



Court of Session Act 1868

1868 CHAPTER 100

IV.—RECORD, MOTIONS, AND PROBATION.

25 Revisal of Pleadings not to be allowed as Matter of course.

Neither Party shall be entitled as Matter of Right to ask for a Revisal of his Pleadings; but it shall be competent for the Lord Ordinary to allow or to order a Revisal of the Pleadings, upon just Cause shown.

26 Procedure after Pleadings completed, and Adjustment of Pleadings.

If no Motion for Revisal is made as above provided, or if such Motion is refused, or after the Lapse of the Period within which the revised Pleadings fall to be lodged where a Revisal has been allowed or ordered, the Pursuer shall cause the Pleadings which are to form- the Record to be printed, and shall within Eight Days from the lodging of the Defences or revised Pleadings, as the Case may be, deliver Two Printer's Proofs thereof to the Agent or to each of the Agents of the other Parties, and also to the Clerk to the Process, who shall transmit the same to the Lord Ordinary, and the Lord Ordinary shall direct the Cause to be put to the Roll for a Day, not less than Four and not more than Six Days thereafter; and upon such Day the Lord Ordinary shall require the Parties then to adjust their Pleadings, and shall close the Record : Provided that if the Pursuer shall fail to deliver the Printer's Proofs as aforesaid the Defender may enrol the Cause, and move for Decree of Absolvitor by Default, which Decree the Lord Ordinary shall grant unless the Pursuer shall show good Cause to the contrary : Provided also, that it shall not be competent of Consent of Parties to prorogate the Time for complying with any Statutory Enactment or Order of the Court, whether with reference to the making up and closing of the Record or otherwise.

27 Procedure after Record closed, and Adjustment of Issues.

The Lord Ordinary shall at the Time of closing the Record require the Parties then to state whether they are ready to renounce farther Probation; and if they are ready to do so the Counsel for the Parties shall sign a Minute to that Effect on the Interlocutor Sheet; and the Lord Ordinary shall, in the Interlocutor closing the Record, pronounce

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a Finding that farther Probation has been renounced, and shall appoint the Cause to be debated.

If the Parties shall not agree to renounce farther Probation, the Lord Ordinary shall appoint the Cause to be debated summarily at the End of the Motion Roll on a Day to be then fixed, before which Day the Parties shall respectively lodge the Issue or Issues, if any, which they propose for the Trial of the Cause; and the Lord Ordinary, after hearing Parties, shall, on the said Day, determine whether farther Probation should be allowed; and if he shall consider that it is necessary, he shall determine whether it is to be limited to Proof by Writ or Oath, and if not, whether it is to be taken before a Jury, or in what other Manner of Way:

- (1) If the Lord Ordinary considers that the Cause may be disposed of without farther Probation, he may, without any Adjournment, hear the Parties upon their Pleas, and dispose of them as appears to him just:
- (2) If the Lord Ordinary considers that farther Probation should be allowed, but that it should be limited to Proof by Writ or Oath, he may pronounce an Interlocutor to that Effect, and at the same Time determine how such Proof is to be taken, and make such Order as may be necessary:
- (3) If the Lord Ordinary shall think that farther Probation should be allowed, and that it should be taken before a Jury, he may, without Adjournment, proceed to adjust Issues for the Trial of the Cause, and pronounce an Interlocutor approving of the Issue or Issues which have been so adjusted; provided that if the Parties consent, and the Lord Ordinary approves, it shall be competent to direct the Cause to be tried by Jury without adjusting any such Issues, and such Cause shall be tried as nearly as may be in the same Manner in which Causes are tried in which Issues have been adjusted according to the present Law and Practice:
- (4) If the Lord Ordinary shall think farther Probation should be allowed, but that such Probation should not be taken before a Jury, he may pronounce an Interlocutor dispensing with the adjusting of Issues, and determining the Manner in which Proof is to be taken or Inquiry to be made, and make such Order as may be necessary for giving Effect to such Interlocutor.

28 Review of certain Interlocutors of the Lord Ordinary.

Any Interlocutor pronounced by the Lord Ordinary as provided for in the preceding Section, except under Sub-division (1), shall be final, unless within Six Days from its Date the Parties, or either of them, shall present a Reclaiming Note against it to One of the Divisions of the Court by whom the Cause shall be heard summarily; and when the Reclaiming Note is advised, the Division shall dispose of the Expenses of the Reclaiming Note, and of the Discussion, and shall remit the Cause to the Lord Ordinary to proceed as accords : Provided always, that it shall be lawful to either Party within the said Period, without presenting a Reclaiming Note, to move the said Division to vary the Terms of any Issue that may have been approved of by an Interlocutor of the Lord Ordinary, specifying in the Notice of Motion the Variation that is desired: Provided also, that nothing herein contained shall be held to prevent the Lord Ordinary or the Court from dismissing the Action at any Stage upon any Ground upon which such Action might at present be dismissed according to the existing Law and Practice.

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29 Amendment of Records in defended Actions.

The Court or the Lord Ordinary may at any Time amend any Error or Defect in the Record or Issues in any Action or Proceeding in the Court of Session, upon such Terms as to Expenses and otherwise as to the Court or Lord Ordinary shall seem proper; and all such Amendments as may be necessary for the Purpose of determining in the existing Action or Proceeding the real Question in Controversy between the Parties shall be so made: Provided always, that it shall not be competent, by Amendment of the Record or Issues under this Act, to subject to the Adjudication of the Court any larger Sum or any other Fund or Property than such as are specified in the Summons or other original Pleading, unless all the Parties interested shall consent to such Amendment: And provided also, that no such Amendment shall have the Effect of validating Diligence used on the Dependence of the Action so as to prejudice the Rights 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 Execution of such Diligence.

30 Pleadings in Actions of Multiplepinding.

In Actions of Multiplepinding it shall not be necessary to lodge Answers to the original Condescendences and Claims, unless it is made to appear to the Satisfaction of the Lord Ordinary that the Claimants are at Issue on Matters of Pact material to the Action, and that Answers are necessary; and in such Actions it shall be competent for Parties having opposing Interests (where they are agreed upon the Pacts) to make their Averments in the Form of a Joint Case, appending thereto their respective Claims and Pleas in Law: Provided always, that where the Competition involves the Construction of written Documents, such Documents shall not be set out at Length on the Record, but shall be printed separately, and referred to in the Pleadings as set forth in such separate Print.

31 Motions in the Outer House.

The Motion Rolls of the Lords Ordinary in the Outer House shall, instead of being called before these Judges respectively, be hereafter called before the Clerks to the Processes therein enrolled; such Calling shall take place at such Hours as shall from Time to Time be fixed by the Lord President of the Court, and shall not be attended by Counsel, but by Agents practising before the Court, or by their Clerks duly authorized by them. If any Motion is unopposed, it may be granted by the Clerk, who shall write on the Interlocutor Sheet an Order in Terms of said Motion, which Order, being signed by said Clerk, shall have the same Effect and be treated in all respects as if it were an Interlocutor of the Lord Ordinary before whom the Cause depends, made out and signed according to the present Law and Practice. All Motions which are opposed, and also those which the Clerk thinks should be disposed of by the Lord Ordinary, shall, on a Requisition to that Effect by the said Clerk, be put to a Roll of continued Motions, which the Clerk of the Lord Ordinary is hereby required' to make up, and which shall be called before the Lord Ordinary himself on such Days, not exceeding Two in each Week, as he may appoint for the hearing of Motions and summary Debates, and shall be disposed of by the Lord Ordinary after hearing Counsel; and it shall not be necessary that any Notice of the Enrolment of such continued Motions shall be given by either Part)" to the other. The Lord Ordinary, in disposing of any continued Motion, shall, unless he see Cause to the contrary, award such Sum of modified Expenses as he shall

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think fit to the Party who has successfully insisted in or opposed the same, as the Case may be.

32 Regulations as to Time of addressing the Court in Proofs under the Conjugal Rights and Evidence Acts.

In all Proofs before the Lord Ordinary, under the Acts Twenty-four and Twenty-five *Victoria*, Chapter Eighty-six, and Twenty-nine and Thirty *Victoria*, Chapter One hundred and twelve, no Adjournment shall be allowed, except on special Cause stated in an Interlocutor, and the Evidence shall be summed up by One Counsel on each Side at the Conclusion of the Examination of the Witnesses, as in the Case of Jury Trials ; and it shall' not be necessary to print the Evidence, unless for the Purpose of bringing the Judgment of the Lord Ordinary thereon under the Review of the Inner House.

33 Time of Trial of Cases under the Conjugal Rights and Evidence Acts.

All Causes ready for Trial by a Proof before any of the Lords Ordinary, under the last-mentioned Acts, at the End of the Winter and Summer Sessions of the Court respectively, shall be tried at Sittings to be held by the Lord Ordinary before whom the Cause depends, or by some other Judge acting for him at his Request, during the ensuing Vacation, at such Time as may be fixed by the Lord Ordinary.