



Public Records (Scotland) Act 1809

1809 CHAPTER 42

An Act for better regulating the Publick Records of *Scotland*.

[12th May 1809]

WHEREAS Irregularities and Inconveniencies have arisen or may arise from the unnecessary Multiplicity of Registers in *Scotland* in which Deeds and other Writings may be competently recorded, either for Execution or for Preservation: And whereas the Laws heretofore devised for regulating the Formation and Custody of the Public Records, and more especially of those in the Local Registries throughout *Scotland*, have not been found effectual; and it is of high Importance that the Whole of the Public Records within that Part of the United Kingdom should be placed under one general and effectual Plan of Management and Controul: And whereas by an Act of the Parliament of *Scotland*, passed on the Thirteenth Day of *June* in the Year One thousand six hundred and eighty-five, intituled, *Act concerning the Registration of Writs in the Books of Session*, it is *inter alia* statuted and ordained, " That no Clerk of inferior " Court for the future presume to registrate any Writs in his Books, " either for Conservation or where Execution is to pass against any Party " that dwells without the Jurisdiction, under the Pain of Deprivation and " of Five hundred Merks of Penalty, the one Half to his Majesty, and "the other Half to the Party pursuer," which Provisions of the aforesaid Act it has become necessary to renew, modify, and enlarge ;

May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's moil 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,

Clerks of Burgh Courts not to record Probative Writs, or Deeds, in virtue of Clauses of Registration :

That from and after the Expiration of Six Months after the palling of this Act, but with and under the Exceptions and Reservations herein, after mentioned, if shall not lie lawful for the Clerks of Royal Burghs, or of Burghs of Regality or Barony within *Scotland*, to receive any Deeds or other Writings for the Purpose of being recorded by them in the Books or Registers of their respective Courts, either, in virtue of an Act of the Parliament of *Scotland* palled on-the Thirtieth Day of *August* in the Year One thousand six hundred and ninety-eight, intituled, *Act concerning Registration of Probative Writs*, or in virtue

of any Clause contained in such Deeds and Writings, consenting that the same mould be recorded either for Preservation thereof, or for Execution :

Except that Clerks of Royal Burghs may record Protests on Bills ; and Instruments of Seisin of Tenements with Burghs ;

Provided always, that this Act shall not extend to or affect the Right of the Clerks of Royal Burghs to receive Instruments of Protest on Bills of Exchange, Inland Bills and Promissory Notes, and to record the same : Provided also, that this Act shall not extend to or affect the Right of the Clerks of Royal Burghs to record in their Books Instruments of Seisin and other Writs relative to heritable Property holding in Burgage and situated within their respective Burghs or Liberties thereof in virtue of an Act of the Parliament of *Scotland*, passed on the Sixth Day of *September* in the Year One thousand six hundred and eighty-one, intituled, *Act concerning the Registration of Seisins and Reversions of Tenements within Burgh* :

and Deeds relating exclusively to such Tenements ; or any Deeds where all the Parties are Burgesses or domiciled Inhabitants.

Provided also, that this Act shall not extend to or affect the Right of the Clerks of Royal Burghs to receive and record Dispositions, Tacks, and other Deeds, relating exclusively to the Property or Possession of Subjects holding in Burgage and situated within such Burghs or Liberties thereof reflectively, or any Deeds or Instruments where all the Parties to the same shall be Burghs or have a legal Domicil within such Burghs, at the Time that such Deeds or Instruments shall be presented for Registration.

II Clerks of Commissary Courts not to record Probative Writs or Deeds, in virtue of Clauses of Registration.

And be it further enacted, That from and after the Expiration of Six Months after the palling of this Act, it shall not be lawful for the Clerks of the several Commissary Courts within *Scotland*, to receive any Deed or other. Writing for the Purpose of being recorded by them in the Books or Registers of their respective Courts, either in virtue of the above, mentioned Act of the Parliament of *Scotland*, passed on the Thirtieth Day of *August* in the Year One thousand six hundred and ninety-eight, or in virtue of any Clause contained in such Deeds or Writings consenting that the same should be recorded either for Preservation thereof or for Execution, or in virtue of an Act of the Parliament of *Scotland*, passed on the Sixteenth Day of *September* in the Year One thousand six hundred and eighty-one, intituled, *Act concerning Bills of Exchange*, or of any Acts of the Parliament of Great Britain authorizing the Registration of Bills and Promissory Notes for the Purpose of summary Execution.

III Penalties on Officers disobeying.

And be it further enacted, That, if after the Date aforesaid, any of the Clerks of Royal Burghs, or Burghs of Regality or Barony, or any of the Clerks of the Commissary Courts within *Scotland*, shall receive any of the above-mentioned Deeds or Writings, fir the Purposes of recording the same in their respective Backs or Registers, or shall transcribe the same into their Books, or shall give forth Copies thereof, bearing to be Extracts from their respective Books or Registers, excepting as above excepted, the aforesaid Books, Copies, and Extracts, shall not make Faith or be of any Avail or Authority whatever ; and the aforesaid Clerks or others so offending shall be liable in a Penalty of Five Pounds for each Offence, which may be fued for and shall be recoverable to his own Use, together with the Expences of Process, by the Sheriff Clerk or. Stewart Clerk of the Shire or Stewartry within which such Offence shall have been

committed, on a summary Complaint to the Sheriff Depute or Stewart Depute of such Shire or Stewartry; and in Default of such Prosecution at the Instance of the Sheriff Clerk or Stewart Clerk, within Twelve Months from the Date of the Commission of such Offence, then such Penalty shall and may be sued for and recovered, together with the Expences of Process, by the Lord Clerk Register on a summary Complaint presented within Three Years after the Date of such Offence, to the Lords of Council and Session, such Penalty in the latter Cafe being solely applicable by the Lord Clerk Register, to the Purposes of the Establishment of His Majesty's General Register House.

IV Clerk of the Commissary Court of Edinburgh to deliver his Registers of Deeds, and the Warrants to the Lord Clerk Register.

And be it further enacted, That on or before the Expiration of Six Months after the pairing of this Act, the Clerk of the Commissary Court of *Edinburgh* shall deliver to the Lord Clerk Register, or his Deputy-Keepers of Records, all the Books or Registers of Deeds or of Probative Writings kept by them and their Predecessors in Office, and which shall be in their Custody, together with the Minute Books and Warrants of the said Registers or Books of Record, and with an Inventory of the whole, to the Accuracy and Completeness of which the said Clerks shall make Oath before the Lords of Council and Session; and that the Lord Clerk Register or his Deputy Keepers of Records shall receive the aforesaid Books, Registers, and Warrants to be deposited with the other Public Records of *Scotland*, and shall make and subscribe a full Duplicate of the aforesaid Inventory, to be delivered to and deposited by the said Clerk with the other Records of the Commissary Court remaining under his Custody and Care.

V Clerks of inferior Commissary Court to deliver their Registers of Deeds, and the Warrants to Sheriff Clerks.

And be it further enacted, That on or before the Expiration of Six Months after the palling of this Act, the Clerks of the several inferior Commissary Courts shall deliver to the Sheriff Clerks or Stewart Clerks of the Shires or Stewartries within which such Commissary Courts are respectively situated, all the Books or Registers of Deeds or of Probative Writings, if any, which have been kept by them and their Predecessors in Office, and which shall be in their Custody, together with -the Minute Books and Warrants of the same, and with an Inventory of the whole, to the Accuracy and Completeness of which- the said Clerks respectively shall make Oath in the Court of the Sheriff Depute or Stewart Depute, and that the said Sheriff Clerks and Stewart Clerks shall receive the aforesaid Books, Registers, and Warrants respectively, to be deposited with the other Public Records under their Custody and Care, and shall make and subscribe full Duplicates of the aforesaid Inventories to be delivered to and deposited by the said Commissary Clerks with the tether Public Records remaining under their Custody and Care.

VI Clerks of Burghs of Regality and Parony, to deliver their Registers of Deeds, and the Warrants if any to Sheriff Clerks.

And be it further enacted, That on or before the Expiration of Six Months after the palling of this Act, the Clerks of the several Burghs of Regality and Barony aforesaid, (hall in like Manner deliver to the Sheriff Clerks or Stewart Clerks of the Shires or Stewartries within which such Burghs are respectively situated, all the Books or

Registers of Deeds or of Probative Writings, if any, which have been kept by them and their Predecessors in Office, and which shall be in their Custody, together with the Minute Books and Warrants of the same, and with an Inventory of the Whole, to the Accuracy and Completeness of which the said Clerks respectively shall make Oath in the Court of the Sheriff Depute or Stewart Depute; and that the laid Sheriff Clerks or Stewart Clerks mail receive the aforesaid Books, Registers and Warrants respectively, to be deposited with the other Public Records under their Custody and Care, and shall make and subscribe full Duplicates of such Inventories to be delivered to and deposited by the said Clerks of Burghs respectively with the other Public Records under their Custody and Care.

VII Penalties on Officers will-fully refusing or neglecting.

And, in order that the aforesaid Provisions of this Act respecting the Delivery of the several Commissary or Burgh Records to the Lord Clerk Register and the several Sheriff Clerks and Stewart Clerks respectively, may be faithfully and punctually carried into Execution ; be it enacted, That it shall be competent for the Lords of Council and Session, on a summary Complaint by the Lord Clerk Register, to inflict such Penalties, not exceeding the Sum of Fifty Pounds for each Offence, upon any Sheriff Clerk or Stewart Clerk, Burgh Clerk, or Commissary Clerk, wilfully refusing or neglecting to comply with the aforesaid Provisions of this Act, and to make such further Orders thereon as may appear to them to be necessary, such Penalties being in all Cases recoverable by the Lord Clerk Register, and folely applicable by him to the Purposes of the Establishment of His Majesty's General Register House.

VIII Sheriff Clerks to record Deeds and Probative Writs in Books marked and issued by Lord Clerk Register. Penalties on Officers disobeying.

And be it further enacted, That from and after the Expiration of Six Months after the palling of this Act, it shall not be lawful for the Sheriff Clerks or Stewart Clerks of the several Shires and Stewartries to use any Books for the Registration of Deeds or other Writings, unless the same shall have been previously marked, at least on the first and last Leaves thereof, and issued to them by the Lord Clerk Register or his Deputies authorized to that effect, for each of which Books there shall not be charged more than the prime Colt thereof, together with a Fee to the Deputy Keepers of Records not exceeding Five Shillings Sterling; and if any Sheriff Clerk or Stewart Clerk shall use any other Books or Registers than such as shall have been previously marked as aforesaid, and issued to him by the Lord Clerk Register or his Deputies, he shall be liable in a Penalty of Five Pounds Sterling for each Offence, to be recoverable, together with the Expences of Process, by the Lord Clerk Register, on a summary Complaint ac his Instance to 'he Lords of Council and Session such Penalty being in all Cases folely applicable by the Lord Clerk Register to the Purposes of the Establishment of His Majesty's General Register House; and shall further be bound and obliged again to record the same Deeds and other Writings or Books duly marked and issued to him as aforesaid.

IX Clerks of Royal Burghs to record Seisins, and Deeds in Books marked and issued by Lord Clerk Register. Penalties for Officers disobeying.

And be it further enacted, That from and after the Expiration of Six Months after the passing of this Act, it shall not be lawful for the Clerks of Royal Burghs, to use any Books for the Registration of Instruments of Seisin of Subjects holding in Burgage, or

for the Deeds and other Instruments which they are hereby enabled to receive and to record, unless such Books shall have been previously marked and issued by the Lord Clerk Register, or his Deputies, in the Manner above directed, and under the Penalty above provided, in the Cafe of Sheriff Clerks or Stewart Clerks a; aforesaid.

X Sheriffs Depute annually to examine the State of Record Offices, and the Progress and State of Records kept by Sheriff Clerks; and to report thereon to the Court of Justiciary : The Court of Judiciary to direct INQUIRIES and make Orders thereon.

And be it further enacted, That the Sheriffs Depute and Stewarts Depute of the several Shires and Stewartries, or their Substitutes, shall at least once in every Year carefully examine into the Progress and State of all the different Records framed and kept by the respective Sheriff Clerks and Stewart Clerks, and shall prepare exact Reports in Writing, letting forth the Remit of their Examinations, and particularly specifying the State and Situation of the Buildings in which the Records of their respective Shires and Stewartries are kept, and how far the Laws and Regulations relative to the several Records have been faithfully and punctually executed and obeyed; and the Sheriffs Depute of the several Shires of *Edinburgh*, *Haddington*, and *Linlithgow*, or their Substitutes respectively, shall in the Month of *November* in every Year present such Reports, duly authenticated, to the Lords Commissioners of Justiciary at *Edinburgh*, and the Sheriffs Depute and Stewarts Depute of the other Shires and Stewartries, or their Substitutes respectively, shall present their said Reports, duly authenticated, to the Lords Commissioners of Justiciary, at the Circuit Courts that shall be holden within their respective Bounds, in the Autumn of every Year ; and the said Lords Commissioners of Justiciary are hereby empowered to make such Orders thereon, or direct such further INQUIRIES to be made as may appear to them to be necessary, and direct their Clerks to enter the same in the Minutes of the Court, and thereafter to transmit the several Reports, with a certified Copy of the Orders that may have been made by them thereon, to the Lord Clerk Register, at whose Instance it shall be competent to present to the Lords of Council and Session summary Complaints against any of the Sheriff Clerks or Stewart Clerks, or their Deputies, on account of any Neglect or Malverfation in the Business of the several Records committed to their Care, and for redressing and punishing the same according to Law.

XI Magistrates of Royal Burghs annually to examine the Progress and State of Records; and to report thereon to the Court of Judiciary.

And be it further enacted, That the Chief Magistrates of the said Royal Burghs respectively, shall at least once in every Year carefully examine into the Progress and State of all the different Records framed and kept by the respective Clerks of such Royal Burghs, and shall prepare exact Reports in Writing, in the Manner above directed, in the Cafe of Sheriff Clerks and Stewart Clerks; and such Chief Magistrates shall, in the Month of *November* in every Year, transmit such Reports to the Lords Commissioners of Justiciary at *Edinburgh*, who are hereby empowered to make Orders, and direct INQUIRIES, in the Manner above provided, in the Cafe of Sheriff Clerks and Stewart Clerks as aforesaid ; and the Clerks of Justiciary shall in like Manner transmit such Reports, with a certified Copy of such Orders, to the Lord Clerk Register, at whose Instance summary Complaints may be made against Clerks of Royal Burghs, in the Manner above directed, in the Cafe of Sheriff Clerks and Stewart Clerks as aforesaid.

XII Registers by Law transmissible periodically to the General Register House, to be delivered within Six Months after Completion. Penalties on Officers disobeying.

And whereas it is expedient that the Transmission of the successive Volumes or Books of the several Public Records, from the Offices in which they are formed, to His Majesty's General Register House, should be made with the least possible Delay; - be it enacted, That within in Months after the patting of this Act, the Keepers of the several Public Records which are by Law transmissible to His Majesty's General Register House, shall deliver all the Volumes or Books of their respective Records that are already completed, together with the Minute Books and the Warrants thereof, to the Lord Clerk Register or his Deputies; and that in all Time coming thereafter the successive Books or Volumes of these Records shall in all Cases be delivered to the Lord Clerk Register or his Deputies within Three Months after the same have been severally completed and filled up; and if the Keepers of these Records shall refuse or neglect to make such regular Transmission of the successive Books of their respective Records, it shall be competent for the Lord Clerk Register to present a luminary Application to the Lords of Council and Session, complaining of such Refusal and Neglect, by whom Warrants shall be granted for issuing Letters of Horning against such Keeper or Keepers, in order to enforce Obedience to this Act, and by whom such further Pains and Penalties may be inflicted by Fine, not exceeding Fifty Pounds on such Defaulters, as in the Circumstances of the Cafe shall seem jut, to be applied by the Lord Clerk Register to the Purposes of the Establishment of His Majesty's General Register House.

XIII Writs under the Great Seal, how to he expedede.

And, for remedying the Inconveniencies that have, arisen or may arise from the unnecessary Multiplicity of Writings and Records now in Use, as the successive Warrants of Charters and Grants of Lands and other heritable Property, which pass under the Seal appointed by the Treaty of Union to be kept and used in *Scotland* in Place of the Great Seal thereof formerly used there; be it enacted, That from and after the Expiration of Six Months after the palling of this Act, in expeding such Charters and Grants under the aforesaid Seal, the Latin Precept under the Signet shall be so framed as to be carried directly to Chancery without its containing any Order (hat a Precept under the Privy Seal shall be directed thereupon, and without such Precept under the Privy Seal being made out or recorded, and such Latin Precept under the Signet shall from thenceforth be received by the Director of His Majesty's Chancery in *Scotland*, and by the Keeper of the Great Seal, as the only legal and sufficient Warrants to them respectively for framing Grants in Terms of the same, and for appending thereto the Seal appointed by the Treaty of Union to be kept and used in *Scotland* in place of the Great Seal thereof formerly used there.

XIV Compensation to the Officers of the Privy Seal.

And be it enacted, That so long as the Writer to His Majesty's Privy Seal, and the Keeper of that Seal in Possession of their respective Offices of Writer and Keeper at the Date of the palling of this Act, shall continue to hold the same respectively and no longer, the aforesaid Precepts under His Majesty's Signet shall be produced to the said Writer and Keeper or their respective Deputies, by the Clerks to His Majesty's Signet, by whom the said Precepts respectively have been expedede, and the same Fees heretofore due on the Writing and Sealing of Precepts under the Privy Seal, shall thereupon be paid to the said Keeper and Writer respectively and their Deputies, of which Payments to them respectively a short Attestation shall be written on the Back

of the aforesaid Precepts under the Signet, and subscribed by the said Writer and Keeper or their Deputies ; and if the Director of His Majesty's Chancery shall, during the Period aforesaid, receive as his Warrant for framing any Charter any such Precept under the Signet which does not bear the due Attestations as aforesaid, he shall be liable in Penalties equal in Amount to the Fees of which the said Writer or Keeper respectively have been deprived; the aforesaid Penalty, together with the Expences of Process, being recoverable by the said Writer or Keeper On summary Complaints at their Instance to the Lords of Council and Session.

XV Register of the Great Seal how to be rendered complete and authoritative ; and transmitted to the General Register House.

And whereas it is of great Importance that the Record of Writs pairing under the Great Seal, and which is kept by the Director of Chancery, mould be in all respects complete, authentic, and authoritative; and that an Act of Sederunt touching that Record was passed by the Lords of Council and Session on the Eleventh Day of *February* One thousand eight hundred and eight, to which it is expedient to give the Force and Effect of a Public Law; be it enacted, That the Keeper of the Great Seal or his Deputies, instead of delivering the failed Charters or other Writs to the Persons by whom these have been expedite, (hall forthwith deliver the same, together with the Warrants thereof, to the Director of Chancery or his Deputy, by whom, after making the proper Entries of the Sealing in the Record, the Writs mail be delivered respectively to the Persons by whom they shall have been expedite ; and the aforesaid Warrants shall remain, in the Possession of the Director of Chancery, until the same, together with the Register in which the relative Writs have been recorded, shall be transmitted to His Majesty's General Register House.

XVI Extracts from Register of Great Seal to be probative.

And be it enacted, That Extracts of Writs from the Register of the Great Seal, of which the Fad and Date of Sealing mail have been duly recorded, such Extracts being certified in due Form by the Keepers of the said Records), shall make entire Faith in all Cases, excepting in Cases of Improbation.

XVII Compensation to Keepers of Records affected by the Operation of this Act ; to be ascertained by Court of Exchequer:

And, in order that permanent Compensation may be made to the Clerks of Royal Burghs and their Successors in Office, and that Compensation during their respective Lives or Continuance in Office, may be made to the Clerks of Burghs of Regality and of Barony, and to the Commissaries and Clerks of Commissary Courts and other Keepers of Publick Records, for and in respect of the Profits arid Emoluments of which they will be deprived by the Operation of this Act; be it enacted, That the laid several Persons having such Claims, and meaning to infill therein, shall, within Twelve Months after the palling of this Act, present the same to the Court of Exchequer in *Scotland*, together with the Vouchers and Evidence by which the same are meant to be supported ; and the said Claims, with the Vouchers thereof, shall be given out to His Majesty's Advocate, in order that he may appear and object to the same if necessary ; and the Barons of the Exchequer, after due Enquiry made by them into the Circumstances of each Cafe, are hereby authorized and required to determine and ascertain the Amount of the Fees and Emoluments of which the aforesaid Claimants shall have been or may be deprived by the Operation of this Act, and what Sums

will form a just and reasonable Compensation to such Claimants respectively, either by annual Payments to the aforesaid Clerks of Royal Burghs and their Successors in Office, or by Payments in the Gross, or in Annuities, during their respective Lives or Continuance in Office, and no longer, to the several other aforesaid Claimants, and shall cause such Determination to be entered in a Roll or Book to be kept for that Purpose ; and shall report the same under their Hands to His Majesty, His Heirs and Successors, and to both Houses of Parliament.

XVIII How to be Satisfied.

And be it further enacted, That so soon as such Compensation shall have been ascertained by the Barons of the Court of Exchequer as aforesaid, it shall and may be lawful for the said Barons, and they are hereby directed and required, from Time to Time to issue their Warrant or Warrants to His Majesty's Receiver General for *Scotland*, who shall thereupon pay the Sum or Sums specified therein to the Person or Persons entitled thereto out of any Money then in his Hands; and every Sum so paid upon any such Warrants shall be allowed in his Account.