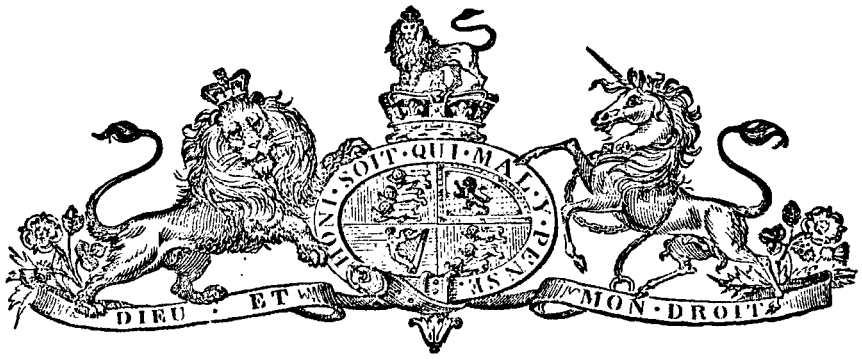


ANNO VICESIMO OCTAVO & VICESIMO NONO

VICTORIÆ REGINÆ.

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CAP. LXXXV.

An Act to amend the Laws relating to Procurators in *Scotland*. [5th *July* 1865.]

WHEREAS the Number of Procurators practising before the Inferior Courts in *Scotland* has of late Years greatly increased, and the Interests entrusted to the Care of such Procurators have risen in Importance: And whereas it is desirable to improve the Qualifications and Standing of the Members of that Branch of the legal Profession, and to regulate the Mode of admitting them to Practice, and to confer corporate Powers on certain Faculties and Societies: 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:

Interpretation of Terms.

1. The following Words and Expressions when used in this Act shall have the Meanings hereby assigned to them, unless there be something in the Subject or Context inconsistent with or repugnant to such Construction; that is to say,

"Inferior Court" shall embrace Sheriff Courts, Commissary Courts, Burgh Courts, Admiralty Courts, Dean of Guild Courts,

Courts, Justice of Peace Courts, and all other Courts of Law having only local Jurisdiction in *Scotland*:

"Procurators" shall include all Persons who have already been admitted as Procurators in any Sheriff Court in *Scotland*, or as Members of the Incorporated Society of Writers in *Dundee*, or who shall hereafter be admitted as Procurators under this Act:

"Sheriff" shall include Steward, but not Sheriff Substitute or Steward Substitute:

"Sheriff Clerk" shall mean Sheriff Clerk Depute as well as Sheriff Clerk, and shall include Steward Clerk and Steward Clerk Depute:

"County" shall include Stewartry.

No Person to act as a Procurator unless already or hereafter admitted pursuant to this Act.

2. No Person shall hereafter act or practise as a Procurator before any Inferior Court, or assume the Name or Title of Procurator, unless prior to the passing of this Act he shall have been duly admitted a Procurator, or unless subsequently to the passing of this Act he shall be admitted a Procurator pursuant to the Directions and Regulations of this Act.

Commissioners of Stamps not to issue Certificates except to qualified Persons.

3. From and after the passing of this Act, the Commissioners of Stamps and Taxes and their Officers shall, previous to issuing any stamped Certificate to any Person applying for the same who has not previously had issued to him a like Certificate, require Evidence that such Person is either a Writer to the Signet, or a Solicitor before the Supreme Courts, or a Notary Public, or that he has been admitted a Procurator.

Requisites to entitle Persons to be admitted.

4. No Person shall hereafter be deemed admissible as a Procurator unless he shall be of the full Age of Twenty-one Years, and shall have been bound under an Indenture in Writing to serve, except as herein-after provided, at least Four Years as an Apprentice to a Master declared by this Act to be competent, and shall have duly served his said Apprenticeship by personal Attendance in the Office of such Master or in the Office of some other Master to whom his Indenture may have been transferred, as herein-after provided, and unless he shall have been reported qualified for Admission after an Entrance Examination in manner herein-after specified: Provided always, that any Person who may before the passing of this Act have served, or may be at the Date thereof in course of serving, an Apprenticeship for a shorter Term than Four Years, in such Form as would have qualified him for Admission under the Provisions of the Act of Sederunt of the Lords of Council and Session, dated Tenth Day of *July* One thousand eight hundred and thirty-nine, Chapter Five, shall be deemed admissible, in so far as regards Apprenticeship, if he have served or shall serve,

serve, either as an Apprentice or Clerk to the same or some other competent Master, such further Term as may be sufficient along with his previous Service to complete the full Term of Four Years, and if he shall have been reported qualified as aforesaid, and such Service may be instructed by a Certificate under the Hand of such Master, or otherwise, as herein-after provided.

Requisites restricted in certain Cases.

5. Provided also, That any Person who shall have taken a Degree in Arts in any One of the Universities of *Great Britain* or *Ireland*, or who shall be a Member of any of the Councils of the *Scottish* Universities, shall be deemed admissible as a Procurator, in so far as regards Apprenticeship, if he shall have served an Apprenticeship under Indenture as aforesaid for the shorter Period of Three Years, and such Person shall not be obliged as a Part of his Entrance Examination to undergo an Examination in general Knowledge.

Who shall be deemed a competent Master.

6. In reference to all Apprenticeships and Clerkships to be entered into in Terms of this Act, any Writer to the Signet or Solicitor before the Supreme Courts, or Procurator or Sheriff Clerk, shall be deemed a competent Master in the Case of a Person seeking to qualify himself as a Procurator.

Provision in case Master of Persons entering into Apprenticeship, &c. dies.

7. In case any Master with whom any Person shall have entered into any Apprenticeship or Clerkship as aforesaid shall, during the Currency of the Term of such Apprenticeship or Clerkship, die or become bankrupt, or cease to practise, or be unable to continue to employ such Apprentice or Clerk, it shall be lawful for the Sheriff of the County or Sheriff Substitute of the County, Ward, District, or Division in which such Apprenticeship or Clerkship is being served, upon the Application of such Apprentice or Clerk, as the Case may be, to direct the Indenture or Agreement of Clerkship to be discharged, or to authorize the Term of Service to be completed with any other Master declared competent by this Act and named in such Application, without Prejudice to the voluntary Transfer of any Apprenticeship or Clerkship to a competent Master mutually agreed upon, and made in Writing.

One Year of Indenture under Procurator may be commuted into Clerkship.

8. Any Apprentice who, either before or after the passing of this Act, has entered into an Indenture for any Period exceeding Three Years, and who may be desirous of making himself acquainted with the Forms of Procedure in the Supreme Courts, or with the Mode of conducting Business in any County other than that in which he has bound himself to serve, may, in lieu of the last Year

Year of his said Apprenticeship, with the Consent of his Master, substitute a Term of Service as Clerk for not less than One Year with a Writer to the Signet or Solicitor before the Supreme Courts, or with a Procurator practising in such other County, which Service as Clerk shall be equally effectual for the Purpose of Admission as if such Apprentice had completed the full Term of his Apprenticeship.

Indentures to be recorded and Service to be certified.

9. All Indentures which shall after the passing of this Act be entered into with the Intention of qualifying the Apprentice for Admission in Terms of this Act shall be recorded in the Register of Probative Writs of the County where the same shall have been entered into, within Six Months from the Date fixed therein for the Commencement of the Term of Apprenticeship, and upon the Expiration thereof such Indenture, with a Certificate endorsed thereon, under the Hand of the Master with whom such Apprenticeship was completed, setting forth that the Party has actually and *bonâ fide* served the Apprenticeship set forth in the Application for Admission as required by this Act, may be received as Evidence of such Apprenticeship having been duly served.

Agreements to serve as Clerk must be in Writing and proved.

10. No Service as Clerk, in Terms and for the Purposes of this Act, entered into after the passing thereof, shall be held a Qualification for Admission as aforesaid, unless the Agreement to serve as Clerk for a specified Time shall be entered into in Writing before the Commencement of Service; and the Production of a written Agreement, with a Certificate under the Hand of the Master of the Time having been actually and *bonâ fide* served by personal Attendance in his Office, may be received as Evidence of Service; provided that in case of the Death or Incapacity of the Master the Sheriff shall be entitled to receive such other Evidence of Service of Apprenticeship or Clerkship as shall seem to him reasonable and satisfactory.

Admission and Entrance Examination.

11. The Admission of Procurators shall as heretofore proceed on the Application of any duly qualified Person to the Sheriff of the County within which he wishes to practise; but such Applicant shall prior to Admission, except as herein-after provided, undergo an Entrance Examination in regard both to general Knowledge and to Law, and legal Training and Practice, on a Remit made by the Sheriff to the Examiners herein-after mentioned, and no further Procedure shall be had on such Application until the Applicant shall have been reported by the Examiners qualified for Admission: Provided always, that no Entrance Examination shall be required if the Applicant for Admission be a Writer to the Signet, or a Solicitor before the Supreme Courts, or hold a Degree of Bachelor of Laws granted by a *Scottish* University

University after the Twelfth Day of *July* Eighteen hundred and sixty-two; nor shall the Provisions of this Act in regard to the Term of Service apply to, nor shall any Entrance Examination in General Knowledge be required from, any Person who is under Indenture at the passing of this Act, or who may have completed the Term of Apprenticeship prior to the passing of this Act; provided also, that the Sheriff of any County to whom an Application for Admission shall be made by any Person who has been already admitted a Procurator in another Sheriff Court shall be entitled to admit the said Person, and also to dispense with such Entrance Examination, if he shall see fit, after hearing the Incorporated Faculty or Society of Procurators practising in the County, Ward, District, or Division in which such Application is made.

Mode of Admission.

12. On the Production of the Certificate of Apprenticeship or of Apprenticeship and Clerkship, as herein-before provided, and of a Certificate under the Hands of the Examiners of the Applicant being duly qualified in regard both to general Knowledge and to Law and legal Training, or of written Evidence that the Applicant falls within some of the Exceptions herein-before contained, the Sheriff may, unless he see Cause to the contrary, admit the Applicant as a Procurator in his Court, and such Admission shall qualify the Person admitted to practise therein and in all the other Inferior Courts held within the County; provided that where the Mode of admitting Procurators in any County is regulated by Royal Charter conferring exclusive Privileges on any Faculty or Society of Procurators practising in such County, or by any Usage following thereon, such Mode of Admission shall not be altered by anything in this Act contained without the express Consent of such Faculty or Society.

Names of Procurators to be registered.

13. The Sheriff Clerk of each County, or of each Ward, District, or Division, when a County is so divided, shall keep a Register in a separate Book, to be called the "Register of Procurators," in which he shall insert the Names of all such Persons then in Life as may have been duly admitted Procurators before the Sheriff Court of such County, Ward, District, or Division prior to the passing of this Act, and shall arrange such Names in the Order of the Dates of Admission of such Persons respectively, and likewise of every Person who shall subsequently to the passing of this Act be admitted a Procurator before such Court, pursuant to the Directions and Regulations herein contained, specifying in the Register the Date of such Admission, and shall, as Occasion requires, make the Alterations on said Register rendered necessary by Death or otherwise, and said Register shall be patent to all the Lieges, and an Extract therefrom

subscribed by the Sheriff Clerk, certifying the Admission of any Procurator, and specifying the Date thereof, and for which Extract a Fee of Two Shillings and Sixpence shall be payable, shall be sufficient Evidence of the Facts therein set forth.

Procurators may form Societies when Number is Ten or upwards.

14. In any County, Ward, District, or Division of a County in which there does not at the Date of the passing of this Act exist an Incorporated Faculty or Society of Procurators, it shall be lawful for the Procurators of such County, Ward, District, or Division, provided their Number exceeds Ten, voluntarily to form themselves into a Society, by the Assent given in Writing of at least Three Fourths of their Number, and on such Writing being recorded in the Court Books of the County, District, Division, or Ward, such Society shall *ipso facto* be held to be incorporated under such Name or Title as shall in such Writing be fixed, and shall include all the Procurators of such County, Ward, District, or Division, and thereafter such Faculty or Society shall have Power in its corporate Name to sue and be sued, and to acquire, hold, and transfer Property, heritable and moveable, and also from Time to Time to adopt such Constitution and Byelaws for the Management of the Affairs of the Society as the Sheriff of such County, Ward, District, or Division shall, on Application made to him, approve of, and shall possess such other Powers as by Law belong to an Incorporation.

How to be incorporated when Number less than Ten.

15. In the event of the Number of Procurators in any County, Ward, District, or Division being less than Ten but more than Three, it shall be competent to them, or to not less than Three Fourths of their Number, by their Assent given in Writing, to combine with the Procurators in any One or more Counties, Wards, Districts, or Divisions, to form themselves into a Society of Procurators under this Act, provided the aggregate of the whole shall be at least Ten; and on such Assent being given in Writing, and recorded in the Court Books of each of the said Counties, Wards, Districts, or Divisions, such Society shall in all respects, for the Purposes of this Act, be entitled to the same corporate Powers and Privileges as any other Society formed under this Act; or otherwise, in the event of no such Combination, the Procurators of any County, Ward, District, or Division whose Number is less than Ten shall be entitled individually to become Members of the Society of Procurators formed in any other County, Ward, District, or Division, in Terms of this Act, and who shall be willing to receive them, and they shall on being duly admitted become Members of said Society: Provided always, that in case of the Procurators in Two or more Counties combining to form a Society as aforesaid, the Sheriff of the County having the largest Number of Procurators at the Time such Society is formed shall alone

alone exercise the Functions which are conferred on Sheriffs by this Act in relation to such Societies.

Powers of incorporated Faculties and Societies.

16. Every Faculty or Society of Procurators already incorporated, or which shall after the passing of this Act be incorporated, in Terms thereof, shall from Time to Time, subject to the Approval of the Sheriff, issue Regulations for the preliminary Examination in the Elements of general Knowledge of Persons desirous of entering into Indentures of Apprenticeship with any Procurator of their Court or the Sheriff's Clerk, and without such Examination, and the Person undergoing the same being reported qualified, such Indenture shall be of no Force or Effect for the Purpose of Admission as aforesaid; and such Society may also, if it sees fit, subject in like Manner to the Approval of the Sheriff, impose a Curriculum of legal Study on the Apprentices serving their Time to the Members of such Faculty or Society, and may institute compulsory Examinations in Law and in legal Training and Practice of such Apprentices at the End of the Second, Third, and Fourth Years of their Apprenticeship, under such Regulations as to extending the Period of Apprenticeship, in case of Failure satisfactorily to undergo such Examinations, as may be established by and under Authority of the General Council herein-after appointed; and any Society hereafter to be incorporated may establish a Fund for the Benefit of indigent Members and of the Widows and Children of Members, and provide for the Use of the Members of the Society a Law Library, to be managed in such Manner as may be settled by the Byelaws, and for these and other Purposes may exact Payment of such Entrance Fees from Parties applying to be admitted as Procurators, and such annual Contribution from each Member of the Society, as may from Time to Time be fixed by the Society, and be approved of by the Sheriff as aforesaid; and in Counties where no such Society exists it shall be in the Power of the Sheriff to order and enforce the preliminary and intermediate Examinations aforesaid.

General Council.

17. The Dean, President, or other chief Office Bearer of each of the several Faculties or Societies of Procurators already incorporated, or which shall after the passing of this Act be incorporated, in Terms thereof, or in his Absence the Sub-Dean, Vice President, or other Member of such Faculty or Society elected to act in his Place, shall form a General Council of Procurators for the Purpose of exercising the Powers conferred upon them by this Act, and shall meet at least once in each Year at such Time and Place as may be fixed in manner herein-after provided, any Five Members of such General Council being a Quorum.

18. The

General Council to meet and frame Byelaws.

18. The First Meeting of such General Council shall be held at *Edinburgh* on *Monday* the Thirtieth Day of *October* One thousand eight hundred and sixty-five, at One o'Clock, within the Sheriff Court-house, and the Members present, after choosing an interim Chairman, shall appoint a Committee of their Number to frame a Draft of the Byelaws herein-after mentioned, with Instructions to report such Draft to an adjourned Meeting, to be held at a Time and Place to be then fixed; and it shall be lawful for such adjourned Meeting, or any other Meeting held by Adjournment, to adopt the said Byelaws, with or without Amendments.

Office Bearers and Time and Place of future Meetings to be appointed.

19. The Byelaws to be so framed and adopted shall provide for the yearly Appointment of Office Bearers, and in particular of a President, and for the Time and Place of all Meetings of the General Council and Office Bearers, and for the Mode of calling the same, and for all other Regulations necessary for beneficially transacting the Business committed to the General Council by this Act, and for the future Amendment of such Byelaws, if necessary.

Power to General Council to prescribe a Curriculum of legal Study, and frame Regulations as to Subjects, &c.

20. The General Council shall prescribe a Curriculum of legal Study for Persons intending to apply for Admission as Procurators, and shall by themselves, or by One or more Committees of their Number, and with such Assistance as the Council may see fit to appoint, act as Examiners of Persons applying for Admission as Procurators, and shall as soon as may be after the passing of this Act frame Regulations as to the Subjects both in general Knowledge and Law, and legal Training and Practice, in which all Persons applying for Admission after a certain Date to be therein fixed shall be examined as herein-before provided, in order to ascertain that they are in these respects qualified for Admission, and also Regulations as to extending the Period of Apprenticeship of Apprentices failing to undergo satisfactorily the compulsory Examinations herein-before provided, and may, if need be, vary such Curriculum and Regulations to suit the peculiar Circumstances of any County, and may also from Time to Time thereafter alter and amend such Regulations respectively.

Such Regulations to be submitted to Sheriffs convened as by 1 & 2 Vict. c. 119. and approved by Lord President, Lord Justice Clerk, and

21. The Curriculum, Regulations, and Byelaws to be framed by the General Council as aforesaid, or any future Alterations or Amendments thereof, shall be of no Force or Effect unless the same have been submitted to the Sheriffs of *Scotland* convened as directed by the Act First and Second *Victoria*, Chapter One hundred and nineteen, Section Thirty-two, and reported on by the Meeting so convened, or any adjourned Meeting of the Sheriffs, to the Lord President of the Court of Session, the Lord Justice Clerk, and the

the other Judges of the Court of Session, and have been approved of by them, and until the said Regulations are so approved of the Rules in operation in each County, Ward, or District for the Examination of Persons applying for Admission shall continue in force.

Judges of the Court of Session.

22. The General Council shall also from Time to Time fix the Times and Places at which such Examinations may most conveniently be conducted, and shall also, subject to the Approval aforesaid, fix the Fees to be paid by the Applicants to defray the Expense of such Examinations and the Application of the Fees so paid.

General Council to fix Time and Place and Fees of Examinations.

23. The General Council may, from Time to Time, exact such Contributions from the various Faculties and Societies already incorporated, or to be incorporated under this Act, as shall be required for the necessary Expenditure of the General Council and Office Bearers thereof, and that as nearly as may be in proportion to the Numbers of Members of such Faculties or Societies, and may recover Payment of such Contributions by Action at Law, to be brought in Name of their President or of any of their Office Bearers whom they may appoint for that Purpose, an Account of which Contributions and Expenditure shall be made up annually, and Copies transmitted to the Dean, President, or other chief Officer of every such Faculty or Society.

Expenses of General Council how to be provided for.

24. No Person who has been admitted a Procurator in Terms of this Act shall be liable to have his Admission challenged or set aside on any Ground except Fraud; reserving, nevertheless, to and empowering the Sheriff of each County, Ward, District, or Division as aforesaid, on a written Complaint made and Cause shown to him by any incorporated Faculty or Society of Procurators practising in his Court, and where there is no such Faculty or Society then by any Three or more Procurators practising in such Court, to call before him, on Six Days Induciæ, and thereafter, whether with or without Compearance, to suspend from Practice, or to strike off the Register, the Name of any Procurator registered in his Court whom he may deem guilty of gross Misconduct, which Sentence shall contain within itself a Statement of the Facts and Grounds on which it proceeded, and shall be subject to Review and Stay of Execution only by Petition of Appeal, to be presented, within Six Months from the Date of such Sentence, to the Inner House of the Court of Session sitting in either Division, who may hear any Person interested thereon, and may confirm or reverse

How Procurator may be suspended from Practice or struck off Register.

reverse the Sentence of the Sheriff, with or without further Inquiry, without Prejudice to the Sheriff and Sheriff Substitute exercising all Powers competent to them at Common Law in such Matters.

Power to Procurators to complain to the Sheriff of unqualified Procurators.

Penalty on Procurator lending his Name to unqualified Persons.

25. Any Procurator shall be entitled to complain to the Sheriff in whose Court he is entitled to practise against any Person practising in such Court who is not a Procurator thereof; and the Sheriff shall, on such Complaint being proved to his Satisfaction, interdict such Person from Practice; and any Procurator who shall knowingly and wilfully lend his Name to enable any Person who is not a Procurator to practise as such may, on a Complaint made as aforesaid, be summarily suspended from Practice or struck off the Register, and the Sentence of the Sheriff in either Case shall be subject to Review and Stay of Execution only in manner foresaid.

Effects of Sheriff's Sentence.

26. The Sentence of any Sheriff striking a Procurator off the Register shall entitle any incorporated Faculty or Society as aforesaid of which he is a Member to expel him from the Body, and he shall thereupon forfeit all his Rights and Privileges as a Member thereof, except his Right to a Share of any Fund for behoof of Widows or Children: Provided that during the Period allowed for Appeal as aforesaid, and during the Dependence of such Appeal, the Party against whom the Sheriff's Sentence shall stand shall be disabled from exercising any of the Rights, Functions, and Privileges of a Procurator.

Nothing to prejudice Privileges of certain public Bodies.

Power to Faculty, &c. to make Bye-laws, and to alter its Name.

27. Nothing in this Act contained shall be held to limit or prejudice the Rights and Privileges of the following public Bodies; that is to say, the Society of Writers to Her Majesty's Signet, the Society of Solicitors in the Supreme Courts, the Society of Solicitors at Law, *Edinburgh*, the Faculty of Procurators in *Glasgow*, the Faculty of Procurators in *Paisley*, or the Society of Advocates in *Aberdeen*, or any other such Faculty or Society holding a Royal Charter: Provided always, that it shall be competent to any Faculty or Society of Procurators incorporated before the passing of this Act, notwithstanding the Terms of their Charter, to pass such Bye-laws as may be necessary to assimilate, in whole or in part, the Conditions and Mode of Admission to the Privileges of their Incorporation to the Provisions of this Act; provided also, that it shall be competent to any such Faculty or Society of Procurators, if they shall so desire, by the Assent given in Writing of at least Three Fourths of the Members registered as herein-before provided, and on the Register at the Time, to alter its Name or Title without Prejudice to its existing Powers and Privileges.

28. Nothing

Saving Rights of certain Persons.

28. Nothing in this Act contained shall be held to repeal the Privileges conferred by former Acts of Parliament on Persons who may be qualified to practise as Agents in the Court of Session of practising in certain Cases before the Sheriff Courts of *Scotland*, or to prejudice or affect the Rights or Privileges of any Person appointed to be Solicitor or Attorney on behalf of Her Majesty, under the Orders or Directions of the Commissioners of the Treasury, Customs, Inland Revenue, or under the Orders or Directions of any Commissioners or other Persons or Person having the Management of any other Branch of Her Majesty's Revenue for the Time being, or under the Authority of any Act of Parliament, or of any Person now holding or who may hereafter be appointed to the Office of Procurator Fiscal in any Inferior Court.

Saving Rights of Notaries Public.

29. Nothing in this Act contained shall prejudice the Rights and Privileges of Notaries Public, or affect the Manner of their Admission to Office.

Short Title.

30. This Act may be cited as "The Procurators (*Scotland*) Act, 1865."

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