provided; and in any Case of Reduction of a Service the Judgment shall 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.

vice is brought under Reduction.

Effect of the Decree of Reduction.

XX. And be it enacted, That all Proceedings authorized by the present Act to be taken in the Court of Session shall commence and be carried on in the same Manner with the same Description of Proceedings in ordinary Civil Cases, and any Judgment pronounced by the Lord Ordinary therein may be brought under Review of the Inner House by Reclaiming Note in like Manner as in such Cases, and all Judgments to be pronounced by the Court of Session in Terms of this Act shall be equally final and conclusive as the Judgments pronounced by the said Court in ordinary Civil Cases, 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 Cases 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 Cases aforesaid.

Forms and Effect of Procedure in the Court of Session.

XXI. And be it enacted, That for the Purpose of completing the feudal Title of the Heir so served, but of such Heir only, every Decree of Special Service shall contain a Precept of Sasine, and such Decree, being recorded and extracted as aforesaid, 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 granted by the Party deceased being last infeft of the Lands contained in such Service 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 of special Service, containing Obligation to infeft by Two several Infeftments and Manners of holding, one thereof to be holden of the Deceased and his Heirs in Free Blench for Payment of a Penny *Scots* in Name of

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.

Blench Farm at *Whitsunday* yearly, upon the Ground of the said Lands, if asked only, and freeing and relieving the Deceased and his Heirs of all Feu Duties and Services exigible out of the said Lands by their immediate lawful Superiors thereof, and the other of the said Infeftments to be holden from the Deceased and his Heirs of and under their immediate lawful Superiors in the same Manner that the Deceased, his Predecessors and Authors, held or might have holden the same, and that by Confirmation, with Assignation to the whole Writs and Rents of the Lands, and Precept of Sasine for infefting the Party served and his Successors in the Lands, all in common Form; and in order that such Sasine may be so taken by and the feudal Title be completed in the Person of the Heir so serving, it shall be lawful and competent for him to use such Decree of special Service in the same Manner and to the same Effect as if such Decree were actually a Disposition of the Nature above mentioned, and in particular he shall be entitled to obtain Infeftment in the said Lands in virtue of the Precept of Sasine in such Decree of special Service, any Notary Public to whom such extracted Decree may be presented being hereby authorized to give Infeftment in virtue thereof accordingly, which Infeftment may be in the Form given in the Schedule (C.) hereunto annexed, and shall, with such Decree of special Service, form as effectual an Investiture in the said Lands, holding Base of the Deceased and his Heirs, until Confirmation thereof shall be granted by the Deceased's Superior or his Successors, as if such Investiture had been created by a Disposition from the Deceased as aforesaid, with an Infeftment passed on the Precept of Sasine therein contained; but such Service shall not be transmissible for the Purpose of infefting in Manner and to the Effect aforesaid the Heir or Assignee of the Person so served: Provided always, that such Decree and Sasine, notwithstanding of any Prohibition against Sub-infeudation or alternative Holding contained in the Charter or Contract or other Deed by which the Vassal's Right is constituted, shall form a valid feudal Investiture in favour of such Heir, without Prejudice to the Right of the Superior to require such Heir to enter forthwith as accords of Law, and to deal otherwise with such Heir as a Vassal unentered.

The Deceased's Incapacity to be no Hindrance.

XXII. And be it enacted, That such Decree of Special Service shall have the full Effect and Operation aforesaid, although the Deceased should have died in Nonage, or been of insane Mind, or laboured under any other Disability whatever, and as if a Disposition in the Terms aforesaid had been granted by the Party deceased when of full Age and Capacity to grant it.

A Special Service not to infer a general Representation, either active or passive.

XXIII. And be it enacted, That no Decree of Special Service 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 and other Heritages thereby embraced; and every such Decree of Special Service shall infer only a limited passive Representation of the Deceased, and the Person thereby served as Heir shall be liable for the Deceased's Debts and Deeds only to the Extent or Value of the Lands and other Heritages embraced by such Special Service and no farther.

XXIV. And

Heir of Line or Heir Male may petition for General Service.

XXIV. And be it enacted, That in any Petition for Special Service as Heir of Line or Heir Male it shall be competent to the Petitioner to pray for General Service in the same Character, and Decree may be pronounced in Terms of such Prayer as well as for Special Service; and no farther Notice or Publication of the Petition of Service shall in such Case be necessary than is hereby required for such Petition of Special Service.

A General Service may be applied for and obtained to a limited Effect by annexing a Specification;

XXV. And be it enacted, That from and after the Fifteenth Day of *November* One thousand eight hundred and forty-seven it shall be lawful for any Person presenting a Petition for General Service to a deceased Person to state in such Petition, in the Form, as nearly as the Case will admit, pointed out in Schedule (D.) hereunto annexed, that he desires the Effect thereof to be limited to certain Lands or other Heritages which belonged to the Deceased, and which shall be embraced in a particular Specification thereof, to be annexed to such Petition for General Service, which Specification shall be in the Form, or as nearly as may be in the Form, given in the said Schedule (D.), and shall be subscribed by the Petitioner or his Mandatory; and in preparing an Abstract of such Petition for Insertion in the Minute Book of the Court in which it shall be presented, and for Publication, it shall be described as a Petition for General Service, with Specification annexed; and the Sheriff to whom such Petition for General Service, with a Specification annexed, shall be presented, in pronouncing Decree of Service on such Petition shall make reference to the Specification annexed thereto, and shall limit such Decree of Service to the Lands and other Heritages described in the said Specification, and the Effect of such Decree shall accordingly be taken and held in Law as so limited; and a Copy of such Specification shall be embodied in the Extract of the said Decree, and shall be signed by the Sheriff Clerk, and recorded as Part thereof; and every such Decree of General Service, with Specification annexed, shall infer only a limited passive Representation of the Deceased, and the Person thereby served as Heir shall be liable for the Deceased's Debts and Deeds only to the Extent or Value of the Lands or other Heritages contained in the relative Specification.

and it shall infer only a limited passive Representation.

Precepts of Clare constat and Entries more burgi to remain unaffected.

XXVI. And be it enacted, That nothing herein contained shall in any way affect the Law or Practice presently existing in regard to the Entry of Heirs by Precept of Clare constat, or the Service and Entry of Heirs *more burgi*, in Burghs, in Tenements holden in Burgage, or by any similar Mode of Tenure known and effectual in Law.

Jurisdiction of the Sheriff of Chancery.

XXVII. And be it enacted, That the Sheriff of Chancery 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 any Sheriff or Judge Ordinary now has and possesses in any Case competent before such Sheriff or Judge Ordinary, or in any Case competent before the Sheriff of *Edinburgh* acting on Special Commission; and such Sheriff of Chancery and his Substitute shall hold their Courts in any Court Room within the Parliament or new Session House of *Edinburgh* which may be assigned by the Lords of Session for that Purpose,

Purpose, or in which the Sheriff of *Edinburgh* is in use to sit for the Trial of any Brieve.

Power to the Court of Session to pass Acts of Sederunt.

XXVIII. And be it enacted, That 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; and the Fees to be paid in respect of any of the Proceedings to be taken in virtue hereof, and also 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.

Appointment of Sheriff of Chancery.

XXIX. And be it enacted, That it shall be lawful for Her Majesty from Time to Time to appoint a fit Person, being a Person qualified for the Office of Sheriff of a County in *Scotland*, to be the Sheriff of Chancery for the Purposes of this Act, and also to appoint a fit Person to act both as Sheriff Clerk of Chancery and as Clerk to the Presenter of Signatures in Exchequer.

Sheriff of Chancery, if required, to discharge the Duties of Presenter of Signatures.

XXX. Provided always, and be it enacted, That the Sheriff of Chancery shall, when authorized and required by the Lord Justice General and President of the Court of Session, discharge the Duties at present or which may hereafter be attached to the Office of Presenter of Signatures, or any Part of these Duties, and that during such Part of the Year as may be required of him.

Agents may practise before Sheriff Courts.

XXXI. And be it enacted, That it shall be lawful and competent for Agents qualified to practise before the Court of Session or before any Sheriff Court to practise before the Sheriff of Chancery as well as in the ordinary Sheriff Courts in Petitions of Service.

Payment of the Sheriff and Sheriff Clerk of Chancery.

XXXII. And be it enacted, That the Sheriff of Chancery and Sheriff Clerk of Chancery shall respectively receive such Salaries in respect of their Offices as shall be from Time to Time fixed by the Lord High Treasurer of the United Kingdom of *Great Britain* and *Ireland*, or by the Commissioners of Her Majesty's Treasury of the said United Kingdom, or any Three or more of them, and such Salaries shall be payable out of the Fees receivable in the Office of Chancery, and form a Part of the incidental Expences of the said Office, and shall be stated and audited in the public Accounts of the Director and Clerks of Chancery.

Salary to be regulated by the Commissioners of the Treasury on Vacancy.

XXXIII. And be it enacted, That whenever any Vacancy shall occur in the Office of Sheriff of Chancery it shall be lawful for the Commissioners of Her Majesty's Treasury, or any Three or more of them, to regulate the Salary of the Sheriff of Chancery as the then Circumstances of the Office may require.

Compensation, how to

XXXIV. And be it enacted, That it shall be lawful for any Person who conceives that he is entitled to Compensation for Loss to be suffered

suffered through the Operation of this Act to make Application to the Lord High Treasurer, or to the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland* for the Time being, claiming such Compensation; and it shall be lawful for the said Lord High Treasurer or Commissioners of Her Majesty's Treasury to investigate such Claim, and call for such Evidence in relation thereto as he or they may think necessary; and upon such Claim being established to his or their Satisfaction the said Lord High Treasurer or Commissioners of Her Majesty's Treasury, or anyThree of them, is and are hereby authorized and empowered to award to such Person such Compensation as he or they shall think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper: Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Ten Days from the Date thereof, if Parliament shall be then sitting, and if not, then within Ten Days after the Commencement of the Session next ensuing, and no such Award shall be final and conclusive until Two Months after the same shall have been so laid before Parliament; provided also, that if any Person to whom Compensation shall be so awarded by way of Annuity shall be afterwards appointed to any other public Office, such Compensation shall be accounted *pro tanto* of the Salary payable to such Person in respect of such other Office while he shall continue to hold the same. be applied for.

XXXV. And be it enacted, That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen *Anne* were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland.* Compensation, how to be paid.

XXXVI. And be it enacted, That the following Words and Expressions in 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,) Interpretation of Act.

Words importing the Singular Number shall include the Plural Number, and Words importing the Plural shall include the Singular Number:

Words importing the Masculine Gender shall include Females:

The Word "Month" shall mean Calendar Month:

The Word "Lands" shall extend to and include Teinds, Fishings, Patronages, Houses, Lands, Tenements, and Heritages of every Description, and generally all Rights and Subjects which may competently be taken up by General or Special Service:

The Word "Sheriff" shall include Sheriff Substitutes and the Sheriff of Chancery appointed in virtue of this Act, and the Presenter of Signatures acting as his Substitute.

XXXVII. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament. Act may be amended, &c.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)

Form of Petition of General Service.

Unto the Honourable the Sheriff of [*specify the County, or say* "of Chancery,"] the Petition of *A.B.*, [*here name and design the Petitioner,*]

Humbly showeth,

That the late *C.D.* [*here name and design the Ancestor to whom Service is sought*] died on or about the Day of , and had, at the Time of his Death, his ordinary or principal Domicile in the County of [*or* furth of Scotland, *as the Case may be*].

That the Petitioner is the eldest Son and nearest lawful Heir [*or state what other Relationship or Character of Heir the Party bears, and if the Service is as Heir of Provision, say,* "nearest lawful Heir of Provision, under and by virtue of a Deed executed by *E.F.*, dated the Day of "] in General of the said *C.D.*

May it therefore please your Lordship to serve the Petitioner nearest and lawful Heir in General to the said *C.D.*, [*or whatever other Character of Heir is sought to be established here set it forth.*]

According to Justice, *&c.*

(*Signed by the Petitioner or his Mandatory.*)

SCHEDULE (B.)

Form of Petition of Special Service.

Unto the Honourable the Sheriff of [*specify the County, or say* "of Chancery,"] the Petition of *A.B.*, [*here name and design the Petitioner,*]

Humbly showeth,

That the late *C.D.* [*here name and design the Ancestor*] died on or about the Day of last, vest and seised in [*here describe the Lands or Subjects with reference to which the Service is sought*] conform to Charter, [*or* Disposition, *or* Precept of Clare constat, *or whatever else was the Deed on which the Ancestor's Infeftment proceeded here specify it,*] dated the Day of , and to Instrument of Sasine following thereon, recorded in the Register of Sasines, at the Day of .

That the Petitioner is the eldest Son and nearest lawful Heir [*or state what other Relationship or Character the Party bears, and if the Service*

Service is as Heir of Provision, say, " nearest lawful Heir of Provision," *or* " of Tailzie and Provision"] in Special of the said *C. D.* in the Lands and others foresaid.

(*If it is wished to embrace a Service in General where the Service in Special is as Heir of Line or Heir Male, say* " That the Petitioner is likewise Heir in General [*or* Heir Male in General] of the said *C.D.*," *and at the End of the Prayer add,* " and likewise as Heir in General [*or* Heir Male in General] of the said *C.D.*")

May it therefore please your Lordship to serve the Petitioner nearest and lawful Heir in Special of the said deceased *C.D.* in the Lands and others above described [*or whatever else is the Character of Heir sought to be established here set it forth as above*].

According to Justice, *&c.*

(*Signed by the Petitioner or his Mandatory.*)

Note.—When the Lands are held under a Deed of Entail, here add, " But always with and under the Conditions and Provisions, and prohibitory, irritant, and resolutive Clauses, contained in a Deed of Entail granted by G. H. [here name and design the Granter] on the Day of in favour of I. K. and the Heirs [here insert the whole Destination of the Entail], and which Conditions and Provisions, and Clauses prohibitory, irritant, and resolutive, are herein referred to, as at Length set forth in the said Deed of Entail, which is recorded in the Register of Entails on the Day of [or as at Length set forth in the above-mentioned registered Sasine in favour of the Deceased, or as at Length set forth in any other Instrument of Sasine duly registered," or, if the Petitioner prefer it, he may here fully insert them.] And where there are any Real Burdens, Restrictions, or Qualifications of any Kind, either proper to be inserted or referred to, insert them here, or refer to them as at Length set forth in the registered Sasine of the Deceased, or in some previous Instrument of Sasine duly registered.

When there is an Entail, say, at the End of the Prayer of the Petition, " But always under the Conditions, Provisions, Restrictions, Clauses prohibitory, irritant, and resolutive, and others above referred to or above written;" and where there are Real Burdens, &c., say, " But always with and under the Real Burdens, &c. above referred to or above written."

SCHEDULE (C.)

(1.)

Form of an Instrument of Sasine on an Extract Decree of Special Service.

At there was [*by or*] on behalf of *A.B.* [*here state the Heir's Name and Designation*] presented to me, Notary Public, subscribing an Extract Decree of Special Service obtained before the Sheriff of [*or* the Sheriff of Chancery], on the [*here insert the Date of the Decree*], whereby the said Sheriff found that the late *C.D.* [*here name and design the Ancestor*] died last vest and seised as of Fee in [*here describe the Lands or other Subjects*], and that the said *A.B.* is the nearest and lawful Heir in Special of the said deceased *C. D.* in the Lands and others aforesaid [*or whatever else is the Character of Heir mentioned in the Decree here set it forth; and if there is an Entail, &c., add the qualifying Words as in the Decree,*] and which Extract Decree of Special Service contains a Precept of Sasine in the following Terms, videlicet [*here insert the Precept*

Precept verbatim]. In virtue of which Precept I hereby give Sasine to the said *A.B.* of the Lands and others above described. In witness whereof I have subscribed these Presents, written on this and the preceding Pages by *E.F.*, my Clerk, before these Witnesses, the said *E.F.* and *G.H.* my Apprentice.

E.F., Witness.
G.H., Witness. (Signed) *L.K.*, Notary Public.

Note.—When the Lands are held under a Deed of Entail, or when there are Real Burdens, Restrictions, Reservations, or other Qualifications, insert or refer to them as in the Decree.

SCHEDULE (D.)

Forms for a General Service where it is to be limited in its Effects by a Specification annexed.

(1.)

The Petition will be in the Form of Schedule (A.), adding at the Close of the Statement of the Petitioner, "But the Petitioner desires that his General Service shall be limited to the Contents of the Specification annexed;" *and adding at the Close of the Prayer of Petition,* "but under Limitation as aforesaid to the Contents of the Specification annexed."

(2.)

Specification of the Lands and other Heritages which belonged to the deceased C.D. referred to in the Petition for General Service presented to the Sheriff of by A.B. as Heir of in General to the said deceased C.D.

[*Here insert a Description of the Lands and other Heritages intended to be included in the Service, distinguishing each separate Property or Heritage, if there are more than One, by a separate Number.*]

(*Signed by the Petitioner or his Mandatory.*)

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