



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

III.—CALLING AND DECREE IN ABSENCE

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 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 [^{F1}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

F1 Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

Changes to legislation: *There are currently no known outstanding effects for the Court of Session Act 1868, Section 23. (See end of Document for details)*

Modifications etc. (not altering text)

C1 [Ss. 15–44](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt.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)

Changes to legislation:

There are currently no known outstanding effects for the Court of Session Act 1868, Section 23.