



# Court of Session Act 1821

## 1821 CHAPTER 38

An Act for establishing Regulations respecting certain Parts, of the Proceedings in the Court of Session, and in the Court of Commissioners for Teinds, and respecting the Duties, Qualifications, and Emoluments of certain Clerks and other Officers of the said Courts. [28th May 1821]

WHEREAS an Act was passed in the Forty-eighth Year of the Reign of His late Majesty King George the Third, intituled *An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords* ; and an Act was passed in the Fiftieth Year of His said late Majesty's Reign, intituled *An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of, that Court*; and an Act was, passed in the Fifty-third Year of His said late Majesty's Reign, intituled *An Act for the better Regulation of the Court of Session in Scotland*; and an Act was passed in the Fifty-fifth Year of His said late Majesty's Reign, intituled *An Act for better regulating the Formation and Arrangement of the Judicial and other Records of the Court of Session in Scotland*: And whereas by a Warrant under the Sign Manual of His Royal Highness The Prince Regent, acting in the Name and Behalf of His Majesty, dated the Eighth Day of February One thousand eight hundred and fifteen, Commissioners were appointed for inquiring into the Duties, Salaries, and Emoluments of the several Officers, Clerks, and Ministers of Justice of the Courts in *Scotland*, and for reporting what Regulations might be fit to be established respecting the same ; which Commissioners have accordingly made certain Reports, and the same have been laid before Parliament: And whereas it is expedient that the said Acts should in certain Particulars be amended and that certain Regulations should be established, which cannot be effected without the Authority of Parliament;

be it therefore enacted by the ting'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,

### **Power to remit, with Instructions on Bills of Advocation and Suspension of final Judgments.**

That upon Bills of Advocation and Suspension, complaining of final Judgments of Sheriffs and other inferior Judges, it shall hereafter be competent either for the Lord

Ordinary on the Bills, or for the Court, to remit the Cause to the inferior Judge, with Instructions how to proceed; but no such Remit shall be made, except In the Case of ft Suspension of a Decreet in Absence without hearing Counsel, of receiving a written Answer on the Part of the Respondent.

## **II Procedure on Bills of Advocations of Removings.**

And be it enacted, That the Procedure of Bills of Advocation, complaining of final Decreets of removing, shall hereafter be the same as is now established for Bills of Suspensions of such Decreets.

## **III Regulations in certain Cases of Equality of Voices.**

And be it enacted, That in all Cases in which, upon Report of the Lord Ordinary on the Bills to the Lords of either Division, there shall be a Difference of Opinion, and an Equality of Voices, such Lord Ordinary on the Bills shall vote in the Case ; and in all other Cases when, in consequence of such Difference of Opinion and Equality of Voices, the Cause or Matter shall be appointed to remain for subsequent Discussion, if the Question shall have previously depended before any Lord Ordinary of the same Division, being at the Time of such Discussion One of the permanent Ordinaries, such Lord Ordinary shall, without Regard to any Rotation, be called in to be present at the Discussion, and to rate in the Case.

## **IV Provision in case of the Death, Sickness, &c. of the Lord Ordinary on the Bills during Session, but when the Court is not sitting.**

And be it enacted, That in case of the Death, Sickness, necessary Absence, or legal Declinature of the Lord Ordinary on the Bills during the Period of the Session, but at a Time when the Court is not actually sitting, any one of the permanent Ordinaries, on a due Statement by any of the Clerks of the Bills of such Fact, and of some Urgency in the Case, shall and may pronounce on any Bill which may in such Case be laid before him, such Interlocutor as Circumstances may require, without Prejudice, *quoad ultra*, to the Provisions of the aforesaid Act, passed in the Fifty-third Year of His said late Majesty's Reign, and also without Prejudice to the Power of either Division, upon legal Declinature of the Lord Ordinary on the Bills when represented to them in any Case, to remit the same to another Ordinary in his Stead.

## **V Court may remit Processes of Reduction to be decided by the Lord Ordinary.**

And; be it enacted, That it shall be competent and lawful for the Court in either Division, in all Cases when great *Avisandum* is made with a Process of Reduction, instead of granting Warrant to enrol the same in the next Regulation Roll, to remit to the Fifth or Junior Lord Ordinary for the Time, to hear Parties thereon, and to discuss the Reasons of Reduction and other Conclusions of the Libel, without Prejudice to the Power of the Court, on the Ground of Contingency, or any other sufficient Cause, to make such Remit to any of the permanent Lords Ordinary; and the Court is authorized and required to regulate by Act of Sederunt the Time and Manner of enrolling such Processes of Reduction so to be remitted to the Fifth or Junior Lord Ordinary, and of calling the same before the Lord Ordinary in pursuance of such Remit.

**VI Principal Clerks of Session alone to be capable of holding the Office of Principal Clerks of the Bills.**

And be it enacted, That from and after the passing of this Act (with the Exception herein-after specified), no Person shall be capable to be appointed a Principal Clerk of the Bills, except a Principal Clerk of Session, and every Person to be hereafter appointed to the said Office, shall personally discharge the Duties thereof, in Manner provided by the said Act, passed in the Fiftieth Year of the Reign of His, late Majesty, and shall in respect of such Appointment be entitled to the Salary herein-after provided, but to no Fees or other Emoluments whatsoever: Provided always, that the Two Principal Clerks of Session, who shall be appointed Principal Clerks of the Bills, pursuant to this Act, shall not belong to the same Division of the Court at the same Time, but one shall be appointed from each Division.

**VII Proviso in favour of the Clerks of Session now in Office.**

Provided also, and be it enacted, That nothing herein of provided shall be so construed as to compel any of the present Principal Clerks of Session to accept the said Office of Principal Clerk of the Bills ; but every Person to be hereafter appointed a Principal Clerk of Session shall, in case of his being subsequently appointed to be one of the Principal Clerks of the Bills, be bound to accept the said Office and perform the Duties thereof; and in case, at the Time of any Vacancy arising in the Office of Principal Clerk of the Bills, there shall be no Principal Clerk of Session willing or bound to accept the same in Terms of this Act, it shall be lawful to His Majesty, His Heirs and Successors, in such Case to appoint a fit and proper Person legally qualified to be appointed a Principal Clerk of Session to fill the said Vacancy.

**VIII Salaries to the Clerks of the Bills.**

And be it enacted, That from and after the Time when in Terms of the Regulations contained in the Said Act passed in the Fiftieth Year of the Reign of His late Majesty, there shall be only Two Depute Clerks of the Bills, each of whom would be entitled, by virtue of the said Act, to draw One-sixth Part of the total Fees pay, able to the Clerks of the Bills, the several Clerks of the Bills shall be entitled thenceforth to receive, from the Collector of the Fee Fund, the annual Salaries under mentioned, payable Quarterly, viz. for every Principal Clerk of the Bills, not being also a Principal Clerk of Session, Six hundred Pounds; for every Principal Clerk of the Bills, being also a Principal Clerk of Session, Three hundred Pounds; and for each of the Depute Clerks of the Bills, Four hundred and fifty Pounds; and the said Clerks shall be thereafter entitled to no Fee or other Emolument whatsoever, but the whole Fees now legally exigible by the said Clerks, shall thenceforth be paid over on the First *Monday* of every Month to the Collector of the Fee Fund, conformably to an Account thereof to be delivered to him, signed by one or other of the said Depute Clerks, and to the Verity of which the said Depute Clerk shall make Oath, if required.

**IX Principal Clerk of Teinds, to be an Advocate or Writer to the Signet of Three Years standing.**

And be it enacted, That from and after the passing of this Act, no Person shall be capable to be appointed Principal Clerk of the Commissioners for Teinds, except a Person legally qualified to be appointed a Principal Clerk of Session ; and no Principal or Depute Clerk of the Bills, to be hereafter appointed, shall after his Appointment practise as an Advocate or Agent before the Court of Session, under Pain

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*Status: This is the original version (as it was originally enacted).*

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of Deprivation of Office; nor shall any Person henceforth to be appointed Clerk to the Commission of Teinds, practise as an Advocate or Agent before the Commission of Teinds, under Pain of the like Penalty. X.

**X Provision for the better conducting the Business of the Teind Court.**

And whereas the Provisions heretofore made for the more regularly conducting the Business before the Teind Court, and bringing the Processes of Augmentation and Locality which come before it to a Conclusion, have been found insufficient in Practice, and other Provisions and Regulations are required; be it enacted, That it shall and may be lawful for the Court of Session, as Commissioners for Plantation of Kirks and Valuation of Teinds, to pass any Act or Acts of Sederunt from Time to Time regulating the Form and Manner of Proceedings in all Processes of Augmentation and Locality that may come before them, in such Manner as they may see proper and expedient for the Dispatch of Business, and for bringing such Processes to a final Conclusion: Provided always, that Copies of all such Acts of Sederunt shall be transmitted by the President of the Court of Session to His Majesty's Secretary of State for the Home Department, to be by him laid before both Houses of Parliament, at or immediately after the Commencement of the ensuing Session ; and no such Act or Acts of Sederunt shall become in force or receive effect, until the Expiration of Three Calendar Months after the First Day of the Meeting of such Session of Parliament.

**XI Direction of Brieves to the Macers in Services prohibited.**

And whereas it is expedient to abolish the Practice of directing Brieves to the Macers of the Court of Session in certain Services ; be it enacted, That in all Cases in which it is now lawful and competent to grant Commission by Authority of the Court of Session, to the said Macers for proceeding in any Service, and in which the Brief issued from Chancery is thereupon directed to the Macers, such Commission shall, from and after the Twentieth Day of *June* in this present Year, be granted, and such Brief issued, according to similar Forms, to the Sheriff Depute of *Edinburgh*, or his Substitute, as Sheriff in that Part specially, constituted, whether such Service may relate to Lands and Heritages situated in or beyond the Sheriffdom of *Edinburgh*, of in several Sheriffdoms; and in all Cases of Competition of Brieves as well as where a Party claiming Right to appear and oppose a Service, shall make such Appearance, either Party may apply for and obtain Advocation of the Brieves to the Court of Session, not only from any inferior Judge, but also from the said Sheriff of *Edinburgh*, acting under special Commission; and the Lord Ordinary, before whom the Letters of Advocation shall be called, shall advocate the Brief, and remit to the Fifth or Junior permanent Lord Ordinary for the Time, to be Judge in the said Service, without Prejudice, nevertheless, to the Power of the Court, whether on Declinature or any other Cause shown, to remit to any other Ordinary to be Judge in any Service; and every such Service, whether before the Lord Ordinary on Advocation, or before the Sheriff of *Edinburgh* on Special Commission, shall proceed in the same Place, Form, and Manner (unless in so far as the same may hereafter be otherwise regulated in Manner hereinafter authorized) as Services have hereto fore preceeded before the Macers, except that the said Sheriff shall not be required to take any Oath *de fidei Administratione*, as in the Case of the Macers; and that the Practice of applying to the Court for Assessors shall be and is hereby abolished ; and the Court of Session is hereby empowered, by any Act or Acts of Sederunt, to make such Rules and Regulations as may be deemed expedient for altering and amending the Form and Manner of issuing of Brieves and executing the same, and of conducting the Procedure in such Services; and for every

such Service, deduced before the said Sheriff on Commission, he shall be entitled to a Fee of Five Guineas on every Service in Lands whereof the valued Rent is upwards of Two thousand Pounds Scots, and in every Service of a Peer, and of Two Guinea in every other Service.

## **XII Writers to the Signet to be Clerks to such Services.**

And be it enacted, That it shall not be lawful to any Person to be Clerk to any such Service before the Lord Ordinary on Advocation, or before the Sheriff of *Edinburgh* on Commission, unless he be a Writer to the Signet; and the Clerk to every Service whatsoever of a Retourable Brieve shall along with the Verdict, deliver or Cause to be delivered into Chancery, to be preserved, subject to the Orders of the Lord Clerk Register, the original Claim of Service, Minutes of the Proceedings, and Depositions of the Witnesses; and no Retour of any Service shall be issued without such previous Delivery.

## **XIII Provision for Contingent Expences incurred under Authority of the Court.**

And whereas Expences are occasionally incurred under the Authority of the Court, in making up Reports for the Information and by Order of the Houses of Parliament, as well as in other Matters connected with the Administration of Justice, for the Payment of which no Fund has been hitherto provided; be it enacted, That the Net Amount of all such Charges shall from Time to Time be paid on the Order of the Barons of Exchequer, on an Account of the same being, presented to them, certified under the Signature of the Lord President of the College of Justice, out of the Monies charged by certain Acts made in the Seventh and Tenth Years of the Reign of Her Majesty Queen *Anne*, with the Fees, Salaries, and other Charges allowed, or to be allowed, for keeping up the Courts of Session, Justiciary, and Exchequer.

## **XIV Keepers of the Inner House Rolls and Clerks of the Judges to receive Salaries.**

And whereas it is expedient that fixed Salaries should be paid to the Keepers of the Inner House Rolls, and the Clerks of the Judges, instead of the Fees now exigible by them; and also that certain Allowances should be granted for providing Life-rent Annuities to them, payable on the Death or Resignation of the Judges to whom they are respectively attached; be it enacted, That from and after the Twentieth Day of *June* in this present Year, there shall be payable by the Collector of the Fee Fund to the Keepers of the Inner House Rolls, who are also Clerks to the Lord President and Lord Justice Clerk respectively, a Salary of Five hundred Pounds Sterling each *per Annum*, and to the Clerks of the Thirteen Ordinary Judges a Salary of Three hundred Pounds Sterling each *per Annum*, payable quarterly; and none of the said Keepers or Clerks shall thenceforth be entitled to any Fee or other Emolument whatsoever; but the whole Fees now legally exigible by them shall be received by them respectively, and paid over on the First *Monday* of every Month to the Collector of the Fee Fund, conformably to signed Accounts to be delivered to him, and to the Verity of which they shall make Oath, if required by the Accountant of the Fee Fund: Provided always, that it shall be lawful to the Court, by any Act or Acts of Sederunt (which they are hereby empowered to make for that Purpose), to authorize and direct any other Mode of Collection of the said Fees, or of any Part thereof, which may be deemed more expedient, so as the whole of such Fees may in the most easy and convenient Manner be paid over to the Collector- of the said Fund.

**XV Annual Allowance to Keepers of Inner House Rolls, &c.**

And be it enacted, That from and after the Twentieth Day of *June* in this present Year, an annual Allowance of One hundred Pounds Sterling for each of the Keepers of the Inner House Rolls, being as aforesaid also Clerks of the Lord President and Lord Justice Clerk respectively; and a like Allowance of Fifty Pounds Sterling for each of the Clerks of the Thirteen Ordinary Judges, shall be paid by the said Collector to such Person or Persons as shall be named and appointed to, receive the same by the said Court, by their Act or Acts of Sederunt from Time to Time ; which Allowances, when go received, shall, under the Authority of the Court, be invested, for forming a Fund for the Purpose or providing eventual Life-rent Annuities as aforesaid, and thereafter applied for the said Purpose, all in such Manner as shall be directed and enjoined by the said Act or Acts of Sederunt, which the said Court is hereby authorized and required to make to that Effect.

**XVI Duties of Keeper of the Outer House Rolls to be performed by Clerks of Eight Judges.**

And be it enacted. That after the Death or Resignation of the present Keeper of the Outer House Rolls, the Duties of that Office shall be performed by the Clerks of the Eight Judges who are not, permanent Ordinaries, according: to a, weekly Rotation to be established among them by the Direction or with the Approbation of the Court; and the. Fees; now legally exigible by the said Keeper shall thereafter be received by them each in his Turn and paid over weekly to the Collector of the Fee Fund, to whom a, printed Copy of that Rolls of the Week shall at the same Time be delivered for the Satisfaction of the Accountant and the said Collector shall from Title to Time thereafter defray the necessary Expence of Paper and Printing for the said Rolls according to Accounts thereof to fee duly certified by any Two or more of the said Clerks.

**XVII Extracts to be prepared by Extractors to be appointed.**

And be it enacted That so much of the said Act passed in the Fiftieth Year of His said late Majesty's Reign as provides that the Six Assistants of the Principal Clerks of Session shall prepare the abridged Forms of Extracts therein directed to be observed, and as provides Salaries to such Six Assistants in respect of the Preparation thereof, shall, from and after the Twentieth Day of *June* in this present Year, be repealed; and all Extracts whatsoever which are now pursuance of the said recited Act prepared by the said Assistants, shall thenceforth be prepared by one or other of Four Extractors, to be appointed in manner herein-after directed, and their Successors in Office, and shall be authenticated by the Signature of the Extractors by whom the same shall have been prepared respectively in the same Manner and to the same Effect as such Extracts are now authenticated by the Signature of a Principal Clerk of Session; and the Forms of Extracts enjoined by the said Act to be used, shall be so far altered.

**XVIII Duplicates for the Record, and Abbreviates of Adjudications, to be signed by the Extractors.**

And be it enacted That the Duplicates of all Decrets for the Record, and also all Abbreviates of Decrets of Adjudication which have been heretofore signed in compliance with the Act of Regulations, in the Year One thousand six hundred and ninety-five, by the Lords Ordinary pronouncing Decree, as well as those Abbreviates of Decrets of Adjudication which have been heretofore signed, in compliance with an Act of Sederunt in the Year One thousand seven hundred and ninety-three by the

Principal Clerk of Session, shall, from and after the Twentieth Day of *June* in this present Year, be authenticated by the Signature of the Extractors respectively by whom the Decrees shall be prepared and signed.

**XIX Extractors to be appointed by the Principal Clerks of Session.**

And be it enacted, That the Nomination of each Extractor shall be made by the said Principal Clerks jointly, the senior Clerk having, in case of Equality, a casting Voice; and every such Nomination shall be made without receiving therefor any Price, Gratuity, or valuable Consideration of any Kind, and shall be forthwith reported to the Court; and the said Extractors shall hold their Offices during the Pleasure of the said Principal Clerks, or the major Part of them, the senior Clerk having as above directed a casting Voice in case of Equality; and the said Extractors shall give obedience to such Regulations as may be made by the Principal Clerks of Session from Time to Time, for establishing and preserving Order and Regularity in the Performance of their Duties, and for the faithful Performance of which Duties the Principal Clerks of Session shall be responsible; and the said Principal Clerks shall be bound as heretofore to maintain and exercise a constant and regular Superintendence; Control and Direction regarding the official Conduct of the Extractors, and all other subordinate Officers in their Department, and for that Purpose at least one of them shall attend personally for such Time as shall be necessary, at least Three Days in every Week, in the Register Office; and the said Principal Clerks shall also prepare and deliver to the Lord Clerk Register or his Deputy, at the Commencement of every Winter and Summer Session, a Report setting forth such Matters as have occurred in the intermediate Period, relating to their Department, and appearing to be worthy of Notice, with a View to the Public Benefit.

**XX Salaries to Extractors.**

And be it enacted, That there shall be paid to each of the said Extractors, by the Collector of the Fee Fund, a Salary of Two hundred and fifty Pounds Sterling *per Annum*, and they shall not be entitled to any Fee or other Emolument whatever, except the ordinary Charge for copying paid for copying at the Time in the Court of Session.

**XXI Compensation to Preparers of Extracts.**

And whereas by the aforesaid Act, passed in the Fiftieth Year of His said late Majesty's Reign, specific Compensations were provided for Seventeen Extractors whose Offices were abolished, including in that Number the Six Assistants of the Principal Clerks of Session being also Extractors, but a Deduction of Two hundred Pounds *per Annum* was made from the Amount of the Compensations ascertained to be due to each of the said Assistants, which Deduction was made in Consideration of their Appointment to be Preparers of Extracts with a Salary to each of Two hundred Pounds : And whereas it is just and equitable that when the said Salaries are withdrawn, the corresponding Deduction from the Compensation should cease to operate ; be it therefore enacted, That an Annuity of Two hundred Pounds Sterling shall, from and after the Twentieth Day of *June* in this present Year, be paid to each of the Six Persons now filling the joint Offices of Clerks Assistant and Preparer of Extracts, upon the Order of the Barons of Exchequer, in the same Manner and at the same Times with the specific Compensations allowed by the said Act.

**XXII. Principal Clerks Assistants to be Members of the College of Justice.**

And be it enacted, That the Keeper of the Judicial Records of the Court of Session, and the Six Assistants of the Principal Clerks of Session for the Time, shall, in virtue of their respective Appointments, be Members of the College of Justice.

**XXIII Act of Sederunt to be made with regard to unextracted Processes.**

And whereas by the said Acts passed in the Fiftieth and Fifty-" fifth Years of His said late Majesty's Reign, certain Regulations were made with regard to unextracted Processes, which have not been found effectual; and it is expedient that the Court of Session should be empowered to make a new Regulation as to that Matter, and also to provide for and facilitate an Arrangement of extracted Decrees, according to the Dates of the last Interlocutors in the Processes; be it enacted, That the said Court shall be empowered; by Act or Acts of Sederunt, from Time to Time to make such Regulations with regard to the Disposal and Arrangement of Processes remaining unextracted, whether final Decree may or may not have been pronounced therein, as shall be deemed fit and expedient; and to order and direct, if they shall see fit, that all extractable Processes shall be extracted in such Form and Manner as may seem expedient, and to make Provision for Payment out of the Fee Fund of the Charge, at the ordinary Rate for copying, for making the Record Copies of such Decrees as the Parties may not require to be extracted; and to make Regulations with regard to the Manner and the Person by whom Extracts of Decrees shall be authenticated after the Transmission, of Processes to the Keeper of the Records, and also with regard to the Manner and the Person by whom Extracts shall be authenticated, of all registered Deeds and Probative Writings, Charters, Precepts, and Instruments whatsoever issued after the Transmission thereof to the General Register House ; all which Orders and Regulations shall be valid and effectual; any thing in the said Two Acts contained to the contrary notwithstanding : Provided always, that Copies of all such Acts of Sederunt shall be transmitted by the President of the Court of Session to His Majesty's Secretary of State for the Home Department, to be by him laid before both Houses of Parliament, at or immediately after the Commencement of the ensuing Session, and no such Act or Acts of Sederunt shall become in force or receive effect until the Expiration of Three Calendar Months after the First Day of the Meeting of such Session of Parliament.

**XXIV Certified Copies for Appeals, &c. may be signed by the Clerks Assistants.**

And be it enacted, That from and after the passing of this Act the Copies of printed Papers and Interlocutors and Minutes of the Court, appointed by the said Act passed in the Fiftieth Year of His said late Majesty's Reign, to be received in Evidence when an Appeal is taken to the House of Lords, and the authenticated Copies of Proceedings in any Cause which the Assistants of the Principal Clerks of Session are by the said Act required to furnish, shall and may be certified by the Signature either of one of the said Clerks, or of one of the said Assistants, for whom the Principal Clerk shall be responsible.

**XXV Fee for comparing certified Copies for Appeals.**

And be it enacted, That the Fee payable to the said Assistants, for comparing the said Copies of printed Papers, shall be Four-pence for each printed Page, and no more: Provided always, that the said Fee shall in no one Case, of whatever Length the said Copies may be, exceed Ten Pounds in the whole: And provided also, that the said Fee is exclusive of the ordinary Charge of copying Interlocutors and Minutes, according



to the Rate for copying paid at the Time in the Court of Session; and the Fee payable to the said Assistants, for preparing Bonds granted by the Purchasers of Estates judicially sold for the Prices thereof, shall be One-half of the Fee which would be payable to a professional Agent for similar Bonds on occasion of a voluntary Sale, and no more.

**XXVI Keepers of the Register of Deeds, &c. to be appointed by the Lord Clerk Register.**

And be it enacted, That from and after the passing of this Act, the Principal and Assistant Keepers of the Register of Deeds, Probative Writings and Instruments of Protest, recorded in the Books of Council Land, Session, shall lie tinder the immediate Control and Direction Lord Clerk Register and his Deputy for the Time in the Performance of the Duties of their Offices and whenever a Vacancy shall arise in any, of the said Offices, the same shall be supplied by the Nomination of, the Lord Clerk Register, and every such Nomination shall be forthwith reported to the Court; and the Extracts or Office Copies, of all such Deeds, Probative Writings, and Instruments of Protest, before the Transmission thereof to the General Register House, shall be authenticated by the Subscription of one or other of the said Keepers, in the same Manner and to the same Effect as such Extracts have heretofore been authenticated by the Signature of a Principal Clerk of Session.

**XXVII Indexes of certain Registers to be formed.**

And whereas it is expedient that the Keepers of the several Registers of Records of Seisins, Reversions, Abbreviates of Adjudications, Inhibitions, and Deeds, and Probative Writs recorded in the Books of Council and Session, should form Alphabetical Indexes of the Persons and Matters to which those Records relate, for the Purposes of easy Reference to the same respectively; be it enacted, That it shall and maybe lawful for the Court of Session, by any Act or Acts of Sederunt, from Time to Time to regulate the Form and Manner in which such Indexes shall be formed and rendered accessible to the Public, and to provide such Remuneration for the Persons who shall be employed to form the same, as may be just and suitable, by the Imposition of a Fee on the Registry of the Writings to which the said Indexes shall bear Reference, not exceeding One Fourth Part of the ordinary Charge paid for copying at the Time in the Court Of Session : Provided always, that Copies of all such Acts of Sederunt shall be transmitted by the President of the Court of Session to His Majesty's Secretary of State for the Home Department, to be by him- laid before both Houses of Parliament at or immediately after the Commencement Of the ensuing Session; and no such Act or Acts of Sederunt shall become in force or receive effect until the Expiration of Three Calendar Months after the First Day of the Meeting of such Session of Parliament.

**XXVIII Fees of Macers regulated, and Salaries provided for diem.**

And be it enacted, That the Fees upon Services heretofore payable to the Macers shall be abolished from and after the Twentieth Day of *June* in this present Year, and that the Fees heretofore collected and accounted for to them, by the Clerks of the Bills and by the Keeper of the Outer House Rolls, shall be thereafter accounted for, and paid over weekly, to the Collector of the Fee Fund; and the said Collector shall retain those Fees which have heretofore been received by him on account of the Macers, and paid by him to them; and the other Fees now legally exigible by the said Macers, or any of them, shall remain so exigible, and shall, along with all Gratuities receivable by them or any of them, in their Capacity of Macers, form a common Fund of Division

among the whole Seven Macers of the Court, including the one by Hereditary Right or his Deputy, instead of being as heretofore exclusively divisible among Four of their Number; and the Fees now legally exigible by the Two Macers of the Court of Teinds (being also Macers of the Court of Session), shall in like Manlier form a common Fund of Division among the whole Seven Macers, who shall all equally be liable to perform the Duty of Macers without Distinction whether in the Court of Session, Court of Teinds, or elsewhere and the Salaries now payable to the said Macers of Ten Pounds each to Four of their Number, shall, from and after the said Twentieth Day of *June* in this present Year, cease and determine, and the said Seven Macers shall thereafter receive a Salary of One hundred and twenty Pounds each, payable in the same-Manner and at the same Times in which Salaries of One hundred and twenty Pounds each are now paid and payable to Three of their Number; the Salaries herein provided for them being in lieu and stead thereof.

**XXIX Remuneration to the Collector of the Fee Fund.**

And be it enacted, That the Remuneration of the Collector of the Fee-Fund\* including the Expence which may become necessary of a Clerk or Assistant, shall, from and after the Twentieth Day of *June* in this present Year, be fixed at the Rate of Four Pounds *per Centum* on the whole Sums received by him, until such Sums shall amount to Eleven thousand Pounds Sterling in each Year, with the Addition of a Rate of Two Pounds *per Centum* on the further Sums received by him in such Year beyond Eleven thousand Pounds Sterling, and that in lieu and stead of the Remuneration fixed by the said Act passed in the Fiftieth Year of His said late Majesty's Reign: Provided always, that in case in any Year the said Remuneration at the Rate aforesaid shall fall short of Six hundred Pounds, the said Collector shall, in such Year, be entitled to retain the full Sum of Six hundred Pounds, as the Allowance for his Trouble and for the Expence aforesaid ; and every Person filling the said Office shall, in virtue of his Appointment, be a Member of the College of Justice.

**XXX Disposal of Balance of Fee Fund, and Deficiency to be supplied.**

And be it enacted, That any Balance remaining in the Hands of the Collector, on the Twentieth Day of *December* in any Year, shall be disposed of in Manner described by the said Act, passed in the Fiftieth Year of His Majesty's Reign ; and in case of the Insufficiency of the said Fund at any Time for the Payment of the Sums which the said Collector is required to pay, the Deficiency shall be supplied in the Manner now practised in pursuance of the said Act.

**XXXI Fees may be diminished or abolished by the Court; and a Copy of the Order transmitted to the Secretary of State, to be laid before Parliament.**

And be it enacted, That in case it shall at any Time appear that the Fees by which the said Fund is created, produce annually a Sum materially exceeding the Amount required, it shall be competent to the said Court to diminish the Amount of, or altogether to abolish any of the said Fees ; any thing in this or any other Act to the contrary notwithstanding: Provided always, that if by any Diminution or Abolition the Fund shall become insufficient for the legal Demands upon it, the Said Court shall restore the said Fees in whole or in part, so as to keep the Fund as nearly as may be equal to the Burthens thereon: Provided further, that a Copy of every Order or Act of Sederunt to be made by the said Court, diminishing the Amount of the said Fees or Polishing any of the same, Or restoring such Fees, shall be transmitted ; by

the President of the Court of Session to His Majesty's Secretary of the State for the Home Department, who shall cause a Copy of the same to be laid before each House of Parliament, at or immediately after the Commencement of the then next Session thereof; and upon the Expiration of Three Calendar Months after the First Day of such Session, but not sooner, every such Fee shall become diminished, or be abolished, or be restored, in the same Manner as if the same had been diminished or abolished, or restored, by Authority of Parliament.

**XXXII Office of Auditor of the Court of Session to be made permanent. During temporary Indisposition, &c. a Person to be appointed to discharge the Duties of Auditor.**

And whereas the Office of Auditor of Accounts in the Court of Session was established by Acts of Sederunt of the Lords of Council and Session, and the Fees payable to and exigible by the Auditor were afterwards regulated and established by the aforesaid Act passed in the Fiftieth Year of the Reign of His late Majesty, by which it was provided, that in the Event of there being ah Auditor of each Division, such Fees should be equally divided between the Two Auditors: And whereas the said Office has been found useful and beneficial; be it therefore enacted, That the said Office of Auditor of Accounts shall hereafter be and remain a permanent Office in the Court of Session, and the Person at present filling the said Office shall continue to hold the same, *ad vitam aut culpam*, with Power nevertheless to His Majesty, His Heirs and Successors, to appoint another Auditor of Accounts, so that there may be an Auditor of Accounts for each Division whenever it shall be certified to His Majesty, His Heirs and Successors, by the Lord President of the Court of Session and the Lord Justice Clerk, that in the Opinion of the Court the due Dispatch of the Business of the said Office shall require that there shall be Two such Auditors, every such Auditor being a fit and proper Person, who shall have practised for not less than Three Years as a Writer to the Signet, or as a Member of the Incorporation of Solicitors before the Supreme Courts in *Scotland*; and every Person filling the said Office shall, in virtue of his Appointment, be a Member of the College of Justice, and shall hold the same, *ad vitam aut culpam* ; and that upon every Vacancy in the said Office, by Death, Resignation, or otherwise, it shall be lawful to His Majesty, His Heirs and Successors, to nominate and appoint a fit and proper Person, of the Description aforesaid, to supply such Vacancy; and no Person holding the said Office shall under Pain of Deprivation of Office practise either directly or indirectly as an Agent before the said Court of Session ; Provided always, that in the Event that Two Auditors of Accounts shall be appointed, it shall and may be lawful for the Court of Session, and such Court is hereby empowered by an Act or Acts of Sederunt, to regulate the Manner in which the Business of the said Office shall be performed by the said Two Auditors, and the Manner in which the Fees granted by the said recited Act shall be divided between them, any thing in the said recited Act to the contrary notwithstanding: Provided further, that a Copy of every such Act of Sederunt shall be transmitted by the President of the Court of Session to His Majesty's Secretary of State for the Home Department, who shall cause a Copy thereof to be laid before each House of Parliament, at or immediately after the Commencement of the then next Session ; and upon the Expiration of Three Calendar Months after the First Day of such Session, but not sooner, such Act of Sederunt shall become in force in the same Manner as if the Regulations prescribed therein had been made by the Authority of Parliament: Provided nevertheless, that in case the present Auditor or any Auditor henceforth to be appointed, shall be unable to discharge the Duties of the said Office, by reason of temporary Indisposition or Absence, it shall and may be lawful for the said Court to appoint a fit and proper Person, though continuing to practise as

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*Status: This is the original version (as it was originally enacted).*

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an Agent before that Court, to discharge the Duties of such Auditor during the Period of such temporary Indisposition or Absence.

**XXXIIIDecreets in Absence not to be extracted without the Account of Expences being taxed by the Auditor.**

And be it enacted, That from and after the passing of this Act, it shall not be lawful to extract any Decree for the random Sum of Expences concluded for in the Summons; and that in all Cases in which Decree is pronounced in Absence of the Defender or Defenders, an Account of Expences shall be lodged in Process, and taxed by the Auditor, and that a Report thereon by the Auditor shall be a sufficient Warrant and Authority to the Extractor to fill up the Amount of Expences to be awarded against the Defender or Defenders in the extracted Decree, without the said Report being brought under the Consideration of the Lord Ordinary, unless by his own Direction, or that of the Auditor, or on the Motion of any Party interested; and for the taxing of all such Accounts, in Cases of Decrees in Absence, the Auditor shall be entitled to charge a Fee of Five Shillings, and no more, when the Amount of the Account shall not exceed the Sum of Ten Pounds Sterling; and when the Amount of the Account shall exceed that Sum, he shall be entitled to charge according to the Rates of Fees specified and contained in the Schedule annexed to the aforesaid Statute passed in the Fiftieth Year of the Reign of His late Majesty.

**XXXIVCompensation to certain Officers.**

And be it enacted, That if any of the Keepers of the Inner House Rolls, or Clerks of the Judges, or other Officers of Court, shall make Application to the said Barons, and shall make it appear that he has suffered or will suffer pecuniary Loss from the Operation or Effect of any of the aforesaid Regulations, beyond the Salaries allowed and Fees reserved by this Act, due Consideration being had of the Circumstances of each individual Case, the said Barons are hereby authorized and required to examine into such Claims, and to decide whether any or what Compensation is due to all or any of the said Officers.

**XXXV Fund from which Compensation shall be made.**

And be it enacted, That every Sum of Compensation to be awarded under the Authority of this Act, shall be paid and payable upon the Order of the said Barons, in such Manner and at such Time or Times as they shall direct, free and clear from all Taxes and Deductions whatsoever, out of the Monies charged or made chargeable by several Acts made in the Seventh and Tenth Years of the Reign of Her Majesty Queen *Anne*, with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, and Exchequer; and every Order for Compensation so made as aforesaid, shall be laid before Parliament within One Month after the Commencement of the Session next ensuring the making of the same:

Provided always, that no such Decision of the said Barons shall be final and conclusive until Three Months after a Copy of the Order of such Barons for Compensation, shall have been laid before Parliament.