



# Court of Session Act 1825

## 1825 CHAPTER 120

An Act for the better regulating of the Forms of Process in the Courts of Law in *Scotland*.  
[5th July 1825]

WHEREAS it is expedient that certain Alterations should be made in the Forms of Proceeding in the Courts of Law in *Scotland*, and sundry Regulations established for the better expediting of Business in those Courts : And whereas certain Acts were passed in the Reign of His late Majesty, and in the Reign of His present Majesty, concerning the Administration of Justice in *Scotland*, and Appeals to the House of Lords; and for the better regulating of the Court of Session in *Scotland* ; and for extending Trial by Jury to Civil Causes: And whereas an Act was passed in the Fourth Year of the Reign of His present Majesty, intituled *An Act for empowering Commissioners, to be appointed by His Majesty, to inquire into the Forms of Process in the Courts of Law in Scotland, and the Course of Appeals to the House of Lords*: And whereas, pursuant to the said last-mentioned Act, His Majesty did name and appoint by His Royal Sign Manual certain Persons to inquire into the Forms of Process in the Courts of Law in *Scotland*, and to report on sundry Matters particularly therein set forth: And whereas the said Commissioners so appointed have made a Report to His Majesty upon the Subject Matter upon which they were so directed to report, which Report has been laid before the Two Houses of Parliament: And whereas it is expedient that the before-mentioned Acts should in certain Particulars be altered and amended, and that certain Regulations should be established for the expediting of Business before the Courts of Law in *Scotland*, and for extending Trial by Jury in Civil Causes, which cannot be effected without the Authority of Parliament :

May it therefore please Your Majesty that it may be enacted ; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same,

### **Altering the Division of the Court of Session ;**

That from and after the Eleventh Day of *November* next to come, the Seven junior Ordinary Judges of the Court of Session shall be relieved from Attendance in the Inner House, and shall not sit therein, unless in so far as is herein-after provided, but shall act as Lords Ordinary in the Outer House, to perform the Business which by the subsisting Acts and Usages belong to the Office of Lords Ordinary in the Outer House ; and

the Lord President, and Three of the senior Ordinary Judges of the Court of Session, shall form the Inner House of the First Division, and the Lord Justice Clerk, with the remaining senior Ordinary Judges, shall form the Inner House of the Second Division ; **and repealing 50 G. 3. c. 112.**

and the Provisions of an Act passed in the Fiftieth Year of the Reign of His late Majesty, intituled *An Act for abridging the Forms of extracting Decrees in the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of that Court*; and also of an Act passed in the Fifty-third Year of the Reign of His late Majesty, intituled *An Act for the better regulating of the Court of Session in Scotland* ; **and 1 & 2 G. 4. c. 38.**

and also of an Act of the First and Second of His present Majesty's Reign, intituled *An Act for establishing certain Regulations respecting certain Parts of the Proceedings of the Court of Session*, in so far as the same may be found inconsistent with the Regulations above expressed, shall be and the same are hereby repealed:

**But the Judges who now sit in the Inner House not to be affected by the foregoing Enactment without their own Consent.**

Provided always, that the Judges who now sit in the Inner House of either Division shall not be affected by this Enactment, except, with their own Consent; and therefore the Number of Judges who are to form the Inner House of either Division, and of Lords Ordinary officiating in the Outer House, shall remain as at present, until, either by the Consent of the present Judges, or by new Appointments of Judges, the Enactment may be carried into Effect.

## **II Proceedings for the preparing of Ordinary Causes for. Trial or Judgment. Summons. Defences.**

And be it further enacted, That from and after the said Eleventh Day of *November* next, in all ordinary Actions in the, Court of Session, the Pursuer or Pursuers shall, in the Summons, set forth in explicit Terms the Nature, Extent, and Grounds of the Complaint or Cause of Action, and the Conclusions which, according to the Form of the particular Action, the said Pursuer or Pursuers shall by the Law and Practice of *Scotland* be entitled to deduce therefrom ; and in like Manner, the Defender or Defenders shall in the Defences state in explicit Terms every Defence, both dilatory and peremptory, on which he or they means or mean to rely, and shall in particular meet the Statement of Facts and the Conclusions deduced from them in the Pursuer's Summons, either by denying the Facts therein stated, or by admitting the same, and in answer setting forth in explicit Terms the Facts on which the said Defender or Defenders found, subjoining a Summary of the Pleas in Law which are to be maintained by such Defender or Defenders.

## **III Production of Writings founded on.**

And be it further enacted, by the Authority aforesaid,-That along with the Summons and with the Defence the Parties shall respectively produce the Deeds or Writings on which they respectively found, so far as the same are in their Custody, or within their Power.

#### **IV No Judgment to be pronounced till the Record be made up and closed.**

And be it further enacted, That in ordinary Causes where the Defender shall make Appearance, and neither Party shall abandon the Cause, neither the Lord Ordinary officiating in the Outer House, nor the Court, shall proceed to give Judgment upon the Merits in .the" Cause, until the respective Averments of the Parties in Fact, and their Pleas in Matter of Law, shall, as herein-after directed, be set forth on the Record, and the Record made up and authenticated in manner herein-after appointed.

#### **V Of the Disposal of the dilatory Defences.**

And be it further enacted, by the Authority aforesaid, That it shall be the Duty of the Lord Ordinary, at the first Calling of the Cause before him, to hear the Parties on the dilatory Defences, with Power to reserve Consideration on such dilatory Defences as require Probation, until the peremptory Defences shall be pleaded, and the Record adjusted in the Manner herein-after directed; and if the Lord Ordinary shall sustain the dilatory Defences, ' or any of them, to the Effect of dismissing the Action, he shall at the same Time determine the Matter of Expences; but if, on the contrary, the said Ordinary shall repel the dilatory Defences, the Cause shall then, with the Exception herein-after to be mentioned, proceed, in its due Course of Preparation, without any separate Interlocutor being pronounced respecting Expences, reserving this Part of the Expence to be disposed of along with the rest of the Expence in the final Decision of the Cause; and the Judgment of the Lord Ordinary on the dilatory Defences shall be final, unless the Pursuer, where the Defences have been sustained and, the Action dismissed, shall, within Twenty-one Days from and after the Date of the Lord Ordinary's Judgment, apply by a Note in manner herein-after directed, to have such Judgment reviewed by the Judges of the Inner House, or unless, in the Case where the Lord Ordinary shall have repelled the Defences, the Defender shall, at tire Time of pronouncing Judgment as aforesaid, give Notice of his Intention to bring the Judgment under Review, in which Case the Lord Ordinary, instead of proceeding -with the Preparation of the Cause, shall forthwith give Judgment for the Expence of that preliminary Discussion; and the Defender shall then be entitled, at any Time within Twenty-one Days from the Date of the Interlocutor, to apply by Note to the Inner House for a Review of the Lord Ordinary's Judgment; and if the Defender shall not avail himself of the Right thus to bring the Judgment of the Lord Ordinary under Review, an Interim Decree, with Expence of Extract, shall be allowed to go out for the Expences for which Judgment shall have been given as aforesaid; and in reviewing the Lord Ordinary's Judgment, and adhering to or altering the Interlocutor by him pronounced, the Court shall also dispose of the Matter of Expences relative to that preliminary Discussion ; and if the Interlocutor of the Lord Ordinary repelling the Defence shall be adhered to, an Interim Decree shall be pronounced for the Expences decerned for by him, with the additional Expence in the Court, if such be allowed, on which Interim Decree Execution may proceed ; and it shall not be completed to appeal to the House of Lords against the Interlocutory Judgment, where the Action is not dismissed, unless express Leave be given by the Court, reserving the Effect of the Defence if an Appeal should afterwards be taken in the Cause when finally decided.

#### **VI Examination by the Lord Ordinary into the Correctness of the Summons and Defences. Of Defences premtory.**

And be it. further enacted, That where no dilatory Defence shall have been stated, or in case all dilatory Defences have been finally repelled, the Lord Ordinary shall proceed to examine into the Correctness of the Summons and of the premtory Defences;

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*Status: This is the original version (as it was originally enacted).*

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and if it shall appear to the Lord Ordinary, that the Grounds of Action, asset forth in the Summons, are in Terms not sufficiently positive and clear, or the Conclusion not regularly or legally deduced according to the Form and Nature of the Action, and the Laws and Practice of *Scotland*, he may either dismiss the Action, decerning for Expences, and reserving to the Pursuer the Right to bring a new Action, or order an Amendment of the Libel, and give Interim Decree against the Pursuer for the Expences occasioned by the incorrect Form of the Summons ; on which Interim Decree, if necessary, Execution may proceed forthwith; and in like Manner, if it shall appear to the Lord Ordinary that the Defender has not set forth his peremptory Defences or Exceptions in Terms sufficiently in point of Fact, and with due Correctness in point of Law, the Lord Ordinary may order Defences more satisfactory and correct to be given in, and give Decree against the Defender for the Expence occasioned by his imperfect or evasive Defences ; and the Expences awarded in this preliminary Adjustment of the Summons and Defences, when an amended Summons or additional Defences shall be ordered, shall, at lodging such amended Summons or Defences, be paid over to the Clerk for Behoof of the Pursuer or of the Defender, as the Case may be, without which the amended Summons or Defences shall not be received; and the Lord Ordinary's Determination, thus dismissing the Action, or ordering an Amendment of the Libel, or more satisfactory Defences, with Expences, shall be final, unless within Twenty-one Days from the Date of the Interlocutor Application shall be made, as herein-after directed, to have the Interlocutor reviewed by the Inner House.

#### **VII The Record to be completed..**

And be it further enacted, That where the Lord Ordinary shall be satisfied that the Summons and Defences are in point of Fact sufficiently explicit, and correctly deduced in point of Law, and that no further Disclosure of Facts or of Pleas is necessary for the due Preparation of the Cause for Trial, he shall require the Parties to state positively whether they are willing to hold the Summons and Defences as containing their full and final Statement of Facts, and Pleas in Law; and if they agree so to do, then the Clerk shall set forth in a Minute their Assent to that Effect, which shall be signed by the Counsel on each Side, and the Record shall forthwith be completed as herein-after directed.

#### **VIII Otherways to put in Condescendences and Answers. Order for Condescendence and Answers. Nature and Form of the Condescendence and Answers. All Writings founded on to be produced.**

Provided always, and be it further enacted, That where the Parties do not agree to hold the Summons and Defences as setting forth fully .the Facts and Pleas respectively founded on ; or .where, the Lord Ordinary shall think fit, he shall order the Pursuer or Defender, as the Case may be, to give in, the one a Condescendence, the other an Answer, or mutual Condescendence, setting forth without Argument the Facts which they aver and offer to prove in support of the Summons and Defences ; and in such Condescendence, Answers, or mutual Condescendences, the Parties shall, in substantive Propositions, and under distinct Heads or Articles, set forth all Facts and Circumstances pertinent to the Cause of Action, or to the Defence, and which they respectively allege and offer to prove ; and along with such Condescendence or Answer, or mutual Condescendences, the Parties shall respectively produce all Writings in their Custody or within their Power, not already produced, on which they mean to found.

**IX Condescence and Answers to be revised. Notes of the Grounds in Law on which the Parties rely.**

And be it further enacted, That as soon as the Condescences or Condescence and Answers shall be lodged, the Parties shall respectively revise their Condescences and Answers, and make such Alterations thereon as may appear to them to be necessary, in order fully to meet the opposite Averments; and in order that the Averments of the Parties may be finally adjusted with due regard to the Matter of Law to be maintained by them respectively, each of the Parties shall, along with the Copy of his revised Condescence or Answer, lodge with the Clerk, previous to the final Adjustment of the Record, a short and concise Note, drawn and signed by Counsel, of the Pleas in Law on which the Action or Defence is to be maintained ; and in such Notes the Matter of Law so to be stated shall be set forth in distinct and separate Propositions, without Argument, but accompanied by a Reference to the Authorities relied on.

**X Final Adjustment of Condescences and Notes of Pleas. Condescences and Notes to be signed by the Counsel for Parties. Record to be made up to foreclose the Parties in point of Fact. Exception of Res noviter veniens ad Notitiam. How such new Matter to be admitted on the Record.**

And be it further enacted, That the Parties shall appear before the Lord Ordinary, for the Purpose of finally adjusting their respective Averments in fact, and their Notes of Pleas, when it shall be the Duty of the Lord Ordinary to hear the respective Explanations of the Parties, and to examine as before directed with the Statement of the Facts respectively, and of the Pleas, as applicable to the Summons and Cause of Action and to the Defence, and to suggest any new Plea which may to him appear necessary to exhaust the whole disputable Matter in Law or Fact in the Cause, after which the adjusted Condescences and Answers and relative Notes of Pleas shall be subscribed by the Counsel for the Parties ; and before any Order shall be pronounced, or Judgment delivered, as to the Disposal of the Cause, the Record of the Pleadings as adjusted shall be authenticated by the Lord Ordinary by his Signature; and the Record so made up and authenticated shall be held as foreclosing the Parties from the Statement of any new Averments in point of Fact; and no Amendment of the Libel or new Ground of Defence shall be allowed after the Record shall have been thus completed, under the Exception hereafter to be mentioned; the Pursuer having it in his Power notwithstanding to abandon the Cause on paying full Expences or Costs to the Defender, and to bring a new Action if otherwise competent: Provided always, that it shall be competent to either Party in the Course of a Cause to state Matter of Fact *noviter veniens ad Notitiam*, or emerging since the Commencement of the Action, if on Cause shown Leave shall be obtained from the Lord Ordinary or the Court so to do, the said Party always paying, previous to stating such be Matter on the Record, such Expences as may be deemed reasonable by the Lord Ordinary or the Court; and if Leave be granted, the new Matter shall within a Time to be limited be stated in the Shape of a specific Condescence framed as above, accompanied by a Note stating the Plea in Law arising therefrom ; and the adverse Party shall in such Case be ordered within a reasonable Time to put in his Answer to such Condescence and Plea, to be adjusted and made a Part of the Record as before directed.

**XI Note of Pleas to foreclose in point of Law ; Exception of new Pleas admitted with Leave of the Court.**

And be it further enacted, That the Pleas stated on the Record, and authenticated as before directed, shall be held as the sole Grounds of Action or of Defence in point of Law, and to which the future Arguments of the Parties shall be confined: Provided always, that where any new Plea or Ground in Law shall, after the Completion of the Record as before, be in the Course of the Cause suggested, either by the Lord Ordinary or by the Judges in the Inner House, or by the Party, as fit to be discussed in relation to the Facts already set forth, it shall and may be competent, with Leave of the Lord Ordinary or of the Court, to add such Plea to the Note of Pleas authenticated by the Lord Ordinary as before.

**XII Of Orders for compelling Parties to lodge Condescendences, &c.**

And be it further enacted, That the Lord Ordinary shall, in every Instance, on due Consideration of the Circumstances, fix the Time within which such Condescendences and Answers shall be lodged, and such Time shall not be prorogated, except on Payment of the Expences previously incurred, unless before the Lapse of the Time so fixed special Application shall be made for such Prorogation, nor shall the Prorogation in any Instance be granted, except on Cause shewn, nor oftener than once ; and if the Party shall fail to lodge his Condescendence or Answers, as the Case may be, within the Time originally fixed, or afterwards prorogated, the Lord Ordinary may hold the Summons or Defences for such Party as his Condescendence or Answers, finally fixing the Averments in point of Fact, on which he founds.

**XIII Of proceeding to the further Disposal of the Cause. Cases to be adjudged on Admission of Parties.**

And be it further enacted, That after the Record of the Averments and Pleas shall have been adjusted and closed as hereinbefore directed, and when it shall appear that the Parties have respectively admitted on the Record all the Facts requisite to the Decision of the Cause, so as to render any Trial of the Facts unnecessary, the Lord Ordinary may proceed to decide the Cause with or without further Argument, or he may take the Cause to report to the Inner House in the Form herein-after appointed.

**XIV Of the Ascertainment of the Fact otherwise than by Admission.**

And be it further enacted, That where the Parties differ as to Facts which do not require to be ascertained by Jury Trial, the Lord Ordinary shall give such Orders and Directions for the Ascertainment of the Facts as to him shall appear expedient, and his Order for Disposal of the Cause shall be final, unless brought under Review of the Inner House in the Form herein-after directed, within Twenty-one Days after such Order is pronounced ; and if so brought under Review, the Interlocutor of the Inner House shall be final, without Appeal, unless on Leave expressly granted, reserving the Effect of any Objection to the Course of Proceeding in any final Appeal on the Merits of the Cause.

**XV Of Remits for Jury Trial.**

And be it further enacted, That where the Parties differ as to Facts which require to be ascertained by Jury Trial, the Lord Ordinary shall have it in his Power either to remit

the whole Cause to the Jury Court for Trial, or to send to that Court a particular Issue or Issues, in order to have such Matter of Fact ascertained, as he may deem necessary for deciding the Cause ; and the Order by the Lord Ordinary, in so far as it thus remits a Cause, shall be final.

**XVI Discussion of the Cause on the Merits. Power to order Cases to be prepared.**

And be it further enacted by the Authority aforesaid, That where a Cause is by means of Admissions, or from the Nature of the Cause, deemed fit to be discussed and determined in the Court of Session, without having recourse to Jury Trial, or when the Parties concur in desiring to have a Question of Law or of Relevancy determined previous to Trial by Jury, or when it shall be finally ordered by the Lord Ordinary or the Inner House, that any Question of Law or Relevancy shall be determined previous to Trial, or when the Cause shall come back to the Court of Session with a Verdict on a special Issue sent for Trial, in these, or any of these or the like Cases, the Lord Ordinary may either proceed himself to decide the Cause or Matter to be determined, or take it to report to the Inner House, as to him shall seem most expedient; and he may either order the Parties to argue the Whole or any Part of the Cause before him, as often as he may find it necessary, or direct Cases in Writing to be prepared by the Parties in the Form herein-after appointed, and to be seen, interchanged, and finally adjusted; and for compelling Obedience to such Order, the Court of Session are hereby required and enjoined to take effectual Means, by Regulations to be by them made, as herein-after directed; and after such Cases shall have been so lodged, the Parties shall have an Opportunity of being further heard, if they or either of them shall desire it.

**XVII Lord Ordinary to determine Costs. His Judgment final in the Outer House.**

And be it further enacted, That in pronouncing Judgment on the Merits of the Cause, the Lord Ordinary shall also determine (the Matter of Expences, so far as not already settled, either giving or refusing the same in whole or in part; and every Interlocutor of the Lord Ordinary shall be final in the Outer House, subject however to the Review of the Inner House, in manner herein-after directed.

**XVIII Of the Review by the Inner House of Judgments of the Lord Ordinary. Proceedings of the Inner House in reviewing the Judgment of the Lord Ordinary.**

And be it further enacted, That when any Interlocutor shall have been pronounced by the Lord Ordinary, either of the Parties dissatisfied therewith shall be entitled to apply for a Review of it to the Inner House of the Division to which the Lord Ordinary belongs ; provided that such Party shall, within Twenty-one Days from the Date of the Interlocutor, print and put into the Boxes appointed for receiving the Papers to be perused by the Judges, a Note reciting the Lord Ordinary's Interlocutor, and praying the Court to alter the same in whole or in part; and if the Interlocutor of the Lord Ordinary shall have been pronounced on Cases, the Party applying for a Review shall, along with the Note as above directed, print and put into the Boxes, the Cases which have been before the Lord Ordinary; and if the Interlocutor has been pronounced without Cases, the Party so applying shall, along with his Note as above directed, put into the Boxes printed Copies of the Record authenticated as before, and shall at the same Time give Notice of his Application for Review by Delivery of Six Copies of the Note to the known Agent of the opposite Party; and it shall in no Case be competent for either Party, from and after the said Eleventh Day of *November*, to bring any Interlocutor

of the Lord 'Ordinary under Review of the Inner House, by the Form of reclaiming Petition as now in use, but only in the Mode thus directed; and the Inner House shall have Power, before proceeding to decide the Cause (where Cases have not already been ordered in the Outer House),' to appoint Parties to prepare and print Cases in the Form herein-after directed, and whether Cases have been sent from the Outer House or ordered in the Inner House, the Court shall allow Counsel to be heard before giving Judgment in the Cause ; and that iii all Causes before pronouncing Judgment, it shall be in the Power of the Court to order an Argument by Counsel, as often as they see fit, and on the Whole or on such Parts of the Cause as shall seem to the Court to require further Argument.

**XIX Of reporting Causes to the Inner House ; incidental Matters may be reported verbally.**

And be it further enacted by the Authority aforesaid, That the Lord Ordinary may, after Intimation to the Parties, report verbally to the Inner House any incidental Matter which may arise in the Course of the Cause, and such Matter so reported by the Lord Ordinary shall be disposed of upon Argument by Counsel, unless the Court shall, when the Matter comes before them, think fit to order Cases ; and if Judgment shall be pronounced by the Court, or an Order shall be made in respect to the Matter so reported, that Judgment or Order shall be final, and the Court shall either settle the Expence relative to the Point so reported, or reserve Consideration thereof to the End of the Cause.

**XX Report of the Cause itself on cases. Court to hear Parties.**

And be it further enacted, That where the Lord Ordinary shall take the whole Cause to report, he shall at the same Time order five Parties to prepare and lodge Cases in the Form to be hereinafter directed, to be seen and interchanged ; and the Interlocutor so taking the Cause to report, and the Order for Cases, shall be final; and when the Cause shall come to be advised by the Court on Cases prepared in consequence of such Order, or on Cases prepared by Order of the Inner House, the Court shall give to the Counsel an Opportunity of being heard before proceeding to Judgment.

**XXI Judgment of the Inner House shall decide Costs, and shall be final.**

And be it further enacted, That the Inner House shall, in deciding the Cause, also determine the Matter of Expences; and the Judgment pronounced by the Inner House shall in all Causes be final in the Court of Session.

**XXII Form in which Cases shall be prepared.**

And be it further enacted, That wherever Cases shall be ordered, whether by the Lord Ordinary or by the Inner House, the Case shall commence with a Copy of the Record, as authenticated by the Lord Ordinary ; and each Ground of Law or Plea, as stated in the Record, shall be separately argued in the Case.

**XXIII Of Consultations of the Judges in doubtful Questions.**

And be it further enacted, That in order to preserve Uniform in the Decisions of the Court, and to settle doubtful Questions of Law which may arise, the Judges of either Division may, in all Causes in which the Judges of the Inner House shall be equally



divided in Opinion, direct the Cause to be judged either by the Inner House Judges of both Divisions, or by the whole Court, including the Lords Ordinary; and in such Cases as it shall appear to them advisable to have any Question occurring before them settled by the Judgment of the whole Court, the Judges of either Division may order that such Matter shall be heard before the whole Judges ; and Judgment shall in all Causes be pronounced according to the Opinion of the Majority of the Judges present; and the Interlocutor shall bear to be the Judgment of the Division before which the Cause depends after consulting with the other Judges.

**XXIV Opinion of permanent Ordinaries taken, and Judgment pronounced according to the Opinion of the Majority of Judges.**

And whereas by an Act of the Forty-eighth Year of His late Majesty, intituled *An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords*, the Judges of either Division are empowered to require the Opinions of the other Division, upon Questions stated in Writing ; be it enacted, That they may on such Occasions also be entitled to require the Opinion of the permanent Ordinaries; and the Judgment to be pronounced in the Cause shall be according to the Opinion of the Majority of all the Judges so consulted, and shall bear that it is the Judgment of the Division before which the Cause depends after consulting with the other Judges.

**XXV Limitation, of Time as to Appeals to the House of Lords.**

And be it further enacted, That from and after the Expiration of Fourteen Days after the First Day of the next Session of Parliament, the Decrees or Orders of the Court of Session, whether pronounced before or after that Time, shall be final and not subject to be complained of by Appeal to the House of Lords, unless the Petition of Appeal shall be lodged with the Clerk of Parliament, or the Clerk . Assistant, within Two Years from the Day of signing the last Interlocutor appealed from, or before the End of Fourteen Days to be accounted from and after the First Day of the Session or Meeting of Parliament for the Dispatch of public Business next ensuing the said Two Years : Provided always, that when the Person or Persons entitled to appeal shall be out of the Kingdom of *Great Britain and Ireland*, it shall be competent for him or them to enter an Appeal at any Time within Five Years from the Date of the last Interlocutor, if he or they shall remain Abroad so long, or within Two Years from the Time of coming into *Great Britain or Ireland*; the Time allowed to such Person or Persons for lodging his or their Appeal in no Case on account of mere Absence exceeding the foresaid Space of Five Years, together with the .Space that may elapse before the End of the Fourteenth Day from and after the Session or Meeting of Parliament next after the Expiration of the said Five Years ; and in case the Person or Persons so entitled to appeal shall be under the Age of Twenty-one Years, or , *non compos mentis*, it shall be competent for them, or their Heirs or Representatives, where no Appeal had been previously entered on this behalf, to enter an Appeal at any Time within Two Years after full Age or coming of sound Mind, or after the Death of the Persons so disqualified and the opening of the Succession to the Heir, or before the End of Fourteen Days after the First Day of the Session or Meeting of Parliament next ensuing the said Two Years.

**XXVI Certain Documents to be laid before the House of Lords in case of Appeal.**

And be it further enacted, That when any Cause shall be carried by Appeal to the House of Lords, the Appellant shall lay before the House a Copy, certified as authentic by the Signature of One of the principal Clerks of Session, or of One of the Assistants of the

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*Status: This is the original version (as it was originally enacted).*

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said Clerks, for whom the principal Clerks shall be responsible, of the whole Record of the Averments and Pleas authenticated by the Lord Ordinary in manner above directed ; and instead of such Cases as are delivered at present to the House of Lords, each Party shall present to the House of Lords a Case containing a printed Copy of the Record as authenticated, and of the Case presented to the Court of Session, if such there be ; and they shall also be at liberty to annex a supplementary Statement, containing an Account of the further Steps which have been taken in the Cause since the Record was completed, or the former Cases prepared, and Copies of the Interlocutors or Parts of Interlocutors complained against, with a Summary of such additional Reasons as may be thought fit, set down in the Form now used in the House of Lords.

**XXVII Proceedings in Classes of Actions in which the Forms of Process are different from Ordinary Causes.**

And whereas, according to the Forms now observed in the Court of Session, there are certain Classes of Actions in which the Forms of Process and the Mode of preparing and discussing the Cause are different from those observed in the Class of Causes called Ordinary Causes ; but it is expedient that all Classes of Causes should, as nearly as may be, consistently with the Nature and Object of the Action, be prepared for Decision, and discussed according to the Method and on the Principles above laid down ; be it therefore enacted by the Authority aforesaid, That all Rescissory Actions, except Reductions of the Decrees of the Court of Admiralty in Maritime Causes, shall, from and after the said Eleventh Day of *November* next, shall be inrolled and continue before the Junior Lord Ordinary without being taken by Avizandum to the Inner House, and thence remitted for Discussion ; and before the Lord Ordinary the said Actions shall, with such Exceptions as the Judges under the Powers herein-after delegated to them shall think necessary, be prepared and discussed according to the Form and Method already directed with regard to ordinary Actions, but without Prejudice to the present Forms of Actions of Reduction in other Respects, and in regard to Suspensions and Reductions of Decrees pronounced by the Court of Admiralty in Maritime Causes, notwithstanding the Provisions of an Act passed in the First and Second Year of His present Majesty, intituled *An Act for the Better Regulation of the Court of Admiralty in Scotland*; and in respect to all other Actions whether originating in the Outer House or originating by Petition, or by Petition and Complaint, or otherwise, in the Inner House, the Court of Session are hereby required, under the Powers hereafter expressed, to establish by Act of Sederunt such Forms of Process suited to those several Causes as shall be most expedient and best adapted for preparing for Decision such Causes, and for duly separating the Matters of Fact from the Matter of Law involved therein, according to the Principles and Mode of Proceeding above provided with regard to ordinary Causes, and with Power to the Court to order such Causes to be prepared, discussed, and in the First Instance determined in the Outer House, or reported to the Inner House, as may seem best calculated for the due Investigation and Decision of such Causes.

**XXVIII Jury Court. Provisions of 59 G. 3. c. 35. as to remitting certain Actions to the Jury Court, &c. repealed. Description and Enumeration of Causes appropriate to the Jury Court.**

And whereas by an Act passed in the Fifty-fifth Year of His late Majesty King *George* the Third, intituled *An Act to facilitate the Administration of Justice in that Part of Great Britain called Scotland, by the extending of Jury Trial to Civil Causes* ; and by another Act passed in the Fifty-ninth Year of His late Majesty's Reign, to amend the

Act above mentioned; and by Regulations framed and approved of in the Manner by the foresaid Acts provided, several Provisions have been made relating to the Jury Court, and to Trial by Jury in Civil Causes, some of which it is expedient to repeal, vary, and amend, and to make other Provisions for the further Improvement of that Mode of Trial; be it therefore further enacted, That the Provisions of the said Act of the Fifty-ninth of *George* the Third, by which it is directed that certain Actions be remitted to the Jury-Court, but that, previous to their being so remitted to the Jury Court, Questions of Law or Relevancy may be raised, pleaded, and decided in the Court of Session, shall be and the same are hereby repealed; and the following Actions, whether originating in the Court of Session or in the Court of Admiralty, shall be held as Causes appropriate to the Jury Court, and shall, for the Purpose of being discussed and determined in that Court, be remitted at once to that Court in manner herein-after to be directed ; namely, all Actions on account of Injury to the Person, whether real or verbal, as Assault and Battery, Libel or Defamation ; all Actions on account of any Injury to Moveables or to Land, when in this last Case the Title is not in question ; all Actions for Damages on account of Breach of Promise of Marriage, or on account of Seduction or Adultery ; all Actions founded on Delinquency or quasi Delinquency of any Kind, where the Conclusion shall be for Damages only and Expences; all Actions on the Responsibility of Shipmasters and Owners, Carriers by Land or Water, Innkeepers or Stablers, for the safe Custody and Care of Goods and Commodities, Horses, Money, Clothes, Jewels, and other Articles, and in general all Actions grounded on the Principle of the Edict *Nautae Caupones Stabularii* ; all Actions brought for Nuisance ; all Actions of Reduction on the Head of Furiosity and Idiocy, or on Facility and Lesion, or on Force and Fear ; all Actions on Policies of Insurance, whether for Maritime or-Fire or Life Insurance; all Actions on Charter Parties and Bills of Lading ; all Actions for Freight; all Actions on Contracts for the Carriage of Goods by Land or Water; and Actions for the Wages of Masters and Mariners of Ships or Vessels.

**XXIX Such Causes arising in the Court of Session, if Appearance be made, to be remitted to the Jury Court. Such Causes in the Court of Admiralty, if Appearance be made, to be remitted to the Jury Court.**

And be it further enacted, That all the Actions above enumerated, originating in the Court of Session, shall be first inrolled in the Roll called the Regulation Roll, whether Appearance shall have been entered for the Defender or not; and if no Appearance shall be made when the Cause is called. Decree shall be pronounced in Absence, according to the present Practice ; but if Appearance shall be made for the Defender, or as soon as the Defender shall be reponed against a Decree in Absence, the Lord Ordinary shall forthwith remit the Cause to the Jury Court; and in any of the Causes or Actions above enumerated, which shall originate in the Court of Admiralty, Judgment shall at the first Calling before the Judge Admiral be pronounced, if no Appearance shall be made for the Defender ; but as soon as the Defender shall enter Appearance, and be reponed against the Decree pronounced in Absence, the Judge Admiral shall forthwith remit the Cause to the Jury Court, provided the Demand shall amount to Forty Pounds and upwards, and provided, that if the Cause be maritime, Caution shall have been found according to the Practice of that Court; and such Causes when remitted to the Jury Court, from whatever Court, shall be prepared, and the Record of Averments and of Pleas completed and authenticated by the Jury Court, or any One of the Judges of that Court, in the same Manner as is hereby directed to be done in the Court of Session.

**XXX Two Judges of the Court of Session to be additional Commissioners of the Jury Court. Directions as to the Preparation of Causes sent to the Jury Court.**

And in contemplation of the Increase of Causes thus to be remitted to the Jury Court, be it further enacted, That, of the Judges of the Court of Session, Two shall be appointed as additional Commissioners of the Jury Court; and that in the Preparation of the enumerated Causes which shall be sent at once to the Jury Court as above, the Jury Court, or One of the Judges thereof, shall proceed in the Way and Manner hereinbefore directed, in regard to the Preparation of Causes in the Court of Session.

**XXXI His Majesty may appoint such additional Judges.**

And be it further enacted, That it shall and may be lawful for His Majesty to appoint such Two of the said Judges of the Court of Session to be additional Judges of the Jury Court, in the Manner in which Judges of the Jury Court are directed to be appointed by an Act passed in the Fifty-fifth Year of the Reign of His late Majesty *George* the Third, intituled *An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending the Trial by Jury to Civil Causes*; and to each of such Judges there shall be paid the Sum of Six hundred Pounds per Annum, payable in the same Manner and at the same Time with the Salaries of the other Judges of the said Jury Court; for which Purpose it shall and may be lawful for His Majesty, His Heirs and Successors, to order and direct to be issued by Quarterly Payments, out of the Monies that shall arise from any of the Duties and Revenues in that Part of *Great Britain* called *Scotland*, which by the several Acts made in the Seventh and Tenth Years of the Reign of Queen Anne, were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed by Her Majesty, for keeping up the Courts of Session, Justiciary, and Exchequer in *Scotland*, the Sum of One thousand two hundred Pounds, in addition to the Sum of Seven thousand Pounds, directed by the said recited Act to be issued in the Manner therein directed,

**XXXII Compensation provided to Persons who may suffer pecuniary Loss by the Operation of this Act.**

And be it further enacted, That if any Assistant Clerk and Closet Keeper, or any other Clerk or Officer of Court in the said Court of Session, or any Clerk or other Officer in the said Court of Teinds, or in the said Court of Admiralty, Courts in *Scotland*, shall make Application to the Barons of Exchequer in *Scotland*, setting forth the Circumstances of his Case, and shall make it appear that he has suffered, or will suffer pecuniary Loss from the Operation or Effect of any of the Regulations of this Act, it shall and may be lawful for the said Barons to award to any such Person such Compensation as the Said Barons shall find such Person entitled to, either by the Payment of a gross Sum, or by way of Annuity, as they shall think proper, to be paid out of the same Fund, and in the Manner in which Compensations are directed to be paid, and are made payable, under an Act passed in the First and Second Years of the Reign of His present Majesty, intituled *An Act for establishing Regulations respecting certain Parts of the Proceedings in the Court of Session, and in the Court of Commission for Teinds, and respecting the Duties, Qualifications, and Emoluments of certain Clerks and other Officers of the said Courts.*

**XXXIII Questions arising on Admissions to be remitted to the Court of Session, &c. Questions which the Parties desire to be previously fixed to be remitted. Question, whether Point of Law to be decided previous to Trial, to be settled by**

**the Jury Court. The Interlocutor of the Judge subject to Review. The Decision of the Jury Court to be final on the Question ; If the Question of Law is to be previously decided, the Cause to be remitted to teh Court of Session, &c. If a Question of Fact remain, the Cause to be sent back to the Jurt Court.**

And be it further enacted, That if after the Record shall have been completed in manner already directed as to Causes in the Court of Session, the Parties shall, by mutual Admissions, render any Trial of the Facts unnecessary, and leave, in the Opinion of the Jury Court or Judge thereof, a Question merely of Law to be determined, the said Jury Court, or the Judge thereof, after having those Admissions put upon Record, and subscribed by the Counsel for the Parties, as already directed for Causes in the Court of Session, shall forthwith remit the Cause to the Ordinary in the Court of Session by whom the same was remitted, or to the Judge of the High Court of Admiralty, if the Cause originated in that Court, to be proceeded in and determined by those Courts respectively; and if after the Record shall have been completed as above, the Parties shall not be agreed Upon the Facts, so as to bring the Cause to a Question merely of Law, but shall concur in a Minute or Note to the Jury Court or Judge, requiring that any Question of Law or Relevancy arising out of the Pleadings to be specified in such Minute or Note shall be determined before going to Trial, the said Court or Judge, if the Request shall appear just or reasonable, shall remit such Question to the Ordinary by whom the Cause was remitted, or to the Court of Admiralty, if the Cause shall have originated in that Court; and the Cause shall afterwards proceed in those Courts respectively, for the Decision of such Question of Law or Relevancy ; but if either of the Parties shall, without the Concurrence of the other, insist that there is a Point of Law or Relevancy, which ought previously to Trial to be determined, it shall be competent for such Party to move for an Order to have the Cause remitted to the Court of Session, or Court of Admiralty, if the Cause have come from that Court, and on such Motion It shall by the said Jury Court, or Judge thereof, be determined whether the Question raised ought to be decided previous to Trial, or left for Discussion at the Trial, or for Decision after Verdict; and if such Question shall arise before One of the Judges of the Jury Court, he shall have it in his Power either to determine the Question, or to report it for Decision by the whole Judges of the Jury Court, or a Quorum thereof, consisting in all Cases of not less than Three of such Judges; and the Decision of the said Judge of the Jury Court in the said Matter shall be final and conclusive, if not brought under Review of the whole Jury Court, by Motion to that Effect, made in the said Court, and of which due Notice shall be given according to the Form of giving Notices in that Court, within Ten Days after the Interlocutor of the said Judge shall be pronounced ; and the Decision of the Jury Court, either pronounced on the Review of the said Judge's Interlocutor, or on the Cause being by him taken to report, shall be final on that Question ; and if it shall be ordered by the said Judge or Jury Court, that such Question ought to be determined previous to Trial, the Cause shall forthwith be remitted to the Ordinary of the Court of Session, by whom the same was remitted to the Jury Court, or to the Judge of the High Court of Admiralty respectively, to have that Question determined ; and when, in either of the Cases now specified, the Cause shall be remitted to the Court of Session, or to the Judge of the High Court of Admiralty, for their Decision on a previous Question of Law, the said Court of Session, or the Judge of the Court of Admiralty, shall proceed to determine the same according to the Rules and Regulations of those respective Courts; the Determination of the Court of Session being final in that Court, and that of the Court of Admiralty subject, as it now is by Law, to the Review of the Court of Session; and the Determination of such previous Question of Law or Relevancy shall not be open to Appeal to the House of Lords without Leave expressly granted, reserving the full Effect of the Objection to the Decision in any Appeal to be finally taken ; and after the Determination of

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*Status: This is the original version (as it was originally enacted).*

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such Question, the Cause may be remitted back to the Jury Court, to be there finally disposed of; and if there shall remain Matter of Fact to be ascertained between the Parties, the said Matter shall be tried by Jury, and the Parties shall forthwith proceed before the said Jury Court, or One of the Judges thereof, to prepare the Issue or Issues for Trial, in manner herein-after directed.

#### **XXXIV How Issues are to be framed and settled.**

And be it further enacted, That from and after the said Eleventh Day of *November* next, when a Cause shall be ready for the framing of Issues, whether it be one of the Causes above enumerated as appropriate to the Jury Court, or a Cause remitted generally from the Court of Session for Trial by Jury, the Pursuer of the Issue shall deliver to the Clerk of the Jury Court the Issue or Issues in the Cause which he may conceive to be proper for Trial, prepared and signed by Counsel; and in like Manner the Defender in the Issue may, if he think proper, lodge with the Clerk the Issue or Issues in the Cause which he may conceive to be proper for Trial, prepared and signed in like Manner ; and if the Issue or Issues so respectively delivered to the Clerk shall be approved of by the Jury Court, the same Issues shall be delivered out to the Parties by the Clerk to be tried by the Jury; but if the Issues shall not be delivered by the Parties, or either of them, to the said Clerk, or if, when so delivered, they shall not be approved of by the Court, the said Court shall direct a proper Issue or Issues to be framed, or shall alter the Issue or Issues as framed and delivered either by adding such other Issues as they may deem necessary, or by leaving out such as are unnecessary, or by re-modelling those which have by the Parties been delivered ; and a Copy of the Issue or Issues so altered by the Court shall be delivered out for Trial to the respective Parties in the Cause; provided, however, that if either Party shall object to the Issues, as settled by the Court, he shall be at liberty, at any Time within Ten Days, to apply to the Court, by Motion, to have such Alteration made therein as he may think will better adapt the Issue for the Trial of the Cause, or to have the Issues originally proposed by him adopted ; and the Court shall, after hearing Counsel, make such Order thereupon as the Justice of the Case may require, and which Order shall be final.

#### **XXXV List of Witnesses not to be furnished previous to Trial.**

And whereas by one of the Regulations for the Government of the Jury Court, framed and approved of in the Manner directed by the aforesaid Act of the Fifty-ninth of His late Majesty, it is ordered, that, preparatory to Trial by Jury, the Parties shall reciprocally exchange Lists of the Witnesses to be examined; but the Practice thereby enjoined has been found inexpedient; be it therefore enacted, That the above Regulation shall be, and the same is hereby repealed; and from and after the Date of this Act, it shall not be necessary for the Parties to produce and exchange, as preparatory to the Trial, the Lists of the Witnesses proposed to be examined by them, but the Parties shall be at liberty at the Trial to adduce and examine such Witnesses as they may think fit, without having given any previous Notice of their Intention to call them,

#### **XXXVI Time of Sitting of the Jury Court.**

And be it further enacted, That so much of the foresaid Act of the Fifty-ninth of His late Majesty, as regulates the Terms and the Times of the Sittings of the said Jury Court, shall be and the same is hereby repealed; and from and after the said Eleventh Day of *November* next, the said Jury Court shall meet for the Dispatch of the Business of the Court, whether requiring the Intervention of a Jury or not, during the whole Period of

the Session of the Court of Session, and that they may hold Sittings for the Trial of Issues for a Fortnight thereafter, and also for Ten Days during the *Christmas* Recess; and during the foresaid Space, the said Court, or the individual Judges thereof, shall sit on such Days, and with such Continuation of Days, as shall by Act of Sederunt, to be made in manner herein afterwards provided, be appointed.

#### **XXXVIMotions for new Trials.**

And in order to prevent Doubts which have been raised on the Provisions of the foresaid Act of the Fifty-ninth of His late Majesty, relating to Motions for new Trials, be it enacted, That in all Cases where Issues have been prepared and are sent from the Court of Session for the Ascertainment of Matter of Fact, and the Verdict is made returnable to that Court, all Motions for new Trial shall be made in the Inner House of that Division of the Court from which the Issue or Issues has or have been sent; and Motions for new Trials shall in all other Cases be made in the Jury Court.

#### **XXXVIMotions for new Trial in Admiralty Causes.**

And whereas by the foresaid Act of the Fifty-ninth of His late Majesty it is provided, that in all Causes remitted by the Court of Admiralty to the Jury Court, the Bills of Exceptions shall be presented by the Judge of the Jury Court to the Divisions of the Court of Session alternately; but no Provision is made with respect to Motions for new Trials on Verdicts in Cases coming from the Court of Admiralty; be it enacted, That Motions for new Trials shall be made in the Divisions of the Court of Session alternately in Cases of the above Description, where the Verdict is on an Issue prepared and sent from the Court of Admiralty for ascertaining Facts, and returnable into that Court, in a maritime Cause; and Motions for new Trials in all other Cases shall be made in the Jury Court.

#### **XXXIXForms of Proceeding in Admiralty and in the Commissary and Inferior Courts.**

And whereas it will essentially contribute to the Attainment of the Objects proposed in this Act, that in the High Court of Admiralty, the Court of the Commissaries of *Edinburgh*, and Inferior Courts, Forms of Proceeding in the Preparation of Causes which have been before; directed relative to Causes in the Court of Session shall be followed as closely as may be done consistently with the peculiar Nature of those several Jurisdictions, and with the State of those Courts in respect to the Skill and legal Knowledge of the Procurators who attend and practise therein; therefore, and in order to establish Uniformity in the Modes of Proceeding in the said Courts, and follow out the Spirit of the present Act, in so far as that may be done consistently with local Circumstances, be it further enacted by the Authority aforesaid, That the Judges of the Court of Session and Jury Court, as herein afterwards empowered, shall and they are hereby required to make due Inquiry, and thereupon to fix, by Act of Sederunt, such Regulations, to be observed in the Practice of the above Courts, as may best be calculated to give effect to this Act, and to forward the Object herein proposed.

#### **XL Interlocutor of Court of Session on Proof taken in Inferior Courts, to be final as to Findings of Fact. Power to advocate against Orders for Proof in Inferior Courts.**

And be it further enacted, That when in Causes commenced in any of the Courts of the Sheriffs, or of the Magistrates of Burghs, or other Inferior Courts, Matter of Fact

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*Status: This is the original version (as it was originally enacted).*

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shall be disputed, and a Proof shall be allowed and taken according to the present Practice, the Court of Session shall, in reviewing the Judgment proceeding on such Proof, distinctly specify in their Interlocutor the several Facts material to the Case which they find to be established by the Proof, and express how far their Judgment proceeds on the Matter of Fact so found, or on Matter of Law, and the several Points of Law which they mean to decide ; and the Judgment on the Cause thus pronounced shall be subject to Appeal to the House of Lords, in so far only as the same depends on or is affected by Matter of Law, but shall, in so far as relates to the Facts, be held to have the Force and Effect of a Special Verdict of a Jury, finally and conclusively fixing the several Facts specified in the Interlocutor : Provided however, that except in Consistorial Causes, the Court of Session shall, in reviewing the Sentences of inferior Judges, have Power to send to the Jury Court such Issue or Issues to be tried by Jury, as to them shall seem necessary for ascertaining Facts which may not have been proved to their Satisfaction by the Evidence already taken, or which may have been omitted in the Cause, the Verdict to be returned to the Court of Session, to assist that Court in the Determination of the Cause; and the said Court shall also have Power to remit the whole Cause for Trial to the Jury Court; and in neither of these Cases shall it be necessary to have the Consent of the Parties to the cancelling of the Depositions already taken in the Cause before proceeding to Jury Trial, but the Court of Session shall have Power to give such Directions with regard to the Proof already taken, or with regard to any Part or Parts thereof, as to them shall seem just; to which Effect the Provision in the foresaid Act of the Fifty-ninth Year of His late Majesty, in So far as the Consent of the Parties to the cancelling of the Depositions already taken is thereby required, shall be and the same is hereby repealed ; and further, the Court of Session shall have Power to remit the Cause with Instructions to the Inferior Court, if that Course shall appear to them the most just and expedient in the Circumstances of the Case ; but it is hereby expressly provided and declared, that in all Cases originating in the Inferior Courts in which the Claim is in Amount above Forty Pounds, as soon as an Order or Interlocutor allowing a Proof has been pronounced in the Inferior Courts (unless it be an Interlocutor allowing a Proof to lie *in retentis*, or granting Diligence for the Recovery and Production of Papers), if shall be competent to either of the Parties, or who may conceive that the Cause ought to be tried by Jury, to remove the Process into the Court of Session, by Bill of Advocation, which shall be passed at once without Discussion and without Caution ; and in case no such Bill of Advocation shall be presented, and the Parties shall proceed tri Proof under the Interlocutor of the Inferior Court, they shall be held to have waived their Right of Appeal to the House of Lords, against any Judgment which may thereafter be pronounced by the Court of Session, in so far as by such Judgment the several Facts established; by the Proof shall be found or declared.

#### **XLI Bills of Advocation.**

And be it further enacted by the Authority aforesaid, That from and after the said Eleventh Day of *November* next, Bills of Advocation, complaining of final Judgments of Sheriffs and other Inferior Judges, shall contain a Copy of the Summons or Petition by which the Action may have commenced in the Inferior Court, and of the Defences or Answers, with the Interlocutors pronounced, or such of them as the Party shall complain of, and without any other Narration, and without Argument ; and such Bills of Advocation shall at once be passed by the Lord Ordinary on the Bills; on Caution being found to make Payment of the Expences incurred in the Inferior Court, and also such Expences as may be incurred in the Court of Session, or on Juratory Caution for such Expences, in Cases where such Caution is by the present Practice held sufficient.



## **XLII Power to regulate Interim Possession.**

And be it further enacted by the Authority aforesaid, That in all Advocations of Interlocutors pronounced by Sheriffs it shall be competent to the Inferior Judge to regulate in the meantime, on the Application of either Party, all Matters regarding Interim Possession, having due regard to the Manner in which the mutual Interests of the Parties may be affected in the final Decision of the Cause; and such Interim Order shall not be subject to Review, except by the Lord Ordinary, or the Court, in the Course of discussing the Process of Advocation; reserving; to the Court of Session or Lord Ordinary full Powers during the Course of Discussion of the Cause in the said Court, to give such Orders and Directions in respect to Interim Possession as Justice may require.

## **XLIII Time at which Decrees of Inferior Courts may be extracted. Decrees in Absence in Inferior Courts and in Admiralty.**

And be it further enacted by the Authority aforesaid, That in all Actions before any Inferior Court, where a Party shall intimate in Writing to the Clerk of Court that he intends to advocate the Cause, and shall therewith lodge a Bond of Caution for such Expences as may be incurred in the Court of Session as provided in this Act, the Space of Fifteen Days in the ordinary Case, and Thirty Days in Causes before the Courts of *Orkney* and *Shetland*, shall be allowed after final Judgment, to apply by Bill of Advocation to the Court of Session, before Extract shall be competent; but on the Elapse of the foresaid Terms respectively, if no Bill of Advocation shall have been intimated to the Clerk of Court, he may give out the Extract on the Application of either Party, it being competent however to present a Bill of Advocation at any Time before the Decree has been actually extracted; and when Decree has passed in Absence in any Inferior Court, or in the Court of Admiralty, and has been extracted, it shall be competent to apply to the Court in which such Decree was pronounced, to have the Decree recalled; and on Consignation in the Hands of the Clerk of the Court of the Expence incurred, the said Court shall have Power to stop Execution and repon the Defender, and revive the Action, as if Decree had not been extracted.

## **XLIV Decrees in Actions of removing to be subject only to Suspension.**

And be it further enacted by the Authority as aforesaid, That when any Judgment shall be pronounced by an Inferior Court, ordaining a Tenant to remove from the Possession of Lands or Houses, the Tenant shall not be entitled to apply as above, by Bill of Advocation to be passed at once, but only by means of Suspension, as herein-after regulated.

## **XLV Bills of Advocation of Interlocutory Judgments.**

And whereas, under the foresaid Act passed in the Fiftieth Year of His late Majesty, Bills of Advocation are admitted against Interlocutory Judgments in certain Cases; be it further enacted, That when such Bills of Advocation shall be passed, it shall not be necessary for the Complainer to find Caution, except for Expences, as in other Cases of Advocation above mentioned ; and all Interlocutors by the Lord Ordinary on the Bills, passing or refusing such Bills of Advocation, shall be final.

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*Status: This is the original version (as it was originally enacted).*

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**XLVI Lord Ordinary may pass Bills of Suspension : Proceedings as to Interlocutors complained of.**

And be it enacted, That in ail Cases, without Distinction, the Lord Ordinary on the Bills may pass Bills of Suspension, without requiring the Concurrence of the Inner House during Session, or of One or more Ordinaries during Vacation ; and in complaining of any Interlocutor pronounced by the Lord Ordinary on the Bills, the Party shall proceed, not as at present by Reclaiming Petition, but by presenting a printed Note to the Inner House, stating the Nature of the Bill, reciting the Interlocutor, and praying for an Alteration thereof; and upon such Note being presented, the Inner House shall order the Counsel for the Parties to be heard, and on hearing them shall either grant or refuse the Application, or appoint Parties to give in mutual Cases on the Question ; and thereafter the Court shall either refuse the Application, or remit to the Lord Ordinary to pass or to refuse the Bill, or to remit to the Inferior Judge with Instructions ; and any Interlocutor of the Court refusing such Application, or of the Lord Ordinary on a Remit from the Court, shall be final; and when a Bill of Suspension shall have been passed on a Remit from the Inner House, or in consequence of the Lord Ordinary having taken the Cause to report to the Inner House, the Letters of Suspension shall be discussed before a Lord Ordinary of that Division, unless remitted *ob contingentiam* to some previous Process depending before the other Division; and in the Event of Bills of Suspension being passed of Decrees of Inferior Courts, it shall be competent for the Lord Ordinary or the Court to find the Suspender entitled to his Expences in the Inferior Court, as well as in the Court of Session.

**XLVII Cautioners in Bills of Suspension.**

And be it also enacted, That Cautioners in a Bill of Suspension shall be liable to fulfil the Obligation in their Bond, although the Letters of Suspension shall not be expedite before the Day of Citation appointed in the Deliverance, and also in the Case of the Chargers obtaining and duly extracting Protestation for not enrolling, calling, and insisting.

**XLVIII As to Cases of Suspension or Advocation before the Lord Ordinary.**

And be it further enacted, That the Lord Ordinary in the Outer House, before whom any Suspension or Advocation shall come to be discussed, shall proceed in preparing the Cause for Judgment after the Manner already directed as to Causes in the Outer House; and the Party resisting the Suspension shall be required, by way of Defence in the Outer House, to return Answers to the Reasons of Suspension.

**XLIX In Actions depending, where Interlocutor is pronounced before 11th Nov. next, how far the Regulations herein provided to be enforced, &c.**

And be it enacted, That in regard to Actions depending in the Court of Session, in which any Interlocutor shall have been pronounced before the Eleventh Day of *November* next, the Regulations herein-before provided may be enforced, in so far as not inconsistent with the Rules of Court and Forms of Procedure now in force : Provided always, that in every such Action, where the Record shall be made up and completed in Terms of this Act, the Provisions of this Act, in so far as they apply to Steps of Process subsequent to the making up of the Record, shall be enforced in all respects.

**L Powers to the Judges of the Court of Session and Jury Court to make Regulations.**

And in order to carry into further Execution the Provisions of this Act, and the more effectually to accomplish the Object of it; be it further enacted by the Authority aforesaid, That from and after the passing of this Act the Court of Session, together with the Chief Commissioner of the Jury Court, assembled by the Lord President of the Court of Session, shall be and they are hereby empowered and required accordingly to make such Orders and Regulations concerning the Forms of Process, and such Arrangements in respect of Attendance and Hours of doing Business, and generally for regulating the Proceedings both of the Court of Session and of the Jury Court, as may most effectually carry into Execution the Purposes of this Act, and remove any Difficulties which may in the Details of Practice be found to arise in expediting the Business before the said Courts, and of the Court of the Lords Commissioners for Plantation of Kirks and Valuation of Teinds, provided the same be not inconsistent with the Provisions of this Act; and the said Judges assembled as above shall also have Power to make such Regulations and Arrangements in respect of the Time and Rotation of the Business in the said Courts, and before Lords Ordinary, as may most effectually secure the due Performance of the respective Duties of the said Courts, and of the Judges thereof; and the said Judges, assembled as before, shall have Power and are hereby required to make such Regulations and Orders relative to the Forms of Proceeding in the High Court of Admiralty, Court of the Commissaries of *Edinburgh*, and Inferior Courts, as may be best calculated to carry into Execution the Purposes of this Act; and It is hereby provided, that, the said Judges assembled as above may meet for the above Purposes during Vacation, as well as during Session, and that they may alter and amend such Regulations from Time to Time.

**LI Regulation of Forms of Citation, Charge, &c.**

And be it further enacted by the Authority aforesaid, That from and after the Eleventh Day of *November* next, the subsisting Forms of Edictal Citation, Charge, Publication, Citation, and Service at the *Market Cross* of *Edinburgh*, Pier and Shore of *Leith*, as against Persons forth of *Scotland*, shall cease and be discontinued; and in lieu thereof such Edictal Citations, Charges, Publications, Citations, and Services at the *Market Cross* of *Edinburgh*, Pier and Shore of *Leith*, as against Persons forth of *Scotland* shall be done and performed by Delivery of a Copy thereof at the Record Office of the Keeper of the Records of the Court of Session, in the Manner now practised in Cases of Citation or Charge at the Dwelling House of a Party not personally apprehended; and the Keeper of the Records or his Clerk shall forthwith register, in a Book to be kept for that Purpose, an Abstract of the Copy so delivered, exhibiting the Time of Service, of the Nature of the Writ, the Names and Designations of the Parties, and the Day against which the Party shall be called upon to give Obedience, or to make Appearance; and the Keeper of the said Records shall keep Three distinct and separate Registers, one for all Citations on Summonses and Orders of Service, as against Persons forth of *Scotland*, to appear before the several Supreme Civil Courts respectively; another Record for all Citations by virtue of Letters of Supplement to Persons forth of *Scotland* to appear before any of the Inferior Courts of *Scotland*; and a Third for all Charges, Intimations, and Publications to Persons forth of *Scotland*, given by virtue of Letters other than Summonses passing the Signet.

**LII The Record of Citations to be printed.**

And it is further provided and enacted, That the said Abstracts, in so far as they comprehend Citations by virtue of Summonses, Precepts, Warrants of Court, and Letters of Supplement, shall periodically be printed by the Keeper of the said Records ; and this Publication by Means of printing shall commence at the Distance of Fourteen Days from the said Eleventh Day of *November* next, and shall regularly be continued at the End of each successive Fourteen Days; and at all Times the said Register of Charges, Citations, and Publications shall be open to Inspection, and the Copies of Charge, Citation," and Service, which shall be lodged as above with the Keeper of the Record or his Clerk, shall be preserved during Three Years; and it shall be competent to the Court of Session to fix such Allowance for the Trouble and Expence of the Duty thus imposed on the Keeper of the Records, to be paid to him from the Fee Fund, as to the said Court shall seem reasonable.

**LIII Defenders to be cited on One Diet only.**

And be it further enacted, That from and after the said Eleventh Day of *November* next to come, the Practice of citing Defenders to appear on Two Diets of Court shall in all Cases cease, and all Summonses shall thenceforward proceed on One Diet only; viz<sup>t</sup>, privileged Summonses against Defenders, within *Scotland* on One Diet of Six Days, other Summonses against Defenders residing in *Orkney* and *Shetland*, a Diet of Forty Days, and for all other Persons within *Scotland*, a Diet of Twenty-seven Days, and for Defenders out of *Scotland*, a Diet of Sixty Days ; and it is hereby provided and declared, that where a Person not having a Dwelling House in *Scotland* occupied by his Family or Servants shall have left his usual Place of Residence, and have been therefrom absent during the Space of Forty Days without having left Notice where he is to be found within *Scotland*, he shall be held to be absent from *Scotland*, and be charged or cited according to the Forms herein prescribed accordingly.

**LIV Of the Court of Teinds.**

And whereas certain Inconveniences have been experienced in Proceedings of a judicial Nature carried on before the Lords Commissioners for Plantation of Kirks and Valuation of Teinds; be it enacted, That from and after the Eleventh Day of *November* next, all Actions for the Valuation or Sale of Teinds or Actions of proving the Tenor of the same, all Actions of Suspension or Reduction of Localities, and all Actions of Declarator or Reduction connected with Teinds, which can at present be competently brought before the said Lords Commissioners for the Plantation of Kirks, shall be brought before and be decided by one or other of the Divisions of the Court of Session, who shall be held as a Quorum of the said Commissioners ; and all such Causes shall be proceeded in, as nearly as possible, according to the Forms prescribed by this Act for the Preparation of Causes in the Court of Session; and the Lord Ordinary shall have the same Power to determine the Cause, or to report the same to the Inner House, as is declared to be competent by this Act. to the Lord Ordinary in the Outer House, in Causes before the Court of Session ; and in like Manner, he shall not be entitled to review his own Interlocutors, but the same shall be subject to Review only in the Inner House, in the Manner directed in Causes before the Court of Session : Provided always, that the Jurisdiction of the Lords Commissioners for Plantation of Kirks and Valuation of Teinds, in assigning or modifying competent Stipends to the Parochial Clergy out of the Teinds of the Parish, and in uniting and disjoining Parishes, and generally whatever Jurisdiction the said Court of Teinds may possess of a ministerial and discretionary Nature, shall nowise be altered or affected by this Act, but the same shall continue to be

exercised by the whole Lords Commissioners for Plantation of Kirks and Valuation of Teinds, or Quorum thereof, in the same Way and Manner as heretofore ; but all Actions in relation to localling of modified or augmented Stipends among Heritors, and other Causes which maybe remitted by the said Lords Commissioners to a Lord Ordinary, shall thereafter be conducted as nearly as may be according to the Forms prescribed for Causes before the Court of Session, and the Interlocutors of such Lord Ordinary shall be subject to Review only by the Division of the Court of Session to which such Lord Ordinary belongs, which Division shall to that Effect be held as a Quorum of the said Commissioners; and in all the aforesaid Actions, and in all other Matters connected with Teinds, the Teind Clerk shall continue as heretofore to officiate as Clerk.

**LV Continuance of Act, as far as relates to Jury Court.**

And be it enacted, That the Provisions of this Act, in so far as the same relate to the Constitution of the Jury Court, shall continue and be in force from the Eleventh Day of *November* next, until the Thirtieth Day of *June* in the Year One thousand eight hundred and thirty, and from thence to the End of the then next Session of Parliament.

**LVI Persons appointed by His Majesty to inquire into Forms of Proceeding in Civil Causes by, Jury, and report thereon.**

And be it enacted, That it shall be lawful, and full Power is hereby given to such Persons as shall for that Purpose, and at such Time or Times as His Majesty shall think fit to name and appoint them, be named and appointed by His Majesty, by Letters Patent, or any Instrument in Writing under His Royal Sign Manual, or any Three of them, to meet at and upon such Place and Day as in such Letters Patent or Instrument shall be for that Purpose named, or at and upon such Place and Day as they, or any Three of them, giving Notice to the others of them, shall appoint, and so thereafter as they or those present from Time to Time at Meetings shall appoint, and to make all such Inquiries as they shall be directed by His Majesty in Instructions annexed to the said Letters Patent or Instrument under the Royal Sign Manual, into the Forms of Proceeding in Trials of Civil Causes by Jury in *Scotland*, and to report to His Majesty whether these Forms of Proceeding may be improved, and at what Time and in what Manner the Union of the Benefit of Jury Trial in Civil Causes with the Jurisdiction of the Court of Session may be best accomplished, and to set down in Writing what shall appear to them to be material to be reported touching the Matters aforesaid, with their Opinions upon the same, together with the Evidence or Information which they may in the Course of their Inquiry receive.

**LVII All Questions in Scotland relating to Prize in War, to vest solely in Court of Admiralty of England.**

And be it further enacted, That from and after the passing of this Act, all Questions and Matters in *Scotland* relating to Prize and Capture in War, and the Condemnation of Ships and Vessels as such, shall be vested solely in the High Court of Admiralty of *England*; and that the High Court of Admiralty of *Scotland* shall not in future exercise such Jurisdiction; any Law or Practice to the contrary notwithstanding.

**LVIII Acts of Sederunt to be transmitted to Parliament.**

And be it further enacted, That within Fourteen Days from the Commencement of every future Session of Parliament, there shall be transmitted to both Houses of

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*Status: This is the original version (as it was originally enacted).*

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Parliament Copies of all Acts of Sederunt settling the Rules of Proceedings of the Courts of *Scotland*, as fixed under the Powers herein given.