ANNO VICESIMO PRIMO & VICESIMO SECUNDO

VICTORIÆ REGINÆ.

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C A P. LVI.

An Act to amend the Law relating to the Confirmation of Executors in *Scotland*, and to extend over all Parts of the United Kingdom the Effect of such Confirmation, and of Grants of Probate and Administration. [23d *July* 1858.]

WHEREAS it is expedient to amend the Law relating to the Confirmation of Executors in *Scotland*, and to extend over the United Kingdom the Effect of such Confirmation, and of Grants of Probate and Administration: 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, as follows:

Practice of raising Edicts of Executry to cease.

I. From and after the Twelfth Day of *November* One thousand eight hundred and fifty-eight, the Practice of raising Edicts of Executry before the Commissary Courts in *Scotland*, for the Decerniture of Executors to deceased Persons, shall cease, and it shall not be competent to any Person to obtain himself decerned Executor in virtue of any such Edict raised subsequently to the Date aforesaid.

Petition to Commissary to be substituted.

II. From and after the Date aforesaid every Person desirous of being decerned Executor of a deceased Person as Disponee, Next of Kin, Creditor, or in any other Character whatsoever now competent, or of having some other Person, possessed of such Character, decerned Executor to a deceased Person, shall, instead of applying, as heretofore, for an Edict of Executry from the Commissary, present a Petition to the Commissary for the Appointment of an Executor, which Petition shall be in the Form as nearly as may be of the Schedule (A.) hereunto annexed, and shall be subscribed by the Petitioner or by his Agent.

Form of Petition as in Schedule (A.)

To whom Petition to be presented.

III. Such Petition shall be presented to the Commissary of the County wherein the Deceased died domiciled, and in the Case of Persons dying domiciled furth of *Scotland*, or without any fixed or known Domicile, having Personal or Moveable Property in *Scotland*, to the Commissary of *Edinburgh*.

Mode of intimating Petition.

IV. Every such Petition, in place of being published at the Kirk-door and Market Cross, as Edicts of Executry have been in use to be published, shall be intimated by the Commissary Clerk affixing on the Door of the Commissary Court House, or in some conspicuous Place of the Court and of the Office of the Commissary Clerk, in such Manner as the Commissary may direct, a full Copy of the Petition, and by the Keeper of the Record of Edictal Citations at *Edinburgh* inserting in a Book, to be kept by him for that Purpose, the Names and Designations of the Petitioner and of the deceased Person, the Place and Date of his Death, and the Character in which the Petitioner seeks to be decerned Executor, which Particulars the Keeper of the Record of Edictal Citations shall cause to be printed and published weekly, along with the Abstracts of the Petitions for General and Special Services, in the Form of Schedule (B.) hereunto annexed; Provided always, that to enable the Keeper of the Record of Edictal Citations to make such Publication, the Commissary Clerk shall transmit to him the said Particulars, and to enable the Commissary Clerk to grant the Certificate after mentioned, the Keeper of the Record of Edictal Citations shall transmit to the Commissary Clerk a Copy, certified by the said Keeper, of the printed and published Particulars, all in such Form and Manner and on Payment of such Fees as the Court of Session by Act of Sederunt may direct.

Certificate of Intimation of Petition.

V. The Commissary Clerk, after receiving the certified Copy of the printed and published Particulars, shall forthwith certify on the Petition that the same has been intimated and published, in Terms of the Provisions of this Act, in the Form of Schedule (C.) hereunto annexed, and such Certificate shall be sufficient Evidence of the Facts

Facts therein set forth: Provided always, that where a Second Petition for Confirmation is presented in reference to the same Personal Estate, the Commissary shall direct Intimation of such Petition to be made to the Party who presented the First Petition. Additional Intimation of Petition in certain Cases.

VI. On the Expiration of Nine Days after the Commissary Clerk shall have certified the Intimation and Publication of a Petition for the Appointment of an Executor as aforesaid, the same may be called in Court, and an Executor decerned, or other Procedure may take place, according to the Forms now in use in case of Edicts of Executry, and with the like Force and Effect; and Decree Dative may be extracted on the Expiration of Three lawful Days after it has been pronounced, but not sooner: Provided always, that nothing herein contained shall alter or affect the Law as to Executors finding Caution; and that Bonds of Caution for Executors may be partly printed and partly written. Procedure on Petition. Decree Dative. Proviso as to Caution.

VII. Provided always, That nothing herein-before contained shall alter or affect the Course of Procedure now in use before the Commissaries in Confirmations of Executors Nominate. Not to affect present Procedure.

VIII. Inventories of Personal Estates of deceased Persons and relative Testamentary Writings may be given up and recorded in, and Confirmations may be granted and issued by, any Commissary Court to which it is competent to apply in virtue of the Provisions of this Act for the Appointment of an Executor Dative to the Deceased. Where Inventories, &c. may be recorded. Confirmations may be granted.

IX. From and after the Date aforesaid it shall be competent to include in the Inventory of the Personal Estate and Effects of any Person who shall have died domiciled in *Scotland* any Personal Estate or Effects of the Deceased situated in *England* or in *Ireland*, or both: Provided that the Person applying for Confirmation shall satisfy the Commissary, and that the Commissary shall by his Interlocutor find that the Deceased died domiciled in *Scotland*, which Interlocutor shall be conclusive Evidence of the Fact of Domicile: Provided also, that the Value of such Personal Estate and Effects situated in *England* or *Ireland* respectively shall be separately stated in such Inventory, and such Inventory shall be impressed with a Stamp corresponding to the entire Value of the Estate and Effects included therein, wheresoever situated within the United Kingdom. Inventory may include Personal Estate in any Part of United Kingdom.

X. Confirmations shall be in the Form, or as nearly as may be in the Form, of Schedules (D.) and (E.) hereunto annexed; and such Confirmations shall have the same Force and Effect with the like Writs framed Form and Effect of Confirmations.

framed in Terms of the Acts of Sederunt passed on the Twentieth *December* One thousand eight hundred and twenty-three and the Twenty-fifth *February* One thousand eight hundred and twenty-four, or at present in use.

Oaths, before whom to be taken.

XI. Oaths and Affirmations on Inventories of Personal Estates given up to be recorded in any Commissary Court may be taken either before the Commissary or his Depute, or the Commissary Clerk or his Depute, or before any Commissioner appointed by the Commissary, or before any Magistrate or Justice of the Peace within the United Kingdom or the Colonies, or any *British* Consul.

Confirmation produced in Probate Court of England, and sealed, to have the Effect of Probate or Administration.

XII. From and after the Date aforesaid, when any Confirmation of the Executor of a Person who shall in manner aforesaid be found to have died domiciled in *Scotland*, which includes, besides the Personal Estate situated in *Scotland*, also Personal Estate situated in *England*, shall be produced in the Principal Court of Probate in *England*, and a Copy thereof deposited with the Registrar, together with a certified Copy of the Interlocutor of the Commissary finding that such deceased Person died domiciled in *Scotland*, such Confirmation shall be sealed with the Seal of the said Court, and returned to the Person producing the same, and shall thereafter have the like Force and Effect in *England* as if a Probate or Letters of Administration, as the Case may be, had been granted by the said Court of Probate.

Confirmation produced in Probate Court of Dublin, and sealed, to have the Effect of Probate or Administration.

XIII. From and after the Date aforesaid, where any Confirmation of the Executor of a Person who shall so be found to have died domiciled in *Scotland*, which includes, besides the Personal Estate situated in *Scotland*, also Personal Estate situated in *Ireland*, shall be produced in the Court of Probate in *Dublin*, and a Copy thereof deposited with the Registrar, together with a certified Copy of the Interlocutor of the Commissary finding that such deceased Person died domiciled in *Scotland*, such Confirmation shall be sealed with the Seal of the said Court, and returned to the Person producing the same, and shall thereafter have the like Force and Effect in *Ireland* as if a Probate or Letters of Administration, as the Case may be, had been granted by the said Court of Probate in *Dublin*.

Probate or Letters of Administration produced in Commissary Court and certified, to have Effect of Confirmation.

XIV. From and after the Date aforesaid, when any Probate or Letters of Administration to be granted by the Court of Probate in *England* to the Executor or Administrator of a Person who shall be therein, or by any Note or Memorandum written thereon signed by the proper Officer, stated to have died domiciled in *England*, or by the Court of Probate in *Ireland* to the Executor or Administrator of

of a Person who shall in like Manner be stated to have died domiciled in *Ireland*, shall be produced in the Commissary Court of the County of *Edinburgh*, and a Copy thereof deposited with the Commissary Clerk of the said Court; the Commissary Clerk shall endorse or write on the Back or Face of such Grant a Certificate in the Form as near as may be of the Schedule (F.) hereunto annexed; and such Probate or Letters of Administration, being duly stamped, shall be of the like Force and Effect and have the same Operation in *Scotland* as if a Confirmation had been granted by the said Court.

For securing the Stamp Duties, Probates, &c. to be deemed granted for all the Property in the United Kingdom.

XV. In any of the aforesaid Cases where the deceased Person shall be stated in or upon the Probate or Letters of Administration to have been domiciled in *England* or in *Ireland*, as the Case may be, such Probate or Letters of Administration shall, for the Purpose of securing the Payment of the full and proper Stamp Duties, be deemed and considered to be granted for and in respect of the whole of the Personal and Moveable Estate and Effects of the Deceased in the United Kingdom, within the Meaning of the Act of Parliament passed in the Fifty-fifth Year of the Reign of King *George* the Third, Chapter One hundred and eighty-four, and of all other Acts of Parliament granting or relating to Stamp Duties on Probates and Letters of Administration in *England* and *Ireland* respectively; and the Affidavit required by Law to be made on applying for Probate or Letters of Administration in *England* or *Ireland* as to the Value of the Estate and Effects of the Deceased; and also where the Commissary shall in manner aforesaid find that the Deceased was domiciled in *Scotland*, the Inventory required by Law to be exhibited and recorded in the proper Commissary Court in *Scotland* before obtaining Confirmation, or intermitting with or entering upon the Possession or Management of the Personal or Moveable Estate or Effects of the Deceased in *Scotland*, shall respectively extend to and include the whole of the Personal and Moveable Estate of the deceased Person in the United Kingdom, and the Value thereof; and the Stamp Duties for the Time being chargeable on Probates and Letters of Administration and on Inventories respectively shall be chargeable upon any Probate or Letters of Administration to be granted, and any Inventory to be exhibited and recorded as aforesaid respectively, for and in respect of the whole of the Personal and Moveable Estate and Effects of the Deceased in the United Kingdom and the Value thereof; and the said Affidavit shall also separately specify the Value of the said Estate and Effects in *Scotland*.

Inventory to include all such Property.

Provisions of former Acts to apply to the Probates,

XVI. For the Purpose aforesaid, and also for granting Relief where too high a Stamp Duty shall have been paid on any such Probate or Letters of Administration, or Inventory, the Provisions contained

Letters of Administration, and Inventories mentioned in this Act.

contained in Sections Forty, Forty-one, Forty-two, and Forty-three, of the said Act passed in the Fifty-fifth Year of His Majesty King *George* the Third, relating to Probates and Letters of Administration granted in *England*, and the like Provisions in the Act passed in the Fifty-sixth Year of the said King, Chapter Fifty-six, relating to Probates and Letters of Administration granted in *Ireland*, and the Provisions contained in the Act passed in the Forty-eighth Year of the said King, Chapter One hundred and forty-nine, relating to Inventories in *Scotland*, and also all other Provisions contained in the said Acts respectively, or in any other Act or Acts relating to Probates and Letters of Administration and Inventories respectively, shall apply to the Probates and Letters of Administration to which effect is given by this Act, and to the whole of the Personal and Moveable Estate of the Deceased for or in respect of which the same shall, in pursuance of this Act, be deemed to be granted, wheresoever situate in the United Kingdom; and also to the Inventories in which the whole of the Personal and Moveable Estate of the Deceased, wheresoever situate in the United Kingdom, ought, in pursuance of this Act, to be included, in as full and ample a Manner as if all such Provisions were herein enacted in reference to such Probates, Letters of Administration, and Inventories respectively.

Affidavit as to Domicile to be made on applying for Probate or Administration.

XVII. Provided, That in any Case where, on applying for Probate or Letters of Administration, it shall be required to be stated as aforesaid that the Deceased was domiciled in *England* or in *Ireland*, the Affidavit so as aforesaid required by Law shall specify the Fact according to the Deponent's Belief, which shall be sufficient to authorize the same to be so stated in or upon the Probate or Letters of Administration; Provided also, that any such Statement, and the Interlocutor of the Commissary finding that the Deceased was domiciled in *Scotland*, shall be Evidence, and have effect for the Purposes of this Act only.

Acts of Sederunt to be passed for following out Purposes of this Act.

XVIII. It shall be competent to the Court of Session, and they are hereby authorized and required, from Time to Time, to pass such Acts of Sederunt as shall be necessary and proper for regulating in all respects the Proceedings under this Act before the Commissary of *Edinburgh* and other Commissaries in *Scotland*, and following out the Purposes of this Act, and also the Fees to be paid to Agents before the said Courts, and to the Commissary Clerks and other Officers of Court, and the Expense of Publication of Petitions.

Former Acts of Sederunt repealed if

XIX. All former Acts, and Acts of Sederunt made in virtue thereof, so far as inconsistent with the present Act, are hereby repealed; and

and this Act may be amended or repealed by any Act to be passed during the present Session of Parliament, and may be cited as the "Confirmation and Probate Act, 1858." inconsistent with this Act.

XX. The Word "Commissary" shall include Commissary Depute, and the Term "Commissary Clerk" shall include Commissary Clerk Depute. Interpretation of Terms.

SCHE-

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)

Form of a Petition for Appointment of an Executor to a deceased Person.

Unto the Honourable the Commissary of [*specify the County*], the Petition of *A.B.* [*here name and design the Petitioner*];

Humbly sheweth,

That the late *C.D.* [*here name and design the deceased Person to whom an Executor is sought to be appointed*] died at [*specify Place*] on or about the [*specify Date*], and had at the Time of his Death his ordinary or principal Domicile in the County of [*specify County, or* "furth of Scotland," *or* "without any fixed Domicile," or "without any known Domicile," *as the Case may be*].

That the Petitioner is the only Son and Next of Kin [*or state what other Relationship, Character, or Title the Petitioner has, giving him Right to apply for the Appointment of Executor*].

May it therefore please your Lordship to decern the Petitioner Executor Dative quâ Next of Kin to the said *C.D.* [*or state the other Character in which the Petitioner claims to be appointed Executor*].

According to Justice, &c.

[*Signed by the Petitioner or his Agent.*]

SCHEDULE (B.)

Roll of Petitions for the Appointment of Executors in Commissary Courts in Scotland.

County.	Name and Designation of Petitioner.	Title of Petitioner.	Name and Designation of Defunct.	Place and Date of Death.
Edinburgh.	*A.B.*, Writer in Edinburgh.	Next of Kin.	*C..D*, Merchant in Edinburgh.	No. George St., Edinburgh, 1st January 1857.

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SCHEDULE (C.)

Form of Certificate by Commissary Clerk of Publication of a Petition for the Appointment of an Executor.

I, *A.B.*, Commissary Clerk [*or* "Commissary Clerk Depute," *as the Case may be,*] of the County of [*specify County*], hereby certify that this Petition was intimated by affixing a Copy thereof on the Door of the Court-house [*if some other Place has been directed by the Commissary, specify it*], on the [*specify Date*], and by being published by the Keeper of the Record of Edictal Citations at Edinburgh, in the printed Roll of Petitions for the Appointment of Executors in the Commissary Courts of Scotland, printed and published on [*specify Date*].

A.B.

SCHEDULE (D.)

Form of a Testament Dative or Confirmation of the Executor of a Person who has died without naming one.

I, *A.B.*, Commissary of the County of [*specify County*], considering that by my Decree, dated [*specify Date*], I decerned *C.D.* Executor Dative quâ Next of Kin [*or other Character, as the Case may be,*] of the late *E.F.*, who died at [*specify Place*], on [*specify Date*], and seeing that the said *C.D.* has since given up on Oath an Inventory of the Personal Estate and Effects of the said *E.F.* at the Time of his Death situated in Scotland, [*or* situated in Scotland and England, *or* in Scotland and Ireland, *or* in Scotland, England, and Ireland, *as the Case may be,*] amounting in Value to
Pounds, which Inventory has been recorded in my Court Books, of Date [*specify Date*], and that he has likewise found Caution for his Acts and Intromissions as Executor: Therefore I, in Her Majesty's Name and Authority, make, constitute, ordain, and confirm the said *C.D.* Executor Dative quâ [*specify Character*] to the Defunct, with full Power to him to uplift, receive, administer, and dispose of the said Personal Estate and Effects, and grant Discharges thereof, if needful to pursue therefor, and generally every other Thing concerning the same to do that to the Office of Executor Dative quâ [*specify Character*] is known to belong; providing always, that he shall render just Count and Reckoning for his Intromissions therewith when and where the same shall be legally required.

Given under the Seal of Office of the Commissariot [*specify County*], and signed by the Clerk of Court at [*specify Place*], the [*specify Date*].

To be signed by the Commissary Clerk or his Depute, and sealed with the Seal of Office.

SCHEDULE (E.)

Form of a Testament Testamentar or Confirmation of an Executor Nominate.

I, *A.B.*, Commissary of the County of [*specify County*], considering that the late *C.D.* died at [*specify Place*], upon [*specify Date*], and that by his last Will [*or other Writing containing the Nomination of Executor*], dated [*specify Date*], and recorded in my Court Books upon [*specify Date*], the said *C.D.* nominated and appointed *E.F.* to be his Executor, and that the said *E.F.* has given up on Oath an Inventory of the Personal Estate and Effects of the said *C.D.* at the Time of his Death situated in Scotland, [*or* situated in Scotland and England, *or* situated in Scotland and Ireland, *or* situated in Scotland, England, and Ireland, *as the Case may be*,] amounting in Value to Pounds, which Inventory has likewise been recorded in my Court Books of Date [*specify Date*]: Therefore I, in Her Majesty's Name and Authority, ratify, approve, and confirm the Nomination of Executor contained in the foresaid last Will [*or other Writing containing the Nomination of Executor*]; and I give and commit to the said *E.F.* full Power to uplift, receive, administer, and dispose of the said Personal Estate and Effects, grant Discharges thereof, if needful to pursue therefor, and generally every other Thing concerning the same to do that to the Office of an Executor Nominate is known to belong; providing always, that he shall render just Count and Reckoning for his Intromissions therewith when and where the same shall be legally required.

Given under the Seal of Office of the Commissariot of [*specify County*], and signed by the Clerk of Court at [*specify Place*], the [*specify Date*].

To be signed by the Commissary Clerk or his Depute, and sealed with the Seal of Office.

SCHEDULE (F.)

I, *A.B.*, Commissary Clerk [*or* Commissary Clerk Depute] of the County of Edinburgh, hereby certify that this Grant of Probate has [*or* these Letters of Administration have] been produced in the Commissary Court of the said County, and that a Copy thereof has been deposited with me.

LONDON:
Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1858.