ANNO DECIMO & UNDECIMO

VICTORIÆ REGINÆ.

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C A P. L.

An Act to facilitate the Constitution and Transmission of Heritable Securities for Debt in *Scotland*, and to render the same more effectual for the Recovery of Debts. [25th *June* 1847.]

WHEREAS an Act was passed in the Eighth and Ninth Years of the Reign of Her present Majesty, intituled *An Act to facilitate the Transmission and Extinction of Heritable Securities for Debt in* Scotland, and it is expedient likewise to facilitate the Constitution of such Securities, and to render the same more effectual for the Recovery of Debt; be it therefore 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 Thirtieth Day of *September* One thousand eight hundred and forty-seven it shall be lawful for any Person entitled to grant Bond and Disposition in Security in favour of his Creditors to grant the same in the Form or as nearly as may be in the Form of Schedule (A.) hereunto annexed; and the Registration of such Bond and Disposition in Security in the General Register of Sasines, or Particular Register of Sasines, or Burgh Register of Sasines, as the Tenure of the Lands embraced in the Security may require,

8 & 9 Vict. c. 31.

After 30th Sept. 1847 Bonds and Dispositions in Security may be granted in the Form of Schedule (A.) to this Act, and re-

gistered in the Register of Sasines.

require, shall be as effectual and operative to all Intents and Purposes as if such Bond and Disposition in Security had contained, in the Case of Subjects held by the ordinary Tenures, an Obligation to infeft *a me vel de me*, Procuratory of Resignation, and Precept of Sasine, and in the Case of Burgage Subjects an Obligation to infeft *more Burgi*, and a Procuratory of Resignation, all in the Words and Form now in use, and as if Sasine, or Resignation and Sasine, as the Case may be, had been duly made, accepted, and given thereon in favour of the original Creditor, and an Instrument of Sasine, or of Resignation and Sasine, as the Case may be, had been duly recorded of the Date of the Registration of the said Bond and Disposition in Security as aforesaid.

Explanation of Clauses in Schedule (A.)

II. And be it enacted, That the Clause of Assignation of Rents to become due or payable shall be held to import an Assignation to Rents from and after the Term from which Interest on the Sum in the Bond commences to run in the fuller Form now generally in use, including therein a Power to the Creditor, on default in Payment, to enter into Possession of the Lands disponed in Security and uplift the Rents thereof, subject to accounting to the Debtor for any Balance of Rents actually recovered beyond what is necessary for Payment of the Creditor; and the Clause of Assignation of Writs shall be held to import an Assignation to Writs and Evidents to the same Effect as in the fuller Form now in use in a Bond and Disposition in Security with Power of Sale; 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 the Clause consenting to Registration for Preservation and Execution shall import a Consent to Registration and a Procuratory for Registration in the Books of Council and Session, or other Judge's Books competent for Preservation, and that Letters of Horning or Six Days Charge, and all other necessary Execution, may pass on a Decree to be interponed thereto; and the Clause consenting to Registration in the General or Particular or Burgh Register of Sasines shall entitle the Creditor to register the said Bond accordingly, either in the General Register of Sasines, or Particular Register of Sasines, or Burgh Register of Sasines, as the Tenure of the Lands embraced in the Security may require.

Clauses reserving Right of Redemption, and of Obligation to pay Expence of Assignation or Discharge and Power of Sale, valid, &c.

III. And be it enacted, That the Clauses reserving Right of Redemption, and obliging the Granter to pay the Expences of assigning or discharging the Security, and, on default in Payment, granting Power of Sale, 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 disponed should be redeemable by the Granter, his Heirs and Successors, from the Grantee and his Heirs and Successors, 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 Granter or his foresaids to the Grantee or his foresaids, personally or at their Dwelling Places, 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 them of the whole principal Sum payable under the Bond and Disposition in Security, Interest due thereon, and liquidated Expences and termly Failures corresponding thereto, if incurred, and in case of their Absence or Refusal to receive the same, by Consignation thereof, 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 or his foresaids, upon the Granter or his foresaids making Payment and redeeming as aforesaid, and also the recording thereof, should always be at the Expence of the Granter and his foresaids; and as if it had been thereby further provided and declared that if the Granter or his foresaids 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 Granter or his foresaids, whether of full Age or in Pupillarity or Minority, or although subject to any legal Incapacity, personally, or at their Dwelling Places if within *Scotland*, or if furth thereof at the Office of the Keeper of the Record of Edictal Citations above mentioned, by a Notary Public and Witnesses, then and in that Case it should be lawful to and in the Power of the Grantee or his foresaids, immediately after the Expiration 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 which, whether within or without the County, 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*, and also in any Newspaper published in such County, or if there be no Newspaper published in such County, then in any Newspaper published in the next or a neighbouring County, the Grantee being always bound, upon Payment of the Price, to hold count and reckoning with the Granter or his foresaids 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 Expences attending the Sale, and for that end to enter into Articles of Roup, grant Dispositions, containing all usual and necessary Clauses, and in particular a Clause binding the Granter of the said Bond and Disposition in Security, and his Heirs, in absolute Warrandice of such Dispositions, and obliging him and them 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 Granter could do himself; and as if it had been thereby further provided and declared that the said Proceedings should all be valid and effectual,

effectual whether the Debtor in the said Bond and Disposition in Security for the Time should be of full Age, or in Pupillarity or Minority, or although subject to any legal Incapacity, and that such Sale or Sales should be equally good to the Purchaser or Purchasers as if the Granter himself had made them, and also that in carrying such Sale or Sales into Execution, it should be lawful to the Grantee and his foresaids to prorogate and adjourn the Day of Sale from Time to Time as they should think proper, previous Advertisement of such Adjournment being given in the Newspapers above mentioned Once weekly for at least Three Weeks; and as if the Granter had bound and obliged himself and his foresaids 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 or Purchasers, their Heirs and Assignees, and to execute and deliver all other Deeds and Writings necessary for rendering their Rights complete.

Conditions of Granter's Title may be omitted, if referred to as set forth in a recorded Instrument of Sasine.

IV. And be it enacted, That in Bonds and Dispositions in Security to be granted in Terms of this Act it shall be lawful and competent, notwithstanding any Declaration to the contrary contained or to be contained in the Rights and Title Deeds of the Lands embraced by the Security, instead of inserting at full Length any Conditions, Reservations, Restrictions, and Provisions under which such Lands and other Heritages are held, to make Reference to the same as set forth at full Length in the recorded Instrument, whether of Sasine or Resignation *ad remanentiam*, in which the same were first inserted, or any other recorded Instrument of Sasine, forming a Part of the Investiture of the Granter of such Security in the said Lands, and which shall contain such Conditions, Reservations, Restrictions, and Provisions at full Length, such recorded Instrument being described by the Name of the Person in whose Favour the same was expede, the Register of Sasines in which the same is recorded, and the Date of recording the same; and such Reference shall be, to all Intents, and in all Questions whatever, whether with the original Disponer or the Superior, or any other Party, as valid and effectual as if the same had been inserted at Length exactly as they may be expressed in such Instrument referred to.

Bonds and Dispositions in Security, how to be registered in Register of Sasines.

V. And be it enacted, That Bonds and Dispositions in Security presented for Registration in the Register of Sasines in pursuance of this Act 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 re-delivered to the Parties, with Certificates of due Registration thereon, which shall be probative of such Registration, such Certificates specifying the Date of Presentation, and the Book and Folio in which the Ingrossment has been made, and being subscribed by the Keeper of the Register; and the Date of Entry in the Minute Book shall be held to be the Date of Registration; and Extracts of Writings registered in pursuance of this Act shall make faith in all Cases in like manner as the Writings registered, except where the Writings so registered are offered to be improven.

VI. And

Bonds and Dispositions in Security may be registered during Lifetime of Grantee, and Title completed after his Death.

VI. And be it enacted, That Bonds and Dispositions in Security to be granted as aforesaid may be registered in the 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 such Bond and Disposition in Security has not been so registered in the Lifetime of the Grantee, such Bond and Disposition shall be as full and sufficient Warrant of Sasine in favour of the Party having Right to the Bond by Service, Adjudication, or otherwise, as if it had been a Bond and Disposition including Precept of Sasine and other Clauses in the ordinary Form now in Use; and Infeftment being passed upon the same in the Form or as nearly as may be in the Form prescribed by an Act passed in the Session of Parliament holden in the Eighth and Ninth Years of the Reign of Her present Majesty, intituled *An Act to simplify the Form and diminish the Expence of obtaining Infeftment in Heritable Property in* Scotland, and duly recorded, shall be to all Intents and Purposes good and valid Infeftment in favour of the Party so infeft.

Sale carried through in Terms of this Act to be valid to the Purchaser.

VII. And be it enacted, That any Sale duly carried through in Terms of this Act shall be as valid and effectual to the Purchaser as if made by the Granter of the Security himself, and that whether the Granter shall have died before or after such Sale, and without the Necessity of Confirmation by him or his Heirs, and notwithstanding that the Party Debtor in the Security and in right of the Lands at the Time shall be in Pupillarity or Minority or subject to any legal Incapacity: Provided always, that nothing herein contained shall be held to affect or prejudice the Obligation of the Granter and his Heirs to execute, or the Right of the Creditor or Purchaser to require the Granter and his Heirs 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.

Creditors selling to count and reckon for the Surplus, of the Price and to consign the same into the Bank.

VIII. And be it enacted, That the Creditor, upon Receipt of the Price, shall be bound to hold count and reckoning therefor with the Debtor and postponed Creditor, if any such there be, and their Heirs and Assignees, or with any other Party having Interest, and to consign the Surplus which may remain after deducting the Debt secured, with the Interest due thereon and Penalties incurred, and whole Expences attending such Sale, and after paying all previous Incumbrances and the Expence 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.

On Sale and Consignation of Surplus, Lands to be disencumbered of the Security

IX. And be it enacted, That 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

and Diligence of the Seller, &c.

Security of such Creditor, as well as of the Security and Diligence of such Creditor himself.

The Act 8 & 9 Vict. c. 31., to apply to the Transmission and Extinction of Securities granted under this Act.

X. And be it enacted, That all the Provisions, Conditions, and Enactments contained in the said recited Act shall be held to apply to the Transmission and Extinction of Heritable Securities for Debt in *Scotland*, constituted in Terms of this Act: Provided always, that where, in the Assignations, Writs of Acknowledgment, Discharges, or other Instruments granted under the said recited Act, Reference is thereby directed to be made to the Instrument of Sasine on any Bond and Disposition in Security, it shall be sufficient, in the Case of a Bond and Disposition in Security granted under Authority of this Act, to make Reference to the Date of recording such Bond and Disposition in Security itself in the Register of Sasines.

Fees to be taken by existing Town Clerks of Royal Burghs and Keepers of Registers during their respective Rights of Office, &c.

XI. And be it enacted, That nothing herein contained shall be construed to prevent the existing Town Clerks of Royal Burghs in *Scotland*, during the Existence of their respective Rights of Office, from exacting and receiving the same Fees, in respect of recording Bonds and Dispositions in Security under this Act, as the same Town Clerks would before the passing of this Act have been legally entitled to exact or receive on their own Account, in respect of passing the Infeftments within Burgh and preparing and recording the Instruments of Sasine and Resignation on said Bonds and Dispositions in Security; provided always, that in computing the said Fees such Instruments of Sasine and Resignation shall not be computed as of greater Length than the Writings actually recorded whereby such Instruments of Sasine and Resignation have been rendered unnecessary; and all other Keepers of Registers of Sasine, during the Existence of their respective Rights of Office, or until otherwise regulated by Law, shall upon the Registration by them of such Bonds and Dispositions in Security, be entitled to the same Fees as such Keeper would have been entitled to upon the Registration of an Instrument of Sasine of the same Length in favour of the same Party in reference to the same Right, and to no other or further Fee whatever,

Court of Session may make Acts of Sederunt.

XII. And be it enacted, That it shall be lawful to the Court of Session to pass such Acts of Sederunt as the said Court may deem proper for regulating the Register of Sasines, and the Fees to be paid to the several Keepers thereof for Registrations in virtue of this Act, and generally for carrying out the Purposes of this Act.

Existing Forms of Security to be still competent.

XIII. And be it enacted, That nothing in this Act contained shall prevent the Establishment of Heritable Securities in the Forms in Use, or which might be competently used, at the passing of this Act.

Interpretation of Act.

XIV. 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 "Granter" shall extend to and include the Granter's Heirs, Successors, and Representatives; and the Word "Debtor" shall include the Debtor's Heirs, Successors, and Representatives; and the Word "Creditor" shall extend to and include

include the Party in whose Favour the Bond and Disposition in Security is granted, and his Heirs and Assignees, or other Party acquiring Right to such Security; 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 all Words importing the Masculine Gender shall extend and be applied to Females as well as Males.

XV. 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.

SCHE-

SCHEDULE to which the foregoing Act refers.

SCHEDULE (A.)

I *A. B.* [*here name and design the Granter*] grant me to have instantly borrowed and received from *C. D.* [*here name and design the Creditor*] the Sum of [*insert the Sum*] Sterling; which Sum I bind myself and my Heirs, Executors, and Representatives whomsoever, without the Necessity of discussing them in their Order, to repay to the said *C. D.* or his Heirs and Assignees whomsoever, at the Term of [*here insert the Date and Place of Payment*], with a Fifth Part more of liquidate Penalty in case of Failure, and the legal Interest of the said Principal Sum from the Date hereof to the said Term of Payment, and half-yearly termly and proportionally thereafter during the Not-payment of the same, and that at Two Terms in the Year, Whitsunday and Martinmas, by equal Portions, beginning the First Term's Payment of the said Interest at the Term of next to come, for the Interest due preceding that Date, and the next Term's Payment thereof at following, and so forth, half-yearly termly and proportionally thereafter during the Not-payment of the principal Sum, with a Fifth Part more of the Interest due at each Term of liquidate Penalty in case of Failure in the punctual Payment thereof. And in Security of the personal Obligation before written, I dispone to and in favour of the said *C. D.* and his foresaids, heritably, but redeemably as after mentioned, yet irredeemably in the event of a Sale by virtue hereof, all and whole [*here describe the Lands or other Heritages*] (*a*) and that in Real Security to the said *C. D.* and his foresaids of the whole Sums of Money above written, Principal, Interest, and Penalties. And I assign the Rents; and I assign the Writs; and I grant Warrandice; and I reserve Power of Redemption; and I oblige myself for the Expences of assigning and discharging this Security; and on default in Payment I grant Power of Sale; and I consent to Registration for Preservation and Execution, and also to Registration in the General or Particular [*or* Burgh, *as the Case may be*,] Register of Sasines. In witness whereof, &c. [*add a testing Clause*].

(*a*) *If the Lands are held under any Conditions, Reservations, Restrictions, and Provisions, say here,*—"But with and under the whole Conditions, Reservations, Restrictions, and Provisions specified and contained in an Instrument of Sasine, *or* 'Resignation ad remanentiam,' in the said Lands and others, in favour of *E. F.*, recorded in the [*here mention the Register in which the Instrument is recorded*], upon the Day of in the Year ."

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