



# Court of Session Act 1988

## 1988 CHAPTER 36

### PART V

#### APPEAL AND REVIEW

##### *Reclaiming*

#### **28 Reclaiming.**

Any party to a cause initiated in the Outer House either by a summons or a petition who is dissatisfied with an interlocutor pronounced by the Lord Ordinary may, except as otherwise prescribed, reclaim against that interlocutor within such period after the interlocutor is pronounced, and in such manner, as may be prescribed.

##### *Review in jury actions*

#### **29 Application for new trial.**

- (1) Any party who is dissatisfied with the verdict of the jury in any jury action may, subject to such conditions and in such manner as may be prescribed, apply to the Inner House for a new trial on the ground—
  - (a) of misdirection by the judge;
  - (b) of the undue admission or rejection of evidence;
  - (c) that the verdict is contrary to the evidence;
  - (d) of excess or inadequacy of damages; or
  - (e) of *res noviter veniens ad notitiam*;or on such other ground as is essential to the justice of the cause.
- (2) The Inner House on hearing an application under this section may, subject to section 30 of this Act and any act of sederunt, grant or refuse a new trial.

*Status: Point in time view as at 01/04/2015.*

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- (3) If the Court, on an application for a new trial on the ground that the verdict is contrary to the evidence, after hearing parties is unanimously of the opinion that the verdict under review is contrary to the evidence, and that it has before it all the evidence that could be reasonably expected to be obtained relevant to the cause, it may set aside the verdict and, in place of granting a new trial, may enter judgment for the party unsuccessful at the trial.

### **30 Restrictions on granting of application for new trial.**

- (1) Where an application for a new trial is made on the ground of the undue admission of evidence, and the Court is of the opinion that the exclusion of that evidence could not have led to a different verdict than that actually returned, it shall refuse to grant a new trial.
- (2) Where an application for a new trial is made on the ground of the undue rejection of documentary evidence, and it appears to the Court from the documents themselves that they ought not to have affected the result at which the jury by their verdict have arrived, it may refuse to grant a new trial.
- (3) Where the Court, on an application for a new trial made to it, is of opinion that the only ground for granting a new trial is either excess of damages or such inadequacy of damages as to show that a new trial is essential to the justice of the cause, it may grant a new trial restricted to the question of the amount of damages only.
- (4) No verdict of a jury shall be discharged or set aside upon an application for a new trial, unless in conformity with the opinion of a majority of the judges hearing the application, and in case of equal division judgment shall be given in conformity with the verdict.

### **31 Verdict may be returned subject to opinion of Inner House on point reserved.**

- (1) Where in a jury action the presiding judge has directed the jury upon any matter of law, any party against whom the verdict is returned may apply to the Inner House to enter the verdict for him.
- (2) The Inner House may, on an application made to it by a party under subsection (1) above—
- (a) where it is of opinion that the direction of the presiding judge was erroneous and that the party making the application was truly entitled to the verdict in whole or in part, direct the verdict to be entered for that party in whole or in part, either absolutely or on such terms as it may think fit; or
  - (b) where it is of opinion that it is necessary, set aside the verdict and order a new trial; or
  - (c) refuse the application.

### **[<sup>F1</sup>31A Power to provide for single judge of Inner House to determine leave or permission and assess grounds of appeal**

- (1) The Court may by act of sederunt provide for any applications to the Court for leave or permission to appeal to the Inner House to be determined by a single judge of the Inner House.
- (2) The Court may by act of sederunt provide for—

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- (a) any appeal proceedings to be considered initially (and, where required, after leave or permission to appeal has been granted) by a single judge of the Inner House, and
  - (b) for the single judge to decide, by reference to whether the grounds of appeal or any of them are arguable—
    - (i) whether the appeal proceedings should be allowed to proceed in the Inner House, and
    - (ii) if so, on which grounds.
- (3) An act of sederunt under subsection (1) or (2)—
- (a) must include provision—
    - (i) about the procedure to be followed in the proceedings before the single judge, including provision for the parties to be heard before the judge makes a decision,
    - (ii) for review, on the application of any party to the proceedings, of the decision of the single judge by a Division of the Inner House,
    - (iii) about the grounds on which the decision may be so reviewed,
    - (iv) about the procedure to be followed in such a review,
    - (v) about the matters that may be considered in such a review and the powers available to the Division on disposing of the review, and
  - (b) may make different provision in relation to different types of—
    - (i) applications for leave or permission,
    - (ii) appeal proceedings.
- (4) Subject to any provision made in an act of sederunt by virtue of subsection (3)(a)(ii) to (v), the decision of any single judge under an act of sederunt under subsection (1) or (2) is final.
- (5) Subsection (6) applies in appeal proceedings in which—
- (a) a single judge has granted leave or permission for the appeal by virtue of subsection (1), and
  - (b) the judge's decision is subject to review by a Division of the Inner House by virtue of subsection (3)(a)(ii).
- (6) Where this subsection applies, the reference in subsection (2)(a) to leave or permission to appeal having been granted is a reference to its having been confirmed following review by the Division of the Inner House.
- (7) In subsection (2)(a), “ appeal proceedings ” means proceedings on—
- (a) a reclaiming application under section 28 (reclaiming against decisions of a Lord Ordinary),
  - (b) an application under section 29 (application for a new trial),
  - (c) an application under section 31 (application to overturn jury verdict),
  - (d) an appeal from the Sheriff Appeal Court under section 113 of the Courts Reform (Scotland) Act 2014,
  - (e) an appeal from a sheriff principal under section 114 of that Act,
  - (f) any other appeal taken to the Court (whether under an enactment or otherwise).]

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#### Textual Amendments

- F1** S. 31A inserted (1.4.2015) by [Courts Reform \(Scotland\) Act 2014 \(asp 18\)](#), **ss. 115, 138(2)**; [S.S.I. 2015/77](#), **art. 2(2)(3)**, **Sch.**

### *Appeals and transmissions from sheriff*

## 32 Appeals.

- (1) Where an appeal is taken to the Court from the judgment of the sheriff principal or sheriff under section 28 of the <sup>M1</sup>Sheriff Courts (Scotland) Act 1907, the record may, with the leave of the Court, be amended at any time on such conditions as to the Court seem proper.
- (2) On any such appeal the Court may, if it thinks fit, remit the cause to the sheriff principal or sheriff with instructions.
- (3) On any such appeal the Court may, if necessary, order proof or additional proof to be taken in accordance with section 37 of this Act and shall thereafter, or without any such order if no such proof or additional proof is necessary, give judgment on the merits of the cause.
- (4) Where such an appeal is taken to the Court from the judgment of the sheriff principal or sheriff proceeding on a proof, the Court shall in giving judgment distinctly specify in its interlocutor the several facts material to the cause which it finds to be established by the proof, and express how far its judgment proceeds on the matter of facts so found, or on matter of law, and the several points of law which it means to decide.
- (5) The judgment of the Court on any such appeal shall be appealable to the [<sup>F2</sup>Supreme Court] only on matters of law.

#### Textual Amendments

- F2** Words in s. 32(5) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), **ss. 40, 148**, **Sch. 9 para. 49(4)**; [S.I. 2009/1604](#), **art. 2(d)**

#### Marginal Citations

- M1** 1907 c. 51.

## 33 Transmissions from sheriff to Court on ground of contingency.

- (1) The Court shall, on an application made to it, if it is of the opinion that there is contingency between a sheriff court cause and a cause depending before it, grant warrant to the clerk of the sheriff court cause for transmission of that cause to the Court.
- (2) In subsection (1) above “sheriff court cause” means a cause depending before the sheriff principal or the sheriff.
- <sup>F3</sup>(3) The Court may, on an application by any of the parties, if it is of the opinion that there is contingency between a matter before the Land Court for determination by virtue of the Agricultural Holdings (Scotland) Act 1991 (c. 55) or the Agricultural Holdings

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(Scotland) Act 2003 (asp 11) and a cause depending before the Court, grant warrant to the clerk of the Land Court for transmission of the case to the Court from the Land Court.]

#### Textual Amendments

**F3** S. 33(3) inserted (27.11.2003) by [Agricultural Holdings \(Scotland\) Act 2003 \(asp. 11\)](#), **ss. 87(2), 95(3)** (with s. 95(2)); S.S.I 2003/548, {art. 2(g)} (with art. 3, Sch.)

#### *Review by suspension*

### **34 Suspension of decrees of Court granted in absence.**

It shall be competent for any party to bring proceedings in manner prescribed for the suspension of any decree in absence granted in the Court.

### **35 Suspension of sheriff court decree.**

- (1) It shall be competent in any proceedings for the suspension of a decree of a sheriff for that sheriff or the Court to regulate all matters relating to interim possession.
- (2) The Court may in any such proceedings remit the cause to the sheriff with instructions; but no such remit shall be made, except in the case of the suspension of a decree in absence, without hearing counsel or receiving a written answer on the part of the respondent.
- (3) The Court may in granting suspension find the petitioner entitled to his expenses both in the sheriff court and in the Court.
- (4) In this section “sheriff” includes sheriff principal.

#### *Rehearing and additional proof in Inner House*

### **36 Rehearing by larger court of causes pending in Inner House.**

Where a division of the Inner House before whom a cause is pending—

- (a) considers the cause to be one of difficulty or importance; or
- (b) is equally divided in opinion on the cause (whether on a question of law or fact),

it may appoint the cause to be reheard by such larger court as is necessary for the proper disposal of the cause.

### **37 Additional proof ordered by Inner House.**

Where proof has been ordered by the Inner House, the proof shall be taken before any one of the judges of the Inner House to whom the Inner House may think fit to remit the case, and the ruling of that judge upon the admissibility of evidence in the course of taking the proof shall be subject to review by the Inner House in the discussion of the report of the proof; and where the Inner House alters any finding of that judge rejecting evidence, it may, if it thinks fit, remit the case to have that evidence taken.

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### 38 Evidence on commission in Inner House.

In any cause coming before it, the Inner House may grant commission to take the depositions of havers and the evidence of witnesses as provided in section 10 of this Act with respect to an action.

*Judgment in Inner House*

### 39 Inner House judgment final in Court of Session.

The judgment pronounced by the Inner House shall in all causes be final in the Court.

*Appeals to [F4Supreme Court]*

#### Textual Amendments

- F4** Words in cross-heading preceding s. 40 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 49\(5\)](#); S.I. 2009/1604, [art. 2\(d\)](#)

### 40 Appealable interlocutors.

- (1) Subject to the provisions of any other Act restricting or excluding an appeal to the [F5Supreme Court] and of sections 27(5) and 32(5) of this Act, it shall be competent to appeal from the Inner House to the [F5Supreme Court]—
  - (a) without the leave of the Inner House, against a judgment on the whole merits of the cause, or against an interlocutory judgment where there is a difference of opinion among the judges or where the interlocutory judgment is one sustaining a dilatory defence and dismissing the action;
  - (b) with the leave of the Inner House, against any interlocutory judgment other than one falling within paragraph (a) above.
- (2) An interlocutor of [F6the Inner House] granting or refusing a new trial, on an application under section 29 of this Act, shall be appealable without the leave of [F6the Inner House] to the [F7Supreme Court]; and on such an appeal the [F7Supreme Court] shall have the same powers as [F6the Inner House] had on the application and in particular the powers specified in sections 29(3) and 30(3) of this Act.
- (3) It shall be incompetent to appeal to the [F8Supreme Court] against an interlocutor of a Lord Ordinary unless the interlocutor has been reviewed by the Inner House.
- (4) On an appeal under this section all the prior interlocutors in the cause shall be submitted to the review of the [F8Supreme Court].

#### Textual Amendments

- F5** Words in s. 40(1) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 49\(6\)\(a\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F6** Words in s. 40(2) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 49\(6\)\(b\)\(i\)](#); S.I. 2009/1604, [art. 2\(d\)](#)
- F7** Words in s. 40(2) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 40, 148, [Sch. 9 para. 49\(6\)\(b\)\(ii\)](#); S.I. 2009/1604, [art. 2\(d\)](#)

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**F8** Words in s. 40(3)(4) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 49\(6\)\(c\); S.I. 2009/1604, art. 2\(d\)](#)

#### **41 Interim possession, execution and expenses.**

- (1) On an appeal to the [<sup>F9</sup>Supreme Court] under section 40 of this Act, a copy of the petition of appeal shall be laid by the respondent before the Inner House which may regulate all matters relating to interim possession, execution and expenses already incurred as it thinks fit, having regard to the interests of the parties to the cause as they may be affected by the upholding or reversal of the judgment against which the appeal has been taken.
- (2) It shall not be competent by appeal to the [<sup>F9</sup>Supreme Court] in respect of regulations made under subsection (1) above to stop the execution of those regulations; but when the [<sup>F9</sup>Supreme Court] hears the appeal under section 40 of this Act, it may make such order or give such judgment respecting any matter which has been done or taken place in pursuance or in consequence of the regulations as it thinks fit.

##### **Textual Amendments**

**F9** Words in s. 41(1)(2) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 49\(7\); S.I. 2009/1604, art. 2\(d\)](#)

#### **42 [<sup>F10</sup>Supreme Court] may make order on payment of interest.**

The [<sup>F10</sup>Supreme Court] in hearing an appeal under section 40 of this Act may make such order with regard to payment of interest, simple or compound, by any of the parties, as it thinks fit.

##### **Textual Amendments**

**F10** Words in s. 42 and in its side-note substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 49\(8\); S.I. 2009/1604, art. 2\(d\)](#)

#### **43 Interest and expenses where appeal dismissed for want of prosecution.**

Where an appeal to the [<sup>F11</sup>Supreme Court] under section 40 of this Act is dismissed for want of prosecution, the Inner House may, on an application made to it by any respondent in the appeal, order the appellant to pay to that respondent such interest, simple or compound, as it thinks fit, together with the expenses which have been incurred in consequence of the appeal.

##### **Textual Amendments**

**F11** Words in s. 40(2) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 40, 148, Sch. 9 para. 49\(9\); S.I. 2009/1604, art. 2\(d\)](#)

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