

ANNO DECIMO & UNDECIMO

VICTORIÆ REGINÆ.

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CAP. XLIX.

An Act to facilitate the Transference of Lands and other Heritages in *Scotland* held in Burgage Tenure. [25th *June* 1847.]

WHEREAS it is expedient to facilitate the Transference of Lands and other Heritages in *Scotland* held by the Tenure of Burgage, and to render the same less expensive, and for that Purpose to amend the Law of *Scotland* relative thereto: 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 in all Dispositions and Conveyances, and other Deeds and Instruments necessary for the Transmission of Lands in *Scotland* held by the Tenure of Burgage, 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 infeft, a Procuratory of Resignation, a Clause of Obligation to free and relieve of Cess, Annuity, Ground Annual, and other public, parochial, and local 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 Conveyances of Burgage Property certain Clauses may be inserted in the Forms given in Schedule (A.)

in the Form, or as nearly as may be in the Form, set forth in Schedule (A.) hereunto annexed; and all or any of such Clauses, if so inserted in any such Disposition or Conveyance, or other Deed or Instrument, shall be as valid, effectual, and operative, to all Intents and Purposes, as if they had been expressed in the fuller Mode or Form now generally in Use.

Explanation of the Import of Clauses in Schedule (A.)

II. And be it enacted, That the Clause of Obligation to infeft expressed as in the Schedule (A.) hereunto annexed shall be held to imply an Obligation on the Disponer to infeft the Disponee, and his Heirs and Assignees, in the Lands or other Heritages conveyed upon their Expences, and that by Resignation, to be holden of Her Majesty in Free Burgage for Service of Burgh used and wont; and the Clause of Resignation shall in all respects be held and taken as equivalent to a Procuratory of Resignation in the Terms now in use in regard to Heritable Property held Burgage; and the Clause of Obligation to free and relieve from Cess, Annuity, Ground Annual, and other public and parochial Burdens shall, unless specially qualified, be held to import an Obligation to relieve of all Cess, Annuity, Ground Annual, and other public, parochial, and local Burdens exigible from or on account of the Subjects conveyed prior to the Date of Entry; and the Clause of Assignation of Rents, unless specially qualified, shall 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 import an Assignation to the Rents payable at the conventional Terms subsequent to the Date of Entry; and the Clause of Assignation to Writs and Evidents shall import an absolute and unconditional Assignation to such Writs and Evidents, and to all open Procuratories therein contained to which the Disponer has Right, unless specially qualified; and the Clause of Warrandice shall, unless specially qualified, be held and taken 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 Consent to Registration, unless specially qualified, shall import a Consent to Registration, and a Procuratory for Registration in the Books of Council and Session or other Judge's Books competent, therein to remain for Preservation, and if for Execution, that Letters of Horning and all other necessary Execution shall pass thereon upon a Charge of Six Days upon a Decree to be interponed thereto.

Conditions of Entail may be referred to as already in the Register of Entails or Register of Sasines.

III. And be it enacted, That in all Cases where Lands holden Burgage are or shall hereafter be held under a Deed of Entail, it shall be lawful and competent, in Dispositions and Conveyances of such Lands, and in Decrees of Adjudication, Instruments of Resignation and Sasine, and Instruments of Cognition and Sasine, and all other Deeds and Instruments of what Nature soever necessary to transmit, renew, or complete a Title under such Entail in such Lands, 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 in such Dispositions and Conveyances,

Conveyances, Decrees of Adjudication, Instruments of Resignation and Sasine, and Instruments of Cognition and Sasine, and other Deeds and Instruments aforesaid, specially referred to as set forth at full Length in the recorded Deed of Entail, if the same shall have been recorded in the Register of Tailzies, or if the same shall not have been recorded in such Register, then as set forth at full Length in any recorded Instrument of Resignation and Sasine, or of Cognition and Sasine, forming a Part of the Progress of Title Deeds of the said Lands under the said Entail, such Reference being made in the Terms, or as nearly as may be in the Terms, set forth in Schedule (B.) hereunto annexed; and the Reference thus made to such Conditions and Provisions, and prohibitory, irritant, and resolutive Clauses, shall be held as equivalent to the full Insertion thereof, and shall to all Intents and in all Questions whatsoever, 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 any Law or Practice to the contrary, or any Injunction to the contrary contained in such Deed of Entail, 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 any other Acts of Parliament now in force, all which are hereby repealed to the Extent of making this Enactment operative, but no further.

Real Burdens may be referred to as already in the Register of Sasines.

IV. And be it enacted, That in all Cases where Lands holden Burgage are or shall hereafter be 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 Dispositions and Conveyances of such Lands, Decrees of Adjudication, Instruments of Resignation and Sasine, Instruments of Cognition and Sasine, and other Deeds and Instruments of what Nature soever necessary to transmit, renew, or complete the feudal Title thereto, to omit the full Insertion of such Real Burdens or Conditions or Limitations, provided such Real Burdens or Conditions or Limitations shall, in such Dispositions and Conveyances, Decrees of Adjudication, Instruments of Resignation and Sasine, Instruments of Cognition and Sasine, and other Deeds or Instruments aforesaid, be specially referred to as set forth at full Length in the recorded Instrument of Resignation and Sasine in which the same were first inserted, or in any recorded Instrument of Resignation and Sasine, or of Cognition and Sasine, of subsequent Date, 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 (C.) 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 whatsoever, 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 of any Law or Practice to the contrary, and notwithstanding

withstanding of any Act or Acts of Parliament to the contrary, which are hereby repealed to the Effect of making this Enactment operative, but no further.

The Form in certain Cases of Sasines in Lands holden in Burgage to be as in Schedule (D.)

V. And whereas it is expedient to assimilate in certain Cases the Forms of Sasines in Lands holden in Burgage to those used in relation to Lands holden by the other Tenures; be it enacted, That from and after the Thirtieth Day of *September* next it shall no longer be necessary towards obtaining Infeftment in Lands holden in Burgage, upon a Disposition or other Deed of Conveyance, or upon a Decree of Adjudication or of Sale, that the Party or a Procurator for the Party obtaining Infeftment shall appear before the Provost, or some One of the Baillies of the Burgh in which such Lands are situated, and resign the same into his Hands as into the Hands of Her Majesty, and for such Provost or Baillie to give Sasine to such Party or Procurator, nor shall it be necessary to proceed to the Ground of the Lands, or to the Council Chamber of the Burgh, or to use any Symbol of Resignation or Sasine; and it shall be lawful and competent to resign and obtain Infeftment in such Lands by presenting to the Town Clerk of such Burgh, being a Notary Public, such Disposition or other Deed, or such Decree and other necessary Warrants, and by such Town Clerk giving Sasine therein by subscribing and recording an Instrument in the Form and Manner herein-after mentioned; and the Instrument of Sasine, or of Resignation and Sasine, following on such Disposition or other Deed or Decree, may be expressed in the Form, or as nearly as may be in the Form, of Schedule (D.) to this Act annexed, and shall be authenticated in the Manner shown in such Schedule; and such Sasine, or Resignation and Sasine, and such Instrument following thereon, shall be as valid and effectual as if the same had been made and received, and given and expressed, in the Mode and Form at present in use, and that notwithstanding of an Act of the *Scottish* Parliament passed in the Year One thousand five hundred and sixty-seven, or any other Act of Parliament now in force to the contrary, all which are hereby repealed to the Extent of making this Act operative, but no farther.

Instruments of Resignation and Sasine to be recorded.

VI. And be it enacted, That every such Instrument of Sasine, or of Resignation and Sasine, shall be recorded in manner heretofore in use with regard to Instruments of Resignation and Sasine in Burgage Property, and the Town Clerks of Cities and Burghs are hereby required to register the same accordingly; and such Instruments of Sasine, or of Resignation and Sasine, being so recorded, shall in all respects have the same Effect as if Resignation had been made and accepted, and Sasine had been given, and an Instrument of Sasine, or of Resignation and Sasine, duly recorded, according to the Law and Practice heretofore in use.

Instruments of Resignation or Sasine may be recorded during Life of the Party in whose

VII. And be it enacted, That every such Instrument of Sasine, or of Resignation and Sasine, may be competently and effectually recorded at any Time during the Life of the Party in whose Favour such Instrument has been expede, and the Date of Presentment and Entry set forth on any such Instrument by the Keeper of the Record shall be taken to be the Date of the Instrument of Sasine, or of Resignation

and Sasine, and Infeftment; and in case of any Error or Defect in any such Instrument it shall be competent of new to make and record an Instrument of Sasine, or of Resignation and Sasine, which shall have Effect from the Date of the recording thereof as if no previous Instrument or Instruments had been made or recorded.

Favour such Instruments have been expede.

VIII. And be it enacted, That it shall no longer be competent to use Letters of general Charge or special Charge, or general special Charge, but in an Action of Constitution of an Ancestor's Debt or Obligation against his unentered Heir the Citation on and Execution of the Summons in such Action shall be held to imply and be equivalent to a general Charge, the Induciæ of which shall expire with the Induciæ of such Summons, and shall infer the like Certification with such general Charge; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir according to the Law and Practice heretofore in use, which Decree shall be a valid Decree of Constitution; and in an Action of Adjudication against such Heir following on such Decree of Constitution, or in an Action of Adjudication against an unentered Heir for his own Debt or Obligation, the Citation on and Execution of the Summons of Adjudication shall be held to imply and be equivalent to a special Charge or general special Charge, as the Circumstances may require, the Induciæ of which Charge shall expire with the Induciæ of such Summons, and shall infer the like Certification with such special Charge or general special Charge, as the Case may be; and it shall thereafter be competent to adopt under such Summons the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of special Charge or general special Charge, as the Case may be, duly executed against such Heir according to the Law and Practice heretofore in use, which Decree shall be a valid Decree of Adjudication; and in an Action of Constitution and Adjudication combined in the same Summons against an unentered Heir it shall be competent to adopt the same Procedure in all respects, and to pronounce the same Decree, which would have been competent had such Summons been preceded by Letters of general Charge duly executed against such Heir according to the Law and Practice heretofore in use; and in such combined Action of Constitution and Adjudication it shall be competent to pronounce Decree of Constitution and Adjudication in one and the same Interlocutor, and to extract the same in one and the same Extract, which Decree shall be a valid Decree of Constitution and Adjudication, any thing in an Act of the Parliament of *Scotland* passed in the Year One thousand five hundred and forty, and in another Act of the Parliament of *Scotland* passed in the Year One thousand six hundred and twenty-one, or in any other Act or Acts of Parliament, or any Law or Practice, to the contrary notwithstanding, the said Acts being hereby repealed to the Extent of making these Enactments operative, but no further.

General and special and general special Charges to be no longer competent to be used.

Bill for Summonses of Adjudication, &c. dispensed with.

IX. And be it enacted, That it shall no longer be necessary that a Summons of Adjudication, or of Ranking and Sale, be preceded by a Bill, such Bill being hereby abolished.

Unnecessary to libel and conclude for Decree of special Adjudication.

X. And whereas it has been found 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; be it enacted, That it shall no longer 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, any thing in the said last-mentioned Act or in any other Act of Parliament to the contrary notwithstanding, the said last-mentioned Act and such other Acts being hereby repealed to the Effect of making this Enactment operative, but no further.

Court of Session may make Acts of Sederunt.

XI. And be it enacted, That it shall be lawful to the Court of Session to pass such Act or Acts of Sederunt as the Court may deem proper for carrying into effect the Purposes of this Act.

Interpretation of Act.

XII. And be it enacted, That in construing this Act, except where the Nature of the Provision or the Context of this Act shall be repugnant to such Construction, the Word "Disponer" shall extend to and include the Disponer's Heirs and Successors; and the Word "Lands" shall include all other Heritable Subjects; and all Words used in the Singular Number shall be held to include several Persons or Things, and Words in the Plural shall include the Singular Number; and all Words importing the Masculine Gender shall extend and be applied to Females as well as Males.

Act to take effect on 30th Sept. 1847.

XIII. And be it enacted, That this Act shall take effect from and after the Thirtieth Day of *September* One thousand eight hundred and forty-seven.

Act may be amended, &c.

XIV. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)

After the inductive and depositive Clauses the Deed may proceed thus:—With Entry at the Term of [*here specify the Date of Entry*]. And I oblige myself to infeft the said [*here insert the Name of the Disponee*] and his foresaids to be holden of Her Majesty in Free Burgage. And I hereby resign the said Lands and others in favour of the said [*here insert the Name of the Disponee*] and his foresaids for

for new Infeftment [*or* for new Liferent Infeftment, *or* for new Infeftment in Liferent and Fee respectively, *as the Case may be*]. And I bind myself to free and relieve the said [*here insert the Name of the Disponee*] of all Cess, Annuity, Ground Annual, and other public and parochial Burdens. And I assign the Rents of the said Lands. And I also assign the Writs and Evidents, and have delivered the same according to Inventory. And I grant Warrandice as accords. And I consent to the Registration hereof for Preservation [*or* for Preservation and Execution]. In witness whereof [*here insert a testing Clause in the usual Form*].

Note.—The Clauses are assumed here as occurring in a Disposition, but they may be used in other Deeds and Instruments; and in the event of its being necessary to omit, vary, or qualify any One or more of them, this may be done, and the other Clauses may be retained.

SCHEDULE (B.)

Instead of inserting the Conditions of Entail at Length, these may be referred to as follows; viz.—"But always with and under the Conditions, Provisions, Reservations, and Clauses, prohibitory, irritant, and resolutive, specified and contained in a Disposition and Deed of Entail [*or* "in the said Disposition and Deed of Entail," *if it has been previously referred to,*] of the said Lands and others made and executed by the deceased *E.F.* [*here mention the Granter of the Entail*], bearing Date the Day of in the Year and recorded in the Register of Tailzies on the Day of in the Year ," [*or* "in an Instrument of Sasine in the said Lands and others in favour of *G.H.*, dated and recorded in the Register of Sasines for the Burgh of the Day of in the Year ."]

And in any subsequent Clauses of the Deed, in which it is requisite or usual to refer again to the Conditions of the Entail, the Reference may be made thus:—"But always with and under the Conditions, Provisions, Reservations, and Clauses, prohibitory, irritant, and resolutive, before referred to."

SCHEDULE (C.)

Instead of inserting the Burdens, &c. at Length, these may be referred to as follows; viz.—"But always with and under the Burdens, Conditions, Provisions, Restrictions, Limitations, and Obligations [*or such of these as may apply to the Case*] specified and at more Length set forth in an Instrument of Sasine in the said Lands and others" [*here describe the Sasine in which the Burdens, &c. were first inserted, or any subsequent Sasine in which they are inserted, forming Part of the Progress of the Titles to the Lands, the Sasine being described by the Name of the Party in whose Favour it was passed, and the Date of Registration in the Burgh Register*].

And in any subsequent Clauses, in which it is requisite or usual to refer again to the Burdens, &c., the Reference may be made thus:—

"But

"But always with and under the Burdens, Conditions, Provisions, Restrictions, Limitations, and Obligations [*or such of them as may apply to the Case*] before referred to."

SCHEDULE (D.)

At there was by [*or* on behalf of] *A.B.* [*design the Disponee or other Person to whom Sasine is given*] presented to me, Notary Public and Town Clerk of the said Burgh subscribing, a Disposition [*or other Deed, or an Extract of a Deed, or any other Warrant, as the Case may be,*] granted by *C.D.* [*here design the Party Granter of the Deed*], and bearing Date the Day of [*here describe shortly any connecting Deed or Writ, or Extract thereof, in virtue of which Sasine is given*], by which Disposition the said *C.D.* sold, alienated, and disposed to the said *A.B.* [*or* to *E.F.*, *as the Case may be,*] and his Heirs and Assignees whomsoever, [*here insert the Destination, if any,*] heritably and irredeemably, [*or* redeemably, in Liferent, *or otherwise, as the Case may be,*] all and whole [*here insert the Description of the Subjects conveyed, and any Conditions, Burdens, or Qualifications, or Power of Redemption, or any Reference to the same, as in the Disposition, and if the Disposition by C.D. was not to A.B. himself, but is vested in him as Assignee, Heir, or Adjudger, or otherwise, in whole or in part, state shortly the successive Transferences, and the Way in which he has Right thereto*], which Disposition contains an Obligation to infeft the said *A.B.* [*or E.F., as the Case may be*], to be holden of Her Majesty in Free Burgage, and also contains Procuratory to make Resignation of the said Lands and others in favour of the said Disponee and his foresaids, for new Infeftment [*or* for new Liferent Infeftment, *or* for new Infeftment in Liferent and Fee respectively, *as the Case may be*]. In virtue of which Procuratory the said Lands and others were resigned, and in Terms of the said Disposition I hereby give Sasine to the said *A. B.* of all and whole the foresaid Lands and others [*if the Deed contains any Conditions, &c., or any Reference to the same as aforesaid, then add,* "but always under the Conditions, *&c.*, before specified" *or* "referred to," *as the Case may be*]. In witness whereof I have subscribed these Presents, written on this and the preceding Pages by *G. H.*, my Clerk, before these Witnesses, *I. K.* my Apprentice, and the said *G. H.*

(Motto.) *L. M.*, Notary Public.

G. H., Witness.
I. K., Witness.

Note.—The Notary will sign according to the present Practice, and the Witnesses will sign on the last Page only, and if the Instrument proceeds upon a Decree of Adjudication or of Sale the necessary Changes will be made on the above Form.

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