



# Companies Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 17 8 and 9 Vict

## *Recovery of damages and penalties*

And with respect to the recovery of damages not specially provided for, be it enacted as follows:

**144 Provision for damages not otherwise provided for.**

In all cases where any damages, costs, or expences are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount in case of dispute, shall be ascertained and determined by the sheriff; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by pointing and sale of the goods of the company or other party liable as aforesaid; and the sheriff shall, on application, issue his warrant accordingly.

145 ..... F1

**Textual Amendments**

F1 S. 145 repealed by [Statute Law \(Repeals\) Act 1986 \(c.12\), s. 1, Sch. 1 Pt. I](#)

**146 Method of proceeding before the sheriff or justices in questions of damages, &c.**

Where in this or the special Act, or any Act incorporated therewith, any question of expences, charges, or damages is referred to the determination of any sheriff or justices, it shall be lawful for the sheriff or any justice, upon the application of either party, to summon the other party to appear before such sheriff, or before two justices, as the case may require, at a time and place to be named in such summons; and upon

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the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such sheriff, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such sheriff or justices, and he or they shall determine the amount thereof.

#### **147 Publication of penalties.**

The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or any Act incorporated therewith, or by any bye law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner herein-before required.

#### **148 Penalty for defacing boards used for such publication.**

If any person pull down or injure any board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the purpose of publishing any bye law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

#### **149 Penalties to be summarily recovered before the sheriff or two justices.**

Every penalty or forfeiture imposed by this or the special Act, or by any bye law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceedings before the sheriff or two justices; . . . <sup>F2</sup> and upon the appearance of the party complained against, or in his absence, after proof of the due service of such order, it shall be lawful for any sheriff or two justices to proceed to the hearing of the complaint; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such sheriff or justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such sheriff or justices shall think fit.

#### **Textual Amendments**

**F2** Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

#### **150 Penalties to be levied by distress.**

If forthwith . . . <sup>F3</sup> the amount of the penalty or forfeiture, and . . . <sup>F3</sup> costs . . . <sup>F3</sup> be not paid, the amount of such penalty and costs shall be levied by poinding and sale; . . . <sup>F3</sup>

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**Textual Amendments**

**F3** Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

**151 Imprisonment in default of distress.**

It shall be lawful for any such sheriff or justices to order any offender so convicted as aforesaid to be detained and kept in safe custody until return can be conveniently made to the warrant of poinding and sale to be issued for levying such penalty or forfeiture, and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the sheriff or justices, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security; but if before issuing such warrant of poinding and sale it shall appear to the sheriff or justices, by the admission of the offender or otherwise, that no sufficient poinding and sale can be had within the jurisdiction of such sheriff or justices whereon to levy such penalty or forfeiture, and costs, he or they may, if he or they think fit, refrain from issuing such warrant; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the sheriff or justices, then such sheriff or justices shall, by warrant, cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty or forfeiture, and costs, be sooner paid and satisfied.

**152,** ..... **F4**  
**153.**

**Textual Amendments**

**F4** Ss. 152, 153, 155, 157, 159, 160, 163, 164, Sch. (G.) repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

**154 Application of penalties.**

The sheriff or justices by whom any such penalty or forfeiture shall be imposed, where the application thereof is not otherwise provided for, may award not more than one half thereof to the informer, and [<sup>F5</sup>the remainder shall be paid into the Exchequer.]

**Textual Amendments**

**F5** Words substituted by [S.I. 1952/1334 \(1952 II, p. 2029\)](#), Sch. Pt. I

**155** ..... **F6**

**Textual Amendments**

**F6** Ss. 152, 153, 155, 157, 159, 160, 163, 164, Sch. (G.) repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

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<sup>F7</sup> 156 .....

**Textual Amendments**  
**F7** S. 156 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIV Group1

157 ..... <sup>F8</sup>

**Textual Amendments**  
**F8** Ss. 152, 153, 155, 157, 159, 160, 163, 164, Sch. (G.) repealed by Statute Law Revision Act 1892 (c. 19)

**158 Transient offenders.**

It shall be lawful for any officer or agent of the company and all persons called by him to his assistance, to seize and detain and person who shall be found committing any offence against the provisions of this or the special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before the sheriff or a justice, without any warrant or other authority than this or the special Act; and such sheriff or justice shall proceed with all convenient despatch in the matter of the complaint against such offender.

159, ..... <sup>F9</sup>  
160.

**Textual Amendments**  
**F9** Ss. 152, 153, 155, 157, 159, 160, 163, 164, Sch. (G.) repealed by Statute Law Revision Act 1892 (c. 19)

<sup>F10</sup> 161 .....

**Textual Amendments**  
**F10** S. 161 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. XIV Group1

**162 Power of appeal to sheriff.**

In all cases which may come before any sheriff substitute under this or the special Act or any Act incorporated therewith, in which written pleadings shall have been allowed, and a written record shall have been made up, and where the evidence which has been led by the parties shall have been reduced to writing, but in no other case whatever, it shall be competent for any of the parties thereto, within seven days after a final judgment shall have been pronounced by such sheriff substitute, to appeal against the

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same to the sheriff of the county, by lodging a minute of appeal with the sheriff clerk of such county, or his depute; and the said sheriff shall thereupon review the proceedings of the said sheriff substitute, and whole process, and, if he think proper, hear the parties viva voce thereon, and pronounce judgment; and such judgment shall in no case be subject to review by suspension . . . <sup>F11</sup>, or to reduction, on any ground whatever.

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**Textual Amendments**

**F11** Words repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

**163,** ..... <sup>F12</sup>  
**164.**

.....  
**Textual Amendments**

**F12** Ss. 152, 153, 155, 157, 159, 160, 163, 164, Sch. (G.) repealed by [Statute Law Revision Act 1892 \(c. 19\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Clauses Consolidation (Scotland) Act 1845, Cross Heading: Recovery of damages and penalties.