

ANNO OCTAVO & NONO

VICTORIÆ REGINÆ.

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CAP. XXXI.

An Act to facilitate the Transmission and Extinction of Heritable Securities for Debt in *Scotland*. [30th *June* 1845.]

WHEREAS it is expedient to facilitate the Transmission and Extinction of Heritable Securities for Debt in *Scotland*: 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 where an Heritable Security has been constituted by Infeftment the Right of the Creditor therein may be transferred, either in whole or in part, by an Assignation or other Deed of Conveyance, in the Form or as nearly as may be in the Terms set forth in the Schedule (No. 1.) hereto annexed; and on such Assignation or Conveyance being recorded in the General Register of Sasines, or in the Particular Register or Burgh Register of Sasines applicable to the Lands contained in the Security, the said Heritable Security shall be transferred to the Assignee as effectually as if such Heritable Security had been disponed and assigned, and the Disposition and Assignation or Conveyance had been followed by Sasine duly recorded according to the present Law and Practice; and such Assignee or Disponee shall thereupon be held to be fully entered as if he had obtained a Renewal of the Investiture in his

Heritable Securities to be transferred in the Form prescribed.

When Conveyance of Heritable Security is contained in a general Deed of Conveyance, the whole of such Deed need not be recorded.

Favour, according to the Law and Practice in use before the passing of this Act: Provided always, that where the Assignation or Conveyance of an Heritable Security constituted as aforesaid is contained in a Deed of Conveyance granted for further Purposes and Objects, or conveying other Properties, such as a Marriage Contract, Deed of Trust or Settlement, it shall not be necessary to record the whole of such Deed, but it shall be sufficient to expede and to put upon record a notarial Instrument, setting forth generally the Nature of the Deed of Conveyance, and containing at length the Part of such Deed which relates to and conveys the Security in question.

Completion of Title of Heir by Writ of Acknowledgment from Proprietor.

II. And be it enacted, That upon the Death of any Creditor fully vested in right of an Heritable Security constituted as aforesaid, it shall be competent for his Heir to complete his Title thereto by a Writ of Acknowledgment to be granted in his Favour by the Person duly infeft, of whom such Security is held, in the Form and as nearly as may be in the Terms set forth in Schedule (No. 2.) hereto annexed; and on such Writ being registered in the General Register of Sasines, or the Particular or Burgh Register respectively as aforesaid, the Heir in whose Favour such Writ has been granted shall be vested with the full Right of the Creditor in such Security, and shall be held to be entered with the Superior in like Manner and to the same Effect as the Creditor himself.

Adjudgers to complete their Title by recording the Abbreviate of Adjudication.

III. And be it enacted, That where an Adjudication of any Heritable Security, vested as aforesaid, has been brought against the Creditor in such Security, or against the Heir of such Creditor, it shall be competent for the Adjudger to complete his Title thereto by recording, in the General or Particular or Burgh Registers of Sasines respectively as aforesaid, the Abbreviate of the Adjudication; which Registration shall have the same Effect as if the Adjudger had been entered and infeft on a Charter of Adjudication.

Heir or General Disponee may complete Title by notarial Instrument recorded.

IV. And be it enacted, That it shall be competent to the Heir duly served and retoured, or to the General Disponee of any Creditor, who was duly vested in an Heritable Security as above mentioned, to complete his Title to such Security without the Intervention of the Superior, by expeding and recording an Instrument under the Hands of a Notary Public, in the Form and as nearly as may be in the Terms set forth in Schedule (No. 3.) hereto annexed; and on such Instrument being registered in the General, Particular, or Burgh Registers respectively as above mentioned, such Heir or Disponee shall be taken to be vested with the full Right of the Creditor in such Security and to be entered with the Superior, in the same Manner and to the same Effect as the Creditor himself.

Assignations, Conveyances, &c. to be registered forthwith.

V. And be it enacted, That Assignations and Conveyances of Heritable Securities, Writs of Acknowledgment in favour of Heirs, or Instruments taken in favour of Heirs or Disponees, or Discharges of Heritable Securities, presented for Registration in pursuance of this Act, shall be forthwith shortly registered in the Minute Books of the Register of Sasines in common Form, and shall, with all due Despatch, be fully registered in the Register Books, and thereafter re-delivered

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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.

Assignations or Conveyances to be registered at any Time.

VI. And be it enacted, That Assignations or Conveyances of Heritable Securities, constituted as aforesaid, may be registered at any Time; and all such Writings shall in competition be preferable according to the Date of the Registration thereof.

In all Questions under the Bankrupt Acts in Scotland, the Dates of the Registration of Assignations, &c. to be held to be the Dates of the Instruments.

VII. And be it enacted, That in all Questions under an Act passed by the Parliament of *Scotland* in the Year One thousand six hundred and ninety-six, intituled *Act for declaring Nottour Bankrupt;* and under an Act passed in the Fifty-fourth Year of the Reign of His Majesty King *George* the Third, intituled *An Act for rendering the Payment of Creditors more equal and expeditious in* Scotland; and under an Act passed in the Session of Parliament held in the Second and Third Years of the Reign of Her present Majesty, intituled *An Act for regulating the Sequestration of the Estates of Bankrupts in* Scotland; the Date of the Registration of all Assignations, Conveyances, Writs of Acknowledgment, Instruments, Discharges, or other Deeds granted or taken in pursuance of this Act, shall be held to be the Date of such Assignations, Conveyances, Writs of Acknowledgment, Instruments, Discharges, and Deeds respectively, without Prejudice to their Validity or Invalidity in other respects.

How any Bond or Disposition in Security may be renounced or discharged.

VIII. And be it enacted, That any Bond and Disposition in Security, completed by Infeftment or other Heritable Security, may be effectually renounced and discharged, in whole or in part, by a Discharge in the Form or as nearly as may be in the Terms set forth in the Schedule (No. 4.) hereto annexed, and by the Registration of such Discharge in the General Register of Sasines or the Particular or Burgh Register of Sasines as aforesaid.

Parties may use the present Forms if they see fit.

IX. And be it enacted and declared, That nothing in this Act contained shall prevent the Transmission or Extinction of Heritable Securities in the Forms in use at the passing of this Act.

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

X. 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 the recording of Assignations or Conveyances of Heritable Securities, Abbreviates of Adjudication, Writs of Acknowledgment in favour of Heirs, or Instruments taken in favour of Heirs and Disponees 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

the Instruments of Sasine and Resignation rendered unnecessary by such Assignations, Conveyances, Writs of Acknowledgment, Instruments, or Abbreviates of Adjudication as aforesaid; 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 each Assignation, Conveyance, Writing of Acknowledgment, Abbreviate of Adjudication, or Instrument aforesaid, registered under the Provisions of this Act, 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.

Fees may be regulated by the Court of Session.

XI. And be it enacted and declared, That nothing in this Act contained shall prevent the Court of Session from passing such Acts of Sederunt as the said Court may deem proper for regulating the aforesaid Registers, and the Fees to be paid to the several Keepers thereof, and having regard to the Nature and Extent of the Interests of such Keepers.

Interpretation Clause.

XII. And be it enacted, That the following Words used in this Act and in the Schedules hereto annexed shall in the Construction thereof be interpreted as follows, except where the Nature of the Provision or the Context of the Act shall be repugnant to such Construction; (that is to say,) the Words "Notary Public" shall be held to mean a Notary Public in *Scotland* duly admitted and practising there; the Word "Creditor" shall extend to and include the Party in whose Favour the Heritable Security is granted, or who is in right thereof; the Word "Lands" shall include all Heritable Subjects or Real Estate over which the Security extends, and whereof Infeftment may be taken; every Word importing the Singular Number shall extend and be applied to several Persons as well as one Person, and every Word importing the Masculine Gender only shall extend and be applied to a Female as well as a Male.

"Notary Public:"

"Creditor:"

"Lands:"

Number:

Gender.

Commencement of Act.

XIII. And be it enacted, That this Act shall commence and take effect from and after the First Day of *October* in the present Year One thousand eight hundred and forty-five.

Act may be amended or repealed.

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

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SCHEDULES to which the foregoing Act refers.

SCHEDULE (No. 1.)

Form of Assignation of a Bond and Disposition in Security and Sasine thereon.

I *A.B.* [*Name and Designation of Cedent*], in consideration of the Sum of [*insert Sum*] now paid to me, do hereby assign, dispone, and convey to and in favour of *C.D.* [*Name and Designation of Assignee*], a Bond or Disposition in Security, dated the [*insert the Date*], for the Sum of [*insert Sum*], granted by *E.F.* (a) [*Name and Designation of Debtor*] in my Favour, with Interest from the [*insert Date*], and also all and whole [*describe the Lands*], (b) all as specified and described in the said Bond and Instrument of Sasine thereon, and registered in the [*here specify the Register of Sasines in which the Sasine is registered*], on the [*specify Date of Registration*]. In witness whereof, *&c.* [*Here insert a Testing Clause in legal Form.*]

G.H., Witness. (Signed) *C.D.*
I.K., Witness.

Note:—(a) If the Conveyance is granted not by the original Creditor in the Security, but by a Person to whom the Security has already been assigned, or in whom it has become vested by Succession or Diligence, the Conveyance will shortly narrate the Title or Series of Titles by which the Granter of the Conveyance has Right to it.

(b) Where the Assignation is made under any Qualification or Condition, such will be introduced after the Description of the Lands.

SCHEDULE (No. 2.)

Form of Writ of Acknowledgment by a Person infeft of Lands in favour of the Heir or Disponee of the Creditor.

I *A.B.* [*insert Name and Designation of Granter*] hereby acknowledge *C.D.* [*insert Name and Designation of Creditor*], being [*specify Relationship*], and thereby in right of a Bond and Disposition in Security, dated [*insert Date*], for the Sum of [*insert Sum*], granted by [*insert Name and Designation of Debtor*] in favour of [*insert Name and Designation of Creditor*], and Sasine thereon, registered in the [*specify the Register of Sasines in which the Sasine is registered*] on the [*specify Date of Registration*], over all and whole [*describe the Lands*]. In witness whereof, *&c.* [*Here insert a Testing Clause in legal Form.*]

E.F., Witness. (Signed) *A.B.*
G.H., Witness.

SCHEDULE (No. 3.)

Form of Instrument in favour of an Heir of a Creditor.

BE it known that, by Bond and Disposition in Security, dated the [*insert Date*], and Sasine thereon, registered in the [*specify Register of Sasines*] on the [*insert Date*], granted by *A. B.* in favour of *C. D.*, the said *A. B.* bound and obliged himself [*insert the personal Obligation and Disposition of the Lands in Security, with the Description of them contained in the Bond*], to which Bond and Disposition in Security, and Lands and others therein contained, and Sasine thereon, *E. F.* acquired Right by [general *or* special Service, *as the Case may be*], as [*specify Character in which Heir was served*] to the said *C. D.*, dated the [*insert Date of Service*], before the [*specify the Court before which the Heir has been served*], and duly retoured to Chancery [*if the Party be a Disponee, state the Date of the Disposition in his Favour*]. (a) Whereupon this Instrument is taken by the said *E. F.* in the Hands of *G. H.* [*Name and Designation of Notary Public*] in the Terms of the Act Victoria, intituled "An Act to facilitate the Transmission and Extinction of Heritable Securities for Debt in Scotland." In witness whereof [*here insert a Testing Clause in legal Form*].

J. K., Witness. (Signed) *G. H.*
L. M., Witness. Notary Public.

Note (a).—If the Person in whose Favour the Instrument is taken is not the Heir or Disponee of the original Creditor, but of one who has acquired Right to the Debt, here specify shortly the Title or Series of Titles by which the Ancestor of the Heir or Author of the Disponee acquired such Right.

SCHEDULE (No. 4.)

Form of Discharge of Bond and Disposition in Security.

I *A. B.*, in consideration of the Sum of [*specify Sum*] now paid to me by *C. D.*, do hereby discharge a Bond and Disposition, dated [*insert Date*], in security for the Sum of [*insert Sum*] granted by [*insert Name and Designation of Debtor*], in favour of [*specify Name and Designation of Grantee*], and of all Interest due thereon; (b) and I declare to be redeemed and disburdened thereof, and of the Infeftment following thereon, all and whole [*describe the Lands*], all as specified and described in the said Bond and Disposition in Security, and Instrument of Sasine thereon, as the same is registered in the [*specify the Register of Sasines in which the Sasine is registered*], on the [*specify Date of Registration*]. In witness whereof, *&c.* [*Here insert a Testing Clause in legal Form.*]

E. F., Witness. (Signed) *A. B.*
G. H, Witness.

Note (b).—If the Granter of the Discharge is not the original Creditor, but one who has acquired Right to the Debt, specify shortly, immediately before the Testing Clause of the Writing, the Title or Series of Titles by which the Granter acquired such Right.

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