



# Court of Session Act 1825

1825 CHAPTER 120 6 Geo 4

An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland. [5th July 1825]

## Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Act repealed by [Court of Session Act 1850 \(c. 36\)](#), s. 56 in so far only as it may be in any respect inconsistent or at variance with the provisions of that Act and by [Sheriff Courts \(Scotland\) Act 1853 \(c. 80\)](#), s. 24 in so far as inconsistent with the enactment contained in that section
- C3 Preamble omitted under authority of [Statute Law Revision Act 1890 \(c. 33\)](#)

## [[<sup>F1</sup>1.] Altering the division of the Court of Session;

The seven junior ordinary judges of the Court of Session shall be relieved from attendance in the inner house, and shall not sit therein, unless in so far as is herein-after provided, but shall act as lords ordinary in the outer house, to perform the business which by the subsisting acts and usages belong to the office of lords ordinary in the outer house; and the lord president, and three of the senior ordinary judges of the Court of Session, shall form the inner house of the first division, and the lord justice clerk, with the remaining senior ordinary judges, shall form the inner house of the second division; . . . <sup>F2</sup>]

## Textual Amendments

- F1 Ss. 1–52 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in [Sch. 2 Pt. II](#) of that Act)
- F2 Words repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

*Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1825. (See end of Document for details)*

.....  
**Textual Amendments**  
F3 S. 2 repealed by Statute Law Revision Act 1873 (c. 91)

3 ..... F4

.....  
**Textual Amendments**  
F4 S. 3 repealed by Statute Law Revision Act 1950 (c. 6), Sch. 1

**4 No judgment to be pronounced till the record be made up and closed.**

In ordinary causes where the defender shall make appearance, and neither party shall abandon the cause, neither the lord ordinary officiating in the outer house, nor the court, shall proceed to give judgment upon the merits in the cause, until the respective averments of the parties in fact, and their pleas in matter of law, shall, as herein-after directed, be set forth on the record, and the record made up and authenticated in manner herein-after appointed.

**5 Of the disposal of the dilatory defences.**

It shall be the duty of the lord ordinary, at the first calling of the cause before him, to hear the parties on the dilatory defences, with power to reserve consideration on such dilatory defences as require probation, until the peremptory defences shall be pleaded, and the record adjusted in the manner herein-after directed; and if the lord ordinary shall sustain the dilatory defences, or any of them, to the effect of dismissing the action, he shall at the same time determine the matter of expences; but if, on the contrary, the said ordinary shall repel the dilatory defences, the cause shall then, with the exception herein-after to be mentioned, proceed in its due course of preparation, without any separate interlocutor being pronounced respecting expences, reserving this part of the expence to be disposed of along with the rest of the expence in the final decision of the cause; and the judgment of the lord ordinary on the dilatory defences shall be final, unless the pursuer, where the defences have been sustained and the action dismissed, shall, within twenty-one days from and after the date of the lord ordinary's judgment, apply by a note in manner herein-after directed to have such judgment reviewed by the judges of the inner house, or unless, in the case where the lord ordinary shall have repelled the defences, the defender shall, at the time of pronouncing judgment as aforesaid, give notice of his intention to bring the judgment under review, in which case the lord ordinary, instead of proceeding with the preparation of the cause, shall forthwith give judgment for the expence of that preliminary discussion; and the defender shall then be entitled, at any time within twenty-one days from the date of the interlocutor, to apply by note to the inner house for a review of the lord ordinary's judgment; and if the defender shall not avail himself of the right thus to bring the judgment of the lord ordinary under review, an interim decree, with expence of extract, shall be allowed to go out for the expences for which judgment shall have been given as aforesaid, and in reviewing the lord ordinary's judgment, and adhering to or altering the interlocutor by him pronounced, the court shall also dispose of the matter of expences relative to that preliminary discussion; and if the interlocutor of the lord ordinary repelling the defence shall be adhered to

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an interim decree shall be pronounced for the expences decerned for by him, with the additional expence in the court, if such shall be allowed, on which interim decree execution may proceed; and it shall not be competent to appeal to the House of Lords against the interlocutory judgment, where the action is not dismissed, unless express leave be given by the court, reserving the effect of the defence if an appeal should afterwards be taken in the cause when finally decided.

6—9 ..... F5

**Textual Amendments**  
F5 Ss. 6–9, 14–16 repealed by Statute Law Revision Act 1873 (c. 91)

**10 Final adjustment of condescendences and notes of pleas. Condescendences and notes to be signed by the counsel for the parties. Record to be made up to foreclose the parties in point of fact. Exception of res noviter veniens ad notitiam. How such new matter to be admitted on the record.**

The parties shall appear before the lord ordinary, for the purpose of finally adjusting their respective averments in fact, and their notes of pleas, when it shall be the duty of the lord ordinary to hear the respective explanations of the parties, and to examine as before directed with the statement of the facts respectively, and of the pleas, as applicable to the summons and cause of action and to the defence, and to suggest any new plea which may to him appear necessary to exhaust the whole disputable matter in law or fact in the cause, after which the adjusted condescendences and answers and relative notes of pleas shall be subscribed by the counsel for the parties; and before any order shall be pronounced, or judgment delivered, as to the disposal of the cause, the record of the pleadings as adjusted shall be authenticated by the lord ordinary by his signature; and the record so made up and authenticated shall be held as foreclosing the parties from the statement of any new averments in point of fact; and no amendment of the libel or new ground of defence shall be allowed after the record shall have been thus completed, under the exception hereafter to be mentioned; the pursuer having it in his power notwithstanding to abandon the cause on paying full expences or costs to the defender, and to bring a new action if otherwise competent: Provided always, that it shall be competent to either party in the course of a cause to state matter of fact noviter veniens ad notitiam, or emerging since the commencement of the action, if on cause shown leave shall be obtained from the lord ordinary or the court so to do, the said party always paying, previous to stating such new matter on the record, such expences as may be deemed reasonable by the lord ordinary or the court; and if leave be granted, the new matter shall within a time to be limited be stated in the shape of a specific condescendence framed as above, accompanied by a note stating the plea in law arising therefrom; and the adverse party shall in such case be ordered within a reasonable time to put in his answer to such condescendence and plea, to be adjusted and made a part of the record as before directed.

**11 Note of pleas to foreclose in point of law;**

The pleas stated on the record, and authenticated as before directed, shall be held as the sole grounds of action or of defence in point of law, and to which the future arguments of the parties shall be confined: Provided always, that where any exception

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of new pleas admitted with leave of the court.new plea or ground in law shall, after the completion of the record as before, be in the course of the cause suggested, either by the lord ordinary or by the judges in the inner house, or by the party, as fit to be discussed in relation to the facts already set forth, it shall and may be competent, with leave of the lord ordinary or of the court, to add such plea to the note of pleas authenticated by the lord ordinary as before.

**12 Of orders for compelling parties to lodge condescendences, &c.**

The lord ordinary shall, in every instance, on due consideration of the circumstances, fix the time within which such condescendences and answers shall be lodged, and such time shall not be prorogated, except on payment of the expences previously incurred, unless before the lapse of the time so fixed special application shall be made for such prorogation, nor shall the prorogation in any instance be granted, except on cause shewn, nor oftener than once; and if the party shall fail to lodge his condescendence or answers, as the case may be, within the time originally fixed, or afterwards prorogated, the lord ordinary may hold the summons or defences for such party as his condescendence or answers, finally fixing the averments in point of fact on which he founds.

**13 Of proceeding to the further disposal of the cause. Cases to be adjudged on admission of parties.**

After the record of the averments and pleas shall have been adjusted and closed as herein-before directed, and when it shall appear that the parties have respectively admitted on the record all the facts requisite to the decision of the cause, so as to render any trial of the facts unnecessary, the lord ordinary may proceed to decide the cause with or without further argument, or he may take the cause to report to the inner house in the form herein-after appointed.

14— ..... F6  
16.

**Textual Amendments**  
F6 Ss. 6–9, 14–16 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**17 Lord ordinary to determine costs.His judgment final in the outer house.**

In pronouncing judgment on the merits of the cause, the lord ordinary shall also determine the matter of expences, so far as not already settled, either giving or refusing the same in whole or in part; and every interlocutor of the lord ordinary shall be final in the outer house, subject however to the review of the inner house, in manner herein-after directed.

18 ..... F7

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**Textual Amendments**

**F7** Ss. 18, 27 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**19 Of reporting causes to the inner house; incidental matters may be reported verbally.**

The lord ordinary may, after intimation to the parties, report verbally to the inner house any incidental matter which may arise in the course of the cause, and such matter so reported by the lord ordinary shall be disposed of upon argument by counsel, unless the court shall, when the matter comes before them, think fit to order cases; and if judgment shall be pronounced by the court, or an order shall be made in respect to the matter so reported, that judgment or order shall be final, and the court shall either settle the expence relative to the point so reported, or reserve consideration thereof to the end of the cause.

**20 Court to hear parties.**

.....<sup>F8</sup> when the cause shall come to be advised by the court. ....<sup>F8</sup> on cases prepared by order of the inner house, the court shall give to the counsel an opportunity of being heard before proceeding to judgment.

**Textual Amendments**

**F8** Words repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**21 Judgment of the inner house shall decide costs, and shall be final.**

The inner house shall, in deciding the cause, also determine the matter of expences; and the judgment pronounced by the inner house shall in all causes be final in the Court of Session.

**22 Form in which cases shall be prepared.**

Wherever cases shall be ordered, whether by the lord ordinary or by the inner house, the case shall commence with a copy of the record, as authenticated by the lord ordinary; and each ground of law or plea, as stated in the record, shall be separately argued in the case.

**23 Of consultations of the judges in doubtful questions.**

In order to preserve uniformity in the decisions of the court, and to settle doubtful questions of law which may arise, the judges of either division may, in all causes in which the judges of the inner house shall be equally divided in opinion, direct the cause to be judged either by the inner house judges of both divisions, or by the whole court, including the lords ordinary; and in such cases as it shall appear to them advisable to have any question occurring before them settled by the judgment of the whole court, the judges of either division may order that such matter shall be heard before the whole judges; and judgment shall in all causes be pronounced according to the opinion of

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the majority of the judges present; and the interlocutor shall bear to be the judgment of the division before which the cause depends after consulting with the other judges.

**24 Opinion of permanent ordinaries taken, and judgment pronounced according to the opinion of the majority of judges.**

And whereas by the <sup>M1</sup>Court of Session Act 1808 the judges of either division are empowered to require the opinions of the other division, upon questions stated in writing: they may on such occasions also be entitled to require the opinion of the permanent ordinaries; and the judgment to be pronounced in the cause shall be according to the opinion of the majority of all the judges so consulted, and shall bear that it is the judgment of the division before which the cause depends after consulting with the other judges.

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**Marginal Citations**

**M1** 1808 c. 151.

**25 Limitation of time as to appeals to the House of Lords.**

From and after the expiration of fourteen days after the first day of the next session of Parliament the decrees or orders of the Court of Session, whether pronounced before or after that time, shall be final and not subject to be complained of by appeal to the House of Lords, unless the petition of appeal shall be lodged with the clerk of Parliament, or the clerk assistant, within two years from the day of signing the last interlocutor appealed from, or before the end of fourteen days to be accounted from and after the first day of the session or meeting of Parliament for the dispatch of public business next ensuing the said two years: Provided always, that when the person or persons entitled to appeal shall be out of the Kingdom of Great Britain and Ireland, it shall be competent for him or them to enter an appeal at any time within five years from the date of the last interlocutor, if he or they shall remain abroad so long, or within two years from the time of coming into Great Britain or Ireland; the time allowed to such person or persons for lodging his or their appeal in no case on account of mere absence exceeding the foresaid space of five years, together with the space that may elapse before the end of the fourteenth day from and after the session or meeting of Parliament next after the expiration of the said five years; and in case the person or persons so entitled to appeal shall be under the age of [<sup>F9</sup>eighteen] years, or non compos mentis, it shall be competent for them, or their heirs or representatives, where no appeal had been previously entered on this behalf, to enter an appeal at any time within two years after full age or coming of sound mind, or after the death of the persons so disqualified and the opening of the succession to the heir, or before the end of fourteen days after the first day of the session or meeting of Parliament next ensuing the said two years.

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**Textual Amendments**

**F9** Words substituted by [Age of Majority \(Scotland\) Act 1969 \(c. 39\), s. 1\(3\), Sch. 1 Pt. I](#)

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**Modifications etc. (not altering text)**

**C4** References to Ireland to be construed as exclusive of Republic of Ireland: S.R. & O. 1923/405 (Rev. X, p. 298: 1923, p. 400), art. 2

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**26 Certain documents to be laid before the House of Lords in case of appeal.**

When any cause shall be carried by appeal to the House of Lords, the appellant shall lay before the house a copy, certified as authentic by the signature of one of the principal clerks of session, or of one of the assistants of the said clerks, for whom the principal clerks shall be responsible, of the whole records of the averments and pleas authenticated by the lord ordinary in manner above directed; and instead of such cases as are delivered at present to the House of Lords, each party shall present to the House of Lords a case containing a printed copy of the records as authenticated, and of the case presented to the Court of Session, if such there be; and they shall also be at liberty to annex a supplementary statement, containing an account of the further steps which have been taken in the cause since the record was completed, or the former cases prepared, and copies of the interlocutors or parts of interlocutors complained against, with a summary of such additional reasons as may be thought fit, set down in the form now used in the House of Lords.

27 ..... <sup>F10</sup>

**Textual Amendments**

**F10** Ss. 18, 27 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**28 Description and enumeration of causes appropriate to the jury court.**

..... <sup>F11</sup> The following actions, whether originating in the Court of Session or in the Court of Admiralty, shall be held as causes appropriate to the jury court, and shall, for the purpose of being discussed and determined in that court, be remitted at once to that court in manner herein-after to be directed; namely, all actions on account of injury to the person, whether real or verbal, as assault and battery, libel or defamation; all actions on account of any injury to moveables or to land, when in this last case the title is not in question; all actions for damages on account of breach of promise of marriage, or on account of seduction or adultery; all actions founded on delinquency or quasi delinquency of any kind, where the conclusion shall be for damages only and expenses; all actions on the responsibility of shipmasters and owners, carriers by land or water, innkeepers or stablers, for the safe custody and care of goods and commodities, horses, money, clothes, jewels, and other articles, and in general all actions grounded on the principle of the edict *nautæ caupones stabularii*; all actions brought for nuisance; all actions of reduction on the head of furiosity and idiotcy, or on facility and lesion, or on force and fear; all actions on policies of insurance, whether for maritime or fire or life insurance; all actions on charter parties and bills of lading; all actions for freight; all actions on contracts for the carriage of goods by land or water; and actions for the wages of masters and mariners of ships or vessels.

**Textual Amendments**

**F11** Recital omitted under authority of [Statute Law Revision \(No. 2\) Act 1890 \(c. 51\)](#) and words repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

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**Modifications etc. (not altering text)**

C5 Jurisdiction of Court of Admiralty now exercisable by Court of Session: [Court of Session Act 1830 \(c. 69\), s. 21](#)

29— ..... F12  
32.

**Textual Amendments**

F12 Ss. 29–32, 34, 36 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**33 Questions arising on admissions to be remitted to the Court of Session, &c. Questions which the parties desire to be previously fixed to be remitted. Question, whether point of law to be decided previous to trial, to be settled by the jury court. The interlocutor of the judge subject to review. The decision of the jury court to be final on the question: If the question of law is to be previously decided, the cause to be remitted to the Court of Session, &c. If a question of fact remain, the cause to be sent back to the jury court.**

If after the record shall have been completed in manner already directed as to causes in the Court of Session, the parties shall, by mutual admissions, render any trial of the facts unnecessary, and leave, in the opinion of the jury court or judge thereof, a question merely of law to be determined, the said jury court, or the judge thereof, after having those admissions put upon record, and subscribed by the counsel for the parties, as already directed for causes in the Court of Session, shall forthwith remit the cause to the ordinary in the Court of Session by whom the same was remitted, or to the judge of the High Court of Admiralty, if the cause originated in that court, to be proceeded in and determined by those courts respectively; and if, after the record shall have been completed as above, the parties shall not be agreed upon the facts, so as to bring the cause to a question merely of law, but shall concur in a minute or note to the jury court or judge, requiring that any question of law or relevancy arising out of the pleadings, to be specified in such minute or note, shall be determined before going to trial, the said court or judge, if the request shall appear just or reasonable, shall remit such question to the ordinary by whom the cause was remitted, or to the Court of Admiralty, if the cause shall have originated in that court; and the cause shall afterwards proceed in those courts respectively, for the decision of such question of law or relevancy; but if either of the parties shall, without the concurrence of the other, insist that there is a point of law or relevancy which ought previously to trial to be determined, it shall be competent for such party to move for an order to have the cause remitted to the Court of Session, or Court of Admiralty, if the cause have come from that court, and on such motion it shall by the said jury court, or judge thereof, be determined whether the question raised ought to be decided previous to trial, or left for discussion at the trial, or for decision after verdict; and if such question shall arise before one of the judges of the jury court, he shall have it in his power either to determine the question, or to report it for decision by the whole judges of the jury court, or a quorum thereof, consisting in all cases of not less than three of such judges; and the decision of the said judge of the jury court in the said matter shall be final and conclusive, if not brought under review of the whole jury court, by motion to that effect, made in the said court, and of which due notice shall be given according to the form of giving notices in that court, within ten days after the interlocutor of the said



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judge shall be pronounced; and the decision of the jury court, either pronounced on the review of the said judge’s interlocutor, or on the cause being by him taken to report, shall be final on that question; and if it shall be ordered by the said judge or jury court that such question ought to be determined previous to trial, the cause shall forthwith be remitted to the ordinary of the Court of Session, by whom the same was remitted to the jury court, or to the judge of the High Court of Admiralty respectively, to have that question determined; and when, in either of the cases now specified, the cause shall be remitted to the Court of Session, or to the judge of the High Court of Admiralty, for their decision on a previous question of law, the said Court of Session, or the judge of the Court of Admiralty, shall proceed to determine the same according to the rules and regulations of those respective courts; the determination of the Court of Session being final in that court, and that of the Court of Admiralty subject, as it now is by law, to the review of the Court of Session; and the determination of such previous question of law or relevancy shall not be open to appeal to the House of Lords without leave expressly granted, reserving the full effect of the objection to the decision in any appeal to be finally taken; and after the determination of such question, the cause may be remitted back to the jury court, to be there finally disposed of; and if there shall remain matter of fact to be ascertained between the parties, the said matter shall be tried by jury, and the parties shall forthwith proceed before the said jury court, or one of the judges thereof, to prepare the issue or issues for trial in manner herein-after directed.

**Modifications etc. (not altering text)**

**C6** Jurisdiction of Court of Admiralty now exercisable by Court of Session: [Court of Session Act 1830 \(c. 69\), s. 21](#)

**34** ..... <sup>F13</sup>

**Textual Amendments**

**F13** Ss. 29–32, 34, 36 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**35** **List of witnesses not to be furnished previous to trial.**

..... <sup>F14</sup> it shall not be necessary for the parties to produce and exchange, as preparatory to the trial, the lists of the witnesses proposed to be examined by them, but the parties shall be at liberty at the trial to adduce and examine such witnesses as they may think fit, without having given any previous notice of their intention to call them.

**Textual Amendments**

**F14** Recital omitted under authority of [Statute Law Revision Act 1873 \(c. 91\)](#) and words repealed by *ibid.* and [Statute Law Revision \(No. 2\) Act 1888 \(c. 57\)](#)

**36** ..... <sup>F15</sup>

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**Textual Amendments**

**F15** Ss. 29–32, 34, 36 repealed by Statute Law Revision Act 1873 (c. 91)

**37** ..... **F16**

**Textual Amendments**

**F16** S. 37 repealed by Statute Law Revision Act 1950 (c. 6), **Sch. 1**

**38** ..... **F17**

**Textual Amendments**

**F17** Ss. 38, 39, 41–43, 49 repealed by Statute Law Revision Act 1873 (c. 91)

**39** ..... **F18**

**Textual Amendments**

**F18** Ss. 38, 39, 41–43, 49 repealed by Statute Law Revision Act 1873 (c. 91)

**40 Interlocutor of Court of Session on proof taken in inferior courts, to be final as to findings of fact. Power to advocate against orders for proof in inferior courts.**

When in causes commenced in any of the courts of the sheriffs, or of the magistrates of burghs, or other inferior courts, matter of fact shall be disputed and a proof shall be allowed and taken according to the present practice, the Court of Session shall, in reviewing the judgment proceeding on such proof, distinctly specify in their interlocutor the several facts material to the case which they find to be established by the proof, and express how far their judgment proceeds on the matter of fact so found, or on matter of law, and the several points of law which they mean to decide; and the judgment on the cause thus pronounced shall be subject to appeal to the House of Lords, in so far only as the same depends on or is affected by matter of law, but shall, in so far as relates to the facts, be held to have the force and effect of a special verdict of a jury, finally and conclusively fixing the several facts specified in the interlocutor: Provided however, that except in consistorial causes, the Court of Session shall, in reviewing the sentences of inferior judges, have power to send to the jury court such issue or issues, to be tried by jury, as to them shall seem necessary for ascertaining facts which may not have been proved to their satisfaction by the evidence already taken, or which may have been omitted in the cause, the verdict to be returned to the Court of Session, to assist that court in the determination of the cause; and the said court shall also have power to remit the whole cause for trial to the jury court; and in neither of these cases shall it be necessary to have the consent of the parties to the cancelling of the depositions already taken in the cause before proceeding to jury trial, but the

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Court of Session shall have power to give such directions with regard to the proof already taken, or with regard to any part or parts thereof, as to them shall seem just; to which effect the provision in the <sup>M2</sup>foresaid Jury Trials (Scotland) Act 1819 in so far as the consent of the parties to the cancelling of the depositions already taken is thereby required, shall be and the same is hereby repealed; and further, the Court of Session shall have power to remit the cause with instructions to the inferior court, if that course shall appear to them the most just and expedient in the circumstances of the case; but it is hereby expressly provided and declared, that in all cases originating in the inferior courts in which the claim is in amount above forty pounds, as soon as an order or interlocutor allowing a proof has been pronounced in the inferior courts (unless it be an interlocutor allowing a proof to lie in retentis, or granting diligence for the recovery and production of papers), it shall be competent to either of the parties, or who may conceive that the cause ought to be tried by jury, to remove the process into the Court of Session, by bill of advocation, which shall be passed at once without discussion and without caution; and in case no such bill of advocation shall be presented, and the parties shall proceed to proof under the interlocutor of the inferior court, they shall be held to have waived their right of appeal to the House of Lords against any judgment which may thereafter be pronounced by the Court of Session, in so far as by such judgment the several facts established by the proof shall be found or declared.

**Modifications etc. (not altering text)**

- C7 Functions of burgh magistrates now exercisable by justice of the peace: [District Courts \(Scotland\) Act 1975 \(c. 20\), s. 1\(2\)](#)
- C8 s. 40 repealed, so far as relating to appeal for jury trial from sheriff court to Court of Session, by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\), Sch. 2](#)

**Marginal Citations**

- M2 1819 c. 35

41— ..... F19  
43.

**Textual Amendments**

- F19 Ss. 38, 39, 41–43, 49 repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

**44 Decrees in actions of removing to be subject only to suspension.**

When any judgment shall be pronounced by an inferior court, ordaining a tenant to remove from the possession of lands or houses, the tenant shall not be entitled to apply as above, by bill of advocation to be passed at once, but only by means of suspension, as herein-after regulated.

**45 Bills of advocation of interlocutory judgments.**

And whereas, under the <sup>M3</sup>foresaid Court of Session Act 1810, bills of advocation are admitted against interlocutory judgments in certain cases: when such bills of advocation shall be passed, it shall not be necessary for the complainer to find caution, except for expences, as in other cases of advocation above mentioned; and

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all interlocutors by the lord ordinary on the bills, passing or refusing such bills of advocacy, shall be final.

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**Marginal Citations**

**M3** 1810 c. 112

**46 Lord ordinary may pass bills of suspension: Proceedings as to interlocutors complained of.**

In all cases, without distinction, the lord ordinary on the bills may pass bills of suspension, without requiring the concurrence of the inner house during session, or of one or more ordinaries during vacation; and in complaining of any interlocutor pronounced by the lord ordinary on the bills, the party shall proceed, not as at present by reclaiming petition, but by presenting a printed note to the inner house, stating the nature of the bill, reciting the interlocutor, and praying for an alteration thereof; and upon such note being presented the inner house shall order the counsel for the parties to be heard, and on hearing them shall either grant or refuse the application, or appoint parties to give in mutual cases on the question; and thereafter the court shall either refuse the application, or remit to the lord ordinary to pass or to refuse the bill, or to remit to the inferior judge with instructions; and any interlocutor of the court refusing such application, or of the lord ordinary on a remit from the court, shall be final; and when a bill of suspension shall have been passed on a remit from the inner house, or in consequence of the lord ordinary having taken the cause to report to the inner house, the letters of suspension shall be discussed before a lord ordinary of that division, unless remitted ob contingentiam to some previous process depending before the other division; and in the event of bills of suspension being passed of decrees of inferior courts, it shall be competent for the lord ordinary or the court to find the suspender entitled to his expences in the inferior court, as well as in the Court of Session.

**47 Cautioners in bills of suspension.**

Cautioners in a bill of suspension shall be liable to fulfil the obligation in their bond, although the letters of suspension shall not be expedite before the day of citation appointed in the deliverance, and also in the case of the chargers obtaining and duly extracting protestation for not enrolling, calling, and insisting.

**48 As to cases of suspension before the lord ordinary.**

The lord ordinary in the outer house, before whom any suspension . . . <sup>F20</sup> shall come to be discussed, shall proceed in preparing the cause for judgment after the manner already directed as to causes in the outer house; and the party resisting the suspension shall be required, by way of defence in the outer house, to return answers to the reasons of suspension.

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**Textual Amendments**

**F20** Words repealed by [Statute Law Revision Act 1873 \(c. 91\)](#)

*Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1825. (See end of Document for details)*

49 ..... F21

**Textual Amendments**  
F21 Ss. 38, 39, 41–43, 49 repealed by Statute Law Revision Act 1873 (c. 91)

50 ..... F22

**Textual Amendments**  
F22 S. 50 repealed by Administration of Justice (Scotland) Act 1933 (c. 41), Sch.

**51 Regulation of forms of citation, charge, &c.**

The subsisting forms of edictal citation, charge, publication, citation, and service at the Market Cross of Edinburgh, pier and shore of Leith, as against persons forth of Scotland, shall cease and be discontinued; and in lieu thereof such edictal citations, charges, publications, citations, and services at the Market Cross of Edinburgh, pier and shore of Leith, as against persons forth of Scotland, shall be done and performed by delivery of a copy thereof at the record office of the keeper of the records of the Court of Session, in the manner now practised in cases of citation or charge at the dwelling house of a party not personally apprehended; and the keeper of the records or his clerk shall forthwith register, in a book to be kept for that purpose, an abstract of the copy so delivered, exhibiting the time of service, of the nature of the writ, the names and designations of the parties, and the day against which the party shall be called upon to give obedience, or to make appearance; and the keeper of the said records shall keep three distinct and separate registers, one for all citations on summonses and orders of service, as against persons forth of Scotland, to appear before the several supreme civil courts respectively; another record for all citations by virtue of letters of supplement, to persons forth of Scotland, to appear before any of the inferior courts of Scotland; and a third for all charges, intimations, and publications, to persons forth of Scotland, given by virtue of letters other than summonses passing the signet.

**52 The record of citations to be printed.**

The said abstracts, in so far as they comprehend citations by virtue of summonses, precepts, warrants of court, and letters of supplement, shall periodically be printed by the keeper of the said records; and this publication by means of printing shall commence at the distance of fourteen days from the said eleventh day of November next, and shall regularly be continued at the end of each successive fourteen days; and at all times the said register of charges, citations, and publications shall be open to inspection; and the copies of charge, citation, and service, which shall be lodged as above with the keeper of the record or his clerk, shall be preserved during three years; and it shall be competent to the Court of Session to fix such allowance for the trouble and expence of the duty thus imposed on the keeper of the records, to be paid to him from the fee fund, as to the said court shall seem reasonable.

F23 53 .....

*Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1825. (See end of Document for details)*

**Textual Amendments**

**F23** [S. 53](#) repealed (S.) (5.9.1994) by [S.I. 1994/1443](#), para. 3(2), [Sch. 4](#)

**54** ..... **F24**

**Textual Amendments**

**F24** [S. 54](#) repealed by [Court of Session Act 1988](#) (c. 36, SIF 36:1), s. 52(2), [Sch. 2 Pt. I](#)

**55, 56.** ..... **F25**

**Textual Amendments**

**F25** [Ss. 55, 56](#) repealed by [Statute Law Revision Act 1873](#) (c. 91)

**57** **All questions in Scotland relating to prize in war, to vest solely in Court of Admiralty of England.**

All questions and matters in Scotland relating to prize and capture in war, and the condemnation of ships and vessels as such, shall be vested solely in the High Court of Admiralty of England; . . . <sup>F26</sup>

**Textual Amendments**

**F26** Words repealed by [Statute Law Revision Act 1890](#) (c. 33), [Sch. 1](#)

**58** ..... **F27**

**Textual Amendments**

**F27** [S. 58](#) repealed by [Administration of Justice \(Scotland\) Act 1933](#) (c. 41), [Sch.](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Court of Session Act 1825.