CHAP. 116.

An Act to amend "The Titles to Land Consolidation (Scotland) Act, 1868." [11th August 1869.] A.D. 1869.

WHEREAS it is expedient to amend "The Titles to Land Consolidation (Scotland) Act, 1868:" 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 authority of the same, as follows: 31 & 32 Vict. c. 101.

1. This Act may be cited for all purposes as "The Titles to Land Consolidation (Scotland) Amendment Act, 1869." Short title.

2. Section twenty-two of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the twenty-second section of the recited Act, and the recited Act shall be read and construed as if the twenty-second section thereof had been originally expressed in the following words; viz.:— Sect. 22 of recited Act repealed.

It shall be competent to any person having right to an unrecorded deed or conveyance, whether granted in favour of himself or originally granted in favour of another person, to assign the deed or conveyance in or as nearly as may be in the form No. 1 of Schedule (M.) to this Act annexed, setting forth the deed or conveyance, and the title or series of titles, if any, by which he acquired right to the same, and the nature of the right assigned; and the assignation, or, in the event of there being more than one, the successive assignations, may be recorded in the appropriate register of sasines along with the deed or conveyance itself, and a warrant of registration thereon, in or as nearly as may be in the form No. 2 of Schedule (H.) hereto annexed; and it shall be competent to write the assignation or assignations on the deed or conveyance itself, in or as nearly as may be in the form No. 2 Assignations to unrecorded conveyances.

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of Schedule (M.) hereto annexed, setting forth the deed or conveyance and the title or series of titles, if any, by which such person acquired right to the same, and the nature of the right assigned; in which case the assignation or assignations, and the deed or conveyance may be so recorded along with the warrant of registration thereon, which warrant shall be in or as nearly as may be in the form No. 1 of Schedule (H.) hereto annexed; and the deed or conveyance, with the warrant of registration, and the assignation or assignations, separate from the deed or conveyance, and those written upon the deed or conveyance, if any, and all similar assignations granted before the commencement of this Act being so recorded shall operate in favour of the assignee on whose behalf they are presented for registration as fully and effectually as if the lands contained in the assignation, or, if there be more than one in the last assignation, had been disponed by the original deed or conveyance in favour of such assignee, and the deed or conveyance with the warrant of registration had been recorded, in the manner herein-before provided, of the date of recording such deed, or conveyance and assignation or assignations; and all deeds or conveyances with a warrant of registration and assignation or assignations written thereon, or with an assignation or assignations separate therefrom, that may have been so recorded before the commencement of this Act, shall operate in favour of the assignees on whose behalf the same shall have been so recorded, as effectually as is herein-before provided in regard to a recorded deed, or conveyance, with a warrant of registration and assignation or assignations written thereon, notwithstanding that such assignation or assignations may not have been docqueted with reference to such warrant, or referred to therein as being so docqueted.

Sect. 24 of recited Act repealed.

3. Section twenty-four of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the twenty-fourth section of the recited Act, and the recited Act shall be read and construed as if the twenty-fourth section thereof had been originally expressed in the following words; viz.:—

Mode of completing title by a judicial factor on a trust estate, &c.

Where in a petition to the Court of Session for the appointment of a judicial factor authority has been or shall be asked for the completion of a title by such factor to any lands forming the whole or part of the estate to be managed by such judicial factor, or where a judicial factor has applied or shall apply, by petition or note to the said Court, for authority to complete a title to such lands, either in his

own person as judicial factor, or in the person of any pupil, minor, or lunatic to whom he may have been appointed judicial factor, and where any petition or note has specified and described or shall specify and describe the lands to which such title is to be completed, or has referred or shall refer to the description of the same, in the form, or as nearly as may be in the form, of Schedule (E.) hereto annexed, or of Schedule (G.) hereto annexed, as the case may be, the warrant granted for completing such title shall also so specify and describe the lands to which such title is to be completed, or shall so refer to the description thereof; and such warrant shall be held to be a conveyance in due and common form of the lands therein specified in favour of such judicial factor granted by the person, whether in life or deceased, whose estate is under judicial management, or where the estate is that of a pupil, minor, or lunatic, in whose person a title has not been made up, such warrant shall be held to be such a conveyance in favour of the pupil, minor, or lunatic, or of the judicial factor appointed to such pupil, minor, or lunatic, as the case may be, granted by a predecessor, or author having such title, or where such judicial factor has been or shall be appointed on an estate which shall have been vested in a trustee or former judicial factor, such warrant shall be held to be such a conveyance granted by such trustee or former factor, whether in life or deceased, for the purposes of such estate or trust, or factory to be holden in the case of lands not held by burgage tenure in the manner and to the effect and subject to the provisions enacted and provided in the sixth section of this Act in the case of conveyances in which no manner of holding is expressed, and in the case of lands held by burgage tenure to be holden of Her Majesty in free burgage; and such warrant may, with warrant of registration thereon, be recorded in the appropriate register of sasines as a conveyance in favour of such judicial factor, or pupil, minor, or lunatic, or of the factor on his estate, and being so recorded shall have the same force and effect as if at the date of such recording such conveyance had been granted to the judicial factor, or pupil, minor, or lunatic, or the judicial factor appointed to such pupil, minor, or lunatic, as the case may be, and recorded in the appropriate register of sasines: Provided always, that for enabling the person in whom such lands were last vested, or his representatives, or other parties interested, to bring forward competent objections against such warrant being granted, or claims upon the estate, the Court shall order such intimation and service of the petition or note as to them shall seem proper: Declaring always, that the whole enactments and

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provisions herein contained shall extend and apply to all petitions to and warrants by the Court of Session under "The Trusts (Scotland) Act, 1867," unless in so far as such provisions and enactments may be inapplicable to the form or objects of such petitions or warrants.

Sect. 62 of recited Act repealed.

4. Section sixty-two of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the sixty-second section of the recited Act, and the recited Act shall be read and construed as if the sixty-second section thereof had been originally expressed in the following words; viz.:—

Effect of a decree of adjudication or sale.

In all cases a decree of adjudication, whether for debt or in implement, or a decree of constitution and adjudication, whether for debt or in implement, or a decree of declarator and adjudication, or a decree of sale, if duly obtained in the form prescribed by this Act, or obtained, if prior to the commencement of this Act, in the form then in use, shall, except in the case where the subjects contained in the decree of adjudication or of constitution and adjudication are heritable securities, be held equivalent to and shall have the legal operation and effect of a conveyance in ordinary form of the lands therein contained granted in favour of the adjudger or purchaser by the ancestor of such apparent heir, or by the owner or seller of the lands adjudged or sold, although in nonage or of insane mind, to be holden in the case of lands not held by burgage tenure in the manner and to the effect and subject to the provisions enacted and provided by the sixth section of this Act in the case of conveyances in which no manner of holding is expressed, and to be holden of Her Majesty in free burgage in the case of lands held by burgage tenure; and it shall be lawful and competent to such adjudger or purchaser to complete feudal titles to said lands, not only by infeftment on such decree as a conveyance or unrecorded conveyance, as the case may be, in the manner provided by this Act, but also, when the lands are not held by burgage tenure, by obtaining from the superior charter of adjudication or of sale of said lands and expeding infeftment on such charter in common form or as a conveyance or unrecorded conveyance, as the case may be, in the manner provided by this Act, or where the ancestor of such apparent heir, or the owner or seller of the lands adjudged or sold, shall have been or shall be entered with his superior, or in a situation to charge such superior under the powers in this Act contained, to grant entry by confirmation, by taking infeftment on such decree as a conveyance or unrecorded conveyance, as the case may be, in the manner provided

by this Act, which infeftment shall, with such decree, be an effectual feudal investiture in the said lands in terms of such decree, holding base of the party whose lands are adjudged or sold, and his heirs, until confirmation thereof shall be granted by the superior of the lands in the same manner and to the same effect as if the party whose lands are sold or adjudged had granted a disposition of the lands to the adjudger or purchaser in the terms of the said decree, with an obligation to infeft a me vel de me to be completed by confirmation, and a precept of sasine, and the adjudger or purchaser had been infeft on such precept, and the effect of the charter or writ of confirmation of such decree or of the infeftment thus proceeding upon the same shall be to make the lands hold immediately of and under such superior; but the right of the superior to the composition payable by the adjudger or purchaser as due under the existing law is hereby reserved entire, and the adjudger or purchaser, by taking infeftment on any such decree in any of the modes above mentioned, shall become indebted in such composition to the superior, and shall be bound to pay the same on the superior tendering a charter or writ of confirmation, whether such charter or writ shall be accepted or not, and the superior shall be entitled to recover such composition as accords of law; and it is hereby provided that such infeftment on any such decree shall, without prejudice to any other diligence or procedure, be of itself sufficient to make the adjudication effectual in all questions of bankruptcy or diligence: Provided always, that where the investiture of any lands has imposed or shall impose a prohibition against sub-infeudation or alternative holding, such adjudger or purchaser shall, in respect of such recorded decree or notarial instrument, and notwithstanding any such prohibition, be deemed and taken to be duly infeft in the lands adjudged or sold as from the date of recording such decree or instrument, but without prejudice to the right of the superior to require such adjudger or purchaser to enter forthwith as accords of law, and to deal with such adjudger or purchaser as with a vassal unentered.

Sect. 97 of recited Act repealed.

5. Section ninety-seven of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the ninety-seventh section of the recited Act, and the recited Act shall be read and construed as if the ninety-seventh section thereof had been originally expressed in the following words; viz.:—

Subject superior may be compelled

Where any person is or shall be infeft in lands holden of a subject superior upon a conveyance or deed of or relating to such lands

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to grant entries by confirmation.

granted by or derived from the person last entered with the superior and infeft, or granted by or derived from a person whose own title to such lands is capable of being made public by confirmation according to the existing law and practice, which conveyance or deed shall contain an obligation to infeft a me, or a me vel de me, or shall contain a clause expressing the manner of holding to be a me, or a me vel de me, or shall imply that the manner of holding is a me, or a me vel de me, or upon any conveyance or deed which under this Act or any of the repealed Acts shall be equivalent to or have the effect of such a conveyance, it shall be lawful and competent for such person, upon production to the Lord Ordinary on the bills in the Court of Session of his infeftment, whether the same shall consist of such conveyance or deed itself with a warrant of registration thereon in his favour, recorded in the appropriate register of sasines, or of an instrument or instruments in his favour, applicable to such lands, following on such conveyance or deed, and recorded in the appropriate register of sasines and warrants of the same, and upon showing the terms and conditions under which the said lands are holden of the superior thereof, to obtain warrant for letters of horning to charge the superior to grant in favour of such person a writ or charter of confirmation in the same way and form as is provided and in use for compelling entry by resignation: Provided always, that the charger shall at the same time pay or tender to such superior such duties or casualties as he is by law entitled to receive upon the entry of the charger, and that it shall be lawful for every such superior to show cause why he ought not to be compelled to give obedience to such charge by presenting a note of suspension to the Court of Session in the usual manner.

Sect. 118 of recited Act repealed.

6. Section one hundred and eighteen of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the one hundred and eighteenth section of the recited Act, and the recited Act shall be read and construed as if the one hundred and eighteenth section thereof had been originally expressed in the following words; viz.:—

Bonds and dispositions in security may be granted in the form No. 1 of Schedule (FF.)

From and after the commencement of this Act it shall be lawful and competent for any person entitled to grant an heritable security by way of bond and disposition in security to grant the same in the form or as nearly as may be in the form No. 1 of Schedule (FF.) hereto annexed; and the registration in the appropriate register of sasines of such bond and disposition in security, or of any bond

and disposition in security, granted according to any of the forms competent, or in use prior to the commencement of this Act, shall be as effectual and operative to all intents and purposes as if such bond and disposition in security had contained, in the case of lands not held by burgage tenure an obligation to infeft a me vel de me, procuratory of resignation and precept of sasine, and in the case of lands held by burgage tenure an obligation to infeft more burgi and a procuratory of resignation, all in the words and form in use prior to the thirtieth day of September one thousand eight hundred and forty-seven, and as if sasine or resignation and sasine, as the case may be, had been duly made, accepted, and given thereon in favour of the original creditor, and an instrument of sasine, or of resignation and sasine, as the case may be, in favour of such creditor had been duly recorded in the appropriate register of sasines of the date of the registration of the said bond and disposition in security as aforesaid.

Sect. 119 of recited Act repealed.

7. Section one hundred and nineteen of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the one hundred and nineteenth section of the recited Act, and the recited Act shall be read and construed as if the one hundred and nineteenth section thereof had been originally expressed in the following words; viz.:—

Explanation of clauses in Schedule (FF.) No. 1.

The import of the clauses of the form of No. 1 of the said Schedule (FF.) occurring in any bond and disposition in security, whether granted before or after the commencement of this Act, shall be as follows, videlicet, the clause obliging the grantor to pay the amount due under the bond, principal, interest, and penalty to the creditor, his heirs, executors, or assignees, shall, unless where executors are excluded, be held to import an obligation to pay the same to the creditor and his representatives in mobilibus and his assignees, and where there is or shall be such exclusion, to the creditor and his heirs and assignees, the clause disponing the lands to such creditor and his foresaids heritably shall, unless where executors are excluded, be held to import a disposition of such lands to such creditor and his representatives in mobilibus and his assignees, and where there is or shall be such exclusion to such creditor and his heirs and assignees in security, in manner specified in the bond and disposition in security, with all the rights and powers at present competent to a creditor and his heirs under such a security, the clause of assignation of rents shall be held to import an assignation to the creditor and his representatives in mobilibus or his heirs, as the case may be, and to his assignees, to the rents to

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become due or payable from and after the date from which interest on the sum in the security commences to run, in the fuller form generally in use prior to the thirtieth day of September one thousand eight hundred and forty-seven, including therein a power to the creditor and his foresaids to insure all buildings against loss by fire, and on default in payment to enter into possession of the lands disponed in security, and uplift the rents thereof, or to uplift the rents thereof if the lands are not disponed in security, and to make all necessary repairs on the buildings, subject to accounting to the debtor for any balance of rents actually recovered beyond what is necessary for payment to such creditor and his foresaids of the sums, principal, interest, and penalty, due to him or them under such security, and of all expenses incurred by him or them in reference to such possession, including the expenses of management, insurance, and repairs; and the clause of assignation of writs shall be held to import an assignation to the creditor and his foresaids to writs and evidents to the same effect as in the fuller form generally in use in a bond and disposition in security, with power of sale, prior to the thirtieth day of September one thousand eight hundred and forty-seven; and the clause of warrandice shall be held to import absolute warrandice as regards the lands and the title-deeds thereof, and warrandice from fact and deed as regards the rents; and clause consenting to registration for preservation and execution shall have the meaning and effect assigned to such clause in the one hundred and thirty-eighth section of this Act; the clauses reserving right of redemption and obliging the grantor to pay the expenses of assigning or discharging the security, and, on default in payment, granting power of sale, shall have the same import, and shall be in all respects as valid, effectual, and operative as if it had been in such bond and disposition in security specially provided and declared that the lands and others thereby disponed should be redeemable by the grantor from the grantee, at the term and place of payment, or at any term of Whitsunday or Martinmas thereafter, upon premonition of three months, to be made by the grantor to the grantee personally, or at his dwelling place, if within Scotland, and if furth thereof at the time, then at the office of the Keeper of the Record of Edictal Citations within the General Register House, Edinburgh, in presence of a notary public and witnesses; and that by payment to him of the whole principal sum payable under the bond and disposition in security, interest due thereon, and liquidated expenses, and termly failures corresponding thereto, if incurred; and in case of

Clauses reserving right of redemption and of obligation to pay expense of assignation or discharge and power of sale valid, &c.

his absence or refusal to receive the same, by consignation thereof in the bank specified in the security, if any bank shall be so specified, and if not, then in one or other of the banks in Scotland incorporated by Act of Parliament or Royal Charter, having an office or branch at the place of payment; to be made furthcoming on the peril of the consigner; the place of redemption to be within the office of such bank or branch thereof; and as if it had been thereby further provided and declared that any discharge and renunciation, disposition and assignation, or other deed necessary to be granted by the grantee upon the grantor making payment and redeeming as aforesaid, and also the recording thereof, should always be at the expense of the grantor; and as if it had been thereby further provided and declared, that if the grantor should fail to make payment of the sums that should be due by the personal obligation contained in the said bond and deposition in security, within three months after a demand of payment intimated to the grantor, whether of full age or in pupillarity or minority, or although subject to any legal incapacity, personally or at his dwelling place if within Scotland, or if furth thereof at the office of the keeper of the Record of Edictal Citations above mentioned, in presence of a notary public and witnesses, and which demand for payment may be in or as nearly as may be in the form of No. 2 of Schedule (FF.) hereto annexed, and a copy thereof certified by such notary public in the form of No. 3 of Schedule (FF.) hereto annexed, or where such demand has been intimated to more persons than one, a copy so certified of the demand intimated to one of such persons, with a certificate by such notary public that a similar demand has been intimated to the other persons, and stating the names and designations of such persons and the dates and places of intimation to them, shall be sufficient evidence of such demand, then and in that case it should be lawful to, and in the power of, the grantee, immediately after the expiration of the said three months, and without any other intimation or process at law, to sell and dispose, in whole or in lots, of the said lands and others, by public roup at Edinburgh or Glasgow, or at the head burgh of the county within which the said lands and others, or the chief part thereof, are situated, or at the burgh or town sending or contributing to send a member to Parliament, or at the burgh or town which may have previously adopted "The General Police and Improvement (Scotland) Act, 1862," or part thereof, which, whether within or without the county, shall be nearest to such lands or the chief part thereof, on previous advertisement, stating

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the time and place of sale, and published once weekly for at least six weeks subsequent to the expiry of the said three months, in any newspaper published in Edinburgh or in Glasgow, and in every case in a newspaper published in the county in which such lands are situated, or if there be no newspaper published in such county, then in any newspaper published in the next or a neighbouring county, and a certificate by the publishers of such newspapers for the time shall be primâ facie evidence of such advertisement, the grantee being always bound, upon payment of the price, to hold count and reckoning with the grantor for the same, after deduction of the principal sum secured, interest due thereon, and liquidated penalties corresponding to both which may be incurred, and all expenses attending the sale; and for that end to enter into articles of roup, to grant dispositions containing all usual and necessary clauses, and in particular a clause binding the grantor of the said bond and disposition in security, in absolute warrandice of such dispositions, and obliging him to corroborate and confirm the same, and to grant all other deeds and securities requisite and necessary by the laws of Scotland for rendering such sale or sales effectual, in the same manner and as amply in every respect as the grantor could do himself; and as if it had been thereby further provided and declared that the said proceedings should all be valid and effectual, whether the debtor in the said bond and disposition in security for the time should be of full age, or in pupillarity or minority, or although he should be subject to any legal incapacity, and that such sale or sales should be equally good to the purchaser or purchasers as if the grantor himself had made them, and also that in carrying such sale or sales into execution it should be lawful to the grantee to prorogate and adjourn the day of sale from time to time as he should think proper, previous advertisement of such adjourned day of sale being given in the newspapers above mentioned once weekly for at least three weeks; and as if the grantor had bound and obliged himself to ratify, approve of, and confirm any sale or sales that should be made in consequence thereof, and to grant absolute and irredeemable dispositions of the lands and others so to be sold to the purchaser, and to execute and deliver all other deeds and writings necessary for rendering their rights complete.

Sect. 130 of recited Act repealed.

8. Section one hundred and thirty of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the one hundred and thirtieth section of the recited Act, and the recited Act shall be read and

construed as if the one hundred and thirtieth section thereof had been originally expressed in the following words; viz.:—

Unregistered security or assignation to be available to executors, &c. of grantee.

In the event of an heritable security from which executors shall not have been excluded, dated before or after the commencement of this Act, not being constituted by infeftment during the lifetime of the grantee, or of any assignation, dated before or after the commencement of this Act, of a security from which executors shall not have been excluded, but which has been constituted by infeftment, not being completed by infeftment during the lifetime of the assignee, and where such grantee or assignee shall be in life at, or at any time subsequent to, the commencement of this Act, such security or assignation shall form a warrant for an instrument in the form or as nearly as may be in the form of Schedule (MM.) hereto annexed, under the hands of a notary public, being passed upon the same in favour of the executors of the creditor, duly confirmed, whether the same be executors nominate or executors dative, or in favour of the disponees or assignees of such security, or of the moveable estate of such creditor under any deed or conveyance inter vivos or mortis causa, or in favour of any legatees of such security; and where such executors or disponees or assignees, being more than one, shall not be entitled to such security wholly for their own beneficial interest, it shall be competent to take such notarial instrument in favour of such executors or disponees or assignees, and the survivors or survivor of them, unless such a destination be expressly excluded by the terms of the conveyance or deed or writing; and where executors shall be excluded from such security, or the creditor has died before the commencement of this Act, the security or assignation, as the case may be, shall form a warrant for a notarial instrument as aforesaid, in favour of any disponees or assignees or legatees of such security, or of the heritable estate of such creditor under any deed or conveyance by him inter vivos or mortis causa, or under any testamentary deed or writing by him within the meaning of the twentieth section of this Act, or in favour of the heirs of such creditor having right to the security by decree of general or special service as heir to such creditor; and on such instrument being recorded in the appropriate register of sasines, the executors or disponees, or assignees or legatees or heirs, as the case may be, in whose favour such instrument is expede, shall be vested with the full right of the creditor in such security, and shall be held to be entered with the superior in like manner and to the same effect as the original creditor himself.

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Sect. 141 of recited Act repealed.

9. Section one hundred and forty-one of the recited Act is hereby repealed, and in place thereof it is enacted that the following words shall be deemed and be taken to be the one hundred and forty-first section of the recited Act, and the recited Act shall be read and construed as if the one hundred and forty-first section thereof had been originally expressed in the following words; viz.:—

All deeds, &c. recorded in register of sasines to have warrants of registration endorsed, except certain burgage deeds.

All conveyances and deeds, and all writings whatsoever which may be recorded in any register of sasines, shall, previous to being presented for registration, have a warrant of registration endorsed or written thereon in or as nearly as may be in such one or other of the forms of warrants of registration contained in the following schedules hereto annexed, viz. Schedule (F.) No. 2, and Schedule (H.) Nos. 1, 2, and 3, as may be applicable to the particular conveyance, deed, or writing so to be presented, which warrant shall in every case specify the person or persons on whose behalf the conveyance, deed, or writing is presented for registration, and in the case of lands not held by burgage tenure the register or registers of the county or counties, and in the case of lands held by burgage tenure the register or registers of the burgh or burghs in which the lands to which such conveyance or deed or writing has reference are situated, and shall be signed by such person or persons, or by his or their agent or agents, and in the latter case the warrant may be signed either by an individual agent or by the subscription of any firm of which such agent may be a partner: Provided always, that nothing herein contained shall render it necessary to have a warrant of registration endorsed or written upon any conveyance, deed, or writing of or relating to lands held by burgage tenure which according to the existing law or practice may be recorded in any burgh register without such warrant: Provided always, that where registration has been or shall be made in any particular register of sasines, it shall be sufficient that such register is specified in the warrant of registration without any specification of a county or counties.

Amended sections to form part of recited Act.

10. The amended sections herein-before enacted shall be held to form part of the recited Act, and may hereafter be printed as forming portions thereof, in place of the several sections hereby repealed.

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