CHAPTER 40.

An Act to amend the Law regarding the Circuit Clerks of Justiciary in Scotland. [12th August 1898.]

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:

Repeal of 50 & 51 Vict. c. 35. s. 73; and of 52 & 53 Vict. c. 54. s. 10.

1. Section seventy-three of the Criminal Procedure (Scotland) Act, 1887, and section ten of the Clerks of Session (Scotland) Regulation Act, 1889, are hereby repealed.

Arrangement for clerks on circuit.

2. The duties of clerk of the High Court of Justiciary when sitting elsewhere than in Edinburgh shall be performed by the existing circuit clerk of Justiciary, and by the first and second assistant clerks of Justiciary for the time being, on such terms (as regards the first and second assistant clerks of Justiciary) as shall be fixed by the Treasury.

Provisions on vacation of office by circuit clerk of Justiciary.

3. When the existing circuit clerk of Justiciary vacates office, the vacancy thus occasioned shall not be filled up, and the duties of clerk referred to in the immediately preceding section shall be performed by the first and second assistant clerks of Justiciary for the time being: Provided always that it shall be in the power of the High Court of Justiciary on the application of the principal clerk of Justiciary to appoint a clerk or clerks to perform the said duties of clerk at any town or towns, whether circuit towns or not, when the business of the court requires such appointment to be made, and these duties shall be performed on such terms as shall be fixed by the Treasury.

Short title.

4. This Act may be cited as the Circuit Clerks (Scotland) Act, 1898.

CHAPTER 41.

An Act to amend the Prisons Acts. [12th August 1898.]

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:

Amalgamation of directors of convict prisons with Prison Commissioners. 40 & 41 Vict. c. 21.

1. The Prison Commissioners shall be by virtue of their office directors of convict prisons, and they shall be assisted in the performance of their duties as such by the inspectors and other officers appointed under section seven of the Prison Act, 1877.

Prison rules.

2.—(1.) The Secretary of State may make rules (in this Act called prison rules) for the government of local prisons and convict prisons, and may thereby regulate, among other things,—

(*a*) any matter dealt with by the regulations in Schedule I. to the Prison Act, 1865; and 28 & 29 Vict. c. 126.

(*b*) any matter which under this Act may be regulated by prison rules.

(2.) Rules under this Act and the Prison Acts, 1865 to 1893, shall not be made until a draft thereof has lain before each House of Parliament for not less than thirty days during which that House is sitting, and if either House, before the expiration of that period, presents an address to Her Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, but without prejudice to the making of any new draft rules.

(3.) The date at which any rules made under this Act and the Prison Acts, 1865 to 1893, come into force shall be notified in the London Gazette.

Boards of visitors for convict prisons.

3. The Secretary of State shall appoint for every convict prison a board of visitors of whom not less than two shall be justices of the peace, with such powers and duties as may be prescribed by prison rules.

Hard labour.

4.—(1.) The mode in which sentences of penal servitude or imprisonment with or without hard labour are to be carried out in prisons may be regulated by prison rules.

(2.) In making such rules, regard shall be had to the sex, age, health, industry, and conduct of the prisoners.

Restrictions on corporal punishment for prison offences.

5.—(1.) Prison rules shall not authorise the infliction of corporal punishment—

(*a*) except in the case of a prisoner under sentence of penal servitude, or convicted of felony, or sentenced to hard labour; nor

(*b*) except for mutiny or incitement to mutiny, or gross personal violence to an officer or servant of the prison; nor

(*c*) except by order of the board of visitors or visiting committee of the prison, after inquiry on oath held by them at a meeting specially summoned for the purpose, and consisting of not less than three persons, two of them being justices of the peace: Provided that the Secretary of State may, if he thinks fit, appoint a metropolitan police magistrate or stipendiary magistrate to take the place of the board or committee, and the magistrate shall in any such case have the same powers as the board or committee.

(2.) An order under this section shall not be carried into effect until it has been confirmed by the Secretary of State, to whom a copy of the notes of evidence and a report of the sentence and of the grounds on which it was passed shall forthwith be furnished.

Such report shall be embodied in the annual report of the Prisons Commissioners.

Divisions of prisoners.

6.—(1.) Prisoners convicted of offences, either on indictment or otherwise, and not sentenced to penal servitude or hard labour, shall be divided into three divisions.

(2.) Where a person is convicted by any court of an offence, and is sentenced to imprisonment without hard labour, the court may, if it thinks fit, having regard to the nature of the offence and the antecedents of the offender, direct that he be treated as an offender of the first division or as an offender of the second division. If no direction is given by the court, the offender shall, subject to the provisions of this section, be treated as an offender of the third division.

(3.) Any person imprisoned for default in payment of a debt, including a civil debt recoverable summarily, or in default or in lieu of distress to satisfy a sum of money adjudged to be paid by order of a court of summary jurisdiction, when the imprisonment is to be without hard labour, shall be placed in a separate division and treated under special prison rules, and shall not be placed in association with criminal prisoners, nor be compelled to wear prison dress unless his own clothing is unfit for use.

(4.) Any person imprisoned for default of entering into a recognizance or finding sureties for keeping the peace, or for being of good behaviour, shall be treated under the same rules as an offender of the second division, unless he is a convicted prisoner, or unless the court direct that he be treated under the same rules as an offender of the first division.

40 & 41 Vict. c. 21.

(5.) References in sections forty and forty-one of the Prison Act, 1877, to a misdemeanant of the first division within the meaning of section sixty-seven of the Prison Act, 1865, shall be construed as references to an offender of the first division within the meaning of this section.

Prison cells.

7.—(1.) It shall not be necessary to provide or appropriate punishment cells in any prison for the confinement of prisoners for prison offences, but in every prison special cells shall be provided for the temporary confinement of refractory or violent prisoners.

(2.) The Secretary of State shall satisfy himself from time to time that in every local and convict prison separate cell accommodation is provided for all prisoners, and a yearly return showing the accommodation of each prison and the daily average and highest number of prisoners confined therein during the year shall be given in the annual report of the Prison Commissioners.

Remissions for industry and good conduct.

8. Provision may be made by prison rules for enabling a prisoner sentenced to imprisonment, whether by one sentence or cumulative sentences for a period prescribed by the rules, to earn by special industry and good conduct a remission of a portion of his imprisonment, and on his discharge his sentence shall be deemed to have expired.

Release of prisoner on payment of portion of fine.

9. Where a person is committed to prison for non-payment of a sum adjudged to be paid by the conviction of any court of summary jurisdiction, then, on payment to the governor of the prison, under conditions prescribed by prison rules, of any

sum in part satisfaction of the sum so adjudged to be paid, and of any charges for which the prisoner is liable, the term of imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which the prisoner is sentenced as the sum so paid bears to the sum for which he is so liable.

Provision may be made by rules under section twenty-nine of the Summary Jurisdiction Act, 1879, for the application of sums paid under this section and for any matter incidental thereto. 42 & 43 Vict. c. 49.

10. Every prison officer while acting as such shall, by virtue of his appointment, have all the powers, authorities, protection, and privileges of a constable. Powers of prison officers.

11.—(1.) A Secretary of State, on proof to his satisfaction that the presence of any prisoner at any place is required in the interest of justice, or for the purpose of any public inquiry, may by writing under his hand order that the prisoner be taken to that place. Order for production of prisoner.

(2.) A prisoner taken from a prison in pursuance of an order made under this section, or of a warrant issued under section nine of the Criminal Procedure Act, 1853, shall, whilst outside that prison, be kept in such custody as the Secretary of State may by general rules prescribe, and whilst in that custody shall be deemed to be in legal custody. 16 & 17 Vict. c. 30.

(3.) For the purposes of this section, the expression "prisoner" shall include any person lawfully confined under any sentence or under commitment for trial or otherwise, and the expression "prison" shall include any place in which any such person is lawfully confined.

12.—(1.) In any sentence of imprisonment passed after the commencement of this Act the word "month" shall, unless the contrary is expressed, be construed as meaning "calendar month." Calculation of term of sentence.

(2.) A prisoner whose term of imprisonment or penal servitude expires on any Sunday, Christmas Day, or Good Friday, shall be discharged on the day next preceding.

13. So much of section eleven of the Prison Act, 1865, as prevents a prison chaplain from holding any benefice with cure of souls or any curacy is hereby repealed. Prison chaplains. 28 & 29 Vict. c. 126.

14.—(1.) In this Act the expression "local prison" means any prison to which the Prison Acts, 1865 to 1893, apply. Definitions.

(2.) For the purposes of the Prison Acts, 1865 to 1893, all officers of a prison shall be deemed to be subordinate officers, except the governor, the chaplain, the medical officer, the matron, and any minister appointed under the Prison Ministers Act, 1863. 26 & 27 Vict. c. 79.

15.—(1.) The enactments mentioned in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule as from the commencement of this Act. Repeal.

(2.) Section sixty-seven and the requisition numbered five in section seventeen of the Prison Act, 1865, and Schedule I. to that Act shall be repealed as from the date at which the first rules made under this Act come into force.

Extent, commencement, and short title.

16.—(1.) This Act shall not extend to Scotland or Ireland.

(2.) This Act shall come into operation on the first day of January one thousand eight hundred and ninety-nine, provided that sections six and nine of this Act shall come into operation on the date at which the first rules made under this Act come into force.

(3.) This Act may be cited as the Prison Act, 1898, and may be cited with the Prison Acts, 1865 to 1893.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
16 & 17 Vict. c. 30. -	The Criminal Procedure Act, 1853.	In section nine, the words "one "of Her Majesty's Principal "Secretaries of State or."
28 & 29 Vict. c. 126.	The Prison Act, 1865.	Section eleven, from "but the chaplain" to the end of the section. In section seventeen, the requisitions numbered (1), (2), and (4). Sections nineteen and forty-one.
40 & 41 Vict. c. 21. -	The Prison Act, 1877.	Sections thirty-seven and thirty-eight. Section fifty-one, from "provided always" to the end of the section.

CHAPTER 42.

An Act to amend the Trusts (Scotland) Amendment Act, 1884. [12th August 1898.]

47 & 48 Vict. c. 63.

WHEREAS it is expedient to amend the Trusts (Scotland) Amendment Act, 1884:

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, as follows:

Short title.

1. This Act may be cited as the Trusts (Scotland) Act, 1898, and the Trusts (Scotland) Acts, 1861 to 1884, and this Act may be cited as the Trusts (Scotland) Acts, 1861 to 1898.