



# Court of Session Act 1850

1850 CHAPTER 36 13 and 14 Vict

An Act to facilitate Procedure in the Court of Session in Scotland. [29th July 1850]

## Modifications etc. (not altering text)

- C1 Short title given by [Short Titles Act 1896 \(c. 14\)](#)
- C2 Act repealed in so far as inconsistent with Rules of Court by [S.I. 1948/1691](#) (1948 I, p. 3778) and 1965/321
- C3 Preamble omitted under authority of [Statute Law Revision Act 1891 \(c. 67\)](#)
- C4 The whole Act except s. 16 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt.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)

1 ..... F1

## Textual Amendments

- F1 [S. 1](#) repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

2—4. .... F2

## Textual Amendments

- F2 [Ss. 2—4, 6](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

5 **Record to be closed by interlocutor and no authentication by counsel to be necessary.**

It shall not be necessary, in order to the closing of a record in any process before the Court of Session, that the record be authenticated by counsel as adjusted or closed, whether by minute of assent or otherwise, but such record shall be closed by interlocutor of the Lord Ordinary before whom the process depends; . . . <sup>F3</sup>

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1850. (See end of Document for details)*

.....  
**Textual Amendments**  
F3 Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

6 ..... F4

.....  
**Textual Amendments**  
F4 Ss. 2–4, 6 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

**7 Dilatory defences in reductions, how to be disposed of.**

Where in a process of reduction the defender is to object to the title of the pursuer, or to plead on an exclusive title, or to state any other objection against satisfying the production, he shall in the first instance lodge defences confined to these points, and the form of such defences, and the procedure thereon, shall be the same as in the case of peremptory defences in an ordinary action; and if the defences so lodged shall be repelled, the defender after the production has been satisfied, shall give in defences applicable to the grounds of reduction and upon the merits of the reduction, and a record may be made up thereafter as in any ordinary action.

**8 Production may be satisfied on box day.**

In a process of reduction the production may be satisfied either during session or on any box day in vacation or recess.

9, 10. .... F5

.....  
**Textual Amendments**  
F5 Ss. 9, 10 repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

11 ..... F6

.....  
**Textual Amendments**  
F6 S. 11 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

12 ..... F7

.....  
**Textual Amendments**  
F7 S. 12 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

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**13** ..... F8

**Textual Amendments**

F8 Ss. 13, 15 repealed by Statute Law Revision Act 1892 (c. 19)

**14 Lord Ordinary not to order written arguments.**

It shall not be competent to the Lord Ordinary to direct cases or minutes of debate or other written argument to be prepared by the parties, whether for the use of himself or of the inner house; but it shall be competent for the Lord Ordinary at any time after hearing parties on a closed record to take such cause to report to the inner house without cases or minutes of debate.

**15** ..... F9

**Textual Amendments**

F9 Ss. 13, 15 repealed by Statute Law Revision Act 1892 (c. 19)

**16 Actions of adherence, etc. to be instituted in the Court of Session.**

All the provisions of the <sup>M1</sup>Court of Session Act 1830, and of this Act, applicable to actions of declarator of marriage and of nullity of marriage, and to actions of declarator of legitimacy and of bastardy, and to actions of divorce, and to actions of separation *à mensâ et thoro*, are and shall be applicable to . . . <sup>F10</sup>all other consistorial actions, though not specially mentioned in the said recited Act.

**Textual Amendments**

F10 Words repealed by Law Reform (Husband and Wife) (Scotland) Act 1984 (c. 15, SIF 49:2), s. 9(1), Sch. 1 para. 1

**Marginal Citations**

M1 1830 c. 69.

**17 Members of College of Justice not to institute actions not otherwise competent.**

No member of the College of Justice shall, in respect of any privilege as such, be entitled to institute any action or proceeding, either original or by way of review, before the Court of Session, which could not have been instituted by him before such court if he had not been a member of the College of Justice.

**18 Summonses not to proceed on bills or to bear dates except the date of signeting.**

..... <sup>F11</sup>no summons passing the signet shall bear any date but the date of signeting, which shall be held to be the date of the summons.

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**Textual Amendments**

**F11** Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

**19 Regulations as to multiple-poidings.**

In summonses of multiple-poiding it shall be the duty of the party raising such action to state specifically in the body of the summons who is the real raiser of the action; and it shall be competent for any number of parties whose claims in such action depend upon the same ground to state such claims in the same paper.

**20 Short forms of execution provided.**

Every execution of a summons, and every execution of intimation of a note of suspension, or of suspension and interdict, or of suspension and liberation, . . . <sup>F12</sup> shall be written at the end of the summons itself, or at the end of the usual certified copy of such note of suspension, or of suspension and interdict, or of suspension and liberation, . . . <sup>F12</sup> and, where necessary, on continuous sheets, but not on a separate paper; and such execution shall be in the form, or as nearly as may be in the form, of schedule (B.) hereunto annexed, which form shall be equally valid and effectual in all respects as the longer form of execution at present in use.

**Textual Amendments**

**F12** Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

**21** . . . . . <sup>F13</sup>

**Textual Amendments**

**F13** [S. 21](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

**22 Edictal citations, regulated.**

. . . . . <sup>F14</sup> all edictal citations, charges publications, citations, and services shall be done and performed by delivery of a copy thereof at the office of the keeper of edictal citations, according to the mode established by the <sup>M2</sup>Court of Session Act 1825, in regard to persons furth of Scotland, and by an act of sederunt of the Court of Session dated the twenty-fourth day of December one thousand eight hundred and thirty-eight.

**Textual Amendments**

**F14** Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

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

- C5** Functions of keeper of edictal citations now exercisable by such officers of the Court of Session as the Principal Clerk of Session may appoint S.R. & O. 1929/588 (Rev. XIX, p. 785: 1929, p. 1305), art. 1 and [Public Records \(Scotland\) Act 1937 \(c. 43\), s. 13\(1\)](#)

#### **Marginal Citations**

- M2** [1825 c. 120.](#)

### **23 Protestations for not calling and enrolling regulated.**

Where protestation shall be put up in the minute book of the Court of Session in reference to any summons, suspension, or . . . <sup>F15</sup> and warrant is issued for extract thereof, if it be a protestation for not calling, such extract shall contain a decerniture for three pounds [<sup>F16</sup>15p] of protestation money, as expences in lieu of such sum of protestation money as would in that case be inserted in the extract according to the present practice; and if the protestation be for not enrolling, but after the calling and return of the summons or other initial writ, with or without defences or answers, as the case may require, the defender or respondent shall be entitled to his just expences as between party and party; and the auditor of court shall tax the account of these expences accordingly, as in the case of a decree in absence, on production to him of the protestation as given out for extract, or of a certificate by the keeper of the minute book that the same has been given out for extract; and the account so taxed shall be a sufficient warrant to the extractor to insert the taxed amount as the just expences, together with the expence of extract, in the extract protestation, in lieu of the sum at present inserted as expences in such extract: Provided always, that a pursuer may be reponed against a protestation for not calling at any time not later than ten days after the same has been given out for extract, whether extract shall have issued or not, by lodging with the clerk, in order to calling, his summons or other writ, with the relative documents, accompanied by the receipt of the agent for the defender for the said sum of three pounds [<sup>F16</sup>15p] of protestation money, or consigning the money itself in the hands of the clerk, for the use of the agent for the defender, and payable to him on demand; and that a pursuer may also be reponed, within the like period, against a protestation for not enrolling and insisting, by enrolling his summons or other writ in the outer house roll, and forthwith lodging that writ, with the enrolling clerk's certificate of enrolment annexed, in the hands of the clerk, as thenceforward a depending process, accompanied by the receipt of the agent for the defender for the taxed amount of the protestation money and expence of extract, or, in lieu thereof, consigning the money itself in the hands of the clerk for the use of such agent, and payable to him on demand: Provided also, that whenever a summons or other writ shall have been duly enrolled by the pursuer in the outer house roll, whether protestation shall have been put up or not, the same shall thenceforth become to all intents and purposes a depending process, under control of the Lord Ordinary and of the court, until finally disposed of by interlocutor.

#### **Textual Amendments**

- F15** Word repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)  
**F16** Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

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24 ..... F17

**Textual Amendments**  
F17 S. 24 repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

**25 Copy of an interlocutor granting commission or diligence to be equivalent to a formal extract.**

It shall not be necessary to obtain a formal extract of any commission or diligence granted or to be granted by a Lord Ordinary or the court in any process or proceeding before the Court of Session, but a copy of the interlocutor granting such commission and diligence, or one or other of them, certified by the clerk to such process or proceeding, or by his assistant, shall have the same force, operation, and effect as such formal extract according to the present practice.

**26 Witnesses abroad may be examined in consistorial causes by commission.**

Where in consistorial causes either party desires to examine witnesses furth of the kingdom, the depositions of such witnesses may be taken under a commission to be issued by the Lord Ordinary or the court to any commissioner whom they may appoint, in the same manner as in any proof upon commission in an ordinary action.

**27 Diligences may be reported on box days.**

In all cases it shall be competent to appoint a diligence to be reported on any box day in vacation or recess.

**28 Interim decrees to be extractible without special allowance.**

Every act and warrant and decree granted or to be granted during the dependence of a process before the Court of Session, and which according to the present practice might be extracted ad interim, if special allowance to that effect were granted by the Lord Ordinary or the court, shall be extractible ad interim without the necessity of such special allowance, unless the Lord Ordinary or the court shall otherwise direct.

**29 Decree for expences to include expence of extract.**

Every decree for expences shall be held to include a decree for the expence of extracting the same.

30 ..... F18

**Textual Amendments**  
F18 S. 30 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

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31 ..... F19

**Textual Amendments**

F19 S. 31 repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

32 **In advocations and suspensions, if record is closed and proof concluded in inferior court, case may be taken at once to the inner house without a judgment of the Lord Ordinary.**

In all cases of suspension which shall come to depend before the Court of Session, where a record has been made up and closed and a proof led and concluded before the inferior judge, the Lord Ordinary before whom such suspension is enrolled shall at the first calling of the cause, if a motion to that effect be made by either of the parties, appoint such record and proof, with any other papers which may be deemed to be necessary, to be printed and boxed for the judges of the inner house, and shall report the cause to the inner house, who shall thereupon proceed to dispose of it in the same way and manner as if it had been reported by the Lord Ordinary upon a closed record prepared in the Court of Session; and the party by whom such motion is made shall defray in the first instance the expence of such printing.

33 ..... F20

**Textual Amendments**

F20 S. 33 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), **Sch.**

34 ..... F21

**Textual Amendments**

F21 S. 34 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

35 **Provision as to one Division of the Court consulting the other.**

It shall be competent to the judges of either division of the court in any cause in which they shall be equally divided in opinion to direct such cause to be judged by the inner house judges of both divisions, and to appoint such cause to be heard by such inner house judges, either on any sederunt day during session, or at any time during the sittings of the Lord Ordinary, either before or after the sittings of the two divisions of the court for the winter session; and such cause shall thereupon be so heard and judged by the judges of the division of the court before which the same depends, with the addition of three judges of the other division of the court; and the judgment shall in all causes be pronounced according to the opinion of 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 division of the court; but the Lord

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Justice General shall always be the presiding judge whenever his lordship sits as a member of the court.

**36 Procedure in jury causes to be the same, so far as is applicable, as in other Court of Session causes.**

In all causes appropriated for trial by the jury, or in the course of preparation for trial by jury, before the Court of Session, the procedure, both before and after the closing of the record, shall be in all respects the same, so far as applicable, as in other Court of Session causes for the time being, except in so far as it may be otherwise provided by this Act, or by any act of sederunt to be passed by the said court under the powers by this Act conferred.

**37** ..... F22

**Textual Amendments**  
F22 S. 37 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

**38** ..... F23

**Textual Amendments**  
F23 S. 38, 52 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

**39 Engrossment of issues abolished.**

It shall not be necessary to engross any issue or issues with a view to trial by jury, but such issue or issues, when adjusted and settled as aforesaid by the Lord Ordinary or the court, shall at the same time be approved by interlocutor to that effect, and shall be signed and authenticated by the judge as relative thereto, which proceeding shall be equivalent to engrossment as at present practised.

**40 On issues being approved of, time and place of trial to be fixed.**

Where an issue or issues is or are approved as aforesaid it shall be competent to the Lord Ordinary in the cause, on the motion of either of the parties, to appoint a time and place for the trial of such issue or issues, such time being as soon after the date of such approval as with reference to the proper trial of such issue or issues conveniently may be, . . . F24 and such trial shall proceed at the time and place so appointed, unless at the time of such appointment one or other of the parties shall intimate to the Lord Ordinary that he objects thereto, in which case the Lord Ordinary shall report the matter to the court, by whom it shall be fixed when and where the trial shall proceed.

**Textual Amendments**  
F24 Words repealed by [Jury Trials Amendment \(Scotland\) Act 1910 \(c. 31\)](#), [s. 1](#)



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**41 Lord Ordinary in the cause to preside at trial during session.**

Unless where some different arrangement shall be made by the court, upon motion to that effect, the Lord Ordinary before whom the cause depends shall preside at the trial of such issue or issues in all cases where such trial shall take place during the sitting of the court.

**42 Lord Ordinary, etc. to have power to summon jury, and to appoint cause to be tried by a special jury.**

All the powers and duties in regard to the summoning of juries for the trial of issues in civil causes at present exercised or performed by the Court of Session, or by any division of the said court, or by any clerk or clerks in jury causes, may be competently exercised and performed by any Lord Ordinary, or by any clerk of session officiating either in the outer or inner house; . . . <sup>F25</sup>

**Textual Amendments**

**F25** Words repealed by [Juries Act 1949 \(c. 27\)](#), [Sch. 3](#)

**43 Certified copy of the Interlocutor fixing the trial to be the warrant for citing witnesses.**

A copy of the interlocutor fixing the trial, certified by the clerk to the process or by his assistant, shall be a sufficient warrant to any messenger at arms to cite witnesses and havers to the said trial, either for the pursuer or defender.

**44 Counsel for each party to be heard after evidence closed.**

In every trial of issues in a cause before the Court of Session, and subject to such regulations in regard to opening the case on the part of the pursuer and defender as the court may establish, one counsel for the pursuer and one counsel for the defender shall be heard, in their order, after the whole evidence in the cause is closed.

**45 Restriction of bills of exceptions.**

A bill of exceptions shall not be allowed in any cause before the Court of Session, upon the ground of the undue admission of evidence, if in the opinion of the court the exclusion of such evidence could not have led to a different verdict than that actually pronounced; and it shall not be imperative on the court to sustain a bill of exceptions, on the ground of the undue rejection of documentary evidence, when it shall appear from the documents themselves that they ought not to have affected the result at which the jury by their verdict have arrived.

**46 Lord Ordinary, by consent, may try issues of consent without a jury.**

If the parties in any cause before the Court of Session in which an issue has been adjusted shall consent to the Lord Ordinary before whom such cause depends trying such issue without a jury, such Lord Ordinary shall, unless the court, on the report of such Lord Ordinary, shall deem it inexpedient and improper, try such issue without a jury accordingly; and whenever any issue shall be tried by a Lord Ordinary without

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a jury, such Lord Ordinary shall take notes of the evidence, and shall hear counsel thereon, and otherwise the proceedings shall be conducted continuously, and as nearly as may be as in an ordinary jury trial; and within eight days after the proceedings at the trial are concluded such Lord Ordinary shall pronounce an interlocutor, in which he shall state specifically what he finds in point of fact; and it shall be competent to either party, by written note, within eight days from its date, to bring such interlocutor of the Lord Ordinary under review of the Lord Ordinary upon his own notes of evidence, who shall forthwith hear parties thereon; and it shall be competent to the Lord Ordinary, upon such review, and within eight days after hearing parties, either to correct his interlocutor as regards such findings in fact or to order a new trial, as he may think fit: Provided always, that if either of such periods of eight days extends into vacation or recess, such period shall not be held to elapse till the fourth day after the next meeting of the Lords Ordinary or the court thereafter.

**47 Lord Ordinary’s findings in fact shall be final unless reclaimed against. Proviso as to appeals on questions of law.**

Unless it shall appear that such findings in point of fact by such Lord Ordinary proceeded on some erroneous view of the law, as to competency of evidence or otherwise, such findings in fact shall be final; but it shall be competent to either of the parties to raise, on a reclaiming note to the inner house, any question of law which may be relevantly raised upon the evidence as appearing in the notes of such Lord Ordinary taken as aforesaid; and no objection to any finding in point of law by such Lord Ordinary during the proceedings at the trial shall be competent, unless such objection was stated, and noted by the Lord Ordinary, at the time of such finding; and the notes of the Lord Ordinary shall be referred to for no other purpose than to decide such questions of law: Provided always, that any appeal which may be entered to the House of Lords against any interlocutor which may be pronounced by the inner house on any such question of law shall be subject to the same regulations and entitled to the same privileges in all respects as appeals against interlocutors or judgments upon bills of exceptions are at present subject and entitled to.

**48 Lord Ordinary may try special facts without a jury.**

.....<sup>F26</sup> In any cause before the Court of Session it shall be competent to the Lord Ordinary before whom such cause depends, without adjusting an issue or issues, to pronounce an interlocutor, stating distinctly any such question or questions to which the parties are to address their proof, and appointing such question or questions for trial by himself, without a jury; and the proof to be adduced by the parties shall in such case be limited to the points so stated, and shall proceed at such time and place as shall be appointed, unless on review of such interlocutor it shall appear to the court that such course of procedure is not in the circumstances of the case expedient, or the interlocutor be otherwise altered by the court; and the Lord Ordinary shall find on each such question separately, and his findings on such questions shall be final, subject always to such review, correction, and objections as would have been competent there-against under this Act if the cause had been tried by such Lord Ordinary on issues.

**Textual Amendments**  
**F26** Recital omitted under authority of [Statute Law Revision Act 1891 \(c. 67\)](#)

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**49 Lord Ordinary may take the evidence by commission except in the enumerated causes.**

.....<sup>F27</sup> It shall be competent for the court to allow proof on commission in any of such enumerated causes where the action is not an action for libel or for nuisance, or properly and in substance an action of damages.

**Textual Amendments**

**F27** Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

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

**C6** “Such enumerated causes” means causes enumerated in [Court of Session Act 1825 \(c. 120\)](#), s. 28, as causes appropriate to the jury court

**50 Parties may choose their own jury.**

.....<sup>F28</sup> If the parties in any cause before the Court of Session in which an issue is to be tried shall consent to refer the same to any one arbiter, or to any three, five, or seven arbiters, it shall be lawful for the court or Lord Ordinary, and the court or Lord Ordinary is hereby required, to allow such arbiter or arbiters to be sworn and to sit as a jury to try such issue; and such arbiter or arbiters, or the major part of their number in the event of difference of opinion, shall have all the powers of a unanimous jury; and the proceedings of such trial shall be conducted, as far as may be, as in any ordinary case of trial by jury, either party being entitled to take exceptions, and to move for a new trial, as in any ordinary case: Provided always, that it shall not be competent to either party to object to the verdict, or to move for new trial, in respect of the verdict being against evidence, or on any other ground implying miscarriage on the part of the jury alone: Provided also, that the court, in the event of granting a new trial, shall direct the new trial to proceed before the same arbiter or arbiters, if able to try the cause, and the new trial shall in that case proceed before the same arbiter or arbiters accordingly.

**Textual Amendments**

**F28** Recital omitted under authority of [Statute Law Revision Act 1891 \(c. 67\)](#)

**51 Reports by Lords Ordinary may be verbal.**

Where by the provisions of this Act anything may be done upon report of a Lord Ordinary to one or other of the divisions of the court, the same may be done summarily, by a simple verbal report, to be made by such Lord Ordinary to such division.

**52** .....

**Textual Amendments**

**F29** S. 38, 52 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

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**53 Compensation.**

In construing this Act the expression “clerk of session” shall include principal clerk of session, depute clerk of session, and assistant clerk of session, both in the inner and outer house; the word “pursuer” shall include complainer, and the word “defender” shall include respondent.

54 ..... F30

**Textual Amendments**  
F30 S. 54 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

55 ..... F31

**Textual Amendments**  
F31 S. 55 repealed by [Statute Law Revision Act 1891 \(c. 67\)](#)

56 ..... F32

**Textual Amendments**  
F32 S. 56 repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

57 ..... F33

**Textual Amendments**  
F33 S. 57 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

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## SCHEDULES

### <sup>F34</sup>~~F34~~SCHEDULE (A.)

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**Textual Amendments**

**F34** Sch. (A.) repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), **Sch.**

.....  
**F34**

### SCHEDULE (B.)

This Summons, [*or Note of Suspension, or Note of Suspension and Interdict, or Note of Suspension and Liberation, . . .*<sup>F35</sup>] executed [*or intimated*] by me [*insert Name*], Messenger at Arms, against [*or to*] [*insert Name or Names*], Defender [*or Defenders, or Respondent or Respondents*] [*state whether personally or otherwise*], in Presence of [*insert Name and Designation of Witness*], this Day of Eighteen hundred and Years.

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**Textual Amendments**

**F35** Words repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

[*Signature of Messenger.*]

C.D., Witness.

**Status:**

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