



# Sheriff Courts (Scotland) Act 1971

## 1971 CHAPTER 58

### PART III

#### CIVIL JURISDICTION, PROCEDURE AND APPEALS

##### *Summary causes*

### 35 Summary causes

- (1) The definition of " summary cause " contained in paragraph (i) of section 3 of the Sheriff Courts (Scotland) Act 1907 shall cease to have effect, and for the purposes of the procedure and practice in civil proceedings in the sheriff court there shall be a form of process, to be known as a " summary cause ", which shall be used for the purposes of all civil proceedings brought in that court, being proceedings of one or other of the following descriptions, namely—
- (a) actions for payment of money not exceeding two hundred and fifty pounds in amount (exclusive of interest and expenses);
  - (b) actions of multiplepoinding, actions of furthcoming and actions of sequestration for rent, where the value of the fund in medio, or the value of the arrested fund or subject, or the rent in respect of which sequestration is asked, as the case may be, does not exceed two hundred and fifty pounds (exclusive of interest and expenses);
  - (c) actions ad factum praestandum and actions for the recovery of possession of heritable or moveable property, other than actions in which there is claimed in addition, or as an alternative, to a decree ad factum praestandum or for such recovery, as the case may be, a decree for payment of money exceeding two hundred and fifty pounds in amount (exclusive of interest and expenses);
  - (d) proceedings which, according to the law and practice existing immediately before the commencement of this Act, might competently be brought in the sheriff's small debt court or were required to be conducted and disposed of in the summary manner in which proceedings were conducted and disposed of under the Small Debt Acts;

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and any reference in the following provisions of this Act, or in any other enactment (whether passed or made before or after the commencement of this Act) relating to civil procedure in the sheriff court, to a summary cause shall be construed as a reference to a summary cause within the meaning of this subsection.

- (2) The Small Debt (Scotland) Act 1837 and the Small Debt Amendment (Scotland) Act 1889 shall cease to have effect.

### **36 Procedure in summary causes**

- (1) In relation to summary causes the power conferred on the Court of Session by section 32 of this Act shall extend to the making of rules permitting a party to such a cause, in such circumstances as may be specified in the rules, to be represented by a person who is neither an advocate nor a solicitor.
- (2) A summary cause shall be commenced by a summons in, or as nearly as is practicable in, such form as may be prescribed by rules under the said section 32.
- (3) The evidence, if any, given in a summary cause shall not be recorded.
- (4) Where in a summary cause a decree is granted by a sheriff principal or a sheriff under which a sum of money is payable, whether by way of satisfaction of the claim or by way of expenses or otherwise, the sheriff principal or, as the case may be, the sheriff may direct that, subject to such conditions as he may specify, the money be paid by such instalments, payable at such times, as he may fix.

### **37 Remits**

- (1) In the case of any ordinary cause brought in the sheriff court the sheriff shall at any stage, on the joint motion of the parties to the cause, direct that the cause be treated as a summary cause, and in that case the cause shall be treated for all purposes (including appeal) as a summary cause and shall proceed accordingly.
- (2) In the case of any summary cause, the sheriff at any stage—
- (a) shall, on the joint motion of the parties to the cause, and
  - (b) may, on the motion of any of the parties to the cause, if he is of the opinion that the importance or difficulty of the cause makes it appropriate to do so, direct that the cause be treated as an ordinary cause, and in that case the cause shall be treated for all purposes (including appeal) as an ordinary cause and shall proceed accordingly:
- Provided that a direction under this subsection may, in the case of an action for the recovery of possession of heritable or moveable property, be given by the sheriff of his own accord.
- (3) The decision of a sheriff in any case to make, or not to make, a direction by virtue of paragraph (b) of, or the proviso to, subsection (2) above shall not be subject to review.
- (4) In this section " sheriff " includes a sheriff principal.

### **38 Appeal in summary causes**

In the case of any summary cause an appeal shall lie—

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- (a) to the sheriff principal on any point of law from the final judgment of the sheriff, and
- (b) to the Court of Session on any point of law from the final judgment of the sheriff principal, if the sheriff principal certifies the cause as suitable for such an appeal,

but save as aforesaid an interlocutor of the sheriff or the sheriff principal in any such cause shall not be subject to review.