



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

An Act to amend the Procedure in the Court of Session and the Judicial Arrangements in the Superior Courts of Scotland, and to make certain changes in the other Courts thereof. [31st July 1868]

Modifications etc. (not altering text)

C1 Preamble omitted under authority of [Statute Law Revision Act 1893 \(c. 14\)](#)

1 Short title.

This Act may be cited for all purposes as “The Court of Session Act 1868.”

2 Interpretation of terms.

The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

The expression “the Court” shall include the whole Court sitting together, also either division of the Inner House, or any Lord Ordinary:

The word “pursuer” shall include complainer, suspender, petitioner, or appellant:

The word “defender” shall include respondent.

3 F1

Textual Amendments

F1 S. 3 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Status: Point in time view as at 01/02/1991.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 1868. (See end of Document for details)

I.—JUDICIAL ARRANGEMENTS

4, 5. F2

Textual Amendments
F2 Ss. 4, 5 repealed by Administration of Justice (Scotland) Act 1933 (c. 41), Sch.

6—8. F3

Textual Amendments
F3 Ss. 6–8 repealed by S.I. 1987/2160, para. 2(9), Sch.

9 Quorum of Teind Court which shall meet on alternate Mondays.

Any five judges, being Lords Commissioners for Teinds (of whom, except in case of indisposition or absence from other necessary cause, the Lord Ordinary in Teind Causes shall be one), shall constitute a quorum of the Court of Commissioners for Teinds; and the said Court, instead of meeting once a fortnight on Wednesday, shall meet once a fortnight on Monday during the sitting of the Court of Session, at such hours as shall be convenient.

Modifications etc. (not altering text)
C2 S. 9 amended by Church of Scotland (Property and Endowments) Act 1925 (c. 33), s. 41

10 F4

Textual Amendments
F4 S. 10 repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), Sch. 2 Pt I

11 F5

Textual Amendments
F5 S. 11 repealed by S.I. 1987/2160, para. 2(9), Sch.

12 F6

Status: Point in time view as at 01/02/1991.

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Textual Amendments

F6 Ss. 12, 13 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I**

II.—SUMMONS

13 ^{F7}

Textual Amendments

F7 Ss. 12, 13 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I**

14 Induciæ of summonses and other writs passing the signet shortened.

All summonses before the Court of Session may proceed on seven days warning or induciæ where the defender is within Scotland, unless in Orkney and Shetland or in any other island of Scotland, and fourteen days where he is in Orkney or Shetland or such other island, or furth of Scotland, in place of the longer induciæ required by the present practice, and such shorter induciæ shall also be competent and sufficient in respect to all other letters passing Her Majesty's signet bearing a citation, charge, publication, or service against persons within or furth of Scotland respectively, and in respect to all edictal charges upon decrees and registered protests: Provided always, that in all cases where any shorter induciæ than the induciæ above mentioned are at present sufficient, such shorter induciæ shall continue to be sufficient after the passing of this Act.

[^{F8}(2) Nothing in this section shall apply to a charge for payment.]

Textual Amendments

F8 S. 14(2) added (S.) by [Debtors \(Scotland\) Act 1987 \(c. 18, SIF 45:2\)](#), s. 108, Sch. 6 para. 6, Sch. 7 paras. 5, **9(1)**

Modifications etc. (not altering text)

C3 Section 14 in so far as it relates to summonses and petitions repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I**

15 As to proving lost summonses or pleading.

Where a summons, petition, or other original writ or pleading is lost or destroyed, a copy thereof proved in the cause to the satisfaction of the Court before whom the cause is depending at the time, and authenticated in such manner as he or they shall require, may be substituted, and shall be held equivalent to the original for the purposes of the action.

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Modifications etc. (not altering text)

- C4 Ss. 15–44 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)

16 Certified copy may be used in place of original in service of summonses and writs.

It shall not be necessary that any messenger or sheriff officer serving a summons, petition, appeal, or note of suspension or interdict shall have the original document in his hands at the time of such service, provided that a copy certified as correct by the agent in the cause shall at the time be in the possession of such a messenger or officer, and shall be exhibited to the party on whom the service is made, if required.

Modifications etc. (not altering text)

- C5 Ss. 15–44 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)

17 Lord Advocate’s concurrence not to be necessary in actions of reduction-improbation and ranking and sale.

It shall not be necessary to obtain the concurrence of Her Majesty’s Advocate to any summons of reduction-improbation, or ranking and sale, and such summonses in future shall not bear to be instituted with the concurrence of Her Majesty’s Advocate: Provided that nothing herein contained shall affect the right of Her Majesty’s Advocate to institute any such summons for the interest of Her Majesty.

Modifications etc. (not altering text)

- C6 Ss. 15–44 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)

18 Warrant of inhibitions may be inserted in will of summons. Publication of such warrants and letters of inhibition.

It shall be competent to insert in the will of a summons passing the signet a warrant of inhibition, which shall have all the like force and effect as letters of inhibition in the form in use at the passing of this Act; and such warrant shall be, as nearly as may be, in the following form:

“And also that ye lawfully inhibit the said , personally or at his dwelling place, if within Scotland, and if furth thereof, at the office of the Keeper of the Record of Edictal Citations at Edinburgh, from selling, burdening, disponing, alienating, or otherwise affecting his lands or heritages, to the prejudice of the pursuer; and that ye cause register this summons and execution hereof in the general register of inhibitions at Edinburgh, for publication to our lieges”:

When warrant of inhibition is contained in the will of a summons passing the signet, such warrant may be executed either at the same time as the summons is served or at any time thereafter, and it shall not be necessary to publish such warrants, or to

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intimate letters of inhibition passing the signet, to the lieges in any other way than by registration in the general register of inhibitions; and in registering it shall be sufficient to register the summons, including the warrant of inhibition, and the execution of such warrant, without registering any condescendence or note of pleas in law which may follow the summons, or where letters of inhibition are used, then such letters, with the execution thereof, shall be registered; and from and after registration as aforesaid, the inhibition, whether contained in a summons or by separate letters of inhibition, shall be held to be duly intimated and published to all concerned.

Modifications etc. (not altering text)

C7 Ss. 15–44 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)

19 F9

Textual Amendments

F9 S. 19 repealed by [Execution of Diligence \(Scotland\) Act 1926 \(c. 16\)](#), s. 7

Modifications etc. (not altering text)

C8 Ss. 15–44 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)

20 Amendment of summonses and pleadings in undefended causes.

In undefended actions any error or defect in any summons or other pleading whereby the action is commenced in the the Court of Session may be amended upon application to the Lord Ordinary or the Court before whom it depends, if the Lord Ordinary or the Court think such amendment should be allowed; and such amendment shall be made in writing either upon the summons or pleading, or in a separate paper, and shall be authenticated by the signature of counsel; and the Lord Ordinary or Court may, if he or they think fit, order the amended summons or other pleading to be served upon the absent defender or defenders, with liberty to him or them to enter appearance within such time as shall seem proper: Provided, that the expenses occasioned by such amendment shall not be chargeable against the defender or defenders; and provided also, that such amendment shall not have the effect of validating diligence used on the dependence of the actions so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objections to such diligence when stated by the defender himself, or by any person representing him by a title, or in right of a debt contracted by him, subsequent to the using of such diligence.

Modifications etc. (not altering text)

C9 Ss. 15–44 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)

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21 Party appearing not to state objections to execution of summonses, &c.

No party appearing in any action or proceeding in the Court of Session shall be entitled to state any objection to the regularity of the execution or service as against himself of the summons or other pleading or writ whereby he is convened.

Modifications etc. (not altering text)

C10 Ss. 15–44 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)

III.—CALLING AND DECREE IN ABSENCE

22 New procedure in reference to calling of summonses and enrolment for decree.

Summonses may be called in Court on any sederunt day; and the calling lists shall be printed and published in the daily rolls of Court, under such regulations as the Court may see proper to make, in place of the separate calling lists now in use to be published; and in case a pursuer shall not call his summons in Court on the first sederunt day after the expiration of the induciæ thereof, or on one of the two sederunt days next ensuing, the defender shall be entitled to the like remedy by protestation as is now competent, and subject to the like conditions. The weekly printed rolls of new causes shall be discontinued; and where a defender shall not enter appearance on or before the second day after the summons has been called in Court, the cause may immediately be enrolled in the Lord Ordinary's motion roll as an undefended cause for decree in absence; and where appearance is timeously entered as aforesaid on behalf of a defender, his defence shall be lodged on or before the tenth day after the date of calling of the summons, failing which the cause may be immediately enrolled for decree in absence, or in the case of actions containing reductive conclusions the cause may be enrolled for the purpose of obtaining an order for satisfying the production, and thereafter the cause may be enrolled by either party for further procedure.

Modifications etc. (not altering text)

C11 Ss. 15–44 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)

23 Mode of obtaining decrees in absence.

When any cause is enrolled as an undefended cause before the Lord Ordinary, the Lord Ordinary shall, without any attendance of counsel or agent, grant decree in absence in common form in terms of the conclusions of the summons, or subject to such restrictions as may be set forth in a minute written on the summons by the agent of the pursuer; and such decree shall, except as herein-after provided, have the like effect and be subject to the like conditions in all respects as a decree in absence pronounced according to the present law and practice: Provided always, that at any time within ten days from the date of such decree it shall be competent for the defender to enrol the cause in the Lord Ordinary's motion roll; or when such ten days shall expire in time of vacation or recess, it shall be competent for the defender at any time within the said ten days to lodge his defences with the clerk, and at the next ensuing sitting of the Lord

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Ordinary officiating on the Bills in terms of the ninety-third section hereof to move him to recall the decree in absence; and if, when the cause is called in said roll, or moved before the said Lord Ordinary officiating on the Bills as aforesaid, the defender shall produce his defences, and shall pay to the pursuer the sum of two pounds [^{F10}10p], the Lord Ordinary, or the Lord Ordinary officiating on the Bills, as the case may be, shall pronounce an interlocutor recalling the decree in absence, and allowing the defences to be received; and the cause shall thereupon be treated as if defences had been lodged in due time: Provided further, that after the lapse of ten days it shall be competent to extract any decree in absence: and it shall not be competent by reclaiming note to the Inner House to obtain the recall of a decree pronounced in absence of the defender.

Textual Amendments

F10 Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

Modifications etc. (not altering text)

C12 [Ss. 15–44](#) 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)

24 Certain decrees in absence to have effect as decrees in foro.

Where a decree upon which a charge is competent shall have been pronounced in absence of a defender after personal service of the summons on such defender or after the entering of appearance for such defender, with his authority and such decree shall not have been recalled in virtue of the provision to that effect herein-before contained, such decree after extract, and upon the lapse of sixty days after the expiry of a charge upon it not brought under review by suspension, shall be entitled to all the privileges of a decree in foro against such defender; and a decree of declarator, or any other decree on which a charge is not competent, obtained in absence after such personal service or appearance as aforesaid, shall be final after the lapse of twenty years from its date, unless the same shall before that time have been lawfully recalled or brought under review by suspension or reduction.

Modifications etc. (not altering text)

C13 [Ss. 15–44](#) 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)

C14 [S. 24](#) excluded by [Conveyancing Amendment \(Scotland\) Act 1938 \(c. 24\), s. 6\(4\)](#) and [Land Tenure Reform \(Scotland\) Act 1974 \(c. 38\), s. 9\(7\)](#)

IV.—RECORD, MOTIONS, AND PROBATION

25 Revisal of pleadings not to be allowed as matter of course.

Neither party shall be entitled as matter of right to ask for a revisal of his pleadings; but it shall be competent for the Lord Ordinary to allow or to order a revisal of the pleadings, upon just cause shown.

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Modifications etc. (not altering text)

C15 Ss. 15–44 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)

26 Procedure after pleadings completed, and adjustment of pleadings.

If no motion for revival is made as above provided, or if such motion is refused, or after the lapse of the period within which the revised pleadings fall to be lodged where a revival has been allowed or ordered, the pursuer shall cause the pleadings which are to form the record to be printed, and shall within eight days from the lodging of the defences or revised pleadings as the case may be, deliver two printer’s proofs thereof to the agent or to each of the agents of the other parties, and also to the clerk to the process, who shall transmit the same to the Lord Ordinary, and the Lord Ordinary shall direct the cause to be put to the roll for a day not less than four and not more than six days thereafter; and upon such day the Lord Ordinary shall require the parties then to adjust their pleadings, and shall close the record: Provided, that if the pursuer shall fail to deliver the printer’s proofs as aforesaid the defender may enrol the cause, and move for decree of absolver by default, which decree the Lord Ordinary shall grant unless the pursuer shall show good cause to the contrary: Provided also, that it shall not be competent of consent of parties to prorogate the time for complying with any statutory enactment or order of the Court, whether with reference to the making up and closing of the record or otherwise.

Modifications etc. (not altering text)

C16 Ss. 15–44 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)

27 ^{F11}

Textual Amendments

F11 Ss. 27, 31 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

C17 Ss. 15–44 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)

28 Review of certain interlocutors of the Lord Ordinary.

Any interlocutor pronounced by the Lord Ordinary as provided for in the preceding section, . . . ^{F12} shall be final, unless within six days from its date the parties, or either of them, shall present a reclaiming note against it to one of the divisions of the Court, by whom the cause shall be heard summarily; and when the reclaiming note is advised, the division shall dispose of the expenses of the reclaiming note, and of the discussion, and shall remit the cause to the Lord Ordinary to proceed as accords: Provided always, that it shall be lawful to either party within the said period, without presenting a reclaiming

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note, to move the said division to vary the terms of any issue that may have been approved of by an interlocutor of the Lord Ordinary, specifying in the notice of motion the variation that is desired: Provided also, that nothing herein contained shall be held to prevent the Lord Ordinary or the Court from dismissing the action at any stage upon any ground upon which such action might at present be dismissed according to the existing law and practice.

Textual Amendments

F12 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

C18 [Ss. 15–44](#) 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)

C19 [S. 28](#) amended by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), s. 14(2)

29 Amendment of records in defended actions.

The Court or the Lord Ordinary may at any time amend any error or defect in the record or issues in any action or proceeding in the Court of Session, upon such terms as to expenses and otherwise as to the Court or Lord Ordinary shall seem proper and all such amendments as may be necessary for the purpose of determining in the existing action or proceeding the real question in controversy between the parties shall be so made: Provided always, that it shall not be competent, by amendment of the record or issues under this Act, to subject to the adjudication of the Court any larger sum or any other fund or property than such as are specified in the summons or other original pleading, unless all the parties interested shall consent to such amendment: And provided also, that no such amendment shall have the effect of validating diligence used on the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objection to such diligence when stated by the defender himself, or by any person representing him by a title, or in right of a debt contracted by him, subsequent to the execution of such diligence.

Modifications etc. (not altering text)

C20 [Ss. 15–44](#) 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)

30 Pleadings in actions of multiplepinding.

In actions of multiplepinding it shall not be necessary to lodge answers to the original condempnations and claims, unless it is made to appear to the satisfaction of the Lord Ordinary that the claimants are at issue on matters of fact material to the action, and that answers are necessary; and in such actions it shall be competent for parties having opposing interests (where they are agreed upon the facts) to make their averments in the form of a joint case, appending thereto their respective claims and pleas in law: Provided always that where the competition involves the construction of written documents, such documents shall not be set out at length on the record, but shall be printed separately, and referred to in the pleadings as set forth in such separate print.

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Modifications etc. (not altering text)

- C21** Ss. 15–44 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)

31 **F13**

Textual Amendments

- F13** Ss. 27, 31 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

- C22** Ss. 15–44 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)

32 Regulations as to time of addressing the Court in proofs under the Conjugal Rights and Evidence Acts.

In all proofs before the Lord Ordinary under the ^{M1}Conjugal Rights (Scotland) Amendment Act 1861 and the ^{M2}Evidence (Scotland) Act 1866, no adjournment shall be allowed, except on special cause stated in an interlocutor, and the evidence shall be summed up by one counsel on each side at the conclusion of the examination of the witnesses, as in the case of jury trials; and it shall not be necessary to print the evidence, unless for the purpose of bringing the judgment of the Lord Ordinary thereon under the review of the Inner House.

Modifications etc. (not altering text)

- C23** Ss. 15–44 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)

Marginal Citations

- M1** 1861 c. 86.
M2 1866 c. 112.

33 **F14**

Textual Amendments

- F14** S. 33 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), **Sch.**

Modifications etc. (not altering text)

- C24** Ss. 15–44 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)

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V.—JURY TRIAL

34 Exceptions taken at a jury trial may be insisted in, either by motion for new trial, or by bill of exceptions.

When an exception is taken in the course of a jury trial a note thereof shall be taken by the judge, or, if he shall so direct, or the party excepting shall think proper, a note thereof shall be written out, and signed by such party or his counsel, and also by the judge at the time; and such exception may be made the ground of an application to set aside the verdict, either by motion for a new trial, or by bill of exceptions.

Modifications etc. (not altering text)

C25 Ss. 15–44 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)

35 Form of bill of exceptions; evidence need not be set forth at length in the bill.

The bill of exceptions (which may be subsequently prepared, and of which notice shall be given as in the case of a motion for a new trial,) shall consist of a distinct statement of the exception or exceptions so noted, with such a statement of the circumstances in which the exception or exceptions were taken (including, if necessary, a statement of the purport of the evidence, or extracts therefrom, so far as bearing upon such exception or exceptions, but without any argument,) as, along with the record in the cause, may enable the Court to judge of such exception or exceptions; and, unless the party excepting shall choose, or the judge at the trial, or the Court at the discussion of the bill, shall so direct, it shall be unnecessary to print or submit to the Court the notes of evidence or the documentary evidence adduced at the trial; and when such notes and documents are submitted to the Court, they shall form no part of the bill of exceptions; and in discussing a bill of exceptions it shall be competent for either party to refer to the record, and to every document produced and put in evidence at the trial, and the notes of evidence at the trial may be produced and founded on at any time.

Modifications etc. (not altering text)

C26 Ss. 15–44 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)

36 Verdict may be taken subject to the opinion of the Court on a point reserved.

The judge at the trial may direct the jury upon any matter of law (subject to the opinion of the Court upon such direction), and with liberty to either party to move the Court to enter the verdict for such party, although returned against him, if the Court should be of opinion that such direction was erroneous, and that such party was truly entitled to a verdict. The opinion of the Court upon any direction so given may be obtained upon motion to enter the verdict for the party moving; and if the Court shall be of opinion that the direction was erroneous, and that the party moving is truly entitled to the verdict in whole or in part, they shall direct the verdict to be entered for him in whole or in part, either absolutely, or on such terms as they may think fit; otherwise they shall refuse the motion, or they may, if necessary, set aside the verdict and order a new trial: Provided also, that in such applications, as well as in motions for a new

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trial, it shall not be necessary to print the notes of the evidence for the use of the Court, but the judges's notes may be produced at any time, if required.

Modifications etc. (not altering text)

C27 Ss. 15–44 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)

37 Evidence may of consent be taken in shorthand.

Where the parties agree, the evidence at a jury trial taken in shorthand, and extended by the shorthand writer, may, with the consent of the judge, be substituted for the judge's notes of the evidence for all purposes; and in such cases it shall not be competent to ask for the judge's notes of evidence.

Modifications etc. (not altering text)

C28 Ss. 15–44 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)

38 Special case may be substituted for special verdict.

It shall be lawful to substitute a special case signed by counsel for a special verdict, and thereupon to discharge the order for trial, or the jury, if one has been empannelled, without returning a verdict; and such special case shall have the like force and effect as a special verdict.

Modifications etc. (not altering text)

C29 Ss. 15–44 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)

39 Abandonment of action in the course of a trial.

Any action may, with leave of the judge, be abandoned on the condition contained in the tenth section of the ^{M3}Court of Session Act 1825 and relative act of sederunt, section one hundred and fifteen, in the course of a trial, at any time before the judge has commenced to charge the jury, or, where there is no jury, at any time before the judge has made avizandum with the evidence: Provided, that such abandonment shall not be competent without the leave of the judge, who shall be of opinion that it is just and proper in the circumstances: Provided further, that in granting such leave the judge shall specify the time within which the expenses shall be paid to the defender; and if the expenses shall not be paid within such time, the defender shall be entitled to be assoilzied from the conclusions of the action, with expenses.

Modifications etc. (not altering text)

C30 Ss. 15–44 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)

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Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868. (See end of Document for details)

Marginal Citations

M3 1825 c. 120.

40 Pursuer recovering less than 5*l.* of damages not to recover expenses if the judge shall certify.

Where the pursuer in any action of damages in the Court of Session recovers by the verdict of a jury less than five pounds, he shall not be entitled to recover or obtain from the defender any expenses in respect of such verdict, unless the judge before whom such verdict is obtained shall certify on the interlocutor sheet that the action was brought to try a right besides the mere right to recover damages; or that the injury in respect of which the action was brought was malicious; or, in the case of actions for defamation or for libel, that the action was brought for the vindication of character, and was in his opinion fit to be tried in the Court of Session.

Modifications etc. (not altering text)

C31 Ss. 15–44 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)

41 Provision for payment of deficient stamp duty pursuant to judge’s certificate to be final.

.....^{F15} the deliverance of the judge that the stamp upon any document is sufficient, or that such document does not require a stamp, shall not be subject to review.

Textual Amendments

F15 Words repealed by Inland Revenue Repeal Act 1870 (c. 99), Sch.

Modifications etc. (not altering text)

C32 Ss. 15–44 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)

42^{F16}

Textual Amendments

F16 S. 42 repealed by Inland Revenue Repeal Act 1870 (c. 99), Sch.

Modifications etc. (not altering text)

C33 Ss. 15–44 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)

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 1868. (See end of Document for details)

43 Certain exemptions from serving as jurors abolished.

All exemptions from liability to serve as jurors in Scotland depending on any Act passed subsequently to the ^{M4}Jurors (Scotland) Act 1825 are hereby abolished.

Modifications etc. (not altering text)

C34 Ss. 15–44 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)

Marginal Citations

M4 1825 c. 22.

44 In civil causes juries to consist of eight common and four special jurors.

In all civil causes appointed to be tried by jury the jurors for the trial of any cause shall be chosen in open court by ballot from the list of persons summoned; and for that purpose the clerk of court shall cause the name and designation of each juror to be written on a separate piece of paper or parchment, all the pieces being of the same size, and shall cause the pieces to be rolled up as nearly as may be in the same shape, [^{F17}and to be put into a box or glass and mixed and the clerk shall draw out the said pieces of paper or parchment one by one from the box or glass]; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged with or without cause assigned, and be set aside, then such further number shall be drawn until the number required for the trial shall be made out; and the persons so drawn and appearing, and being sworn, shall be the jury to try the cause, and their names shall be taken down and recorded, according to the present law and practice, but providing that when challenges are made, and jurors set aside, their places shall be filled up with other names, by drawing by ballot as aforesaid from the box or glass . . . ^{F18}

Textual Amendments

F17 Words substituted by **Juries Act 1949 (c. 27), Sch. 1**

F18 Words repealed by **Juries Act 1949 (c. 27), Sch. 3**

Modifications etc. (not altering text)

C35 Ss. 15–44 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)

45 Mode of returning jurors.

The number of jurors to be cited for the trial of any cause or causes appointed to be tried at Edinburgh, . . . ^{F19}, shall be such as is specified in the ^{M5}Jury Trials (Scotland) Act 1815; and a list of such jurors shall be returned by the sheriff [^{F20}principal], as provided by the ^{M6}Jurors (Scotland) Act 1825 . . . ^{F21}

Textual Amendments

F19 Words repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 2 Pt. I**

F20 Word substituted by **Local Government (Scotland) Act 1973 (c. 65), Sch. 27 Pt. II para. 9**

F21 Words repealed by **Juries Act 1949 (c. 27), Sch. 3**

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Marginal Citations

- M5** 1815 c. 42.
- M6** 1825 c. 22.

46 ^{F22}

Textual Amendments

- F22** S. 46 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 1 Pt. I**

47 Jurors to be cited by registered post letter.

The present mode of citing jurors for the trial of civil causes shall be discontinued, and in place thereof the sheriff clerk of the [^{F23}sheriffdom of Lothian and Borders], . . . ^{F24}, or his depute, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him in a registered post letter, directed to him at his place of residence, as stated in the roll of jurors; and a certificate under the hand of such sheriff clerk or his depute of the citation of any jurors or juror in manner herein provided shall have the like force and effect as an execution of citation according to the present law and practice.

Textual Amendments

- F23** Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), **Sch. 1 para. 1** and S.I. 1974/2087
- F24** Words repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt. I**

48 ^{F25}

Textual Amendments

- F25** S. 48 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), **Sch.**

49 ^{F26}

Textual Amendments

- F26** S. 49 repealed by [Juries Act 1949 \(c. 27\)](#), **Sch. 3**

50 Inferior court agents to act at jury trials on circuit.

At the trial of any civil cause at a circuit town any agent qualified to practise in the sheriff court of any [^{F27}Sheriffdom] comprised within such circuit may attend such trial as sole agent in the cause, and shall be allowed for his attendance, and for all

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necessary business performed by him in connexion with such trial, the same fees as are allowed to agents in the Court of Session.

Textual Amendments

F27 Word substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), **Sch. 1 para. 1**

Modifications etc. (not altering text)

C36 [Ss. 50–101](#) 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)

VI.—INNER HOUSE PROCEDURE

51 **F28**

Textual Amendments

F28 [Ss. 51, 54, 55](#) repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), **Sch.**

Modifications etc. (not altering text)

C37 [Ss. 50–101](#) 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)

52 **Effect of a reclaiming note against a final judgment.**

Every reclaiming note, whether presented before or after the whole cause has been decided in the Outer House, shall have the effect of submitting to the review of the Inner House the whole of the prior interlocutors of the Lord Ordinary, of whatever date, not only at the instance of the party reclaiming, but also at the instance of all or any of the other parties who have appeared in the cause, to the effect of enabling the Court to do complete justice, without hindrance from the terms of any interlocutor which may have been pronounced by the Lord Ordinary, and without the necessity of any counter reclaiming note; and after a reclaiming note has been presented, the claimer shall not be at liberty to withdraw it without the consent of the other parties as aforesaid; and if he shall not insist therein, any other party in the cause may do so, in the same way as if it had been presented at his own instance.

Modifications etc. (not altering text)

C38 [Ss. 50–101](#) 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)

53 **Definition of final judgment in the Outer House.**

It shall be held that the whole cause has been decided in the Outer House when an interlocutor has been pronounced by the Lord Ordinary, which, either by itself, or taken along with a previous interlocutor or interlocutors, disposes of the whole subject matter of the cause, or of the competition between the parties in a process of

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competition, although judgment shall not have been pronounced upon all the questions of law or fact raised in the cause; but it shall not prevent a cause from being held as so decided that expenses, if found due, have not been taxed, modified, or decerned for; and for the purpose of determining the competency of appeals to the Court of Session, this provision shall be applicable to the causes in the sheriff and other inferior courts, the name of the [^{F29}sheriff principal] or other inferior judge or court being read instead of the words “the Lord Ordinary,” and the name of the sheriff court or other inferior court being read instead of the words “Outer House.”

Textual Amendments

F29 Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), s. 4

Modifications etc. (not altering text)

C39 Ss. 50–101 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)

54, 55. ^{F30}

Textual Amendments

F30 Ss. 51, 54, 55 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

56 After reclaiming note against a final judgment, cause not to be remitted to Outer House.

After the whole cause has been decided in the Outer House within the meaning of this Act, it shall not in any case be necessary for the Inner House to remit the same back to the Outer House; but the cause, when taken to the Inner House after having been so decided in the Outer House, even though the interlocutor of the Lord Ordinary or any of the procedure shall be held to have been incompetent, shall, except in special circumstances rendering a remit expedient, remain in the Inner House, until it shall be finally and completely decided in the Court of Session.

Modifications etc. (not altering text)

C40 Ss. 50–101 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)

57 Inner House may order repayment of money, &c.

In the event of any interim decree or interlocutor pronounced in the Outer House having been implemented, it shall be lawful for the Court, in any interlocutor recalling or altering such interim decree or interlocutor, to order the repayment of any money which shall have been paid or recovered in implement thereof, or to pronounce such warrant ad factum præstandum or other order as may be necessary in order to give effect to such recall or alteration of the Lord Ordinary’s interlocutor, notwithstanding that the interlocutor of the Lord Ordinary may have been extracted and put to execution.

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Modifications etc. (not altering text)

- C41 Ss. 50–101 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)

58 Hearing of motion for new trials, &c.

When a motion for a new trial or a bill of exceptions comes before one of the divisions of the Court, if the judge who tried the cause is not one of the judges of the division, such judge shall be called in to hear the motion or bill, as the case may be; and when the cause is advised, such judge shall give his judgment with the other judges, and the decision shall be in conformity with the opinion of the majority of the judges present.

Modifications etc. (not altering text)

- C42 Ss. 50–101 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)

59 Provision for rehearing before five judges in case of equal division of opinion.

In event of the judges of either of the divisions of the Inner House being equally divided in opinion on a question of fact arising upon a proof, or upon a cause which in their opinion does not involve any legal principle of importance, it shall be competent for such division to appoint the cause to be re-heard before the judges of the said division, or such of them as shall be able to give attendance in Court on the day appointed, with the assistance of such additional judge or judges to be afterwards named by the president or judge presiding in the division as shall make up the number of five judges; and the judgment to be pronounced upon such hearing shall be in conformity with the opinion of the majority of the five judges, and shall bear to be the judgment of the division by which the hearing was appointed, after consulting with such additional judge or judges, and may be signed at any ordinary sitting of the said division, without the presence of such additional judge or judges, if he or they do not desire to attend for the purpose of delivering separate opinions.

Modifications etc. (not altering text)

- C43 Ss. 50–101 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)

60 Cases of difficulty and importance may be referred to seven judges in place of to the whole Court.

In cases of equal division of opinion not falling under the preceding section, and in cases of difficulty or importance which, according to the existing practice, may be referred by one of the divisions of the Inner House to the whole Court, it shall be competent for such division to direct that the printed papers in the cause shall be laid before three other judges to be named in the interlocutor with a view to their opinions being communicated in writing, or to direct that the cause shall be argued before themselves with the assistance of such three judges (or four judges, when that is

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necessary to complete the number of seven at the time of re-hearing); and the judgment to be pronounced thereon shall be in conformity with the opinions of the majority of the seven judges, and shall bear to be the judgment of the division by whom the hearing was appointed, after consulting with such other judges, and may be signed in the absence of such other judges at any ordinary sitting of the division.

Modifications etc. (not altering text)

C44 Ss. 50–101 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)

61 New trial not to be granted if Court equally divided.

No verdict of a jury shall be discharged or set aside upon a motion for a new trial, unless in conformity with the opinion of a majority of the judges of the division, and in case of equal division judgment shall be given in conformity with the verdict; but this provision shall not apply to hearings upon bills of exceptions.

Modifications etc. (not altering text)

C45 Ss. 50–101 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)

62 Amendment of 29 & 30 Vict. c. 112. s. 3.

The third section of the Evidence (Scotland) Act 1866, is hereby amended to the effect of providing that, notwithstanding the terms of the said section, “where proof shall be ordered by one of the divisions of Court,” it shall no longer be competent to remit to one of the Lords Ordinary to take such proof, but it shall be taken before any one of the judges of the said division, whose place may for the time be supplied by one of the Lords Ordinary called in for that occasion.

Modifications etc. (not altering text)

C46 Ss. 50–101 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)

63 Special cases on questions of law.

Where any parties interested, whether personally or in some fiduciary or official character, in the decision of a question of law shall be agreed upon the facts, and shall dispute only on the law applicable thereto, it shall be competent for them, without raising any action or proceeding, or at any stage of an action or proceeding, to present to one of the divisions of the Court a special case, signed by their counsel, setting forth the facts upon which they are so agreed, and the question of law thence arising upon which they desire to obtain the opinion of the Court; and which case may set forth alternatively the terms in which the parties agree that judgment shall be pronounced, according to the opinion of the Court upon the question of law, aforesaid. When a special case is laid before one of the divisions the Court may order such documents as appear to be necessary to be printed and boxed, and shall hear parties . . . ^{F31} and give

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their opinion or pronounce judgment, as the case may be, and such judgment shall be extractible in common form: Provided always, that the case may be amended of consent, and that, if the Court shall think fit, they may appoint the case to be reheard in terms of the sixtieth section hereof; and the Court shall dispose of all questions of expenses. Judgments pronounced in virtue of this section shall be liable to review by the House of Lords, unless such review shall be excluded of consent of all parties.

Textual Amendments

F31 Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

C47 [Ss. 50–101](#) 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)

VII.—APPEALS FROM INFERIOR COURTS

64 **F32**

Textual Amendments

F32 [S. 64](#) repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

C48 [Ss. 50–101](#) 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)

65 Appeals substituted for advocacy.

Wherever, according to the present law and practice, it is competent to advocate to the Court of Session a judgment (final or not final, as the case may be) of any sheriff or other inferior court or judge, it shall be competent, except as herein-after provided, to submit such judgment to the review of the Court of Session by appeal in the manner herein-after provided: Provided always, that it shall not be necessary for the appellant to find caution for expenses before taking or prosecuting his appeal.

Modifications etc. (not altering text)

C49 [Ss. 50–101](#) 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)

C50 [Ss. 65–70, 73 and 79](#), so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), **Sch. 2**

66 Form of note of appeal.

An appeal to the Court of Session under this Act may, when otherwise competent, be taken by a note of appeal written at the end or on the margin of the interlocutor sheet containing the judgment appealed from, or any note thereto annexed, or by a separate

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note of appeal lodged with the clerk of the inferior court; and such note of appeal may be in the following or similar terms:

“The pursuer [*or* defender or other party] appeals to the division of the Court of Session”;

And the said note shall specify the division, and shall be signed by the appellant or his agent, and shall bear the date on which it is signed.

Modifications etc. (not altering text)

- C51** Ss. 50–101 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)
- C52** Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)

67 Not competent to appeal after six months from date of final judgment.

It shall not be competent to take or sign any note of appeal after the expiration of six months from the date of final judgment in any cause depending before the sheriff or other inferior court or judge, even although such judgment has not been extracted.

Modifications etc. (not altering text)

- C53** Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)
- C54** Ss. 50–101 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)

68 Time at which interlocutors of inferior courts may be extracted.

A party may take an appeal within the space of twenty days after the date of the judgment of which he complains, during which period of twenty days extract shall not be competent; but on the expiration of the foresaid period, if no appeal shall have been taken, the clerk of the court may give out the extract; it being competent, however, to take such appeal at any time within the period of six months from the date of final judgment in the cause, unless the judgment has previously been extracted or implemented.

Modifications etc. (not altering text)

- C55** Ss. 50–101 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)
- C56** Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)

69 Effect of appeals under this Act.

Such appeal shall be effectual to submit to the review of the Court of Session the whole interlocutors and judgments pronounced in the cause, not only at the instance of the appellant, but also at the instance of every other party appearing in the appeal, to the effect of enabling the Court to do complete justice without hindrance from the terms

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of any interlocutor in the cause, and without the necessity of any counter appeal; and an appellant shall not be at liberty to withdraw or abandon an appeal without leave of the Court; and an appeal may be insisted in by any party in the cause other than the appellant, in the same manner and to the like effect as if it had been taken by himself.

Modifications etc. (not altering text)

- C57** Ss. 50–101 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)
- C58** Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), **Sch. 2**

70 Notice of appeal.

The clerk of the inferior court shall within two days after the date of any appeal being taken send written notice of such appeal to the respondent or his agent: Provided, that the failure to give such notice shall not invalidate the appeal; but the Court of Session may give such remedy for any disadvantage or inconvenience thereby occasioned as may in the circumstances be thought proper.

Modifications etc. (not altering text)

- C59** Ss. 50–101 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)
- C60** Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), **Sch. 2**

71 Form of bringing appeals into Court of Session.

Within two days after the appeal shall have been taken the clerk of the inferior court shall transmit the process to one of the clerks of the division of the court to which the appeal is taken, who shall subjoin to the appeal a note of the day on which it is received; . . . ^{F33}

Textual Amendments

- F33** Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

- C61** Ss. 50–101 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)

72 Proof and judgment upon appeals.

The Court may, if necessary, order proof or additional proof to be taken in any appeal under this Act, such proof to be taken in the same manner as proof may be competently taken in any cause depending before the Inner House, and shall thereafter, or without any such order (if no such proof or additional proof is necessary), give judgment on the merits of the cause according to the law truly applicable in the circumstances,

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although such law is not pleaded on the record; and the record may, with leave of the Court, be amended at any time, on such conditions as to the Court shall seem proper.

Modifications etc. (not altering text)

C62 Ss. 50–101 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)

73 Appeal under s. 40. of 6 G. 4. c. 120.

It shall be lawful, by note of appeal under this Act, to remove to the Court of Session all causes originating in the inferior courts in which the claim is in amount above forty pounds, at the time and for the purpose and subject to the conditions specified in the fortieth section of the ^{M7}Court of Session Act 1825; and such causes may be remitted to the Outer House.

Modifications etc. (not altering text)

C63 Ss. 50–101 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)

C64 Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)

Marginal Citations

M7 1825 c. 120.

74 Procedure in place of advocations ob contingentiam.

In place of advocations of actions and proceedings in inferior courts ob contingentiam of a process in the Court of Session, it shall be lawful for the party desiring to remove any such action or proceeding to the Court of Session to lay before the Lord Ordinary, or the division of the Court before which such Court of Session process shall actually be at the time, a copy of the inferior court record, or of such pleadings as may have been lodged, and of the interlocutors in the cause, certified by the clerk of the said inferior court, and to move for the transmission of the inferior court process to the Court of Session; and if upon consideration thereof the said Lord Ordinary or division of the Court shall be of opinion that there is contingency between the said processes, he or they shall grant warrant to the clerk of the inferior court process for the transmission thereof; and upon such transmission being made the said process shall thenceforth be proceeded with in all respects as if it had been advocated ob contingentiam to the Court of Session according to the present law and practice.

Modifications etc. (not altering text)

C65 Ss. 50–101 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)

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75 Exclusion of review in such cases.

The decision of the Lord Ordinary or of the Court, as the case may be, upon any such motion for transmission, shall be final at that stage; but, in the event of the application being refused, it shall be competent for either party to renew the motion at any subsequent stage of the cause.

Modifications etc. (not altering text)

C66 Ss. 50–101 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)

76 Appeals substituted for advocations under special enactments.

Where, by any Statute now in force, special provision is made for removing any action or proceeding in any inferior court to the Court of Session by advocacy, it shall be lawful to remove any such action or proceeding to the Court of Session by appeal under this Act at the same stage of the cause, for the same purpose, and with such and the like restrictions as are provided by such Statute.

Modifications etc. (not altering text)

C67 Ss. 50–101 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)

77 Provisions for completing record in processes removed to the Court of Session by appeal.

Where it is necessary in any action removed to the Court of Session by appeal under this Act that a record should be made up in the Court of Session, the record shall be made up under the direction of the division of the Inner House in which the appeal is depending.

Modifications etc. (not altering text)

C68 Ss. 50–101 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)

78 Exclusion of review by advocacy under special enactments to imply exclusion of review by appeal.

Where, by any Statute now in force, the right of review by advocacy to the Court of Session is excluded or restricted, such exclusion or restriction of review shall be deemed and taken to apply to review by appeal under this Act.

Modifications etc. (not altering text)

C69 Ss. 50–101 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)

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 1868. (See end of Document for details)

79 Regulation of interim possession pending appeal to the Court of Session.

In all cases where the judgment of any inferior court shall be brought under the review of the Court of Session by appeal, it shall be competent for the inferior court to regulate in the meantime, on the application of either party, all matters relating to interim possession, having due regard to the manner in which the interests of the parties may be affected by the final decision of the cause; and such interim order shall not be subject to review, except by the Court at the hearing of such appeal, when the Court shall have full power to give such orders and direction in respect to interim possession as justice may require.

Modifications etc. (not altering text)

- C70** Ss. 50–101 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)
- C71** Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)

80 F34

Textual Amendments

- F34** S. 80 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

Modifications etc. (not altering text)

- C72** Ss. 50–101 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)

VIII.—ACCOUNTINGS, SUSPENSIONS, AND SUMMARY PETITIONS

81 Accountant may be required to attend debate, and assist in settling the terms of the remit.

The Court (in any branch of its jurisdiction), where a question of accounting is to be investigated, may request the accountant to whom it is intended to remit the cause to attend in Court at the debate, and in the advising of the cause may take the assistance of such accountant out of court in settling the terms of the remit to be made to him.

Modifications etc. (not altering text)

- C73** Ss. 50–101 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)

82 Accountant to have power to compel production of documents, and attendance of parties and witnesses.

The accountant shall have power, by signed order, to require the attendance of the parties before him at such times, either in session or in vacation, as he may appoint;

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 1868. (See end of Document for details)

and also to fix the times within which notes of objections and answers, vouchers, and other necessary papers shall be lodged before him; and the time appointed by such order may be once prorogated without special cause shown, and a second time upon special cause to be mentioned in the order of prorogation; provided, in case of such second prorogation, that application is made before the expiration of the time previously appointed. When the accountant has power under the remit to examine witnesses or havers, the clerk of the bills shall issue letters of second diligence against any defaulting witness or haver, on a bill presented by the agent, and countersigned by the accountant.

Modifications etc. (not altering text)

C74 Ss. 50–101 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)

83 In case of default accountant to proceed ex parte.

In case of failure to lodge any note or answer or productions within the time appointed, the accountant shall proceed to dispose of the cause upon the evidence and statements submitted to him; and in case of the failure of one of the parties to attend any diet without reasonable excuse, he shall proceed to dispose of the cause, after hearing the explanations of the other party, according to his opinion on its merits.

Modifications etc. (not altering text)

C75 Ss. 50–101 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)

84 Accountant may apply to Court for special direction.

It shall be competent for the accountant to apply, either by written note, or vivâ voce in presence of the parties, to the Court for direction as to any point which may arise in the course of the remit; and the Court may give such directions either vivâ voce, or by interlocutor, thereon, or may suspend the remit, and proceed to deal with the point raised as in the cause, and dispose of it accordingly.

Modifications etc. (not altering text)

C76 Ss. 50–101 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)

85 Parties may appeal from accountant, or move the Court for special direction.

It shall be competent for either party, with the leave of the accountant, to bring under review of the Court any interim order or proceeding of the accountant, or, with leave as aforesaid, to move the Court to give the accountant special directions on any point arising in the course of the remit.

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 1868. (See end of Document for details)

Modifications etc. (not altering text)

C77 Ss. 50–101 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)

86 Accountant to report results in the form of a certificate of his opinion.

The report of the accountant shall state, in the form of a certificate, the facts he has found to be established, and the results at which he has arrived, and also the points falling within the remit which he suggests as proper for the consideration of the Court, and any necessary explanations of the grounds of the accountant's findings and opinion shall be stated in the form of a note appended to such certificate; and such states of accounts only shall be prepared as the accountant or the Court shall consider essential for the proper decision of the cause.

Modifications etc. (not altering text)

C78 Ss. 50–101 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)

87 Court empowered to take the assistance of the accountant in applying their judgment as to bring out results.

The accountant shall, if required by the Court or by either of the parties, attend at the debate on his report; and it shall be lawful for the Court to take the assistance of the accountant out of court in the preparation of the draft of the judgment, in which the opinions they may communicate to him shall be applied to the various points of the case, so as to bring out the proper results of such opinions, and so as, if possible, to obviate the necessity of a second remit; and for this purpose the opinion of the Court may be communicated to the accountant by the judge upon whom the preparation of the judgment of the Court may be devolved, in any way he may think fit.

Modifications etc. (not altering text)

C79 Ss. 50–101 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)

88 Procedure when remit to accountant made by the Lord Ordinary.

The whole of the above-mentioned provisions in relation to actions of accounting shall be applicable to causes in dependence before any of the Lords Ordinary.

Modifications etc. (not altering text)

C80 Ss. 50–101 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)

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 1868. (See end of Document for details)

89 Lord Ordinary on bills, &c. may grant warrant ad factum præstandum.

Where a respondent in any application or proceeding in the Bill Chamber, whether before or after the institution of such proceeding or application, shall have done any act which the Court, in the exercise of its preventive jurisdiction, might have prohibited by interdict, it shall be lawful for the said Court, or for the Lord Ordinary on the Bills, upon a prayer to that effect, in the note of suspension and interdict, or in a supplementary note, to ordain such respondent to perform any act which may be necessary for reinstating the complainer in his possessory right, or for granting specific relief against the illegal act complained of.

Modifications etc. (not altering text)

C81 Ss. 50–101 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)

90 As soon as note passed in Bill Chamber, cause to become Court of Session process.

In all proceedings in the Bill Chamber, as soon as an interlocutor passing the note has become final, and caution has been found or consignation has been made, in the event of caution or consignation having been ordered, the cause shall become for all purposes an action depending in the Court of Session, and may immediately be enrolled by either party in the motion roll of the Lord Ordinary to whom it is marked: Provided, that where a note of suspension or other original note in the Bill Chamber is not at the time of its presentation, or during the dependence of the process in the Bill Chamber, marked by the respondent to one of the Lords Ordinary, it may, as soon as the interlocutor passing the note has become final, be so marked by the complainer; and it shall not be necessary that any such process should appear in the calling lists.

Modifications etc. (not altering text)

C82 Ss. 50–101 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)

91 Questions of possession or specific performance may be presented in the form of a summary petition.

It shall be lawful for the Court, upon application by summary petition, to order the restoration of possession of any real or personal property of the possession of which the petitioner may have been violently or fraudently deprived, and also to order the specific performance of any statutory duty, under such conditions and penalties, (including fine and imprisonment, where consistent with the Statute,) in the event of the order not being implemented, as to the Court shall seem proper; and such petitions may be presented to any Lord Ordinary, or, in time of vacation or recess, to the Lord Ordinary on the Bills, who shall proceed therein as justice may require; and any such petition presented to the Lord Ordinary on the Bills may, after the ordinary sittings of the Court have commenced, be transferred to one of the Lords Ordinary in the Outer House in manner herein-before provided with respect to Bill Chamber proceedings.

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 1868. (See end of Document for details)

Modifications etc. (not altering text)

- C83** Ss. 50–101 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)
- C84** S. 91 extended by Harbours, Piers and Ferries (Scotland) Act 1937 (c. 28), s. 22(4), S.I. 1955/1752 (1955 I, p. 778), reg. 43(2), Housing and Town Development (Scotland) Act 1957 (c. 38), s. 16(3)(b), Road Traffic Regulation Act 1967 (c. 76), ss. 62(2), 69(6), Rent (Control of Increases) Act 1969 (c. 62), s. 4(3), Civil Aviation Act 1971 (c. 75), s. 29(6), Town and Country Planning (Scotland) Act 1972 (c. 52), s. 260(7) and Finance Act 1975 (c. 7), s. 29, **Sch. 6 Pt. I para. 13(6)**

92 Appointment of judicial reporters on summary petitions.

It shall be lawful for the Court to appoint not fewer than six agents, being agents practising in the Court of Session of not less than five years standing, and skilled in conveyancing, to be judicial reporters, and who shall hold their office at the pleasure of the Court; and all remits which under the existing practice are made to agents practising in the Court of Session shall be made to such judicial reporters by rotation, or in such other way as may be considered most advisable for the despatch of the business entrusted to such reporters, who shall be remunerated by fees according to a scale to be fixed by the Court, and which the Court may alter from time to time. The Court also shall have power to regulate from time to time the fees which shall be payable to any accountant or person of skill, other than the judicial reporters foresaid, to whom any remit is made in the course of any judicial proceedings before the Court.

Modifications etc. (not altering text)

- C85** Ss. 50–101 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)

IX.—MISCELLANEOUS PROVISIONS

93 Procedure in time of vacation.

Summonses may be called, and defences or other pleadings may be returnable, at any of the box days in vacation or recess; . . . ^{F35}

Textual Amendments

- F35** Words repealed by Administration of Justice (Scotland) Act 1933 (c. 41), **Sch.**

Modifications etc. (not altering text)

- C86** Ss. 50–101 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)

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 1868. (See end of Document for details)

94 Lord Ordinary may sign interlocutors in vacation.

It shall be lawful for the Lords Ordinary at any time in vacation or recess to sign interlocutors pronounced in causes heard in time of session, or at any extended sittings, or at the trial of causes by jury or by proof, before such Lord Ordinary: . . . ^{F36}

Textual Amendments

F36 Words repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), **Sch.**

95 New procedure in place of actions of wakening.

Where, according to the existing practice, a cause would require to be wakened in order to its being proceeded with, it shall be competent for any of the parties to enrol such cause before the Lord Ordinary, and to lodge a minute craving a wakening of the cause; and the Lord Ordinary may thereupon direct intimation of such minute to be made to the known agents of the other parties in the cause, or to such parties themselves, and shall direct intimation to be made in the minute book of the Court of Session; and where said parties have no known agents, or are themselves furth of Scotland, the Lord Ordinary shall also appoint edictal intimation thereof to be made by publication in the record of edictal citations; and on the expiration of eight days from the date of such intimation, or from the latest date thereof, and on a certificate being lodged in process under the hand of the agent of the party applying for the wakening, certifying that he has duly intimated the minute in terms of the Lord Ordinary's interlocutor, the Lord Ordinary may pronounce an interlocutor holding the cause as wakened, and the same may thereafter be proceeded with as wakened accordingly.

Modifications etc. (not altering text)

C87 [Ss. 50–101](#) 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)

96 New procedure in place of actions of transference.

Where, according to the existing practice, a cause may be transferred against any party or parties, it shall be competent to any party who might have instituted a summons of transference to enrol the cause before the Lord Ordinary, and to lodge a minute craving transference of the cause against such party or parties; and the Lord Ordinary may thereupon grant warrant for serving a copy of the summons or other original pleading upon the party or parties against whom such cause is sought to be transferred, and at the same time shall allow such party or parties to give in a minute of objections to such transference within a time to be specified in the interlocutor; and such interlocutor shall also be intimated in common form to the agents of the other parties in the cause; and such and the like procedure may be had in virtue of the service of such summons or pleading under the Lord Ordinary's warrant as might have been had in virtue of the execution of a summons of transference; and if the Lord Ordinary shall think fit to transfer the cause in terms of the said minute, (which the Lord Ordinary is hereby authorized to amend, if necessary,) he shall pronounce an interlocutor holding the cause as transferred against the party or parties named in such minute or amended minute, and the cause shall be taken to be transferred accordingly.

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 1868. (See end of Document for details)

Modifications etc. (not altering text)

C88 Ss. 50–101 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)

97 New procedure in place of combined actions of wakening and transference.

Where, according to the existing practice, a cause would require to be wakened in order to its being proceeded with, and also to be transferred against any party or parties, it shall be competent to any party who might have instituted a summons of wakening and transference to enrol the cause before the Lord Ordinary, and to lodge a minute craving a wakening of the cause, and a transference thereof against such party or parties; and after such procedure by intimation and service as is herein-before directed with respect to motions for wakening and transference respectively, the Lord Ordinary may pronounce an interlocutor holding the cause as wakened, and may either in the same interlocutor, or in an interlocutor to be subsequently pronounced, as justice may require, also transfer the cause against the parties named in such minute.

Modifications etc. (not altering text)

C89 Ss. 50–101 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)

98 Transference of actions depending in the Inner House.

It shall be lawful, where the process is in the Inner House, to apply by minute to the division of the Court in which the cause depends for a transference of the cause in manner herein-before provided against any party or parties named in such minute: Provided also, that nothing herein contained shall prevent the Lord Ordinary or the Court from sisting any person upon his own application by minute as a party to the cause, where such person is, according to the existing practice, entitled to be sisted as representative, trustee, or guardian, or in any other relation to any party who shall be already a party to the cause, or who shall have died during the dependence thereof: and any such application to be so sisted may be combined with an application for wakening.

Modifications etc. (not altering text)

C90 Ss. 50–101 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)

99 Not competent to object to productions after record closed.

It shall no longer be competent to object to the production of any document after a record has been closed, on the ground that it was in the possession or under the control of the party producing it at the time when the record was closed: Provided, that the Court or the Lord Ordinary may attach such conditions, as to expenses or otherwise, to the receiving of such documents as to them or him shall seem proper.

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 1868. (See end of Document for details)

Modifications etc. (not altering text)

C91 Ss. 50–101 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)

100 Amendment of Conjugal Rights Act. 24 & 25 Vict. c. 86.

The Conjugal Rights (Scotland) Amendment Act 1861 is hereby amended as follows, viz.:

- (1) It shall be sufficient compliance with the provision in the tenth section of the said Act if the personal service therein required is made by the delivery to the defendant personally of the summons by a person (although not a messenger-at-arms or other officer of the law) duly authorized by the pursuer for that purpose, and such person shall return a certificate that such delivery has been made: Provided always, that it shall be competent for the Lord Ordinary to call for farther evidence of the service by such delivery, if he shall think proper:
- (2) Notwithstanding the terms of the thirteenth section of said Act, it shall be competent for the Lord Ordinary to grant commission to any person competent to take and report in writing the deposition of a haver according to the existing practice, although such haver shall be resident in Scotland.

Modifications etc. (not altering text)

C92 Ss. 50–101 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)

101 Cognition of the insane regulated.

It shall no longer be competent to direct a brieve for the cognition of a person alleged to be *incompos mentis prodigus et furiosus*, or of a person alleged to be *incompos mentis fatuus et naturaliter idiota*, to the Judge Ordinary; and the brieves of *furiosity* and *idiotry* hitherto in use are hereby abolished; and in lieu thereof it is enacted, that a brieve from Chancery, written in the English language, shall be directed to the Lord President of the Court of Session, directing him to inquire whether the person sought to be cognosced is insane, who is his nearest agnate, and whether such agnate is of lawful age; and such person shall be deemed insane if he be furious or fatuous, or labouring under such unsoundness of mind as to render him incapable of managing his affairs; and such brieves shall be served upon the persons sought to be cognosced, on induciæ of fourteen days; and the brieve shall be tried before the said Lord President and a special jury, or before any other judge of the Court of Session to whom the said Lord President may remit the same, and a special jury; and the trial shall be conducted in the same manner as jury trials in civil causes in Scotland are conducted, with all the like remedies as to motions for new trials and bills of exceptions which are competent with reference to such jury trials; and the Court shall have power to award expenses against either party; but they shall not award expenses against the party prosecuting the brieve, unless they are of opinion that the same was prosecuted without reasonable or probable cause; and the verdict and service of the jury shall be retoured to Chancery, and shall, unless set aside on any ground, have the like force and effect, and be followed by

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the like procedure, as a retour of the verdict and service of the jury before the Judge Ordinary according to the present law and practice.

Modifications etc. (not altering text)

C93 Ss. 50–101 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)

C94 Functions of Chancery (Director of Chancery) now exercisable by Keeper of the Registers of Scotland: S.R. & O. 1932/148 (Rev. III, p. 655: 1932, p. 140), art. 3, [Public Records \(Scotland\) Act 1937 \(c. 43\)](#), **s. 13(1)** and [Public Registers and Records \(Scotland\) Act 1948 \(c. 57\)](#), **s. 1(2)**

102 F37

Textual Amendments

F37 [S. 102](#) repealed by [Statute Law Revision Act 1893 \(c. 14\)](#) and S.R. & O. 1913/638, (1913, p.2013) Book G, c. I, s. 4

103 Regulations as to declinature of jurisdiction.

It shall not be deemed a ground of declinature of jurisdiction that the judge (whether in the Court of Session or in any of the inferior courts) is a partner in any joint stock company carrying on as its sole or principal business the business of life and fire or life assurance, where such company is a party to the proceeding in which the judge is called to exercise his jurisdiction; and it shall not be deemed a ground of declinature of jurisdiction that any such judge is possessed, merely as a trustee, of any stock or shares in any incorporated company, where such company is a party to the proceeding.

104 F38

Textual Amendments

F38 [S. 104](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

105, F39
106.

Textual Amendments

F39 Ss. 105, 106 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), **Sch.**

107 F40

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 1868. (See end of Document for details)*

Textual Amendments

F40 [S. 107](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

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 1868.