



## Court of Session (No. 2) Act 1838

### 1838 CHAPTER 118

An Act to make certain Alterations in the Duties of the Lords Ordinary, and in the Establishment of Clerks and Officers of the Court of Session and Court of Commissioners for Teinds in Scotland, and to reduce the Fees payable in those Courts.  
[16th August 1838]

WHEREAS an Act was passed in the Fiftieth Year of the Reign of His Majesty King George the Third, intituled An Act for abridging the Form of extracting Decrees of the Court of Session in Scotland, and for the Regulation of certain Parts of the Proceedings of that Court; and another Act was passed in the Fifty-fifth Year of the Reign of His Majesty King George the Third, intituled An Act to facilitate the Administration of Justice in that Part of the United Kingdom called Scotland, by the extending Trial by Jury to Civil Causes; and another Act was passed in the Fifty-fifth Year of the Reign of His said Majesty King George the Third, intituled An Act for better regulating the Formation and Arrangement of the Judicial and other Records of the Court of Session in Scotland; and another Act was passed in the Fifty-ninth Year of the Reign of His said Majesty King George the Third, intituled An Act to amend an Act passed in the Fifty-fifth Year of the Reign of His present Majesty, intituled ' An Act to facilitate ' the Administration of Justice in that Part of the United Kingdom called Scotland, by extending Trial by Jury to Civil Causes;' and another Act was passed in the First and Second Years of the Reign of His Majesty King George the Fourth, intituled An Act for establishing Regulations respecting certain Parts of the Proceedings in the Court of Session and in the Court of Commissioners for Teinds, and respecting the Duties, Qualifications, and Emoluments of certain Clerks and other Officers of the said Courts; and another Act was passed in the Sixth Year of the Reign of His Majesty King George the Fourth, intituled An Act for the better regulating of the Forms of Process in the Courts of Law in Scotland; and another Act was passed in the First Year of the Reign of His late Majesty King William the Fourth, intituled An Act for uniting the Benefits of Jury Trial in Civil Causes with the ordinary Jurisdiction of the Court of Session, and for making certain other Alterations and Reductions in the Judicial Establishments of Scotland; and another Act was passed in the Third and-Fourth Years of the Reign of His late Majesty King William the Fourth, intituled An Act to provide for the Execution of the Duties performed by the Barons of Exchequer in Scotland in relation to the Public Revenue, and to place the Management of the Assessed Taxes and Land Tax in Scotland under the Commissioners for the Affairs of Taxes: And whereas the Commissioners acting under Two several Commissions issued by His late Majesty, directing certain Persons to make Inquiry into various Matters relative to the Law and Administration of Justice in Scotland, have made Two Reports, which have been laid before Parliament :. And whereas, in order to improve the Arrangement of Judicial Business before

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*Status: This is the original version (as it was originally enacted).*

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the Lords Ordinary of the Court of Session, and to improve the Arrangements and Duties of the Clerks and other-Officers of the said Court, and of the Court of Commissioners for Teinds in Scotland, and to diminish the Expence of the Administration of Justice, it is expedient that certain new Regulations should be adopted, and a further Reduction of the Number of the Clerks and Officers of the said Courts should be made, and that the Clerks and other Officers should derive their Remuneration from Salaries of a fixed Amount ; and it is therefore necessary to alter and amend the said recited Acts and the existing Practice: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the junior Lord Ordinary of the Court of Session for the Time shall act as one of the permanent Lords Ordinary in the Outer House, and shall be on the same Footing in regard to the Duties of preparing and deciding Causes in the Outer House with the other Four permanent Lords Ordinary ; and that it shall accordingly be competent to enrol Causes brought into Court for the first Time before the junior Lord Ordinary in the same Manner as before any other of the Four permanent Lords Ordinary, and the junior Lord Ordinary shall thereafter proceed in and determine the same in common Form: Provided always, that (with the Exception as to Actions of Reduction and Teind Causes herein-after mentioned) the other Duties of the junior Lord Ordinary shall continue as at present: Provided also, that it shall be competent to either Division of the Court, in case of a Pressure of Business before the junior Lord Ordinary, to relieve him by remitting the summary Causes now in use to be prepared by the junior Judge to such of the other Lords Ordinary and for such Time as may appear expedient, or for the Courts from Time to Time to relieve him of the Duty of taking up a weekly Roll of new Causes for such Time as may be thought proper.

## **II Actions of Reduction to be enrolled before any Lord Ordinary.**

And be it enacted, That the present Practice of enrolling all recissory Actions or Actions of Reduction exclusively before the junior Lord Ordinary shall be discontinued, and it shall be competent to enrol such of the said Description of Actions as shall be brought into Court for the first Time before any of the Five Lords Ordinary in the Outer House, who shall severally proceed to prepare and dispose thereof in common Form; and upon the Occurrence of the first Vacancy in the Office of any of the present Five Lords Ordinary, either by Death, Resignation, or Removal into the Inner House, the second junior Lord Ordinary for the Time being shall thereafter be Judge in the Teind Causes and Proceedings which are at present appropriated to the junior Lord Ordinary.

## **III Causes to be enrolled weekly before any Lord Ordinary.**

And be it enacted, That the present Regulation by which each of the Four permanent Lords Ordinary is required in rotation to officiate as Ordinary for the Week in the Outer House shall be discontinued, and that it shall be competent to enrol in the weekly printed Roll Causes which shall then be brought into Court for the first Time, before any of the Lords Ordinary, without Regard to such Rotation ; and it shall be competent to any Lord Ordinary to discharge the Duties of Lord Ordinary on Oaths and Witnesses.

#### **IV Lords Ordinary to be attached to, either Division.**

And be it enacted, That the said Lords Ordinary in the Outer House shall not be exclusively attached to either Division of the Court, but shall be attached equally to both Divisions thereof; and that the Partibus written upon Summonses, Letters, or Notes of Suspension, Advocation, or other Writ by which a Cause shall be originated in the Outer House, shall set forth the particular Division of the Court to which the Cause shall belong ; and in the event of the Cause being afterwards removed to the Inner House by Reclaiming Note, Cases, or otherwise, it shall be carried to the particular Division so set forth, and the Division to which the Cause is to belong shall be stated in the weekly printed Rolls : Provided always, that this Regulation shall not be held to apply to Causes depending in the Outer House at the Time when the Provisions of this Act shall take effect, but that all such Causes shall continue to belong to that Division of the Inner House to which the Lords Ordinary before whom such Causes then depending shall be severally attached.

#### **V Principal Clerks of Session.**

And be it enacted, That instead of Four Principal Clerks of the said Court of Session, and Four Principal Clerks connected with Proceedings in Trials by Jury, being Two Issue Clerks and Two Record Clerks, the Number of Principal Clerks shall be reduced as herein-after provided to Four in all, who, in addition to the Duties heretofore discharged by the Principal Clerks of Session, shall perform all Duties belonging to the Principal Clerks connected with Trials by Jury as herein-after provided, and shall also discharge the Duties of the present Clerks of the Bills in all Bill Chamber Proceedings which may take place in the Inner House of the Court of Session.

#### **VI Vacancies of Principal Jury Clerks not to be filled up.**

And be it enacted, That, in order to carry such Reduction of the Number of Clerks into effect, the Vacancy which has occurred in the Office of the senior Record Clerk, and the Vacancies which may hereafter occur in the other Offices of the said Principal Clerks connected with Trial by Jury, shall not be filled up ; and as Vacancies occur in the Offices of the said Two Issue Clerks, the Duties now falling to be performed by them shall be discharged as follows; on the first of the said Vacancies occurring, One of the Principal Clerks in each Division shall be nominated by the President of that Division, who shall be conjoined with the remaining Issue Clerk in the Performance of those Duties in their respective Divisions ; and on the remaining Vacancy occurring, the Two Principal Clerks nominated as aforesaid, and their respective Successors, shall perform the said Duties, in their several Divisions of the Court respectively, in the same Manner as they have been performed by the present Issue Clerks; and the said Principal Clerks are hereby enjoined and required to consult, advise, and act with the remaining Issue Clerk, and with one another, in the Performance of the said Duties, for the Purpose of preserving Uniformity of Practice : Provided always, that one of the Principal Clerks so nominated, and his Successors, may act for and in the Absence of the other.

#### **VII Distribution of Duties of Record Clerks.**

And whereas the senior Record Clerk, now deceased, has heretofore been attached to the First Division of the said Court in Business connected with Trial by Jury, and the junior Record Clerk is attached to the Second Division of the said Court in such Business ; be it enacted, That the Duties which have heretofore fallen to be discharged

by the said senior Record Clerk in the Inner House, and at the Register House connected with Inner House Causes, and at the Jury Trials which take place at the Sittings in Edinburgh in Causes belonging to the First Division, shall be performed by the Principal Clerks of Session connected with that Division ; and upon the Occurrence of a Vacancy in the Office of the said junior Record Clerk the Duties falling to be discharged by him in the Inner House, and at the Register House connected with Inner House Causes, and at the Jury Trials which take place at the Sittings in Edinburgh in Causes belonging to the Second Division, shall be performed by the Principal Clerks connected with that Division ; provided that the Principal Clerks who shall be nominated to perform the Duty of Issue Clerks as aforesaid shall thereupon be relieved of the Duty of attending Jury Trials ; and the Duties now falling to be discharged before the Lords Ordinary by the said Record Clerks and their Assistant, relative to Causes connected with Trials by Jury, shall from and after the Commencement of this Act be performed by the Depute and Assistant Clerks, each Depute and Assistant Clerk taking charge in the Outer House as aforesaid of those Causes which depended in or belong to his own Office; and the said Causes so appropriated to Trial by Jury, or ordered to be so tried, shall not be sent to the Jury Clerks Offices until the Record is ready to be closed and Issues are to be prepared: Provided always, that the Practice of remitting such Causes to the Jury Roll shall remain as at present, but, being so remitted, such Causes shall not be re-transmitted to the Court of Session Roll, but shall be dealt with in the Jury Court Roll in all respects and subject to the like Review as if they had been in the Court of Session Roll.

#### **VIII Duties of Principal Clerks maybe discharged in his Absence by other Clerks.**

And be it enacted, That in case of Absence, from necessary Cause, of any Principal Clerk, his Duties may be discharged by any of the remaining Principal Clerks, or by any Person appointed by the Division of the Court to which such Principal Clerk may belong either from among the Assistant Clerks in the Inner House or the Depute Clerks in the Outer House; and all Interlocutors which have been or shall hereafter be written by any such Persons so appointed and acting under Authority of the Court, being duly signed, shall be and they are hereby declared to be valid and effectual, any Law or Practice to the contrary notwithstanding.

#### **IX Office of Clerk of Queen's Processes abolished.**

And be it enacted, That no Payment shall be made to any Principal or Depute Clerk of Session as Clerk to Queen's Processes, and the said Office of Clerk to Queen's Processes is hereby abolished, and Processes conducted on behalf of Her Majesty shall hereafter be under the Care of the Clerks of Session generally; and so much of the before-recited Act passed in the First and Second Years of the Reign of His Majesty King George the Fourth as provides that in the event of a Principal Clerk of Session being appointed one of the Principal Clerks of the Bills, he shall receive an additional Salary of Three hundred Pounds per Annum, shall be and the same is hereby repealed.

#### **X Assistant Clerks in the Inner House.**

And be it enacted, That the Assistant Clerks of Session in the Inner House shall be reduced to Four in Number in manner herein provided; and no Successors shall be appointed to the present Assistant Clerks connected with Jury Cases ; and the said Assistant Clerks in the Inner House, instead of being paid by Fees, shall receive, a Salary of Three hundred and fifty Pounds each per Annum.

## **XI Duties of Assistant Clerks.**

And be it enacted, That the Assistant Clerks in the Inner House shall, in addition to their other Duties, take charge of all Bill Chamber Cases brought into the Inner House, and shall in like Manner take charge of all Jury Cases in the Inner House, on the Death, Resignation, or Removal of the present Issue Clerks and Record Clerks ; and in case both or either of the Assistants of the Issue and Record Clerks shall resign or be removed or predecease that Event, the Duties of such Jury Clerks Assistant so resigning, removed, or predeceasing shall in the meantime be discharged by the Survivor or by the other Assistant Clerks, or in such Way and Manner as the Court of Session may direct in virtue of the Powers conferred by this Act.

## **XII Depute Clerks in the Outer House, and Assistants.**

And whereas it is necessary that there should be a Depute Clerk of Session for each Lord Ordinary as herein-after provided; be it enacted, That from and after the passing of this Act there shall be Five Depute Clerks in the Outer House, who shall be appointed in the same Manner as the Depute Clerks in the Outer House now are, and shall receive Salaries of Four hundred Pounds per Annum each ; and there shall be an Assistant appointed to each Depute Clerk ; and in addition to the Duties at present performed by them, and to be performed by them before the Lords Ordinary in Jury Causes as aforesaid, the Depute and Assistant Clerks shall take charge of all Processes connected with Trial by Jury in the Outer House as Vacancies occur in the respective Offices of the Record Clerks in that Department; and the Depute Clerks shall, on the Death, Resignation, or Removal of the Record Clerks, or on being directed by the Lord President of either Division, attend in rotation the Circuits at which Jury Causes shall be tried, and shall act as Clerks of Court at such Trials, each of the said Depute Clerks so attending receiving an Allowance of Three Pounds Three Shillings per Day during his necessary Absence from Edinburgh, in full of all Expences of each Circuit: Provided always, that a Depute and Assistant Clerk shall be attached to and shall attend at the Bar of each of the Five Lords Ordinary in the Outer House as herein-after provided : And provided also, that it shall be competent to the Lord President of either Division, on Application by any Lord Ordinary, to direct that any of the ordinary Judges Clerks of either Division of the Inner House, or any Person receiving Compensation or retired Allowance under this Act, shall discharge such Duties as the Absence of any Clerk officiating before or in attendance upon any Lord Ordinary, or the State of Business depending before him, shall render necessary.

## **XIII Salaries of Assistant Clerks in the Outer House.**

And be it enacted, That the Remuneration of the Assistant Clerks employed in the Business of the Outer House, instead of depending, as at present, upon Fees, shall consist of a fixed Salary of Three hundred and fifty Pounds per Annum each ; and the said Assistant Clerks both in the Inner and Outer House are hereby prohibited from charging or receiving any Fees, except for Copies of Interlocutors or other Papers ordered or required, for which an Allowance shall be paid at the Rate of Four-pence for each Page of One hundred and fifty Words, and Sixpence for each Page of States or Schemes in Figures, without any further Charge for Stationery : Provided always, that where, upon Remit from the Court or Lord Ordinary, any of the said Depute or Assistant Clerks shall be directed to make Investigations, and prepare any Report, Calculation, or State, the Charges therefor shall be regulated by the Time and Labour in each particular Case, and shall be in all Cases subjected to the Review and Taxation

of the Auditor of Court; and the Emoluments arising from such Employment shall be paid into the Fee Fund.

#### **XIV Two Clerks of the Bill Chamber.**

And be it enacted, That the Offices of the whole of the present Clerks in the Bill Chamber connected with Bill Chamber Procedure shall be and the same are hereby abolished; and it shall be lawful for Her Majesty, Her Heirs and Successors, from and after the passing of this Act, to appoint Two fit Persons to be Clerks of the Bills, and such Clerks of the Bills shall, under the Principal Clerks of Session, have the whole Charge of the Bill Chamber Department, and the said Two Clerks shall be responsible for the reputed Solvency of Cautioners arid for consigned Money, in like Manner as the Bill Chamber Clerks are at present, and shall find Caution as the Court shall direct; and the Clerks of the Bills shall receive a Salary of Two hundred and fifty Pounds each per Annum; and the said Clerks are hereby prohibited from charging or receiving any Fees, except for copying Bills of Suspension or other Papers, Copies of which may be ordered or required from them, for which an Allowance shall be paid at the aforesaid Rate of Four-pence for each Page of One hundred and fifty Words, and Sixpence for each Page of States or Schemes in Figures, including Stationery ; and all Fees in the Bill Chamber, except those allowed by this Act, are hereby abolished, including the Fees on consigned Money and Interest during the Period of Consignation : Provided further, that no Successor shall be appointed to the present Keeper of the Register of Abbreviates of Adjudications, but upon the Death, Resignation, or Removal of James Mercer, now officiating in that Office, the said Office of Keeper of the Register of Abbreviates of Adjudications shall be abolished, and the Duties thereof performed by the Keeper of the Register of Hornings and Inhibitions in such Manner and subject to such Conditions and Regulations as Her Majesty's Principal Secretary of State for the Home Department for the Time being shall direct

#### **X Distribution of Business of the Court.**

And whereas by the said recited Act of the First Year of the Reign of His late Majesty it is enacted, that the Two Vacancies which should then next occur in the Office of Principal Clerk of Session, as also in the Office of Depute Clerk of Session, should not be supplied, and that in like Manner the Vacancies in the Offices of the other Clerks belonging to the Court of Session should not be supplied until a certain Event therein mentioned: And whereas in virtue of the said Act certain Vacancies which have since occurred have not been supplied, whereby the Number of Principal Clerks of Session has been already reduced from Six to Four, and the Number of Depute Clerks has been reduced from Six to Four, and the Number of Assistants to the Depute Clerks has been reduced from Six to Four : And whereas the Court of Session have, by Act of Sederunt dated the Eleventh Day of March One thousand eight hundred and thirty-seven, enacted certain Regulations for apportioning the Duties among the remaining Clerks; and it is expedient, for the Purpose of carrying into effect the said last-recited Act and this Act, in so far as required and not already carried into effect by the said Act of Sederunt, that further Regulations should be made for distributing the Business of the Court and arranging the Duties of the several Clerks ; be it enacted, That John Pringle Depute Clerk, and his Assistant, shall be attached to the Business depending before Lord Cockburn; Thomas Bruce Depute Clerk, and his Assistant, to the Business depending before Lord Fullerton; the additional Depute Clerk to be appointed as aforesaid, and the Assistant in the Office of the late Robert Menzies Depute Clerk, to the Business depending before Lord Moncrieff; Adam Wilson Depute

Clerk, and his Assistant, to the Business depending before Lord Jeffrey ; Thomas Bernridge Depute Clerk, and his present Assistant, to the Business depending before Lord Cuninghame; and the said Two Clerks hereinbefore provided to the Department of the Bill Chamber; and the said Clerks and their Successors respectively shall be attached to and officiate before the said Lords Ordinary and their Successors respectively; that in Terms of these Regulations all Causes depending before the several Lords Ordinary above named shall be transmitted to the respective Offices of the Depute Clerks above named, according as they are to be severally attached to the said Judges and their Successors ; that those Causes in the Inner House falling to be transmitted back to the Outer House shall be transmitted to the Office of the Depute Clerk who shall, in virtue of this Act, be attached to the Lord Ordinary to such Causes respectively ; that all Causes which may come to depend in the Offices of John Pringle and the said deceased Robert Menzies Depute Clerks, and which shall be removed by Reclaiming Note or otherwise to either Division of the Inner House, in Terms of the Provisions herein-before contained, shall be transmitted either to the Office held by Macvey Napier Principal Clerk in the First Division, or to the Office held by Thomas Thomson Principal Clerk in the Second Division ; that in like Manner all Causes removed to the Inner House from the Offices of Thomas Bruce and Adam Wilson Depute Clerks shall be transmitted either to the Office held by George Joseph Bell Principal Clerk in the First Division, or to the Office held by James Fergusson Principal Clerk in the Second Division ; that all Causes depending before the junior Lord Ordinary at the Time when this Act shall take effect, which may be removed to the Inner House by Reclaiming Note or otherwise, shall be transmitted to the Office of the Principal Clerk which corresponded with the Office of the Depute Clerk in which such Causes formerly depended: Provided always, that such of the said Causes as depended in the Offices held by William Pringle Depute Clerk, deceased, and by Adam Wilson Depute Clerk, as well as all Causes which may come to depend before the junior Lord Ordinary in the Outer House, and which may be removed to the Inner House by Reclaiming Note or otherwise, shall be transmitted to the senior Principal Clerk's Office of that Division of the Court to which such Causes shall belong in Terms of this Act; and the Practice as to Reclaiming Notes from the Bill Chamber being lodged with any of the Inner House Clerks of either Division of the Court shall remain as at present; and the same Rule shall be followed with respect to the Transmission of Causes taken to report from the Bill Chamber.

## **XVI Judges Clerks and Keepers of Inner and Outer House Rolls.**

And be it enacted, That the Salaries of each of the Judges Clerks and Keepers of the Inner and Outer House Rolls, to be appointed after the Death, Resignation, or Removal of the present Incumbents, shall be Four hundred Pounds to each of the Keepers of the Inner House Rolls, instead of Five hundred Pounds as at present, and to the ordinary Judges Clerks Two hundred Pounds per Annum, each, instead of Three hundred Pounds as at present, with an Addition of Ten Pounds per Annum to the said Salaries of the ordinary Judges Clerks respectively for each Year of their Service until such Salaries shall amount to Three hundred Pounds per Annum to each ordinary Judges Clerk who shall have served as such for Ten Years; and so much of the said recited Act of the First and Second Years of His Majesty King George the Fourth as provides that certain Allowances shall be paid by the Collector of the Fee Fund to such Person or Persons as should be appointed by the Court of Session, for forming a Fund for the Purpose of providing eventual Life-rent Annuities to the Judges Clerks and Keepers of the Inner House Rolls, shall be and the same is hereby repealed.

**XVII Annuity Fund to Judges Clerks and Keepers of Inner House Rolls.**

And whereas a Fund has been accumulated under the Provisions of the said recited Acts of the First and Second Years of the Reign of His Majesty King George the Fourth, and the Acts of Sederunt of the Court of Session relative thereto, for the Purpose of providing eventual Life-rent Annuities to the said Judges Clerks and Keepers of the Inner House Rolls; and the present Judges Clerks and Keepers of the Inner House Rolls, and certain existing Annuitants, are interested in the said Fund and in the Contributions directed to be made thereto under the Provisions of the said Act which are hereby repealed as aforesaid : And whereas it is expedient to provide for the Continuance of equivalent Life-rent Annuities to the said existing Annuitants, and also to the Judges Clerks and Keepers of the Inner House Rolls, and their Successors in Office, out of the Public Revenue; be it enacted, That the Holders of the said accumulated Fund shall be and they are hereby authorized and required to pay over and assign the said accumulated Fund to the Lord High Treasurer or Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the Time being, or to such Person or Persons as they shall appoint, who is or are hereby empowered to require an Account thereof, and call for and receive the same, and discharge the Holders thereof, and which shall be applied and disposed of as the said Lord High Treasurer or Commissioners may think fit to direct; and Life-rent Annuities shall be payable and paid to the said existing Annuitants and Judges Clerks and Keepers of the Inner House Rolls, and their Successors in Office, equivalent to those which they would have had Right to receive under the Provisions of the said last-recited Act and Acts of Sederunt relative thereto, and in the Manner and under the Conditions therein contained, out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen Anne were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, and Exchequer in Scotland.

**XVIII Extractors.**

And be it enacted, That instead of the Duty of extracting the Acts and Decrees of the Court of Session being performed by Four Extractors and Eight Ingrossing Clerks, nominated by the Principal Clerks of Session during Pleasure, the Duty of preparing and superintending the Preparation of Extracts shall be intrusted to One Principal Extractor, to be appointed by Her Majesty, Her Heirs and Successors, and such Principal Extractor shall not practise before the Court of Session, or hold any official Situation in the said Court other than in Terms of this Act, and shall attend in and perform the Duties of the Office in Person, with the Aid of One Assistant nominated by him and holding an Appointment at Pleasure under him, and for whom he is to be responsible, and who, in" the event of Absence from necessary Cause of such Principal Extractor, shall be empowered to subscribe and authenticate the Extracts ; and in preparing Extracts, and Record Copies thereof, printed Forms, in manner or to the Effect required by the said Act of the Fiftieth Year of His Majesty King George the Third, shall be used, the Blanks in such Forms being filled up in Writing; and such Principal Extractor shall from Time to Time employ such Ingrossing Clerks as he shall think necessary for the Performance of the Business of the Office : Provided always, that in any new Appointments to be made under this Act a Preference shall be given to Persons removed from any Office under this Act who may be duly qualified to discharge the Duties thereof: Provided also, that the junior Principal Clerk of Session for the Time being shall superintend and direct the Preparation of Extracts, by giving such Directions or Instructions from Time to Time as he may think fit or be by the Court directed to give, which Directions or Instructions the Extractor is hereby



required to comply with: Provided always, that in order to give due, Efficiency to the foregoing Provisions the junior Clerk of Session for the Time being, from Time to Time as he may think proper, and at any rate, shall, Fourteen Days before, the Termination of each Winter and Summer Session of the Court, report to the Court how far the Duties of the principal Extractor and his Assistants and Clerks are properly discharged, with such other Matters touching the same as he shall deem fit to be so reported.

**XIX Salary of Extractors.**

And be it enacted, That the Principal and Assistant Extractors shall be paid wholly by Salaries ; and the Salary of the Principal Extractor shall be Five hundred Pounds per Annum, and the Salary of the Assistant Extractor shall be Three hundred Pounds per Annum ; and the Ingrossing Clerks shall be paid at the aforesaid Rate of Four-pence for each Page of One hundred and fifty Words, and Sixpence for each Page of States or Schemes in Figures, without any further Charge for Printing or Stationery; the Party ordering the First Extract paying as aforesaid for each Page both of the Copy given out and of the Record Copy ; and it shall be held illegal and an Act of Malversation in Office for the Principal or Assistant Extractor to participate in the Charges for copying payable to such Ingrossing Clerks.

**XX Keeper of the Records.**

And be it enacted, That the Office of Keeper of the Records, established by the said Act passed in the Fifty-fifth Year of the Reign of His Majesty King George the Third, shall be and the same is hereby abolished ; and the Duties of the Office shall be performed by the Principal Extractor and his Assistant, with the Aid of a Clerk, in case it shall appear to the said Principal Extractor to be proper and necessary to appoint such Clerk, who shall receive such Salary, not exceeding One hundred Pounds per Annum, as shall be fixed by the said Principal Extractor; and no Fees shall hereafter be received by any Person performing the Duties of the said Office.

**XXI Keeper of the Minute Book and Record of Edictal Citations.**

And be it enacted, That the Offices of Keeper of the Minute Book and Keeper of the Record of Edictal Citations shall, upon the Death, Resignation, or Removal of the present Incumbents, be conjoined, and the Duties thereof performed by One Officer, who shall be appointed by Her Majesty, Her Heirs and Successors; and these Duties shall be performed by the Holder of the said Offices in Person, with the Aid of a Clerk to be appointed by him ; and such Officer shall receive a fixed Salary of Three hundred Pounds per Annum, and his said Clerk shall receive a Salary of One hundred and thirty Pounds per Annum; and such Salaries shall be in lieu of all Fees or Perquisites, and of any Profits arising from the Sale of the Minute Book or otherwise : Provided always, that in order to bring the Conjunction of the said Two Offices the sooner into effect it shall be lawful to the Commissioners of Her Majesty's Treasury, or any Three of them, to make such Arrangement with the present Holders of the said Offices, and to award to either of them who shall resign his Office such Compensation, not exceeding the Amount of his present Salary and Emoluments, as to the said Commissioners shall seem proper.

**XXII Minute Book how to be printed.**

And be it enacted, That the Minute Book of the Court of Session and Teind Court, the Record of Edictal Citations, the weekly Calling List of Causes, and the weekly printed Roll of Outer House and Teind Causes, shall be printed by the respective Keepers thereof, and shall be sold to the Public at the lowest Rate which will defray the necessary Expence of printing the same, and such Keepers shall annually exhibit an Account thereof to the Auditor of Court, who is authorized to examine and audit the same : Provided always, that the said Court may regulate the Mode of such Sale, and by whom the same shall be made, and the Proceeds thereof accounted for ; and in case such Sale shall be insufficient to defray the Expence of Printing, the Balance shall be paid out of the Fee Fund.

**XXIII Collector and Accountant of the Fee Fund.**

And be it enacted, That the Salary and Emoluments of the Collector of the Fee Fund shall not exceed Four hundred Pounds per Annum, paid in the same Manner as the present Salary and Emoluments are paid; and upon any Vacancy hereafter occurring in the said Office his Successor shall be appointed by Her Majesty, Her Heirs and Successors ; and the Salary of the present Accountant of the Fee Fund, while he shall hold the said Office, shall be One hundred Pounds: Provided always, that the Offices of the said Collector and Accountant of the Fee Fund may be abolished by any Act to be passed during the present Session of Parliament, or to be hereafter passed, and their Duties transferred to other Persons.

**XXIV Auditor to be paid by Salary.**

And be it enacted, That the Auditor of Accounts in the said Court, instead of being paid by Fees, shall receive a fixed Salary of Seven hundred Pounds per Annum, with the Accommodation of Office Room, or such a reasonable Allowance for the same as the said Court shall direct.

**XXV Macers.**

And be it enacted, That as Vacancies occur the Salaries allowed to each of the Macers of Court shall be limited to One hundred Pounds per Annum.

**XXVI Teind Clerks.**

And be it enacted, That the Office of the Principal Clerk of the Commissioners for Teinds shall be and the same is hereby abolished, and the Business heretofore discharged by the Teind Clerks shall be in future discharged by the present First and Second Depute Clerks of Teinds and their Successors in Office, the said present First Clerk being hereafter to be named the Clerk of Teinds, and the said present Second Clerk being hereafter to be named the Depute Clerk of Teinds; and upon the Death, Resignation, or Removal of the said Clerk or Depute Clerk their Successors shall be appointed by Her Majesty, Her Heirs and Successors ; and the Salary of the Clerk of Teinds shall be Three hundred Pounds per Annum, and the Salary of the Depute Clerk shall be Two hundred and fifty Pounds per Annum, besides the Emoluments respectively allowed to, such Clerk and Depute Clerk by this Act: Provided always, that it shall be lawful for Her Majesty, Her Heirs and Successors, from and after the passing of this Act to appoint a fit Person to be Keeper of the Records in the Teind

Office, with an Allowance not exceeding One hundred Pounds per Annum, in case it shall be judged expedient to make such Appointment; and it shall be the Duty of such Keeper to arrange and index the Records and Processes in the Teind Office, so as to render them useful and accessible to the Public, and to perform such other Duties in the said Office as may be directed in his Commission, or by the Court of Session in virtue of the Powers herein given.

#### **XXVII Teind Clerks, Extracts, Accounts, &c.**

And be it enacted, That the Provisions and Regulations for abridging the Form of extracting Decrees of the Court of Session contained in the said recited Act of the Fiftieth Year of the Reign of His Majesty King George the Third and in this Act shall be and the same are hereby extended and applied to Extracts of Acts and Decrees pronounced by the Court of Commissioners for Teinds, except in Processes of Valuation of Teinds and other Cases where full Extracts may be required by the Parties ; and the Provisions and Regulations which are or may be applicable to auditing of Accounts of Expences in the Court of Session by the Auditor of Court shall be and the same are hereby extended and applied to Accounts of Expences in the Court of Commissioners for Teinds, which shall be subject to be audited and taxed by the said Auditor in like Manner as Accounts of Expences in the Court of Session ; and the Business of the Teind Office shall in other respects continue as at present: Provided always, that in those Cases in which the Clerk of Teinds may be appointed by Remit from the Court or Lord Ordinary, or may be employed by any Party or Parties in a Cause, to act as an Accountant, or in the Preparation of States, Schemes, or Calculations for regulating or adjusting the Rights of Parties, the Charges to be made by the Clerk of Teinds shall be regulated according to the Time and Labour in each particular Case, but subject to the Review and Taxation of the Auditor of the Court of Session in like Manner as Accounts of Expences; and the Emoluments arising from such Remits to or Employment of and Charges by the said Clerk of Teinds shall belong to such Clerk of Teinds : Provided further, that it shall be competent to the Court or Lord Ordinary, wherever it shall appear necessary for the due Despatch of Business, to make such Remits to act as aforesaid to any other properly qualified Person, and that it shall be competent to the Parties, by mutual Agreement, to employ any Person whom they shall think proper to act as aforesaid, except in the Preparation of Schemes of Locality : Provided also, that the said Depute Clerk of Teinds shall continue to discharge the Duty of extracting Acts and Decrees pronounced by the Court of Commissioners for Teinds, and shall receive Payment for-preparing the Same at the Rate of Sixpence for each Page of One hundred and fifty Words, and One Shilling for each Page of States or Schemes in Figures, without any further Charge for Printing or Stationery, the Party ordering the First Extract paying as aforesaid for each Page both of the Copy given put and of the Record Copy.

#### **XXVIII The Fee Fund.**

And be it enacted, That the Fees contained in: the Schedule annexed to this Act, along with the Fees presently payable upon Extracts of Deeds recorded in the Books of Council and Session, shall hereafter be paid into the Fee Fund of the Court of Session; and all other Fees, Dues, and Perquisites payable to the Clerks or Officers of Court, or of the Commissioners for .Teinds, are and shall be abolished, under the Exceptions herein-before made ; and the Salaries and Allowances made and provided by this Act shall be payable quarterly, free of all Deductions, out of the said Fee Fund, under the

Provisions, in case of Insufficiency of the said Fund, contained in the said Act of the Fiftieth Year of the Reign of His Majesty King George the Third.

**XXIX Admiralty Summonses.**

And be it enacted, That Summonses in Admiralty Causes may be raised and pass under the Signet in like Manner as other Summonses before the Court of Session now do.

**XXX Officers of Court may be summarily removed for Malversation.**

And be it enacted, That if any Clerk, Extractor, or other Officer of Court shall neglect his Duty, or shall be guilty of any Malversation in; Office, or shall exact or receive any Fees of Perquisites other than those due to him in virtue of his Office or contrary to Law, it shall be competent for the Court of Session, on such Charge or Charges being proved in any summary Application by Petition and Complaint at the Instance of the Party or Parties aggrieved, or of Her Majesty's Advocate for the Time being, to pronounce such Judgment as in the Circumstances, of the Case may seem just, not exceeding Deprivation of Office and Expences of the Proceedings, besides the Repayment of any such Fees or Perquisites unduly received, which shall be paid either to the Party complaining or to the Fee Fund, as the Court shall direct.

**XXXI Compensation.**

And be it enacted, That it shall be lawful for any Clerk or Officer of the Court of Session, or other Person entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act, to make Application to the Lord High Treasurer or to the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the Time being, claiming such Compensation, giving at the same Time Notice of such Application to Her Majesty's Advocate for Scotland ; and it shall be lawful for the said Lord High Treasurer or Commissioners of the Treasury to investigate such Claim and call for such Evidence in relation thereto as he or they may think necessary ; and upon such Claim being established to his or their Satisfaction, the said Lord High Treasurer or Commissioners, or any Three of them, is and are hereby authorized and empowered to award to such Person such Compensation as he or they shall, under all the Circumstances of the Case, and having reference to the Nature of the Appointment and the Duration of the Service, think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper : Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Thirty Days from the Day on which the same shall be granted if Parliament shall then be sitting, and if not, then within Thirty Days after the then next Sitting of Parliament; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament Provided also, that it shall be a Condition of every such Grant that the Compensation so granted, in the event of the Appointment thereafter of any of the said Persons to any Office of Profit or Emolument under the Crown, shall abate or wholly cease during the Period in which such Person shall hold such Office, so as that the Compensation and Emolument thereof taken together shall not exceed the Emoluments of the Office in respect of which the Compensation has been granted.

### **XXXII Compensation how to be paid.**

And be it enacted, That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen Anne were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in Scotland.

### **XXXIII Court of Session to make Acts of Sederunt.**

And be it enacted, That the Court of Session shall be and is hereby empowered from Time to Time from and after the passing of this Act to make such further Regulations by Act of Sederunt as the said Court may deem meet for the Purpose of carrying into effect the Purposes of this Act, and of duly apportioning the Business and regulating the Duties to be performed by the several Clerks and Officers of Court, and also for the Purpose of regulating any additional Duties which the Court may think fit to require to be performed by any of the Judges Clerks, and which Regulations such Clerks and Officers shall be respectively bound to observe without any Claim to further Remuneration; and the said Court may meet for the above Purposes during Vacation as well as during Session, and may alter and amend such Regulations from Time to Time : Provided also, that within Fourteen Days from the Commencement of every future Session of Parliament there shall be transmitted to both Houses of Parliament Copies of all Acts of Sederunt passed under the Powers herein given.

### **XXXIV Acts repealed.**

And be it enacted, That all Laws, Statutes, Acts of Sederunt, and Usages shall be and the same are hereby repealed in so far as they may be in any respect inconsistent or at variance with the Provisions of this Act; and the whole Provisions of this Act, unless where otherwise herein specially provided, shall commence and take effect from and after the Thirty-first Day of December next after the passing of this Act.

### **XXXV Act may be repealed, &c.**

And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

*Status: This is the original version (as it was originally enacted).*

## SCHEDULE

OF FEES OR DUES (REFERRED TO IN THIS ACT) TO BE PAID INTO THE FEE FUND IN LIEU OF THE FEES PRESENTLY PAYABLE TO THE INNER AND OUTER HOUSE ASSISTANT CLERKS, CLERKS OF THE TEIND COURT, CLERKS OF THE BILLS, AND AUDITOR

### *INNER HOUSE AND COURT OF TEINDS.*

	s.	d.
Original Petitions, and Petitions and Complaints, or any other Writ or Step by which a Cause is originated; also Answers thereto, or other first Step for		
a Respondent or other Party; each Paper, printed	15	0
Written	12	6
Condescendences, Answers, and revised or amended Condescendences and Answers, with or without Pleas in Law annexed, each Paper, printed	10	0
written	7	6
Cases, and revised or supplementary Cases, each, printed	10	0
written	7	6
Reclaiming Notes, with or without Appendices, also Petitions and Answers, not being first Steps, each, printed	10	0
written	7	6
Notes to the Lord President and Answers thereto, Minutes and Answers thereto, each, printed	5	0
written	2	6
Notes of additional or supplementary Pleas in Law	7	6
Each other Step or Pleading in the Inner House, not enumerated in this Schedule, printed	10	0

*INNER HOUSE AND  
COURT OF TEINDS.*

written	7	6
OUTER HOUSE.		
Summonses of every Kind, and Defences thereto; also Letters or Notes of Suspension or Advocation, and any other Writ, Pleading, or Step whereby a Cause is originated or by which a Party first makes Appearance in any Cause, each	10	0
Reasons, or revised or amended Reasons, of Suspension or Advocation, and Answers or revised and amended Answers thereto, with or without Notes of Pleas in Law annexed, each	5	0
Condescence and Answers, revised or amended Condescence, and revised or amended Answers, with or without Notes of Pleas in Law annexed, each	5	0
Notes of additional or supplementary Pleas in Law	5	0
Inventories to satisfy Production, and Inventories of Titles in Teind Causes, each	5	0
Cases, and revised or supplementary Cases	7	6
Minutes and Answers thereto, Notes and Answers thereto, each	2	6
Objections, revised Objections, Answers and revised Answers thereto, each	2	6
Condescence and Claims or Interests in Multiplepointings, Rankings, &c, and revised ditto, where the Sum claimed is upward of 10l., each (No Charge where for 10l. or under.)	2	6

*Status: This is the original version (as it was originally enacted).*

*INNER HOUSE AND  
COURT OF TEINDS.*

Each other Step or Pleading in the Outer House, not enumerated in this Schedule	7	6
<b>BILL CHAMBER.</b>		
Bills or Notes of Suspension or Advocation, Suspension and Interdict, and Answers thereto, or other original Application or first Step, except Plack Bills, each	5	0
Bills for loosing Arrestments and Answers thereto, Notes and Answers thereto, each	2	6
Accounts of Expences, each (see "Miscellaneous Papers")	2	6
Bonds of Caution on being taken out	2	6
Certificates or Extracts of Judgment	2	6
<b>EXTRACTS.</b>		
Decrees of Locality (instead of 4l. 13s. 4d. presently paid to the Teind Clerks, besides other Fees)	40	0
Decrees of Valuation (instead of 7l. 4s. 6d. presently paid to the Teind Clerks, besides other Fees)	40	0
All other Decrees, if in Foro	15	0
Decrees in Absence, Acts, Abbreviates of Adjudication, Diligences, and Protestations, each	10	6
<b>MISCELLANEOUS PAPERS.</b>		
Certified Copy of Proceedings for Appeal to the House of Lords	40	0
Certified Copy of Pleadings or Interlocutors by a Principal Clerk or his Assistant	2	6
Oaths of Parties, Witnesses, or Havers, if in Presence of	2	6



*INNER HOUSE AND  
COURT OF TEINDS.*

a Lord Ordinary or the Inner House, each		
if on Commission	1	0
Bonds of Judicial Caution, on being taken out	10	0
Prepared States and Schemes, printed	15	0
written	10	0
Memorials and Abstracts	10	0
Minutes of Election of a common Agent	2	6
For printed additional Appendices or other Papers, boxed for the Judges of the Inner House, not being Pleadings in the Cause, each	2	6
Notes for Searches, if under Ten Years from the Date of the Order, each Search	2	6
10 Years and under 25	7	6
25 Years and upwards	12	6
for extracted Processes in the Teind Record	5	0
Accounts of Expences	5	0
And in lieu of the Auditor s Fees at present payable, the following Rates;—Accounts under 10l.	2	6
10l. and under 20l.	5	0
20l. and under 50l.	7	6
50l. and under 100l.	10	0
100l. and under 150l.	15	0
150l. and under 200l.	20	0
200l. and under 300l.	30	0
300l. and under 500l.	40	0
500l. and under 600l.	60	0
And for Accounts exceeding 600l. the Fee to be increased		

*Schedule – of FEES or DUES (referred to in this Act) to be paid into the Fee Fund in lieu of the Fees presently payable to the Inner and Outer House Assistant Clerks, Clerks of the Teind Court, Clerks of the Bills, and Auditor*

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*INNER HOUSE AND  
COURT OF TEINDS.*

at the Rate of 5s. for every 100l. or Part of 100l.		
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The Fees in the preceding Schedule to apply to all Causes and Proceedings in the Court of Session and Court of Commissioners for Teinds, and also to Jury Causes; but shall not apply to Maritime or Consistorial Causes, nor to Applicants for the Benefit of the Poor's Roll, or Persons pursuing or defending in forma pauperis, nor to any Proceedings which are at present exempt from Fees by any Act of Parliament now in force.