



Court of Session Act 1868

1868 CHAPTER 100

VII.—APPEALS FROM INFERIOR COURTS.

64 Process of Advocation abolished.

The Process of Advocation is hereby abolished.

65 Appeals substituted for Advocation.

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.

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 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.

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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.

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 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.

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 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.

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.

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; and it shall be lawful for either the Appellant or the Respondent at any Time after the Expiry of Eight Days from the Date of such Note to enrol the Appeal; and when the Appeal is called in the Roll, it shall be competent for the Court to order the whole Inferior Court Record, and the Interlocutors in Causa and Note of Appeal, and Notes of the Evidence and Productions, if any, to be printed and boxed to the Court; or the Court may dispense with the printing and boxing of any Portions of the same; and in case the Record and other Papers ordered to be printed shall not be printed and boxed by the Appellant, or in case he shall not move in the Appeal, it shall be lawful for the Court, on a Motion by any other Party in the Cause, either to dismiss the Appeal with Expenses, and to affirm the Interlocutor of the Inferior Court, or to

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grant an Order authorizing the Party moving to print and box the Record and other Papers aforesaid, and to insist in the Appeal as if it had been taken by himself.

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, 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.

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 Act Sixth *George* the Fourth, Chapter One hundred and twenty; and such Causes may be remitted to the Outer House.

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.

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.

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 Advocation, 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.

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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.

78 Exclusion of Review by Advocation under special Enactments to imply Exclusion of Review by Appeal.

Where, by any Statute now in force, the Right of Review by Advocation 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.

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.

80 How far Provisions of Part VII to apply to depending Actions.

The whole Provisions of Part VII. of this Act shall, so far as possible, apply to all Advocations in Dependence before the Inner House at the Commencement of this Act, and to all Advocations which may, after the Commencement of this Act, come before the Inner House by Report or Reclaiming Note from any Lord Ordinary: Provided always, that the Advocations depending before the Outer House at the Commencement of this Act shall be disposed of in the Outer House according to the present Law and Practice.