Court of Session Act 1825

1825 CHAPTER 120

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 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of the Parties to the cancelling of the Depositions already taken is thereby required, shall be and the same is hereby repealed ; and further, the Court of Session shall have Power to remit the Cause with Instructions to the Inferior Court, if that Course shall appear to them the most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

Status: *This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

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.