



# Criminal Procedure (Scotland) Act 1995

## 1995 CHAPTER 46

### PART IX

#### SUMMARY PROCEEDINGS

##### *Miscellaneous*

#### **170 Damages in respect of summary proceedings**

- (1) No judge, clerk of court or prosecutor in the public interest shall be found liable by any court in damages for or in respect of any proceedings taken, act done, or judgment, decree or sentence pronounced in any summary proceedings under this Act, unless—
  - (a) the person suing has suffered imprisonment in consequence thereof; and
  - (b) such proceedings, act, judgment, decree or sentence has been quashed; and
  - (c) the person suing specifically avers and proves that such proceeding, act, judgment, decree or sentence was taken, done or pronounced maliciously and without probable cause.
- (2) No such liability as aforesaid shall be incurred or found where such judge, clerk of court or prosecutor establishes that the person suing was guilty of the offence in respect whereof he had been convicted, or on account of which he had been apprehended or had otherwise suffered, and that he had undergone no greater punishment than was assigned by law to such offence.
- (3) No action to enforce such liability as aforesaid shall lie unless it is commenced within two months after the proceeding, act, judgment, decree or sentence founded on, or in the case where the Act under which the action is brought fixes a shorter period, within that shorter period.
- (4) In this section “judge” shall not include “sheriff”, and the provisions of this section shall be without prejudice to the privileges and immunities possessed by sheriffs.

**171 Recovery of penalties**

- (1) All penalties, for the recovery of which no special provision has been made by any enactment may be recovered by the public prosecutor in any court having jurisdiction.
- (2) Where a court has power to take cognisance of an offence the penalty attached to which is not defined, the punishment therefore shall be regulated by that applicable to common law offences in that court.

**172 Forms of procedure**

- (1) The forms of procedure for the purposes of summary proceedings under this Act and appeals therefrom shall be in such forms as are prescribed by Act of Adjournal or as nearly as may be in such forms.
- (2) All warrants (other than warrants of apprehension or search), orders of court, and sentences may be signed either by the judge or by the clerk of court, and execution upon any warrant, order of court, or sentence may proceed either upon such warrant, order of court, or sentence itself or upon an extract thereof issued and signed by the clerk of court.
- (3) Where, preliminary to any procedure, a statement on oath is required, the statement may be given before any judge, whether the subsequent procedure is in his court or another court.