



Court of Session Act 1868

1868 CHAPTER 100

II.—SUMMONS.

13 Summons may be signed by any Agent practising before the Court of Session.

Summons passing the Signet shall continue to be signeted as at present, but they may competently be signed by any Agent entitled to practise before the Court of Session ; provided that in the event of such Agent not being a "Writer to the Signet the Summons shall be signed on the last Page only by a Writer to the Signet in testimony of its being written to the Signet, and any Writer to the Signet shall, on a Fee of Two Shillings and Sixpence being tendered to him, be bound so to sign any Summons which may be presented to him for that Purpose, but he shall not by so signing incur any Responsibility.

14 Induciae of Summons and other Writs passing the Signet shortened

All Summons before the Court of Session may proceed on Seven Days Warning or Induciae where the Defender is within *Scotland*, unless in *Orkney* and *Shetland* or in any other Island of *Scotland*, and Fourteen Days where he is in *Orkney* or *Shetland* or such other Island, or furth of *Scotland*, in place of the longer Induciae required by the present Practice; and such shorter Induciae shall also be competent and sufficient in respect to all other Letters passing Her Majesty's Signet bearing a Citation, Charge, Publication, or Service against Persons within or furth of *Scotland* respectively, and in respect to all Edictal Charges upon Decrees and registered Protests : Provided always, that in all Cases where any shorter Induciae than the Induciae above mentioned are at present sufficient, such shorter Induciae shall continue to be sufficient after the passing of this Act.

15 As to proving lost Summons or Pleading.

Where a Summons, Petition, or other original Writ or Pleading is lost or destroyed, a Copy thereof proved in the Cause to the Satisfaction of the Court before whom the Cause is depending at the Time, and authenticated in such Manner as he or they

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

shall require, may be substituted, and shall be held equivalent to the Original for the Purposes of the Action.

16 Certified Copy may be used in place of Original in Service of Summonses and Writs.

It shall not be necessary that any Messenger or Sheriff Officer serving a Summons, Petition, Appeal, or Note of Suspension or Interdict shall have the original Document in his Hands at the Time of such Service, provided that a Copy certified as correct by the Agent in the Cause shall at the Time be in the Possession of such Messenger or Officer, and shall be exhibited to the Party on whom the Service is made, if required.

17 Lord Advocate's Concurrence not to be necessary in Actions of Reduction-Improbation and Ranking and Sale.

It shall not be necessary to obtain the Concurrence of Her Majesty's Advocate to any Summons of Reduction-Improbation, or Ranking and Sale, and such Summonses in future shall not bear to be instituted with the Concurrence of Her Majesty's Advocate : Provided that nothing herein contained shall affect the Right of Her Majesty's Advocate to institute any such Summons for the Interest of Her Majesty, Her Heirs and Successors.

18 Warrant of Inhibition may be inserted in Will of Summons. Publication of such Warrants and Letters of Inhibition.

It shall be competent to insert in the Will of a Summons passing the Signet a Warrant of Inhibition, which shall have all the like Force and Effect as Letters of Inhibition in the Form in Use at the passing of this Act; and such Warrant shall be, as nearly as may be, in the following Form :

“And also that ye lawfully inhibit the said personally or at his Dwelling Place, if within Scotland, and if forth thereof, at the Office of the Keeper of the Record of Edictal Citations at *Edinburgh*, from selling, burdening, disposing, alienating, or otherwise affecting his Lands or Heritages, to the Prejudice of the Pursuer; and that ye cause register this Summons and Execution hereof in the General Register of Inhibitions at *Edinburgh* for Publication to Our Lieges :”

When Warrant of Inhibition is contained in the Will of a Summons passing the Signet, such Warrant may be executed either at the same Time as the Summons is served or at any Time thereafter, and it shall not be necessary to publish such Warrants, or to intimate Letters of Inhibition passing the Signet, to the Lieges in any other Way than by Registration in the General Register of Inhibitions ; and in registering it shall be sufficient to register the Summons, including the Warrant of Inhibition, and the Execution of such Warrant, without registering any Condescence or Note of Pleas in Law which may follow the Summons, or where Letters of Inhibition are used, then such Letters, with the Execution . thereof, shall be registered; and from and after Registration as aforesaid, the Inhibition, whether contained in a Summons or by separate Letters of Inhibition, shall be held to be duly intimated and published to all concerned.

Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.

19 Summons against certain Defenders, &c. may be served by Sheriff Officers.

Where any Defender called in any Summons, or any Person upon whom Service of any Proceeding is ordered by the Court or by the Judge officiating in the Bill Chamber, or any Witness or Haver requiring to be cited to attend said Court, or any Commissioner appointed by the same, resides within any County, or within any District of a County subject to the Jurisdiction of the ordinary Court of any Sheriff Substitute of such County, in which County or District of any County there shall not be at the Time a resident Messenger-at-Arms, or within any of the Islands of *Scotland*, it shall be competent for a Sheriff. Officer of such County or of the Sheriffdom within which such Island is situated (as the Case may be) to serve such Summons or to make such Service or Citation upon such Defender or other Party or Witness or Haver within such County or Island, and, such Service and Citation and Execution thereof shall have the same Effect as if done or made by a Messenger-at-Arms.

20 Amendment of Summonses and Pleadings in undefended Causes.

In undefended Actions any Error or Defect in any Summons or other Pleading, whereby the Action is commenced in the Court of Session, may be amended upon Application to the Lord Ordinary or the Court before whom it depends, if the Lord Ordinary or the Court think such Amendment should be allowed; and such Amendment shall be made in "Writing either upon the Summons or Pleading, or in a separate Paper, and shall be authenticated by the Signature of Counsel; and the Lord Ordinary or Court may, if he or they think fit, order the amended Summons or other Pleading to be served upon the absent Defender or Defenders, with Liberty to him or them to enter Appearance within such Time as shall seem proper: Provided that the Expenses occasioned by such Amendment shall not be chargeable against the Defender or Defenders ; and provided also, that such Amendment shall not have the Effect of validating Diligence used on the Dependence of the Action so as to prejudice the Bights of Creditors of the Defender interested in defeating such Diligence, but shall be operative to the Effect of obviating any Objections to such Diligence when stated by the Defender himself, or by any Person representing him by a Title, or in right of a Debt contracted by him subsequent to the using of such Diligence.

21 Party appearing not to state Objections to Execution of Summonses, &c.

No Party appearing in any Action or Proceeding in the Court of Session shall be entitled to state any Objection to the Regularity of the Execution or Service as against himself of the Summons or other Pleading or Writ whereby he is convened.