CHAPTER 70.

An Act to alter and amend the Law relating to the Administration of Justice in Civil Causes in the ordinary Sheriff Courts in Scotland, and for other purposes relating thereto. [15th August 1876.]

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:

Preliminary.

Short title.

1. This Act may be cited for all purposes as "The Sheriff Courts (Scotland) Act, 1876."

Commencement and application of Act.

2. This Act shall commence and come into operation on the first day of October one thousand eight hundred and seventy-six, which date is herein-after referred to as the commencement of this Act. Unless where otherwise expressly provided, this Act shall only apply to civil proceedings in the ordinary sheriff court.

Interpretation of terms.

3. In this Act, unless when there is something in the sense or context repugnant to that construction, the following terms have the meanings herein-after assigned to them; that is to say,

"Action" includes every civil proceeding competent in the ordinary sheriff court:

"Person" includes company, corporation, and firm:

"Sheriff" includes sheriff substitute:

"Sheriff clerk" includes sheriff clerk depute, and in Part VIII. of this Act means commissary clerk, in those cases in which such office is not abolished:

"Agent" means a law agent enrolled in terms of the Act of the thirty-sixth and thirty-seventh years of the reign of Her present Majesty, chapter sixty-three:

"Final judgment" means a judgment or interlocutor which, either by itself or taken along with a previous interlocutor or interlocutors, disposes of the whole subject-matter of the cause, or of the competition between the parties in a process of competition, although judgment shall not have been pronounced on all the questions of law or fact raised therein, and although expenses, if found due, have not been taxed, modified, or decerned for.

I.—*Sessions.*

Of the sessions.

4. Each sheriff shall hold two sessions in each year, the one of which shall be called the winter session, and the other the summer session.

The winter session shall in each year commence on the first day of October or the first ordinary court day thereafter, and shall end on the last ordinary court day in March; but it shall be lawful for the sheriff to adjourn the court at Christmas time for a period not exceeding fifteen days.

The summer session shall commence on the first day of May or the first ordinary court day thereafter, and shall end on the last ordinary court day in July.

Court days in vacation.

5. The sheriff shall before the termination of each winter session appoint at least one court day during the spring vacation for the despatch of civil business; and shall before the termination of each summer session appoint at least two court days during the autumn vacation for the same purpose.

II.—*Petition and Service.*

Form of petitions and defences.

6. Every action in the ordinary sheriff court shall be commenced by a petition in one of the forms as nearly as may be, contained in Schedule (A.) annexed to this Act, in which the pursuer shall set forth the court in which the action is brought, his own name and designation, and the name and designation of the defender, and the prayer of the petition, without any statement whatever of the grounds of action. There shall be annexed to the

petition a statement (in the form of an articulate condescendence) of the facts which form the grounds of action, and a note of the pursuer's pleas in law, which condescendence and note of pleas shall be held to constitute part of the petition.

The statement of facts shall be made succinctly and without quotation from documents except where indispensable.

The warrant following upon such petition shall be as nearly as may be in the form contained in the said Schedule (A.), which schedule and the notes thereto and directions therein shall be construed and have effect as part of this Act.

Petitions, &c. may be written or printed.

7. Any petition, warrant, interlocutor, order, or pleading may be written or printed, or partly written and partly printed.

Induciæ of petitions and periods of charge.

8. All petitions may, except as herein-after provided, proceed on seven days warning or induciæ where the defender is within Scotland, unless in Orkney and Shetland, or in any other island within Scotland, and fourteen days where he is in Orkney or Shetland, or such other island, or is not within Scotland; and in all kinds of execution proceeding upon extracted decrees a seven days charge shall, except as herein-after provided, be competent and sufficient:

Provided that,—

(1.) In any case in which a shorter warning or induciæ or period of charge is by law in force at the commencement of this Act sufficient, such shorter warning or induciæ or period of charge shall continue to be sufficient after the commencement of this Act:

(2.) It shall be lawful for the sheriff to shorten the warning or induciæ as he shall see fit in any case which he considers to require special despatch.

Sheriff's warrants, &c. may be executed edictally.

9. It shall be competent to execute edictally any warrant of citation granted or charge on an extracted decree pronounced by a sheriff against any person furth of Scotland, by delivery of a copy thereof at the office of the keeper of edictal citations at Edinburgh according to the mode established in regard to the execution edictally of citations and charges on warrants of the Court of Session; or by sending to such keeper in a registered post-letter a certified copy of such warrant or charge, of which copy the keeper shall acknowledge the receipt. Every citation or charge so executed edictally shall be recorded in the record of edictal citations in Edinburgh in a separate record of edictal citations or charges against persons furth of Scotland cited or charged upon warrants proceeding from any sheriff court therein.

Where the party cited or charged has a known residence or place of business in England or Ireland, a copy of the petition and citation, or of the decree and charge, on fourteen days induciæ, shall be posted in a registered letter to the party at such address by the officer, whose execution shall bear that he has done so. The sheriff clerk shall in all warrants to cite or charge persons furth of Scotland insert a warrant to cite or charge edictally.

Original petitions to remain in the hands of the clerk; certified copies may be borrowed.

10. Every petition commencing an action shall, after it has been lodged for calling, remain in the hands of the clerk of court, unless the sheriff shall give a special order in writing to the contrary.

In every defended action the pursuer shall forthwith, on the defence being lodged, lodge in process a copy of the petition, and of the warrant thereon, certified as correct by him or his agent in the cause, and which may thereafter be borrowed by any party to the process, and where a warrant has been granted to arrest on the dependence of the action, such certified copy shall be a sufficient warrant for such arrestment. Separate precepts of arrestment may be issued as heretofore.

As to proving lost petitions.

11. Where a petition or any other pleading is lost or destroyed a copy thereof proved in the action to the satisfaction of the sheriff before whom the action is depending at the time, and authenticated in such manner as he shall require, may be substituted, and shall be held equivalent to the original for the purposes of the action.

Of the service of writs.

12. With regard to the service of writs issuing from the sheriff courts, the following provisions shall have effect; that is to say,

(1.) A warrant of citation issuing from any sheriff court against any defender who under the provisions of this Act is subject to the jurisdiction of such sheriff court, but who has his domicile within the jurisdiction of another sheriff court, may be competently executed against such defender within and by an officer of the sheriff court of the county in which such defender is domiciled without any indorsation thereof by the sheriff clerk of such last-mentioned county:

(2.) A party who appears shall not be permitted to state any objection to the regularity of the execution or service as against himself of the petition by which he is convened:

(3.) The sheriff may authorise the pursuer to serve of new his petition on any defender who has not entered appearance should it appear to the sheriff that there was any irregularity in the service on such defender, and the petition, on being so served of new, shall be proceeded with as if there had been no previous service, subject to such order as to expenses as to the sheriff shall seem just:

(4.) Service, in ordinary form, on a minor, and on his father as curator at law, or upon a minor and his tutors and curators if known to the pursuer, or, if they are not known, upon the minor himself in ordinary form, and his tutors and curators edictally, shall be good and sufficient service on the minor for every purpose of law:

(5.) An arrestment shall be ineffectual, when the schedule of arrestment shall not have been personally served on the arrestee, unless a copy of such schedule shall also be sent to the arrestee at his last known place of abode through the post by the officer serving the same, who shall certify in his execution that he has done so, stating the address to which the copy has been sent:

(6.) Service at the market cross is hereby abolished.

Amendment of petitions in undefended causes.

13. In an undefended action in the sheriff court any error or defect in the petition whereby the same is commenced may be amended, if the sheriff shall think such amendment should be allowed; and such amendment shall be made in writing, either upon the petition, or in a separate paper, signed by the pursuer or his agent; and the sheriff may, if he shall see fit, order the amended petition to be served upon any defender who has not entered appearance, and allow him to enter appearance within such time as shall seem proper: Provided that the expenses occasioned by such amendment shall not be chargeable against any defender; provided also, that such amendment shall not have the effect of validating diligence used on the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objections to such diligence when stated by the defender himself, or by any person representing him by a title, or in right of a debt contracted by him subsequent to the using of such diligence.

III.—*Decrees in absence.*

Decrees in absence.

14. On the expiration of the inducіæ in any action without appearance being entered for the defender, the sheriff shall, on the motion of the pursuer, grant decree in absence in common form in terms of the prayer of the petition, or subject to such restrictions as may be set forth in a minute written on the petition by the pursuer or his agent, and the sheriff clerk may, seven days after the granting of a decree in absence, issue extract of such decree: Provided as follows:

(1.) At any time within seven days from the date of such decree it shall be competent for the defender, after consigning in the hands of the sheriff clerk the sum of two pounds sterling, and lodging his defences, to enrol the action in the sheriff's motion roll; or when such seven days shall expire in time of vacation, after consignation as aforesaid, to lodge his defences with the sheriff clerk, at any time within such seven days, and thereafter to enrol the action in the said roll against the next ensuing sitting of the court; and the action being in the roll, to move

the court to recall the decree in absence; and when this motion is made the sheriff shall pronounce an interlocutor recalling the decree in absence, and allowing the defences to be received; and the action shall thereupon proceed as if appearance had been made in due time.

The sheriff shall, unless there seems to him to be any special reason to the contrary, order the consigned money to be paid to the pursuer towards his expenses, and that whether the decree in absence has been recalled or not.

Until the motion for the recall of the decree in absence has been disposed of, the decree shall not be extracted.

(2.) Should the defender fail to take, within seven days of the date of such decree, the steps herein-before provided with a view to having the decree recalled, or to follow out the same, he may obtain the recall of the decree whether extracted or not at any time before implement has followed thereon, or so far as the same shall not have been implemented, by presenting to the sheriff a written note in which he shall set forth his explanation of his failure to enter appearance in the action and to take within such seven days the steps herein-before provided as aforesaid, or to follow out the same, and producing with such note his defences to the action in which the decree was granted and any documentary evidence he may have in support of such explanation, and consigning the sum of five pounds; and it shall not be necessary for the pursuer to lodge any answer to the said note, but it shall be lawful for the sheriff, if satisfied with the explanation aforesaid, to recall the said decree, so far as not implemented, and order payment to the pursuer out of the consigned money of his expenses, including the expense of any charge or diligence upon the decree, or to refuse the note or do otherwise as he shall think just.

The balance of the consigned money, if any, shall remain in the hands of the sheriff clerk until the sheriff shall make an order as to the disposal of the same.

(3.) A note for the recall of a decree under the preceding sub-section shall, after being intimated to the pursuer or his agent, and till refused, operate as a sist of diligence on such decree, and on such decree being recalled the action in which it was granted shall thereafter proceed in all respects as if appearance therein had been duly made by the defender.

(4.) Any interlocutor or order recalling, or incidental to the recall, of a decree in absence pronounced under this section shall be final and not subject to review.

Certain decrees in absence to have effect as decrees in foro.

15. Where a decree upon which a charge is competent shall have been pronounced in absence of a defender after personal service of the petition on such defender, or after the entering of appearance for such defender with his authority, or where a defender shall have been personally charged on such a decree, whether the petition was personally served upon him or appearance made for him with his authority or not, and such decree shall not have been recalled in virtue of the provisions to that effect herein-before contained, such decree, upon the lapse of six months after the expiration of a charge upon it not brought under review by suspension, where suspension is competent, shall be entitled to all the privileges of a decree in foro against such defender; and any decree on which a charge is not competent, obtained in absence after such personal service or appearance as aforesaid, shall be final after the lapse of twenty years from its date unless the same shall before that time have been lawfully recalled or brought under review by suspension or reduction.

IV.—*Entering Appearance: Records.*

Procedure where defender enters appearance.

16. Where the defender intends to state a defence, he shall enter appearance by lodging with the sheriff clerk, before the expiration of the induciæ, a notice in the form of Schedule (B.) annexed to this Act; and he shall, on the first court day after the expiration of the induciæ, or at the latest at an adjourned diet not later than seven days after the expiration of the induciæ, lodge defences with the sheriff clerk. The defences shall be in the form of articulate answers to the condescendence, and shall have appended thereto

a note of the defender's pleas in law, and, where necessary, a statement of the facts on which the defender founds in defence.

The statement of facts and answers shall be made succinctly and without quotation from documents except where indispensable.

Revisal of pleadings not to be allowed as matter of course.

17. Neither party shall be entitled as matter of right to ask for a revisal of his pleadings; but it shall be competent for the sheriff to allow or to order a revisal of the pleadings, upon just cause shown.

Procedure after pleadings completed, and adjustment of pleadings.

18. If no motion for revisal is made, or if such a motion is refused, or after the lapse of the period within which the revised pleadings fall to be lodged where a revisal has been allowed or ordered, the sheriff clerk shall transmit the process to the sheriff and the sheriff shall direct the action to be put to the roll for the first court day occurring not less than four days thereafter, and upon such day shall require the parties then to adjust their pleadings, and shall close the record.

Prorogations of consent abolished.

19. It shall not be competent of consent of parties to prorogate the time for complying with any statutory enactment or order of the sheriff, whether with reference to the making up and closing of the record, appointing a diet of proof, diet of debate, or otherwise.

If parties fail to appear in defended action, sheriff to give judgment.

20. Where in any defended action one of the parties fails to appear by himself or his agent at a diet of proof, diet of debate, or other diet in the cause, it shall be in the power of the sheriff to proceed in his absence, and unless a sufficient reason appear to the contrary he shall, whether a motion to that effect is made or not, pronounce decree as libelled or of absolvitor (as the case may require), with expenses; or if all parties fail to appear, he shall, unless a sufficient reason appear to the contrary, dismiss the action.

Penalty on agent failing to return process borrowed.

21. Where an agent who has borrowed a process, or any part thereof, fails to return the same for any diet in the cause for which the process or the part thereof which may have been borrowed shall be required, it shall be the duty of the sheriff, whether a motion to that effect is made or not, to impose upon the agent so failing a fine of not less than one pound sterling, which fine shall be payable to the clerk of court for behoof of Her Majesty: Provided always, that it shall be competent for the sheriff who imposed the fine, on cause shown, to recall the order imposing the same, but such order shall not be subject to review.

Production of documents.

22. At or before the closing of the record each party to an action shall produce all documents specially mentioned in his pleading and which are in his hands. Any other documents, whether in his hands or not, may be produced by him during the proof, but without prejudice to the power of the sheriff to order their production at any stage of the cause.

It shall be lawful for the sheriff to order or allow a party at any time before judgment to produce any document which he failed to produce timeously, upon such terms as to payment of expenses and allowing further proof to the other party as to the sheriff shall seem just.

Procedure after record closed.

23. The sheriff shall at the time of closing the record require the parties then to state whether they are ready to renounce further probation; and if they are ready to do so the parties or their agents shall sign a minute to that effect on the interlocutor sheet; and the sheriff shall, in the interlocutor closing the record, pronounce a finding that further probation has been renounced, and shall appoint the action to be debated; but when probation is not renounced, the sheriff, when proof seems necessary, shall at the time of closing the record appoint a diet for proof on an early day, and shall hear the parties or their procurators immediately after such proof is led, unless one adjournment shall be allowed on cause shown for a period not exceeding seven days; and after such debate or hearing, as the case may be, the sheriff shall pronounce judgment with the least possible delay.

Amendment of records in

24. The sheriff may at any time amend any error or defect in the record in any action, upon such terms as to expenses and otherwise as to the sheriff shall seem proper, and all

such amendments as may be necessary for the purpose of determining in the action the real question in controversy between the parties shall be so made; but it shall not be competent by such amendment to subject to the adjudication of the sheriff any larger sum or estate, or any other fund or property, than that specified in the petition, except with the consent of all the parties interested: Provided always, that no such amendment shall have the effect of validating diligence used on the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objections to such diligence when stated by the defender himself or by any person representing him, by a title, or in right of a debt contracted by him, subsequent to the execution of such diligence. Defended actions.

V.—*Special Actions; Multiplepoindings; Processes of Cessio.*

25. In actions of multiplepoinding the following provisions shall have effect: Procedure in multiplepoindings.

(1.) The party raising the action shall set forth in the petition who is the real raiser of the action:

(2.) The sheriff shall, at the first calling of the action, where no defences are stated, or, where defences are stated and repelled, at the first calling thereafter, pronounce an order for claims within a short space:

(3.) Any of the parties whose claims in the action depend upon the same grounds may state their claims in the same paper; and may, where their claims are opposed and yet they are agreed on the facts, make their averments in the form of a joint case, appending thereto their respective claims and pleas in law:

(4.) When the parties who shall appear and claim an interest in the fund in medio shall have lodged their claims, or had opportunity allowed them for doing so, the sheriff shall appoint the parties or their agents to meet him; and shall at such meeting allow each party to adjust his own part of the record, and to meet the averments of the other claimants so far as necessary; and the procedure at such meeting, and in the after progress of the action, shall be as nearly as may be the same as is herein-before provided with reference to ordinary actions after defences have been lodged.

26. From and after the passing of this Act the following provisions shall have effect with respect to processes of cessio bonorum: Cessio bonorum.

(1.) All such actions shall be instituted in the sheriff court only:

(2.) A debtor being insolvent and under a charge to pay any civil debt on which charge imprisonment may follow; or against whom a decree for payment of civil debt, not requiring a charge, has been granted, on which imprisonment may follow; shall, being prepared to surrender his whole means and estate to his creditors, be entitled to raise an action in the sheriff court, praying for interim protection and for decree of cessio bonorum under the Act of the sixth and seventh years of the reign of King William the Fourth, chapter fifty-six, as amended by this Act, and the production of the said charge, or a certificate of the granting of such a decree as aforesaid, under the hands of the clerk of the court which granted the same, shall be a sufficient title on which to raise such action:

(3.) It shall be lawful for the sheriff—

(*a.*) At once to grant interim protection against imprisonment for civil debt to the applicant on his finding caution, for such amount as the sheriff may deem reasonable, for his appearance at all diets of the process:

(*b.*) When the applicant is in prison to grant warrant for his interim liberation, after forty-eight hours notice to the incarcerating creditor or his known agent of the motion for liberation, and on caution being found for such amount as the sheriff may deem reasonable for the applicant's appearance at all diets of the process, and also binding the cautioner to present the applicant at the prison for re-incarceration should the cessio be refused or the interim warrant recalled:

(4.) Judgments or interlocutors pronounced in such actions shall be reviewed on appeal in the same form and subject to the like provisions, restrictions, and conditions

as are by law provided in regard to appeals against any judgment or interlocutor pronounced in any other action in the sheriff's ordinary court; but warrants of interim protection or interim liberation shall become effectual when granted, and remain good till recalled:

(5.) Any notices or intimations required by law to be given to creditors shall be sufficiently given in the case of creditors furth of Scotland if given to their known agents or mandatories in Scotland.

VI.—*Appeals.*

What appeals competent before final judgment.

27. The following, and no other, appeals to the sheriff against judgments or interlocutors of the sheriff substitute shall be competent; that is to say, an appeal against a final judgment or an appeal against an interlocutor,—

(1.) Granting or refusing interdict, interim or final; or,
(2.) Granting interim decree for money, or making an order ad factum præstandum, or sisting an action; or,
(3.) Allowing, or refusing, or limiting the mode of proof; or,
(4.) Against which the sheriff substitute, either ex proprio motu or on the motion of a party, grants leave to appeal.

Note of appeal against judgment of the sheriff substitute.

28. An appeal to the sheriff may, when competent, be taken by a note of appeal written at the end or on the margin of the interlocutor sheet containing the judgment or interlocutor appealed from, within seven days after the date of such judgment or interlocutor, in the following or similar terms:

"The pursuer [*or* defender *or other party*] appeals to the sheriff:"

The note shall be signed by the appellant or his agent, and shall bear the date on which it is signed. If the interlocutor sheet is not in the hands of the sheriff clerk (which fact shall be certified by him) the note may be written, signed, and dated as aforesaid on a separate paper, prefixing merely the name of the cause and the date of the interlocutor appealed from, and having annexed a certificate by the sheriff clerk to the effect foresaid:

On an appeal being so taken, the sheriff clerk shall forthwith transmit the process to the sheriff, whose duty it shall be to determine what shall be the procedure in the appeal; provided as follows:

(1.) The sheriff may fix a diet for hearing the parties orally on the appeal, and may hear them accordingly, or may order a reclaiming petition and answers to be lodged, and prescribe the times for lodging the same; but it shall not be competent for him in any case both to order a reclaiming petition and answers and an oral hearing:
(2.) If both parties concur in asking the sheriff to dispose of the appeal without either ordering a reclaiming petition and answers or an oral hearing, the sheriff may, if he think fit, dispose of the same accordingly:
(3.) It shall be competent for the sheriff, where the action is before him on appeal on any point, to open the record ex proprio motu, if the record shall appear to him not to have been properly made up, or to allow further proof.

Effect appeal.

29. Such appeal shall be effectual to submit to the review of the sheriff the whole interlocutors and judgments pronounced in the cause, not only at the instance of the appellant, but also at the instance of every other party appearing in the appeal, to the effect of enabling the sheriff to do complete justice without hindrance from the terms of any interlocutor in the cause, and without the necessity of any counter appeal; and an appellant shall not be at liberty to withdraw or abandon an appeal without leave of the sheriff; and an appeal may be insisted in by any other party in the cause, other than the appellant, in the same manner and to the like effect as if it had been taken by himself.

How reclaiming petitions, &c. shall be drawn.

30. All reclaiming petitions and answers shall be drawn without quotation from the interlocutors, notes thereto, proof or process, except when such quotation is indispensable.

Power to regulate possession, &c. pending appeal.

31. A sheriff or sheriff substitute shall have power, notwithstanding an appeal, to regulate all matters relating to interim possession, to make any order for the preservation of any property to which the action relates, or for the sale of such property when perishable, or for the preservation of evidence, according to his discretion, having a just regard to the interests of the parties as they may be affected by the decision of the sheriff on the appeal.

An interim interdict, although appealed against, shall be binding till recalled.

An appeal shall not prevent the immediate execution of a warrant of sequestration for rent, or a warrant to take inventories, or place effects in custody ad interim, or other warrants of interim preservation.

When judgment, &c. may be extracted if no appeal.

32. Notwithstanding anything contained in section sixty-eight of the Court of Session Act, 1868, extract of any judgment, decree, interlocutor, or order pronounced in the ordinary sheriff court may be issued at any time on the expiration of fourteen days from the date thereof, unless the same shall, if competent, have been sooner appealed against, and no extract of any such judgment, decree, interlocutor, or order shall be issued before the expiration of fourteen days from the date thereof, unless the sheriff or sheriff substitute who pronounced the same shall allow the extract to be sooner issued.

Final judgments may be appealed within one month, if not sooner extracted or implemented.

33. Notwithstanding the provisions of this Act relating to appeals, an appeal to the sheriff may be competently taken against any final judgment pronounced by a sheriff substitute at any time within one month of its date, if the same shall not have been sooner extracted or implemented.

Correction of accidental errors in judgments.

34. At any time before the transmission of a process in which an appeal has been taken to the sheriff, the sheriff substitute may competently correct any merely clerical or accidental error in his judgment; and in like manner the sheriff may competently correct any such error in a judgment pronounced by him before extract thereof or appeal therefrom to the Court of Session.

VII.—*The Commissary Courts abolished.*

Commissary courts abolished, and powers transferred to sheriffs.

35. From and after the commencement of this Act the commissary courts in Scotland shall be and the same are hereby abolished, and the whole powers and jurisdictions of the commissary court in each commissariot shall be and the same are hereby transferred to the sheriff in office at the commencement of this Act as the commissary of such commissariot, who shall thereafter, and his successors in office as sheriff, possess and exercise the whole of the said powers and jurisdictions in all respects: Provided that it shall still be competent and proper to affix the seal of office of a commissariot to all documents to which it would have been competent and proper to affix the same before the commencement of this Act.

Office of commissary clerk in certain cases abolished.

36. In every case in which in any sheriffdom the offices of sheriff clerk and of commissary clerk shall at the commencement of this Act be united in the same person, who is remunerated by salary for discharging the duties of both offices, the office of commissary clerk shall be as from the said date and the same is hereby abolished, and the whole powers and duties of the office of commissary clerk shall be as from the said date and the same are hereby transferred to the office of sheriff clerk, and the sheriff clerk shall thereafter, and his successors in office as sheriff clerk, possess and exercise the whole of the said powers and perform the whole of the said duties.

Vacancies in office of commissary clerk not to be supplied.

37. No vacancy existing at the commencement of this Act or which may thereafter occur in the office of a commissary clerk, except the office of the commissary clerk of Edinburgh, shall be supplied.

All commissary clerks, except in Edinburgh, to be abolished on vacancies occurring.

38. In every case of a vacancy occurring after the commencement of this Act in the office of commissary clerk in any commissariot in Scotland, except the commissariot of Edinburgh, such office shall be, as from the date of the occurrence of such vacancy, abolished, and the whole powers and duties of the office of commissary clerk shall be transferred to the office of the sheriff clerk of the county, and the sheriff clerk of the

county shall thereafter, and his successors in office as sheriff clerk, possess and exercise the whole of the said powers and perform the whole of the said duties.

Commissary clerks continuing in office to perform the duties in the sheriff court.

39. From and after the commencement of this Act every commissary clerk whose office shall not be forthwith abolished under the provisions of this Act, shall perform in the sheriff court of the county all the duties and exercise all the powers heretofore performed and exercised by him in the commissary court; provided that such commissary clerk shall not be disabled from acting as a procurator in the sheriff court, except in causes in which he acts as clerk of court.

Provisions to have effect on the abolition of the office of commissary clerk.

40. On the office of commissary clerk being in any case abolished under the provisions herein-before contained, the following provisions shall have effect:

(1.) All records, books, documents, papers, and things belonging to the office of the commissary clerk or in the possession of any clerk or officer of that office as such, shall be forthwith transferred to the office or offices of the sheriff clerk of the county:

(2.) It shall be lawful for the Lords Commissioners of Her Majesty's Treasury to regulate the office of such sheriff clerk, and out of moneys to be voted by Parliament to award him such salary or personal remuneration, together with such allowances for clerks and office expenses, as shall seem just, having regard to the additional duties imposed upon him, and to the increased expenses of his office consequent on the transfer thereto of the duties of the office of commissary clerk:

(3.) The sheriff clerk shall account for and pay to the Queen's and Lord Treasurer's Remembrancer on behalf of Her Majesty all fees received in his office in connexion with the new business by this Act transferred to his office.

VIII.—*Amendment of Law as to Confirmation of Executors.*

Note in confirmation by sheriff clerk or commissary clerk that deceased died domiciled in Scotland substituted for certified copy interlocutor by the sheriff commissary and to have like effect.

41. Where, under the provisions of the ninth and subsequent sections of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, intituled "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," it shall be desired to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view to his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland; and sections twelve and thirteen of the said Act, so far as they make it a condition of the sealing of a confirmation in the principal Court of Probate in England or in the Court of Probate in Dublin, that the copy of the confirmation provided to be deposited with the registrar shall be accompanied by such a certified copy interlocutor, are hereby repealed.

Extension of the provisions of ss. 12. and 13. of 21 & 22 Vict. c. 56.

42. When an additional inventory has been given in and recorded and confirmation granted in a sheriff court in Scotland of estate situated in England or Ireland of a person who died domiciled in Scotland, and the additional confirmation shall be produced in the principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, and a copy thereof deposited with the registrar of the court, such additional confirmation shall be sealed with the seal of the court and returned to the person producing the same, and that whether the original confirmation shall have been sealed with the seal of the court or not, and although the additional inventory confirmed shall not contain any estate of the deceased situated in Scotland, and such additional confirmation when so sealed shall thereafter have the same force and effect as if probate or letters of

administration, as the case may be, had been granted by the court of probate in which it had been sealed.

Confirmation of Scotch estate with note of trust funds in England or Ireland to be sealed in Probate Courts as if it contained English or Irish estate of the deceased.

43. When any confirmation or additional confirmation of personal estate situated in Scotland, which shall contain or have appended thereto and signed by the sheriff clerk a note or statement of funds in England or Ireland, or both, held by the deceased in trust, shall be produced in the principal Court of Probate in England or in the Court of Probate in Dublin, as the case may be, such confirmation shall be sealed with the seal of such court in the same manner as is provided by sections twelve and thirteen of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, as amended by this Act, with respect to sealing confirmations which include personal estate situated in England or Ireland respectively; and such confirmation shall thereafter have the like force and effect in England and Ireland with respect to such funds as if probate or letters of administration, as the case may be, had been granted by the Court of Probate in which it had been sealed; and such note or statement may be inserted or appended as aforesaid by the sheriff clerk, provided the same shall have been set forth in any inventory which has been recorded in the books of the court of which he is clerk.

Schedule C. of 21 & 22 Vict. c. 56. hereby repealed, and new form of intimation, &c.

44. The sheriff clerk shall, after a petition for the appointment of an executor has been intimated by him as provided by section four of the Act passed in the twenty-first and twenty-second years of the reign of Her present Majesty, chapter fifty-six, and after receiving the certified copy of the printed and published particulars therein set forth, forthwith certify these facts on the petition in the following or similar terms: "Intimated "and published in terms of the statute," which certificate (in lieu of the certificate in the form of Schedule C. annexed to the said Act, which Schedule C. is hereby repealed,) shall be dated and signed by him, and shall be sufficient evidence of the facts therein set forth: Provided always, that special intimation shall be made to all executors already decerned or confirmed to a deceased person of any subsequent petition for the appointment of an executor which may be presented with reference to the personal estate of the same deceased person.

A calendar of confirmations and inventories to be published annually.

45. It shall be the duty of the commissary clerk of Edinburgh on or before the thirty-first day of December one thousand eight hundred and seventy-seven, and on or before the thirty-first day of December in every year thereafter, to prepare and issue a printed calendar containing a list or register, alphabetically arranged, of all confirmations granted, and of all inventories given in, in cases in which from any cause confirmation shall not have been required in Scotland, in the year ending on the thirty-first day of December immediately preceding, specifying in each case the name and designation, and the place and date of death of the person deceased; whether he died testate or intestate; the names and designations of his executors; date of confirmation or recording of inventory; the date of the will or deed, if any; and where and of what date the same was registered; and the value of the estate: Provided as follows:

(1.) It shall be the duty of every sheriff clerk to furnish to the commissary clerk of Edinburgh on or before the fifteenth day of February one thousand eight hundred and seventy-seven such a list or register of confirmations granted, and inventories given in, within the sheriffdom of which he is such clerk (with all the particulars above specified) in the year ending on the thirty-first day of December immediately preceding; and thereafter quarterly, on or before the first days of February, May, August, and November in each year, to furnish to the commissary clerk of Edinburgh such a list or register, with such particulars as aforesaid, of all confirmations and inventories granted, or given in, within such sheriffdom in the quarters ending on the thirty-first day of December, the thirty-first day of March, the thirtieth day of June, and the thirtieth day of September immediately preceding respectively:

(2.) A copy of every such calendar issued shall be sent by the commissary clerk of Edinburgh to every sheriff clerk in Scotland, who shall keep the same in his office open for the inspection of the public on payment of such fee as may be

fixed by act of sederunt, which the Court of Session are hereby authorised and required to pass:

(3.) A copy of every issue of such calendar shall also be sent to the Lord Clerk Register and to the registrars in the Probate Courts of London and Dublin:

(4.) The cost of preparing and printing and issuing such calendar and of furnishing copies thereof to the persons to whom they are herein directed to be sent shall be defrayed out of moneys to be voted by Parliament.

IX.—*Miscellaneous Provisions.*

A person shall, in certain cases, be subject to the jurisdiction of the sheriff within whose territory he has a place of business, though domiciled in another county.

46. A person carrying on a trade or business, and having a place of business within a county, shall be subject to the jurisdiction of the sheriff thereof in any action, notwithstanding that he has his domicile in another county, provided he shall be cited to appear in such action either personally or at his place of business; it shall however be in the power of the sheriff aforesaid, upon sufficient cause shown, to remit any such action to the court of the defenders' domicile in another sheriffdom.

Actions of forthcoming and multiplepoinding to be competent before the sheriff to whose jurisdiction the arrestee or the holder of the fund is amenable.

47. Any person entitled to raise an action of forthcoming or of multiplepoinding may competently raise the same in any sheriff court to whose jurisdiction the arrestee or the holder of the fund or subject in medio, as the case may be, is subject, although the common debtor may not reside within such jurisdiction; and the warrant of citation issuing from such court may be competently executed as herein-before provided against the common debtor or other defender in any such action; provided that the citation shall require the person cited to appear at a sheriff court of the county in which the action is brought, by lodging a notice of appearance, or defence, or claim, in the hands of the clerk of court within seven days, or fourteen days, as the case may be, after the date of citation.

Repeal of section 15 of Act 16 & 17 Vict. c. 80.

48. Section fifteen of the Act passed in the sixteenth and seventeenth years of the reign of Her present Majesty, chapter eighty, is hereby repealed.

Actions falling asleep may be wakened of consent, and after certain procedure.

49. Any action in a sheriff court in which no interlocutor shall have been pronounced during the period of year and day shall be held to have fallen asleep; but the following provisions shall have effect in regard to the wakening thereof:

(1.) Where any cause shall have fallen asleep as aforesaid, it shall be competent to the sheriff to pronounce an interlocutor wakening the cause on the agents for the whole parties subscribing a minute on the interlocutor sheet to the following or the like effect, "We the agents for the parties consent to the cause being wakened and proceeded with;" and on such interlocutor being pronounced, the cause may thereafter be proceeded with as wakened accordingly:

(2.) Where any cause shall have fallen asleep as aforesaid, and where any of the parties desires to have it wakened and proceeded with, it shall be competent for such party to enrol the cause and to lodge a minute craving a wakening of the cause; and the sheriff may thereupon direct intimation of such minute to be made to the known agents of the other parties in the cause or to such parties themselves; and shall direct intimation to be made on the walls of the court in such manner as shall seem fit for seven days; and where said parties have no known agents or are themselves furth of Scotland, the sheriff shall also appoint edictal intimation thereof to be made by publication in the record of edictal citations; and on the expiration of seven days from the date of such intimation or from the latest date thereof and on a certificate being lodged in process under the hand of the agent applying for the wakening, certifying that he has duly intimated the minute in terms of the sheriff's interlocutor, the sheriff may pronounce an interlocutor holding the cause as wakened, and the same may thereafter be proceeded with as wakened accordingly.

The provisions of this section shall not apply to any action which at the commencement of this Act stood dismissed in consequence of six months having elapsed without any proceeding having been taken therein, but may be applied to any action where a less

period than six months had at the commencement of this Act elapsed without any proceeding having been taken therein.

Sheriff may sign judgment when furth of his county.

50. It shall be lawful for any sheriff to pronounce and sign any interlocutor, judgment, or decree when furth of his sheriffdom: and every such interlocutor, judgment, or decree shall have all the like force and effect as if pronounced and signed by the sheriff while within the limits of his sheriffdom, but shall bear date at the seat of the court as of the day on which it is received there by the sheriff clerk, and entered by him in the books of court.

Provision for the case of a sheriff being disabled or necessarily absent.

51. It shall be lawful for one of Her Majesty's Principal Secretaries of State on an application made by or on behalf of any sheriff for leave of absence on account of temporary illness or other reasonable cause, to grant such leave of absence for such period as he shall deem proper, and to appoint some other person, who shall be a sheriff of some other sheriffdom, or shall be an advocate of not less than five years standing, to act as interim sheriff in the place and during the absence of such sheriff; and, on any such interim appointment being made, to fix what proportion of the salary of the sheriff shall be paid to the interim sheriff, and to certify the same in writing; and such certificate shall, when presented in Exchequer to the Queen's and Lord Treasurer's Remembrancer, be a sufficient warrant to him for payment to such interim sheriff of the proportion of the sheriff's salary therein mentioned.

In this section the word "sheriff" does not include sheriff substitute.

Any interim sheriff appointed under this section shall have and exercise all the powers and privileges, and perform all the duties of the sheriff, and his acts, orders, and judgments shall have the same force and effect as if done, made, or pronounced by the sheriff.

A sheriff appointed to be interim sheriff under this section shall not, by accepting such interim appointment, vacate his office as sheriff.

Mode of disposing of summary applications where no procedure provided by statute.

52. In every case of an application, whether by appeal or petition, made to the sheriff under any Act of Parliament which provides, or according to any practice in the sheriff court which allows, that the same shall be disposed of in a summary manner in the sheriff court without record of the defence or evidence, and without the judgment being subject to review, but which does not more particularly provide in what form the same shall be heard, tried, and determined, the application may be by petition in one of the forms as nearly as may be contained in Schedule A. annexed to this Act, and the sheriff shall appoint the application to be served and the parties to be heard at a diet to be fixed by him, and shall at that diet, or at an adjourned diet, summarily dispose of the matter after proof led when necessary, and hearing parties or their procurators thereon, and shall give his judgment in writing.

Additions to salaries of sheriffs of united counties to be paid out of Consolidated Fund.

53. Notwithstanding anything contained in section eleven of the Act of the thirty-third and thirty-fourth years of the reign of Her present Majesty, chapter eighty-six, any additions made in terms of the recited section to the salaries of the sheriffs of united counties shall, instead of being paid out of moneys to be provided by Parliament for that purpose, be paid in the manner provided by the Act passed in the seventeenth and eighteenth years of the reign of Her present Majesty, chapter ninety-four, Schedule A.

Court to make acts of sederunt.

54. The Court of Session may from time to time make such regulations by act of sederunt as shall be necessary for carrying into effect the purposes of this Act; and for regulating the forms of petitions, and modes of procedure and of pleadings; and generally the practice of the sheriff courts in respect of the matters to which the Act relates; and for regulating the fees of court, with the concurrence of the Commissioners of the Treasury, and also for regulating the fees of the agents practising before the said courts, and of shorthand writers appointed to take down proofs, and, so far as may be found expedient, for altering the course of proceeding herein-before prescribed in respect to the matters to which this Act relates, or any of them, and for regulating the place or places at which in each county the business heretofore conducted in the commissary court thereof shall be hereafter conducted in the sheriff court thereof, and the place or places and manner in which

the records, books, documents, papers, and things connected therewith should be hereafter kept; and may also repeal or alter the provisions of any act of sederunt relating to any of the matters herein-before specified as may be inconsistent with such new regulations; and for that purpose the Court of Session may meet during vacation as well as during session; and in preparing such act of sederunt the court may take the assistance of any six sheriffs and sheriffs-substitute whom they may select: Provided that every such act of sederunt shall, within one month after the date thereof, be transmitted by the Lord President of the Court of Session to one of Her Majesty's Principal Secretaries of State in order that it may be laid before both Houses of Parliament; and if either of the Houses of Parliament shall, by any resolution passed within thirty-six days after such act of sederunt has been laid before such House of Parliament, resolve that the whole or any part of such act of sederunt ought not to continue in force, in such case the whole or such part thereof as shall be so included in such resolution shall from and after such resolution cease to be binding.

SCHEDULES.

SCHEDULE (A.)

IN THE SHERIFF COURT OF SHIRE AT

A. B. (*design him*), Pursuer,

against

C. D. (*design him*), Defender.

[NOTE.—Where any party sues, or is sued, in any special character,—as trustee, or inspector, or otherwise,—state what it is.]

The above-named pursuer submits to the court the condescendence and note of pleas in law hereto annexed, and prays the court—

a. To grant a decree against the above-named defender, ordaining him to pay to the pursuer the sum of sterling.

b. Or, To sequestrate, &c., and grant warrant to sell (*specify rent, due and current, and the subjects in respect of which such rent is payable*), and to find the pursuer entitled to expenses, and grant warrant of sale therefor.

c. Or, To ordain the defender—

(1.) To deliver to the pursuer, &c. &c.

(2.) *Or,* Forthwith to repair, &c. &c., and failing his doing so within days, to authorise such repairs to be made at the sight of a person to be appointed, and to ordain the defender to pay the expenses thereby incurred.

d. Or, To grant warrant to sell, &c. &c.

e. Or, To interdict the defender from, &c. &c. and to grant interim interdict.

f. Or, To ordain the said *C. D.*, defender, to pay to the pursuer *l.* arrested by him in *C. D.*'s hands as due to *E.*, in satisfaction of the sums due by *E.* to the pursuer, conform to, &c. &c.

g. Or, To ordain the defender to produce a full account of his intromissions as (*here state the character in which the defender is accountable, as factor or otherwise*), and to pay to the pursuer the sum of *l.*, or such other sum as may appear to be the true balance due by him; and failing his producing such account, to ordain the defender to pay

h. Or, To find that he is holder of *l.* (*or state the nature of the fund or subject in medio*), which is claimed by the defenders, and that he is only liable in once and single payment (*or* delivery) thereof, and is entitled, on payment (*or* delivery, *or* consignation), to be exonered thereof, and to obtain payment of his expenses; and that decree should issue in favour of the party or parties who shall be found to have best right to the fund (*or subject*) in medio. The real raiser hereof is

CONDESCENDENCE.

[*State articulately the facts which form the grounds of action.*]

Note of PLEAS IN LAW.

[*State them articulately.*]

WARRANT.

(*Place and date.*) The sheriff of the county of grants warrant [*to cite the defender, in the manner and upon the induciæ, as the case may be*] and ordains the defender, if he intends to show cause why the prayer of the petition should not be granted, to lodge in the hands of the clerk of court at a notice of appearance within the induciæ of citation hereon, under certification of being held as confessed, and grants warrant [*to arrest on the dependence*], [*meantime grants interim interdict as craved*], [*meantime sequestrates and grants warrant to officers of court to inventory and secure as craved*], [*or as the case may be*].

NOTE.—In all these writs, where interest and expenses, or either, are sought, they must be prayed for.

Every writ shall be signed by the pursuer or his law agent, who shall add his address.

The warrant may be signed by the sheriff clerk, unless interim interdict, sequestration, or other order not being an order for citation or warrant to arrest, is contained in the warrant, in which case the warrant shall be signed by the sheriff or sheriff substitute; and a mere warrant of citation or arrestment may competently be signed by the sheriff or sheriff substitute.

SCHEDULE (B.)

IN THE SHERIFF COURT OF SHIRE AT

NOTICE OF APPEARANCE.

In the action *A.B.* [*design him*] against *C.D.* [*design him*].

C.D., defender, enters appearance to defend said action.

C.D., defender.

[*Or*] *E.*, agent for defender.

CHAPTER 71.

An Act to amend the laws relating to the Jurisdiction of Chairmen of Quarter Sessions in Ireland. [15th August 1876.]

WHEREAS under the provisions of an Act passed in the session of Parliament held in the fourteenth and fifteenth years of the reign of Her present Majesty, chapter fifty-seven, and of the Acts amending the same, (in this Act referred to as "the principal Acts,") the Lord Lieutenant of Ireland is empowered to nominate and appoint to the office of chairman of the quarter sessions of each and every county and riding of a county in Ireland a barrister having the qualification by the principal Acts prescribed: 14 & 15 Vict. c. 57.

And whereas it is expedient to enable the Lord Lieutenant whenever a vacancy shall occur in the office of chairman of the quarter sessions of any county, in case he shall so think fit, to appoint a person holding the office of chairman of quarter sessions of another county to fill such vacancy, and to exercise the jurisdiction of chairman of quarter sessions in both such counties:

And whereas it is expedient to make provisions such as are in this Act contained with respect to the exercise of such jurisdiction as aforesaid, and generally with respect to the exercise of jurisdiction at quarter sessions in Ireland:

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:

1. This Act may be cited as "The Chairman of Quarter Sessions (Ireland) Jurisdiction Act, 1876." Short title.