



# Merchant Shipping Law Amendment Act 1853

1853 CHAPTER 131

*Procedure in Scotland*

**LVII Form of Complaint, &c.**

All Prosecutions, Complaints, Actions, or other Proceedings under the said Act may be brought either in a written or printed Form, or partly written and partly printed, and where such Proceedings are brought in a summary Form it shall not be necessary in the Complaint to recite or set forth the Clause or Clauses of the Act on which such Proceeding is founded, but it shall be sufficient to specify or refer to such Clause or Clauses, and to set forth shortly the Cause of Complaint or Action, and the Remedy sought; and when such Complaint or Action is brought in whole or in part for the Enforcement of a pecuniary Debt or Demand, the Complaint may contain a Prayer for Warrant to arrest upon the Dependence.

**LVIII Mode of requiring Appearance of Defender and Witnesses.**

On any Complaint or other Proceeding brought in a summary Form under the said Acts being presented to the Sheriff Clerk or Clerk of the Peace, he shall grant Warrant to cite the Defender to appear personally before the said Sheriff or Justices of the Peace on a Day fixed, not less than Three Days after a Copy of the Complaint or other Proceeding has been served upon him, and at the same Time shall appoint a Copy of the same to be delivered to him by a Sheriff Officer or Constable, as the Case may be, along with the Citation; and such Deliverance shall also contain a Warrant for citing Witnesses and Havers to compare at the same Time and Place, to give Evidence and produce such Writs as may be specified in their Citation; and where such Warrant has been prayed for in the Complaint or other Proceeding, the Deliverance of the Sheriff Clerk or Clerk of the Peace shall also contain Warrant to arrest upon the Dependence in common Form: Provided always, that Service made on any Party or Witness by leaving a Copy of Citation for him on board of any Ship to which he may belong shall be of equal Force and Effect as Service made at his Dwelling House.

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**LIX Backing Arrestments.**

When it shall become necessary to execute such Arrestment on the Dependence against Goods or Effects of the Defender within *Scotland*, but not locally situated within the Jurisdiction of the Sheriff or Justices of the Peace by whom the Warrant to arrest has been granted, it shall be competent to carry the Warrant into execution on its being indorsed by the Sheriff Clerk or Clerk of the Peace of the County or Burgh respectively within which such Warrant comes to be executed.

**LX Compelling Attendance of Witnesses.**

That in all Proceedings under the said Acts the Sheriff or Justices of the Peace shall have the same Power of compelling Attendance of Witnesses and Havers as in Cases falling under their ordinary Jurisdiction.

**LXI Proceedings to be viva voce.**

The whole Procedure in Cases brought in a summary Form before the Sheriff or Justices of the Peace shall be conducted viva voce, without written Pleadings, and without taking down the Evidence in Writing, and no Record shall be kept of the Proceedings other than the Complaint and the Sentence or Decree pronounced thereon.

**LXII Power to adjourn.**

It shall be in the Power of the Sheriff or Justices of the Peace to adjourn the Proceedings from Time to Time to any Day or Days to be fixed by them, in the event of Absence of Witnesses or of any other Cause which shall appear to them to render such Adjournment necessary.

**LXIII Sentence to be in Writing. Imprisonment to be inflicted in default of Payment.**

All Sentences and Decrees to be pronounced by the Sheriff or Justices of the Peace upon such summary Complaints shall be in Writing ; and where there is a Decree for Payment of any Sum or Sums of Money against a Defender, such Decree shall contain Warrant for Arrestment, Poinding, and Imprisonment in default of Payment, such Arrestment, Poinding, or Imprisonment to be carried into effect by Sheriffs Officers or Constables, as the Case may be, in the same Manner as in Cases arising under the ordinary Jurisdiction of the Sheriff or Justices: Provided always, that nothing herein contained shall be taken or construed to repeal or affect an Act of the Fifth and Sixth Years of *William* the Fourth, intituled *An Act for abolishing, in Scotland, Imprisonment for Civil Debts of small Amount.*

**LXIV Sentence, Penalties, &c. in default of Defender's Appearance.**

In all summary Complaints and Proceedings for Recovery of any Penalty or Sum of Money, if a Defender who has been duly cited shall not appear at the Time and Place required by the Citation, he shall be held as confessed, and Sentence or Decree shall be pronounced against him in Terms of the Complaint, with such Costs and Expenses as to the Court shall seem fit: Provided always, that he shall be entitled to obtain himself reponed against any such Decree at any Time before the same be fully implemented, by lodging with the Clerk of Court a Reponing Note, and consigning in his Hands the Sum decerned for and the Costs which had been awarded by the Court, and on the

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same Day delivering or transmitting through the Post to the Pursuer or his Agent a Copy of such Reponing Note; and a Certificate by the Clerk of Court of such Note having been lodged shall operate as a Sist of Diligence till the Cause shall have been reheard and finally disposed of, which shall be on the next Sitting of the Court, or on any Day to which the Court shall then adjourn it.

**LXV Warrant to apprehend in default of Appearance.**

In all summary Complaints or other Proceedings not brought for the Recovery of any Penalty or Sum of Money, if a Defender, being duly cited, shall fail to appear, the Sheriff or Justices may grant Warrant to apprehend and bring him before the Court.

**LXVI Backing Sentences or Decrees.**

In all Cases where Sentences or Decrees of the Sheriff or Justices require to be enforced within *Scotland*, but beyond the Jurisdiction of the Sheriff or Justices by whom such Sentences or Decrees have been pronounced, it shall be competent to carry the same into execution, upon the same being endorsed by the Sheriff Clerk or Clerk of the Peace of the County or Burgh within which such Execution is to take place.

**LXVII Orders not to be quashed for Want of Form; and to be final.**

No Order, Decree, or Sentence pronounced by any Sheriff or Justice of the Peace under the Authority of this Act shall be quashed or vacated for any Misnomer, Informality, or Defect of Form; and all Orders, Decrees, and Sentences so pronounced shall be final and conclusive, and not subject to Suspension, Advocation, Reduction, or to any Form of Review or Stay of Execution, except on the Ground of Corruption or Malice on the Part of the Sheriff or Justices, in which Case the Suspension, Advocation, or Reduction must be brought within Fourteen Days of the Date of the Order, Decree, or Sentence complained of: Provided always, that no Stay of Execution shall be competent to the Effect of preventing immediate Execution of such Order, Decree, or Sentence.

**LXVIII General Rules, so far as applicable, to extend to Penalties and Proceedings in Scotland.**

Such of the general Provisions with respect to Procedure and Penalties contained in the said last-mentioned Acts as are not inconsistent with the special Rules herein-before laid down for the Conduct of legal Proceedings and the Recovery of Penalties in *Scotland*, shall, so far as the same are applicable, extend to such last-mentioned Proceedings and Penalties.