

ANNO VICESIMO & VICESIMO PRIMO

VICTORIÆ REGINÆ.

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CAP. XXVI.

An Act to provide for the Registration of Long Leases in *Scotland*, and Assignations thereof.

[10th *August* 1857.]

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:

Long Leases, and Assignations thereof, registerable in Register of Sasines.

I. From and after the passing of this Act, it shall be lawful to record in the General Register of Sasines in *Scotland*, or in the particular Register of Sasines for the District in which the Lands and Heritages leased are situated, probative Leases, whether executed before or after the passing of this Act, for a Period of Thirty-one Years, and for any greater Number of Years that shall be stipulated, of Lands and Heritages in *Scotland* other than Lands and Heritages held by Burgage Tenure, and to record in the several Burgh Registers of Sasines probative Leases for the Period foresaid of Lands and Heritages within the Burgh for which such Register is kept, and held by Burgage Tenure, and to record respectively in the Register in which any such] Lease as aforesaid shall have been registered the Assignations, and Assignations in Security of such Lease, and Translations thereof, all herein-after mentioned.

Recorded Leases effectual against singular Successors in the Lands let.

II. Leases registerable under this Act, and valid and binding as in a Question with the Granters thereof, which shall have been duly recorded, as herein provided, at or subsequent to the Date of Entry therein stipulated, shall, by virtue of such Registration, be effectual against any singular Successor in the Lands and Heritages thereby let, whose Infeftment is posterior in Date to the Date of such Registration: Provided always, that, except for the Purposes of this Act, it shall not be necessary to record any such Lease as aforesaid, but that all such Leases which would, under the existing Law prior to the passing of this Act, have been valid and effectual against any such singular Successor as aforesaid, shall, though not recorded, be valid and effectual against such singular Successor, as well as against the Granters of the said Leases.

Assignations of recorded Leases.

III. When any such Lease as aforesaid shall have been recorded as herein provided, it shall be lawful for the Party in Right of such Lease, and whose Right is recorded in Terms of this Act, but in accordance always with the Conditions and Stipulations of such Lease, and not otherwise, to assign the same, in whole or in part, by Assignation, in the Form as nearly as may be of the Schedule (A.) to this Act annexed; and the recording of such Assignation shall fully and effectually vest the Assignee with the Right of the Granter thereof in and to such Lease to the Extent assigned: Provided always, that such Assignation shall be without Prejudice to the Right of Hypothec, or other Rights of the Landlord.

Assignations in Security.

IV. It shall be lawful for the Party in Right of any such Lease recorded as aforesaid, and whose Right thereto is recorded in Terms of this Act, but in accordance always with the Conditions and Stipulations of such Lease, and not otherwise, to assign the same, in whole or in part, in Security for the Payment of borrowed Money, or of Annuities, or of Provisions to Wives or Children, or in Security of Cash Credits or other legal Debt or Obligation, in the Form as near as may be of the Schedule (B.) to this Act annexed; and the recording of such Assignation in Security shall complete the Right thereunder; and such Assignation in Security so recorded shall constitute a Real Security over such Lease to the Extent assigned.

Where Party presenting for Registration not original Lessee or Assignee.

V. Where the Party in Right of any such Lease or Assignation in Security as aforesaid is not the original Lessee in such Lease, or the original Assignee in such Assignation in Security, he shall, before presenting such Lease or Assignation in Security for Registration, expede an Instrument, under the Hand of a Notary Public, in the Form as nearly as may be of the Schedule (C.) to this Act annexed; and the Keeper of the Register, on such Notarial Instrument

ment being produced to him, but not otherwise, shall thereupon record such Lease or Assignation in Security, together with the said Instrument.

Translation of Assignations in Security.

VI. All such Assignations in Security as aforesaid shall, when recorded, be transferable, in whole or in part, by Translation, in the Form as nearly as may be of the Schedule (D.) to this Act annexed; and the recording of such Translation shall fully and effectually vest the Party in whose Favour it was granted with the Right of the Granter thereof in such Assignation in Security to the Extent assigned; and the Creditor or Party in Right of such Assignation in Security, without Prejudice to the Exercise of any Power of Sale therein contained, shall be entitled, in default of Payment of the Capital Sum for which such Assignation in Security has been granted, or of a Term's Interest thereof, or of a Term's Annuity, for Six Months after such Capital Sum or Term's Interest or Annuity shall have fallen due, to apply to the Sheriff for a Warrant to enter on Possession of the Lands and Heritages leased; and the Sheriff, after Intimation to the Lessee for the Time being, and to the Landlord, shall, if he see Cause, grant such Warrant, which shall be a sufficient Title for such Creditor or Party to enter into Possession of such Lands and Heritages, and to uplift the Rents from any Sub-tenants therein, and to sub-let the same, as freely and to the like Effect as the Lessee might have done: Provided always, that no such Creditor or Party, unless and until he enter into Possession as aforesaid, shall be personally liable to the Landlord in any of the Obligations and Prestations of the Lease.

Creditor's Entry to Possession in default of Payment.

Heir may complete Title by Writ of Acknowledgment.

VII. It shall be competent for the Heir of any Party who shall have died vested in Right of any such Lease or Assignation in Security, recorded as aforesaid, to make up his Title thereto by a Writ of Acknowledgment from the Proprietor infeft in the Lands and Heritages leased by such Lease, or from the Party appearing on the Register as in absolute Right of such Lease of or over which such Assignation in Security has been granted, respectively, in the Form as nearly as may be of the Schedule (E.) to this Act annexed; and the recording of such Writ in the Register in which such Lease or Assignation in Security is registered shall complete the Title of such Heir to such Lease or Assignation in Security aforesaid: Provided always, that no Defect in the Title of the Proprietor or Party Granter of such Writ shall affect the Right or Title of such Heir.

Heir or Disponee may complete Title by recording Notarial Instrument.

VIII. It shall be competent to the Heir who shall have been served by general or special Service, or to the General Disponee of any Party who shall have died fully vested in Right of any such Lease or Assignation in Security, recorded as aforesaid, to expede a Notarial

a Notarial Instrument in the Form as nearly as may be of the Schedule (F.) to this Act annexed; and the recording of such Instrument in the Register in which such Lease is recorded shall complete the Title of such Heir or Disponee to such Lease or Assignation in Security.

Where Assignee has died without recording Assignation, Mode of making up Title.

IX. Where any Assignation, Assignation in Security, or Translation granted in pursuance of this Act shall not have been registered as aforesaid in the Lifetime of the Grantee in such Writ respectively, it shall be competent to the Heir or General Disponee of such Grantee to make up his Title by expeding an Instrument under the Hand of a Notary Public in the Form, as nearly as may be, of the Schedule (F.) to this Act annexed; and the Keeper of the Register, on such Notarial Instrument being presented to him, but not otherwise, shall thereupon record such Assignation, Assignation in Security, or Translation, together with the said Instrument.

Adjudgers to complete Right by recording Abbreviate.

X. When an Adjudication of any such Lease or Assignation in Security recorded as aforesaid shall have been obtained against the Party vested in the Right thereof respectively, or against the Heir of such Party, the recording of the Abbreviate of Adjudication in the Register in which the Lease is recorded shall complete the Right of the Adjudger to such Lease or Assignation in Security.

Trustees on sequestrated Estate may be entered on Register.

XI. It shall be lawful for the Trustee on the sequestrated Estate of any Party in Right of any such Lease or Assignation in Security as aforesaid to expede a Notarial Instrument in the Form as nearly as may be of the Schedule (F.) to this Act annexed; and the recording of such Instrument in the Register in which such Lease is recorded shall complete the Right of such Trustee to such Lease or Assignation in Security.

Preferences regulated by Date of recording Transfer.

XII. All such Leases executed after the passing of this Act, and all Assignations, Assignations in Security of any such Lease recorded as aforesaid, and Translations thereof, and all Adjudications of such Leases recorded as aforesaid, or Assignations in Security, shall in Competition be preferable according to their Dates of recording.

Renunciations and Discharges be to recorded.

XIII. On the Production to the Keeper of the Register of a Renunciation of any such Lease as aforesaid recorded therein, or of a Discharge of any such Assignation in Security as aforesaid therein recorded, by or on behalf of the Party appearing on the Register as in Right of such Lease or Assignation in Security, which Renunciation or Discharge may be in the Form of the Schedules (G.) and (H.) respectively to this Act annexed, and may be endorsed on such Lease

Lease or Assignation in Security, he shall forthwith duly record the same.

XIV. On the Production to any such Keeper of an Extract of a Decree of Reduction of any such Lease, Assignation, Assignation in Security, Translation, Adjudication, Instrument, Discharge, or Renunciation recorded in the Register of which he is the Keeper, he shall forthwith duly record the same. Entry of Decree of Reduction.

XV. Leases, Assignations, Assignations in Security, Translations, Adjudications, Instruments, Discharges, Renunciations, and other Writs, duly presented for Registration in pursuance of this Act, shall be forthwith shortly entered in the Minute Book of the Register in common Form, and shall, with all due Despatch, be fully registered in the Register Book, and thereafter re-delivered 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 all such Writs registered in pursuance of this Act shall make faith in all Cases in like Manner as the Writs registered, except where the Writs so registered are offered to be improven. Mode of registering. Extracts to make faith as Writs registered.

XVI. The Registration of all such Leases, Assignations, Assignations in Security, Translations, Adjudications, Writs of Acknowledgment, and Notarial Instruments as aforesaid, in manner herein provided, shall complete the Right under the same respectively, to the Effect of establishing a Preference in virtue thereof, as effectually as if the Grantee, or Party in his Right, had entered into the actual Possession of the Subjects leased under such Writs respectively at the Date of Registration thereof. Registration equivalent to Possession.

XVII. Leases containing an Obligation upon the Granter to renew the same from Time to Time at fixed Periods, or upon the Termination of a Life or Lives, or otherwise, shall be deemed Leases within the Meaning of this Act, and registerable as such, provided such Leases shall by the Terms of such Obligation be renewable from Time to Time so as to endure for a Period of Thirty-one Years or upwards. Leases, with Obligation to renew, registerable.

XVIII. No Lease of Lands and Heritages other than Subjects held by Burgage Tenure executed after the passing of this Act, unless where the same shall have been executed in Terms of an Obligation No Lease executed after Date of Act

to be registerable where Name of Lands and Boundaries not given.

to renew contained in a Lease renewable as aforesaid, and of Date prior to this Act, shall be held to fall within the same or to be registerable thereunder, unless the Name of the Lands of which the Subjects let consist or form a Part shall be set forth in such Lease; and no such Lease of such Lands and Heritages as aforesaid, except where the same consist of Mines or Minerals, shall be held to fall within this Act or to be registerable thereunder, unless the Extent of the Land let shall be set forth in such Lease, and shall not exceed Fifty Acres.

Extracts registerable where Leases recorded in Court of Session or Sheriff Court Books prior to Act.

XIX. Where any such Lease as aforesaid registerable under this Act shall, before the passing thereof, have been recorded in the Books of Council and Session, or in the Books of any Sheriff or Burgh Court, the Production to the Keeper of the Register of an Extract of such Lease shall be a sufficient Warrant for him to record the same, and he shall thereupon duly record it, and the recording thereof shall be as valid and effectual as if the original Lease had been presented to him.

Clauses in Schedules to be held to import and to have Effect as declared by 10 & 11 Vict. c. 50.

XX. The several Clauses in the Schedules to this Act annexed shall be held to import such and the like Meaning and to have such and the like Effect as is declared by the Act of the Tenth and Eleventh of Queen *Victoria*, Chapter Fifty, Sections Second and Third, to belong to the corresponding Clauses in the Schedule to the said recited Act annexed, and the Procedure thereby prescribed for a Sale under a Bond and Disposition in Security shall be applicable to a Sale of any such Lease as aforesaid under any such Assignation in Security as is herein-before mentioned.

Short Title.

XXI. This Act may be cited for all Purposes as "The Registration of Leases (*Scotland*) Act, 1857."

SCHEDULES.

SCHEDULE (A.)

FORM OF ASSIGNATION OF LEASE.

I, *A.B.*, [*Designation,*] in consideration of the Sum of now paid to me, [*or otherwise, as the Case may be,*] assign to *C.D.* [*Designation*] a Lease, dated , and recorded in the Register of Sasines at , of Date , granted by *E.F.* [*Designation*] in my Favour [*or if not in Assigner's Favour, name and design Grantee*], of [*shortly mention Subjects*] in the Parish of and County of [and (*when the Assigner is not the Grantee in the Lease*) my Title to which is recorded in the said Register, of Date], [but (*where the Lease is assigned in part only*) in so far only as regards the following Portion of the Subjects leased; viz. (*specify particularly the Portion*),] with Entry as at (*Term of Entry*). And [*where Sub-Lease*] I assign the Rents from [*Term*]; and I grant Warrandice; and I bind myself to free and relieve the said *C.D.* of all Rents and Burdens due to the Landlord or others at and prior to the Term of Entry in respect of said Lease; and I consent to Registration for Preservation and Execution.

[*Testing Clause in common Form.*]

SCHEDULE (B.)

FORM OF BOND AND ASSIGNATION IN SECURITY.

I, *A.B.*, [*Designation*] bind myself, my Heirs and Executors, without the Necessity of discussing them in their Order, to make Payment, at the Term of [*Date and Place of Payment*], to *C.D.* [*Designation*] or his Heirs, Executors, or Assignees, of the Sum of , being Money borrowed by me from him, [*or* as a Provision to the said *C.D.*, *or* of the yearly Annuity of during his Lifetime, *as the Case may be,*] with the Interest of the said Capital Sum at the Rate of per Cent. per Annum, payable by equal Portions half-yearly at Whitsunday and Martinmas, beginning the First Payment at . And, in Security of the personal Obligation before written, I assign to the said *C.D.* and his foresaids,

foresaids, heritably but redeemably, as after mentioned, yet irredeemably in the event of a Sale by virtue hereof, a Lease of [*shortly mention Subjects leased*] in the Parish of and County of , which Lease was granted by *E.F.*, [*Designation*,] of Date , and recorded [*insert Register, with Date of recording*], and [*where Cedent not the original Lessee*] my Title to which is registered therein [*Date of recording*]; [but (*where only a Portion of the Subjects are assigned*) in so far only as regards the following Portion of the Subjects leased; viz. (*specify particularly the Portion*)]. And I assign the Rents; and I assign the Writs; and I grant Warrandice; and I reserve Power of Redemption; and I oblige myself and my foresaids for the Expenses of assigning and discharging this Security; and, on default of Payment, I grant Power of Sale; and I consent to Registration for Preservation and Execution.

[*Testing Clause.*]

SCHEDULE (C.)

Forms of Notarial Instruments in favour of a Party not the original Grantee.

No. 1.—*Case of Lease.*

Be it known, That by Lease, dated , *A.B.* [*Designation*] let to *C.D.* [*Designation*] that Piece of Ground [*or as the Case may be, shortly describing the Property leased*] in the Parish of and County of , to which Lease *E.F.* [*Designation*] has made up Title by Service as eldest Son [*or as the Case may be*] and Heir of the said *C.D.*, dated [*insert Date of Service*] before the [*specify the Court before which the Heir has been served*], and duly retoured to Chancery, [*or, as the Case may be,* as General Disponee *or* Assignee of the said *C.D.* in virtue of (*here mention the Writs or Decreets instructing the Right, with the Dates thereof, and, if recorded, the Register, and Date of recording*)*]: Wherefore this Instrument is taken by the said *E.F.* in the Hands of *G.H.* [*Designation of Notary Public*], in Terms of the Registration of Leases (Scotland) Act, 1857.

[*Testing Clause.*]

No. 2.—*Case of Assignation in Security.*

Be it known, That by Bond and Assignation in Security of Date *C.D.* [*Designation*] assigned to *J.K.* [*Designation*], in Security of a

* *Note.*—If the Person in whose Favour the Instrument is taken is not the Heir or Disponee of the original Grantee, but of one who has acquired Right to the Lease or Assignation in Security, here specify shortly the Series of Titles by which the Predecessor acquired the Right.

Sum of [*or as the Case may be*], a Lease granted by *A.B.* [*Designation*] of [*shortly describe the Subjects leased*], in the Parish of and County of , which Lease is dated , and recorded [*Register, and Date of recording*], to which Assignation in Security *E.F.* [*Designation*] has acquired Right as eldest Son [*or as the Case may be*] and Heir of the said *J.K.*, *&c.* [*as in Form No.* 1.]

SCHEDULE (D.)

FORM OF TRANSLATION OF ASSIGNATION IN SECURITY.

I, *A.B.*, [*Designation,*] in consideration of the Sum of now paid to me [*or as the Case may be*], assign and transfer to *C.D.* [*Designation*] a Bond and Assignation in Security for the Principal Sum of [*or as the Case may be*], granted by *E.F.* [*Designation*] in my Favour, [*or, if not in Granter's Favour, name and design the Party in whose Favour granted,*] dated and recorded [*Register and Date of recording*] of and over a Lease granted by *G.H.* [*Designation*] of [*shortly describe Subjects leased*], in the Parish of , and County of , which Lease is dated , and is recorded in the said Register of Date [and (*if the Granter is not the Assignee in said Bond*) my Title to which Bond and Assignation in Security is recorded in said Register (*Date of recording*)], [but (*where the Translation is partial*) only to the Extent of (*insert Sum*), and to the Effect of giving pari passu Preference to the said *C.D.* over the said Lease with me, my Heirs and Assigns, as regards the Remainder of the said Principal Sum and corresponding Interest], with the Interest from [*Date*].

[*Testing Clause.*]

SCHEDULE (E.)

FORMS OF WRITS OF ACKNOWLEDGMENT.

No. 1.—*Acknowledgment of Heir in Lease.*

I, *A.B.*, [*Designation,*] Proprietor infeft in the Lands of *C.*, by Infeftment recorded [*Register, and Date of recording,*] acknowledge *D.E.*, [*Designation,*] as [*specify Relationship*], and Heir of the deceased *F.G.*, [*Designation,*] to be in Right of a Lease granted by *H.J.* [*Designation*] of [*shortly mention Subjects*] in the Parish of and County of , being a Portion of the said Lands of *C.*, which Lease is dated and recorded [*Register, and Date of recording*], and [*where the Deceased not the original Lessee*] the Title of the said *F.G.* being recorded in the said Register, of Date .

[*Testing Clause.*]

No. 2.—*Acknowledgment of Heir of Creditor in Assignation in Security.*

I, *A.B.*, [*Designation,*] being in Right of a Lease granted by *C.D.* [*Designation*] of [*shortly specify Subjects*] in the Parish of and County of , which Lease is dated , and recorded [*Register, and Date of recording*] and [*where Granter not the Lessee named in the Lease*] my Title to which is recorded in said Register [*Date of recording*], acknowledge *E.F.* [*Designation*] as [*specify Relationship*], and Heir of the deceased *G.H.* [*Designation*], to be in Right of a Bond and Assignation in Security for the Sum of [*or as the Case may be*] granted by *I.K.* [*Designation*] over said Lease, which Bond and Assignation in Security is dated and recorded in the said Register on [*Date*], and [*where the Deceased not the original Creditor*] the Title of the said *G.H.* to which Bond and Assignation in Security is recorded in the said Register on [*Date*].

[*Testing Clause.*]

SCHEDULE (F.)

FORM OF NOTARIAL INSTRUMENT IN FAVOUR OF HEIR IN RECORDED LEASE OR ASSIGNATION IN SECURITY, OR OF TRUSTEE ON SEQUESTRATED ESTATE.

No. 1.—*Case of Lease.*

BE it known, That by Lease dated *A.B.* [*Designation*] let to *C.D.* [*Designation*] that Piece of Ground [*or as the Case may be, shortly describing the Property leased,*] in the Parish of and County of , which Lease is recorded [*Register, and Date of recording*], and to which *E.F.* [*Designation*] has made up Title by Service as [*specify Relationship*], and Heir of 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 [*or, as the Case may be,* as General Disponee of the said *C.D.*, *or* as Heir (*or* General Disponee) of *L.M.* in an Assignation by the said *C.D.* of Date , *or* as Trustee confirmed on the sequestrated Estate of the said *C.D.*, in virtue of (*here mention the Writs or Decreets, instructing the Rights, with the Dates thereof, and if recorded, the Register, and Date of recording.*)] Whereupon this Instrument is taken by the said *E.F.*, in the Hands of *G.H.* [*Designation of Notary Public*], in Terms of the "Registration of Leases (Scotland) Act, 1857."

[*Testing Clause.*]

No. 2.—*Case of Assignation in Security.*

BE it known, That by Bond and Assignation in Security, of Date *C.D.* [*Designation*] assigned to *I.K.* [*Designation*] in Security of a Sum of [*or as the Case may be,*] a Lease granted by *A.B.* [*Designation*] of [*shortly describe the Subjects leased*] in the Parish of and County of , dated , and recorded [*Register, and Date of recording*], to which Bond and Assignation in Security *E.F.* [*Designation*] has acquired Right as [*specify Relationship*], and Heir of the said *I.K.*, *&c.* [*as in Form* No. 1.]

SCHEDULE (G.)

RENUNCIATION OF LEASE.

I, *A.B.*, [*Designation,*] renounce as from the Term of in favour of *C.D.* [*Designation*] a Lease granted by the said *C.D.* [*or as the Case may be*] of [*shortly set forth Subjects*] in the Parish of and County of , which Lease is dated and recorded [*Register, and Date of recording,*] and [*where the Party renouncing not the original Lessee*] my Title to which is recorded in the said Register on [*Date*].

[*Testing Clause.*]

SCHEDULE (H.)

FORM OF DISCHARGE OF BOND AND ASSIGNATION IN SECURITY.

I, *A.B.*, [*Designation,*] in consideration of the Sum of now paid to me by *C.D.* [*Designation,*] discharge a Bond and Assignation in Security for the Sum of , granted by the said *C.D.* in my Favour [*or as the Case may be**], and which is dated and recorded in the [*Register, and Date of recording*]; and I declare to be disburdened thereof a Lease granted by *E.F.* [*Designation*] of [*shortly mention Subjects leased*] in the Parish of and County of , which Lease is dated and recorded [*Register, and Date of recording*].

[*Testing Clause.*]

* *Note.*—If Granter not original Creditor, here state his Title, and Date of recording the same.

LONDON:
Printed by GEORGE EDWARD EYRE and WILLIAM SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1857.