



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

VII.—APPEALS FROM INFERIOR COURTS

64^{F1}

Textual Amendments

F1 S. 64 repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

C1 Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt.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 appellants to find caution for expenses before taking or prosecuting his appeal.

Modifications etc. (not altering text)

C2 Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt.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)

C3 Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, VII.—Appeals from Inferior Courts. (See end of Document for details)

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.

Modifications etc. (not altering text)

- C4 Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt.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)
- C5 Ss. 65–70, 73 and 79, so far as they relate to appeals from Sheriff Court, repealed by [Sheriff Courts \(Scotland\) Act 1907 \(c. 51\)](#), [Sch. 2](#)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)

- C6 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](#)
- C7 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)

- C8 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)
- C9 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](#)

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, VII.—Appeals from Inferior Courts. (See end of Document for details)

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.

Modifications etc. (not altering text)

- C10** 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)
- C11** 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)

- C12** 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)
- C13** 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; . . . ^{F2}

Textual Amendments

- F2** Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

Modifications etc. (not altering text)

- C14** 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)

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, VII.—Appeals from Inferior Courts. (See end of Document for details)

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.

Modifications etc. (not altering text)

C15 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 ^{M1}Court of Session Act 1825; and such causes may be remitted to the Outer House.

Modifications etc. (not altering text)

C16 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)

C17 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

M1 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.

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, VII.—Appeals from Inferior Courts. (See end of Document for details)

Modifications etc. (not altering text)

C18 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)

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)

C19 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 avocation, 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)

C20 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)

C21 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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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)

C22 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)

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)

C23 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)

C24 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 F3

Textual Amendments

F3 S. 80 repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

Modifications etc. (not altering text)

C25 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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