commission, precept, writ, warrant, or other document, notwithstanding the same may be addressed to or make mention of the sheriff of any county, city, or place, instead of being addressed to or making mention of the governor of a prison or prisons; and every such commission, precept, writ, warrant, or other document shall be obeyed by the governor and take effect in the same manner as if the governor had been named therein instead of the sheriff.

CHAPTER 50.

An Act to amend the Law in regard to the appointment of Sheriffs Substitute and Procurators Fiscal in Scotland; to extend the jurisdiction of and amend the procedure in the Sheriff Courts of Scotland; and for certain other purposes connected therewith. [14th August 1877.]

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:

1. This Act may be cited for all purposes as the Sheriff Courts (Scotland) Act, 1877. Short title.

2. Except in so far as otherwise expressly provided, this Act shall commence and take effect on and immediately after the first day of October one thousand eight hundred and seventy-seven. Commencement of Act.

3. From and after the passing of this Act the right of appointing to the salaried office of sheriff substitute, heretofore belonging to sheriffs, shall be transferred to, vested in, and exercised by Her Majesty, her heirs and successors, on the recommendation of one of Her Majesty's Principal Secretaries of State. Appointment of salaried sheriffs substitute vested in Her Majesty.

4. The ninth section of the Act passed in the sixth year of His Majesty George the Fourth, chapter twenty-three, is hereby repealed; and in lieu thereof it is enacted as follows: From and after the passing of this Act no person shall be appointed to the office of salaried sheriff substitute who shall not be an advocate or a law agent, within the meaning of the Act passed in the thirty-sixth and thirty-seventh years of the reign of Her present Majesty, chapter sixty-three; provided always, that such advocate or law agent shall not be of less than five years standing in his profession. Qualification of sheriffs substitute. 6 Geo. 4. c. 23. s. 9. repealed. 36 & 37 Vict. c. 63.

5. No person holding the office of sheriff substitute or procurator fiscal at the passing of this Act, and receiving salary on that account, and no person who may hereafter be appointed to the office of salaried sheriff substitute or procurator fiscal by virtue of the provisions of this Act, shall be removable from office, except by one of Her Majesty's Principal Secretaries of State, for inability or misbehaviour, upon a report by the Lord President of the Court of Session and the Lord Justice Clerk for the time being. Tenure of office of salaried sheriffs substitute and procurator fiscal.

6. From and after the passing of this Act the appointment of procurators fiscal shall be made by the sheriff with the approval of one of Her Majesty's Principal Secretaries of State, and any procurator fiscal so appointed, and any procurator fiscal holding office at the passing of this Act (save in so far as herein-after expressly provided) shall not be removable from office except in the manner provided in the fifth section of this Act: Provided always, that no appointment of any procurator fiscal, whether made before or after the passing of this Act, shall fall by reason of the sheriff ceasing to hold office by reason of death, resignation, or otherwise. The appointment of any person to act as procurator fiscal ad interim or in the absence of the procurator fiscal in any sheriff court shall cease and determine from and after the commencement of this Act. Appointment of procurators fiscal vested in sheriffs with approval of Secretary of State.

7. Except as herein-before provided, no sheriff shall have power, after the passing of this Act, to nominate or appoint any person to perform the duties of procurator fiscal; but it shall be lawful for a procurator fiscal, with the leave of the Lord Advocate and Procurator fiscal may appoint depute with consent of

Lord Advocate and sheriff.

sheriff expressed in writing, to grant a deputation to one or more fit persons to be named in such writing for whose actings he shall be responsible, to sign writs, to appear in Court, and to conduct prosecutions and inquiries in his name and on his behalf. In the event of a vacancy in the office of procurator fiscal, any depute or deputes appointed in terms of this section shall have and discharge all the powers, privileges, and duties of a procurator fiscal until such vacancy is filled up.

Sheriffs jurisdiction extended to certain questions of heritable right or title, &c.

8. The jurisdictions, powers, and authorities of the sheriffs and sheriffs substitute of Scotland shall be and the same are hereby extended to,—

(1.) All actions (including actions of declarator, but excluding actions of adjudication, save in so far as now competent, and excluding actions of reduction,) relating to a question of heritable right or title, where the value of the subject in dispute does not exceed the sum of fifty pounds by the year, or one thousand pounds value:

(2.) Actions of declarator for the purpose of determining any question relating to the property in, or right of succession to, movables, where the value of the subject in dispute does not exceed the sum of one thousand pounds:

(3.) Actions of division of commonty, and division, or division and sale, of common property, where the value of the subject in dispute does not exceed the sum of fifty pounds by the year, or one thousand pounds value:

Provided that the Act of the Parliament of Scotland passed in the year one thousand six hundred and ninety-five, intituled "Act concerning the dividing of commonties," shall for the purposes of this Act, and subject to the limitations hereof, be read and construed as if it conferred jurisdiction upon sheriffs and sheriffs substitute in the same manner as it confers jurisdiction on the Court of Session:

(4.) Any action against a foreigner, provided—

(1.) That such action would be competent in a sheriff court against a Scotsman subject to the jurisdiction thereof; and

(2.) That a ship or other vessel belonging to such foreigner, or of which he is part owner or master, shall have been arrested within the sheriffdom:

Actions relating to questions of heritable right or title, or to division of commonties, or division, or division and sale, of common property, raised in a sheriff court, shall be raised in the sheriff court of the county in which the property forming the subject in dispute is situated, and all parties against whom any such action may be brought shall be subject in such action to the jurisdiction of the sheriff and sheriff substitute of such county.

Nothing herein contained shall derogate from any jurisdiction, power, or authority now possessed by the sheriffs and sheriffs substitute of Scotland.

Provisions as to actions, &c. made by this Act competent in the sheriff court.

9. In regard to every action brought under the preceding section in the sheriff court, the following provisions shall have effect; that is to say,

(1.) If a defender shall, at any time before an interlocutor closing the record is pronounced in the action, or within six days after such an interlocutor shall have been pronounced, lodge a note in the process in the following or similar terms; that is to say,

"The Defender prays that the process may be transmitted to the Court of "Session.

"[Date]

"[Signed by the Defender *or* his Law Agent.]"

it shall be the duty of the sheriff clerk forthwith to transmit the process to the keeper of the rolls of the First Division of the Court of Session, who shall, under the directions of the Lord President of the Court, mark on the petition the Division and the Lord Ordinary before whom it shall depend, and shall transmit the process to the depute clerk officiating at the bar of such Lord Ordinary; and the process having been so transmitted shall thereafter proceed before the Court of Session as nearly as may be as if it had been raised in that court:

(2.) The Court of Session or either Division thereof or any Lord Ordinary therein may, if of opinion that the action might have been properly tried in the sheriff court, allow the defender who removed the action to the Court of Session, in the event of his being successful therein, such expenses only as they may consider that he would have been entitled to if successful in the action in the sheriff court:

(3.) The provisions of any Act of Parliament excluding appeal to the Court of Session in respect of the value of a cause depending in the sheriff court shall not apply to actions brought therein under the preceding section.

How value of estate shall be determined.

10. In any case of question as to the value of the subject in dispute in any action brought in a sheriff court under the provisions of this Act extending the jurisdiction of the sheriffs, the sheriff or sheriff substitute shall (in such way as he may think expedient) inquire into and determine the value, and his determination shall be final as regards the competency of bringing the action in the sheriff court.

If it shall appear to the sheriff or sheriff substitute, as the case may be, that the value exceeds the amount specified by this Act, he may dismiss the action, with or without expenses, as he shall see fit, or on the motion of the pursuer may, if he shall see fit, order the sheriff clerk to transmit the process to the keeper of the rolls of the First Division of the Court of Session, who shall, under the directions of the Lord President of the Court, mark on the petition the Division and the Lord Ordinary before whom it shall depend, and shall transmit the process to the depute clerk officiating at the bar of such Lord Ordinary, and the process having been so transmitted shall thereafter proceed before the Court of Session as nearly as may be as if it had been raised in that court.

Deed may be set aside by exception.

11. When in any action competent in the sheriff court a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception, without the necessity of bringing a reduction thereof: Provided always, that if any objection to a liquid document of debt, now maintainable only by way of reduction, shall be maintained by way of exception, the objector shall find such caution, or make such consignation, as the sheriff or sheriff substitute may direct.

Abolition of fees to sheriffs and sheriffs substitute. 23 & 24 Vict. c. 33. 8 & 9 Vict. c. 19.

12. From and after the passing of this Act, the seventh section of "The Bankruptcy (Scotland) Amendment Act, 1860," and so much of the fifty-first section of "The Lands Clauses Consolidation (Scotland) Act, 1845," as provides for the payment of remuneration to sheriffs and sheriffs substitute shall be repealed, and all payments to sheriffs and sheriffs substitute in respect of the discharge of their official duties, other than the salaries provided to them out of public moneys, and the expenses mentioned in the last-recited section, shall cease and determine: Provided always, that it shall be lawful to the Commissioners of Her Majesty's Treasury to grant out of moneys to be provided by Parliament, such compensation as they shall think fit to any sheriff or sheriff substitute in respect of the operation of this section, regard being had to the terms of the commission under which such sheriff or sheriff substitute holds office, and to the conditions, if any, which may have been attached to any salary, or increase of salary, granted to such sheriff or sheriff substitute.

CHAPTER 51.

An Act to enable the Secretary of State in Council of India to raise Money in the United Kingdom for the Service of the Government of India.

[14th August 1877.]

WHEREAS the exigencies of the public service in India require that the Secretary of State in Council of India should be enabled to raise money in the United Kingdom on the credit of the revenues of India:

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: