ANNO QUARTO

GEORGII IV. REGIS.

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C A P. XCVII.

An Act for the Regulation of the Court of the Commissaries of *Edinburgh;* and for altering and regulating the Jurisdiction of Inferior Commissaries in *Scotland*. [19th *July* 1823.]

WHEREAS an Act was passed in the Forty-eighth Year of the Reign of His late Majesty King *George* the Third, intituled *An Act concerning the Administration of Justice in* Scotland, *and concerning Appeals to the House of Lords;* by which 48 G.3. c.151.
Act His said late Majesty was empowered to name and appoint, and pursuant to which His said late Majesty did name and appoint, by His Majesty's Royal Sign Manual, certain Persons to make Inquiries into the Form of Process before the Court of Session and the Inferior Courts, and to report upon various Matters therein particularly set forth: And whereas an Act was passed in the Forty-ninth Year of the Reign of His said late Majesty, intituled *An Act to give to the Persons named by His Majesty, pursuant to an Act passed in the last* 49 G.3. c.119.
Session of Parliament, intituled 'An Act concerning the Administration 'of Justice in Scotland, *and concerning Appeals to the House of Lords,' further Time for making their Report or Reports:* And whereas the Commissioners so appointed did make Reports to His said late Majesty, and the Two Houses of Parliament, relative to the Subject Matter upon which they were directed to report: And whereas, by a Warrant under the Sign Manual of His Royal Highness The Prince Regent, acting in the Name and on Behalf of His said late Majesty, dated the Eighth Day of *February* One thousand eight hundred and fifteen, other Commissioners were appointed for inquiring into the Duties, Salaries, and Emoluments of the several Officers, Clerks, and Ministers of Justice of the Courts of *Scotland*, and for reporting what

Regulations might be fit to establish respecting the same; which Commissioners have accordingly made several Reports, which have been laid before Parliament, and in which it is recommended that Provision should be established with respect to the granting Confirmations, which may prevent the just Rights of next of Kin and of Creditors from being defeated; that Quots or Compositions should be abolished; and that certain Regulations with respect to Fees and otherwise, should be made, in regard to the Court of the Commissaries of *Edinburgh*, and with respect to the Jurisdiction of inferior Commissary Courts: Be it therefore enacted by the King'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 First Day of *January* One thousand eight hundred and twenty-four, all Compositions in respect of Confirmation, and all Fees termed Consignation Fee and Sentence Money, shall be and the same are hereby from thenceforth abolished.

Compositions in respect of Confirmation, and Fees termed Consignation Fee, and Sentence Money, abolished.

Extracts of Decrees, as now practised, to cease.

II. And be it further enacted, That from and after the First Day of *January* One thousand eight hundred and twenty-four, Extracts of Decrees in the said Court of the Commissaries of *Edinburgh*, and Testaments Testamentor in the Manner now practised, shall cease and determine; and thereafter abridged Forms of Extracts, in the Manner herein-after provided, shall be adopted; save and except where a full Extract shall be required in the Manner now practised by any Party desiring the same.

Commissaries of Edinburgh to prepare Table of Fees, and to frame Forms for abridging of Extracts.

III. And be it further enacted, That as soon as conveniently may be after the passing of this Act, the Judges of the said Court of the Commissaries of *Edinburgh* shall and they are hereby directed and required to frame a proper and suitable Table of Fees, to be taken by the Clerks and Officers of the said Court, and the Practitioners before the same, for and in respect of Proceedings in such Court, in order to fix and ascertain the Emoluments and Charges which shall be justly exigible by such Clerks, Officers, and Practitioners; and also proper and suitable Forms for abridging the Forms of Extracts now in use in the said Court, as nearly as may be according to the Forms for Extracts prescribed by an Act passed in the Fiftieth Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for abridging the Form of extracting Decrees of the Court of Session in* Scotland, *and for the Regulation of certain Parts of the Proceedings of that Court;* and also to fix and ascertain the Fees to be paid for such Extracts to be included in the said Table of Fees, having regard to the Reports of the said Commissioners in that Behalf.

50 G. 3. c. 112.

Such Form and Table of Fees to be sanctioned by the Court of Session.

IV. Provided always, and be it enacted, That every such Form and Table of Fees, to be framed by the Judges of the said Court, pursuant to this Act, shall be presented by such Judges to the Lords of Council and Session, by whom the same shall be considered; and after due Deliberation and Conference, if necessary, with the said Judges, every such Form and Table of Fees shall, with or without Alteration, be adjusted and published by an Act of Sederunt of the Court of Session; and it shall be lawful for the said Lords to alter

any such Form and Table of Fees by a new Act or Acts of Sederunt, from Time to Time thereafter, as they shall see Cause: Provided always, that every such Act of Sederunt shall be reported to Parliament in manner herein-after directed.

Office of Principal Clerk to be abolished.

V. And be it further enacted, That from and after the First Day of *January* One thousand eight hundred and twenty-four, the Office of Principal Clerk of the said Court of the Commissaries of *Edinburgh* shall be, and the same is hereby from thenceforth abolished, and thenafter there shall only be Two Clerks of the said Court entitled to receive Fees; the one to be appointed by His Majesty, and who shall perform the Duties of his Office in Person; the other to be named by the Clerk so appointed, as his Deputy during his Pleasure, and for whom he shall be responsible.

Commissaries Clerks to discharge Duties in Person.

Sheriffdoms and Stewartries to become Commissariats.

VI. And be it further enacted, That from and after the said First Day of *January* One thousand eight hundred and twenty-four, the Boundaries of all inferior Commissariats, as they exist at present, shall cease and determine; and from thenceforth every Sheriffdom and Stewartry shall constitute a Commissariat, excepting always the Sheriffdoms of *Edinburgh*, *Haddington*, and *Linlithgow*, which Sheriffdoms shall be and remain the Commissariat of *Edinburgh*, as provided by this Act; and provided always, that where Two Counties shall be under the Jurisdiction of One Sheriff, such Two Counties shall constitute One Commissariat.

Small Debt Jurisdiction of Commissaries abolished.

VII. And be it further enacted, That from and after the said First Day of *January* One thousand eight hundred and twenty-four, the Jurisdiction now exercised by the Commissaries of *Edinburgh*, in Actions for the Recovery of Debts not exceeding Forty Pounds *Scots*, and all Prorogation of their Jurisdiction in any Action for the Recovery of Debt, shall be and the same is hereby declared to be from thenceforth abolished and prohibited; and no inferior Commissary, as established by this Act, shall possess or exercise any Jurisdiction in such Actions, or in any Cases to which the Jurisdiction of the Sheriff is now competent.

Inferior Commissaries as at present to cease, and Sheriffs to become Commissaries.

VIII. And be it further enacted, That from and after the said First Day of *January* One thousand eight hundred and twenty-four, the Persons then severally filling the Offices of inferior Commissaries shall cease to hold such Offices; and the Persons then filling the Offices of Sheriffs or Stewarts Depute shall respectively become Commissaries, each over the Commissariat comprehending the County or Stewartry or Counties of which such Persons shall respectively be Sheriffs or Stewarts Depute; and every such Person shall continue to hold the said Office of Commissary so long as he shall fill the said Office of Sheriff or Stewart Depute of such County or Stewartry, or Counties, and no longer; and every Person thereafter appointed to the Office of Sheriff or Stewart Depute shall, in consequence of such Appointment, become the Commissary of the Commissariat hereby established, over the County or Stewartry or Counties of which he is appointed the Sheriff or Stewart Depute, and be vested with all the Jurisdiction, Powers, and Privileges belonging to the said Office of Commissary

Commissary therein, and shall continue to hold and exercise the same so long as he shall fill the said Office of Sheriff or Stewart Depute, and no longer.

Proceedings of Sheriffs or Stewarts, as Commissaries, reviewable only by the Court of Session.

IX. And be it further enacted, That it shall not be lawful or competent for the Judges of the said Court of the Commissaries of *Edinburgh* to review the Proceedings of inferior Commissaries as established by this Act, but all such Proceedings shall be reviewable only by the Court of Session.

Sheriff Substitutes to be appointed Commissaries Depute.

X. And be it further enacted, That it shall and may be lawful for every Sheriff or Stewart Depute hereby appointed a Commissary, and his Successor in Office within his Sheriffdom or Stewartry, to name and appoint as his Deputy or Deputies the Person or Persons acting as Sheriff Substitute or Substitutes within such County, so long as any such Person or Persons shall continue so to act; and every such Commissary and Commissary Depute shall exercise within their several Commissariats, as hereby constituted, the Powers and Authorities exercised by the present Commissaries; save and except as is provided by this Act.

Provision as to depending Actions.

XI. And be it further enacted, That all Actions and Proceedings which shall be depending on the said First Day of *January* One thousand eight hundred and twenty-four, before any inferior Commissary, shall by virtue of this Act be transferred to the Commissary of the County or Stewartry wherein such Actions and Proceedings would have originated if this Act had been passed previous to the Commencement thereof; and such Actions and Proceedings shall thereupon be pursued and brought to a Conclusion before such Commissary, in the same Manner as if they had been brought or commenced before such Commissary in the first Instance; and as soon as conveniently may be after the said First Day of *January* One thousand eight hundred and twenty-four, the Processes in all such depending Actions and all such depending Proceedings shall be accordingly transmitted, together with an Inventory thereof made by the Commissary Clerk, to the Accuracy of which he shall make Oath, if required.

Records and Warrants of Decrees of inferior Commissaries to be transmitted to the General Register House.

XII. And be it further enacted, That as soon as conveniently may be after the said First Day of *January* One thousand eight hundred and twenty-four, all other Processes, Records, and Warrants of Decrees of inferior Commissaries, together with an Inventory thereof made by the Commissary Clerk, which he is hereby required to do, and to make Oath to the Accuracy thereof, if required, shall be transmitted to the General Register House at *Edinburgh*.

WhereCourts are at present held, the Clerk shall become the Commissary Clerk for the Commissariat hereby

XIII. And be it further enacted, That in Counties or Stewartries wherein a Commissary Court is at present held, the Clerk of such Court shall, after the said First Day of *January* One thousand eight hundred and twenty-four, become the Commissary Clerk for the Commissariat hereby established in such County or Stewartry, with Power to such Commissary Clerk to name a Deputy to act for him so long as he shall hold the said Office, and for whom he shall be responsible;

responsible; and in any County or Stewartry where more than one of such Courts is at present held, the Commissary Clerk whose Emoluments shall amount to the highest annual Sum, as set forth in the Report of the said Commissioners in that Behalf, herein-before recited, shall become the Commissary Clerk for the Commissariat hereby established in such County or Stewartry, with Power to name a Deputy as aforesaid. established, who may name his Deputy, &c.

XIV. And be it further enacted, That in all other Counties, as also in the Event of the Death, Resignation, or Removal of any such Commissary Clerk, who shall become the Commissary Clerk of a Commissariat, as immediately before directed, it shall and may be lawful for His Majesty, His Heirs and Successors, to appoint a proper Person to be Commissary Clerk; and every Person henceforth to be appointed a Commissary Clerk shall perform his Duty in Person. Provision as to other Commissary Clerks.

XV. And be it further enacted, That all Appointments and Nominations to any Office in any of the said Commissary Courts shall be made without receiving any Price, Gratuity, or valuable Consideration of any Kind. No Gratuity for any Appointment.

XVI. And be it further enacted, That as soon as conveniently may be after the passing of this Act, the Court of Session, at a Meeting specially called by the Lord President for this Purpose, shall and they are hereby directed and required to appoint, by a Commission duly executed by them, Five Sheriffs or Stewards Depute, for the Purpose of establishing Tables of Fees in the several inferior Commissary Courts as hereby established, in the Manner directed in the Case of the Court of the Commissaries of *Edinburgh*, regard being always had to the Reports of the said Commissioners herein-before recited in that Behalf. Judges of the Court of Session to appoint Commissioners to frame Regulations and a Table of Fees for Commissary Courts.

XVII. And be it further enacted, That the said Five Sheriffs or Stewarts so appointed shall and they are hereby authorized and required to frame proper and suitable Forms for abridging the Extracts of the Decrees of the said inferior Commissary Courts, as established by this Act, as nearly as may be according to the Forms for Extracts prescribed by the said Act passed in the Fiftieth Year of the Reign of His late Majesty King *George* the Third, intituled *An Act for abridging the Form of extracting Decrees of the Court of Session in* Scotland, *and for the Regulation of certain Parts of the Proceedings of that Court.* Provision as to abridged Extracts. 50 G. 3. c. 112.

XVIII. And be it further enacted, That a Report or Reports shall be made to the Court of Session by the said Five Sheriffs or Stewarts so appointed, as to the several Matters and Things upon which they are directed to report as aforesaid; and after such Reports shall have been so made, it shall and may be lawful for the said Court, if they think fit, to require Explanations or Information relative to any Part of such Report or Reports, and to have Conferences thereupon with all or any of the said Sheriffs and Stewarts so appointed; and after being well and ripely advised in that Behalf, it shall and may be lawful Form to be established by Act of Sederunt.

ful for the Court of Session to give effect to the same by any Act or Acts of Sederunt, to be observed in each of the said Commissary Courts established by this Act, and the several Persons holding Offices and discharging Duties therein, or practising before the same.

A Copy of every Act of Sederunt made under this Act to be laid before Parliament.

XIX. Provided always, and be it enacted, That a Copy of every such Act of Sederunt, and Table of Fees to which it may or shall refer, shall be transmitted by the Lord President of the Court of Session to His Majesty's Secretary of State for the Home Department, who shall cause a Copy thereof to be laid before each House of Parliament, at or immediately after the Commencement of the Session of Parliament next ensuing the passing of this Act; and every Fee sanctioned by such Act of Sederunt shall and may be demanded and taken from and after the said First Day of *January* One thousand eight hundred and twenty-four, and shall thereafter, according to the Terms of such Act of Sederunt, be and be deemed and taken to be a legal Fee, and payable and receivable as such in the Manner therein directed, unless altered by Parliament.

Further Power to establish Fees.

XX. And be it further enacted, That from Time to Time and in all Time hereafter, as often as it shall appear to be necessary, it shall and may be lawful for the Court of Session, at a Meeting to be called by the Lord President for that Purpose, to appoint, by a Commission duly executed by them, Five Sheriffs Depute, for the Purpose of considering any such Table of Fees theretofore established, in or for the inferior Commissary Courts hereby established, by which Five Sheriffs so to be from Time to Time appointed a Report or Reports shall be made to the Court of Session as herein-before directed; and after any such Report shall have been made, it shall and may be lawful for the said Court, if they think fit, to require Explanations or Information relative thereto as aforesaid, and to have Conferences thereupon with all or any of the said Sheriffs; and by Act or Acts of Sederunt to make and establish a further or other Table or Tables of Fees in and for the said inferior Commissary Courts, and the Officers and Practitioners therein: Provided always, that no Claim of Compensation shall arise or be allowed to any Clerk or Officer appointed after the passing of this Act, by reason of any such further Table of Fees; and provided also, that a Copy of every such Act of Sederunt, together with any Table of Fees to which it may refer, shall be transmitted by the Lord President of the Court of Session to His Majesty's Secretary of State for the Home Department, who shall cause a Copy thereof to be laid before each House of Parliament as herein-before directed; and after the Expiration of the Period herein-before limited, as the Case may be, every such Act of Sederunt and Table of Fees shall become in force; and thereafter, but not sooner, every such Fee shall, according to the Terms of such Act of Sederunt, be and be deemed and taken to be a legal Fee, and payable and receivable as such in the Manner therein directed.

Compensation to be made to Commissaries, &c.

XXI. And be it further enacted, That it shall and may be lawful for any Commissary, Commissary Clerk, or other Officer holding his Office at the passing of this Act, and entitled to Compensation for Loss to be suffered through the Operation and Effect of this Act, to make

make Application to the Barons of Exchequer in *Scotland*, who shall direct Intimation thereof to be given to His Majesty's Advocate, and thereafter the said Barons shall enquire into and consider the Circumstances of the Case, and after due Investigation of the Legality of the Claim, and of the Fees or Emoluments in respect whereof such Loss shall be stated to have arisen, and having regard to the Fees to which any such Person may become entitled pursuant to this Act, the said Barons shall award to every such Person such Compensation as they shall think such Person entitled to, either by the Payment of a gross Sum or by way of Annuity, as they shall think proper: Provided always, that every Order made for such Compensation shall be laid before Parliament within Two Calendar Months after the Commencement of the Session next ensuing after making the same: Provided further, that no Decision of the said Barons shall be final and conclusive, until Two Calendar Months after a Copy of the Order of such Barons for Compensation shall have been laid before Parliament.

Fund out of which Compensation shall be paid.

XXII. And be it further enacted, That any Sum of Compensation so to be awarded shall be paid and payable upon the Order of the said Barons, in such Manner and at such Time or Times as they shall direct, out of any Monies charged or made chargeable by Acts made in the Seventh and Tenth Years of the Reign of Her Majesty *Queen Anne*, with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer; and every Sum of Compensation to be paid shall be free and clear of all Taxes and Deductions whatsoever.

Salaries of Sheriffs to be paid without Deduction.

XXIII. And be it further enacted, That the respective Salaries of Sheriffs and Stewarts Depute and Substitute shall, after the passing of this Act, be paid to them free of all Taxes and Deductions whatsoever; any Law or Practice to the contrary notwithstanding.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN, Printers to the King's most Excellent Majesty. 1823.