



# Court of Session Act 1868

## 1868 CHAPTER 100

### *IX.—MISCELLANEOUS PROVISIONS.*

#### **93 Procedure in Time of Vacation.**

Summonses may be called, and Defences or other Pleadings may be returnable, at any of the Box Days in Vacation or Recess ; and on the Fifth lawful Day after each Box Day the Lord Ordinary officiating on the Bills shall sit in Court for the Purpose of granting or recalling Decrees in Absence and hearing and disposing of Motions in any Cause in reference to the Preparation of the Record, or for the granting of Commissions and Diligence for the Recovery of "Writings or the taking of Evidence to lie *in retentis*, or for any other Purpose which the Court may specify in any Act of Sederunt which they are empowered by this Act to make.

#### **94 Lord Ordinary may sign Interlocutors in Vacation.**

It shall be lawful for the Lords Ordinary at any Time in Vacation or Recess to sign Interlocutors pronounced in Causes heard in Time of Session, or at any extended Sittings, or at the Trial of Causes by Jury or by Proof, before such Lord Ordinary; provided that where any such Interlocutor is dated at or prior to the First Box Day in Vacation, the same may be reclaimed against on the Second Box Day; and where the Interlocutor is dated after the First Box Day, then on the First Sederunt Day ensuing, or within such Number of Days from the Date of such Interlocutor as may be competent in the Case of a Reclaiming Note against such Interlocutor, dated and signed during Session; and where such Interlocutor is signed during the Christmas Recess, the same may be reclaimed against on the First Sederunt Day ensuing, or within such Time after the Date thereof as may be competent as aforesaid : Provided that in the Case of Interlocutors which cannot be reclaimed against without the Leave of the Lord Ordinary, such Leave may be given by such Lord Ordinary, or in his Absence by the Lord Ordinary sitting on the Bills during Vacation or Recess.

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**95 New Procedure in place of Actions of Wakening.**

Where, according to the existing Practice, a Cause would require to be wakened in order to its being proceeded with, it shall be competent for any of the Parties to enrol such Cause before the Lord Ordinary, and to lodge a Minute craving a Wakening of the Cause ; and the Lord Ordinary may thereupon direct Intimation of such Minute to be made to the known Agents of the other Parties in the Cause, or to such Parties themselves, and shall direct Intimation to be made in the Minute Book of the Court of Session; and where said Parties have no known Agents, or are themselves furth of *Scotland*, the Lord Ordinary shall also appoint Edictal Intimation thereof to be made by Publication in the Record of Edictal Citations ; and on the Expiration of Eight Days from the Date of such Intimation, or from the latest Date thereof, and on a Certificate being lodged in Process under the Hand of the Agent of the Party applying for the Wakening, certifying that he has duly intimated the Minute in Terms of the Lord Ordinary's Interlocutor, the Lord Ordinary may pronounce an Interlocutor holding the Cause as wakened, and the same may thereafter be proceeded with as wakened accordingly.

**96 New Procedure in place of Actions of Transference.**

Where, according to the existing Practice, a Cause may be transferred against any Party or Parties, it shall be competent to any Party who might have instituted a Summons of Transference to enrol the Cause before the Lord Ordinary, and to lodge a Minute craving a Transference of the Cause against such Party or Parties ; and the Lord Ordinary may thereupon grant Warrant for serving a Copy of the Summons or other original Pleading upon the Party or Parties against whom such Cause is sought to be transferred, and at the same Time shall allow such Party or Parties to give in a Minute of Objections to such Transference within a Time to be specified in the Interlocutor; and such Interlocutor shall also be intimated in common Form to the Agents of the other Parties in the Cause; and such and the like Procedure may be had in virtue of the Service of such Summons or Pleading under the Lord Ordinary's Warrant as might have been had in virtue of the Execution of a Summons of Transference; and if the Lord Ordinary shall think fit to transfer the Cause in Terms of the said Minute (which the Lord Ordinary is hereby authorized to amend if necessary), he shall pronounce an Interlocutor holding the Cause as transferred against the Party or Parties named in such Minute or amended Minute, and the Cause shall be taken to be transferred accordingly.

**97 New Procedure in place of combined Actions of Wakening and Transference.**

Where, according to the existing Practice, a Cause would require to be wakened in order to its being proceeded with, and also to be transferred against any Party or Parties, it shall be competent to any Party who might have instituted a Summons of Wakening and Transference to enrol the Cause before the Lord Ordinary, and to lodge a Minute craving a Wakening of the Cause, and a Transference thereof against such Party or Parties; and after such Procedure by Intimation and Service as is herein-before directed with respect to Motions for Wakening and Transference respectively, the Lord Ordinary may pronounce an Interlocutor holding the Cause as wakened, and may either in the same Interlocutor, or in an Interlocutor to be subsequently pronounced, as Justice may require, also transfer the Cause against the Parties named in such Minute.

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**98 Transference of Actions depending in the Inner House.**

It shall be lawful, where the Process is in the Inner House, to apply by Minute to the Division of the Court in which the Cause depends for a Transference of the Cause in manner hereinbefore provided against any Party or Parties named in such Minute: Provided also, that nothing herein contained shall prevent the Lord Ordinary or the Court from sisting any Person upon his own Application by Minute as a Party to the Cause, where such Person is, according to the existing Practice, entitled to be sisted as Representative, Trustee, or Guardian, or in any other Relation to any Party who shall be already a Party to the Cause, or who shall have died during the Dependence thereof; and any such Application to be so sisted may be combined with an Application for Wakening. 99.

**99 Not competent to object to Productions after Record closed.**

It shall no longer be competent to object to the Production of any Document after a Record has been closed, on the Ground that it was in the Possession or under the Control of the Party producing it at the Time when the Record was closed : Provided that the Court or the Lord Ordinary may attach such Conditions, as to Expenses or otherwise, to the receiving of such Documents as to them or him shall seem proper.

**100 Amendment of Conjugal Rights Act.**

" The Conjugal Rights (*Scotland*) Amendment Act, 1861," is hereby amended as follows, viz:

- (1) It shall be sufficient Compliance with the Provision in the Tenth Section of said Act if the Personal Service therein required is made by the Delivery to the Defender personally of the Summons by a Person (although not a Messenger-at-Arms or other Officer of the Law) duly authorised by the Pursuer for that Purpose, and such Person shall return a Certificate that such Delivery has been made: Provided always, that it shall be competent for the Lord Ordinary to call for farther Evidence of the Service by such Delivery, if he shall think proper :
- (2) Notwithstanding the Terms of the Thirteenth Section of said Act, it shall be competent for the Lord Ordinary to grant Commission to any Person competent to take and report in Writing the Deposition of a Haver according to the existing Practice, although such Haver shall be resident in *Scotland*.

**101 Cognition of the Insane regulated.**

It shall no longer be competent to direct a Brieve for the Cognition of a Person alleged to be *incompos mentis prodigus et furiosus*, or of a Person alleged to be *incompos mentis fatuus et natwraliter idiota*, to the Judge Ordinary; and the Brieves of Furiosity and Idiocy hitherto in Use are hereby abolished; and in lieu thereof it is enacted, that a Brieve from Chancery, written in the *English* Language, shall be directed to the Lord President of the Court of Session, directing him to inquire whether the Person sought to be cognosced is insane, who is his nearest Agnate, and whether such Agnate is of lawful Age; and such Person shall be deemed insane if he be furious or fatuous or labouring under such Unsoundness of Mind as to render him incapable of managing his Affairs; and such Brieves shall be served upon the Persons sought to be cognosced, on Induciae of Fourteen Days; and the Brieve shall be tried before the said Lord President and a Special Jury, or before any other Judge of the Court of Session to whom the said

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Lord President may remit the same, and a Special Jury; and the Trial shall be conducted in the same Manner as Jury Trials in Civil Causes in *Scotland* are conducted, with all the like Remedies as to Motions for new Trials, and Bills of Exceptions which are competent with reference to such Jury Trials; and the Court shall have Power to award Expenses against either Party; but they shall not award Expenses against the Party prosecuting the Brieve, unless they are of opinion that the same was prosecuted without reasonable or probable Cause; and the Verdict and Service of the Jury shall be retoured to Chancery, and shall, unless set aside on any Ground, have the like Force and Effect, and be followed by the like Procedure, as a Retour of the Verdict and Service of the Jury before the Judge Ordinary according to the present Law and Practice.

**102 Bonds of Caution for Judicial Factor for Lunatics to be approved of by Principal Clerks of Session only.**

"Whereas by the Act Twentieth and Twenty-first *Victoria*, Chapter Seventy-one, Section Eighty-four, it is provided that no Caution for any Judicial Factor for a Lunatic shall be received as sufficient by any of the Principal Clerks of Session until the Accountant of the Court of Session shall approve thereof: Be it enacted, That the said Provision be repealed, so far as relates to the Approval of Caution for Judicial Factors to Lunatics by the said Accountant of Court, and that after the passing of this Act all such Bonds of Caution shall be received by the Principal Clerks of Session in the same Manner as before the passing of the said last-mentioned Act.

**103 Regulation as to Declinature of Jurisdiction.**

It shall not be deemed a Ground of Declinature of Jurisdiction that the Judge (whether in the Court of Session or in any, of the Inferior Courts) is a Partner in any Joint Stock Company carrying on as its sole or principal Business the Business of Life and Fire or Life Assurance, where such Company is a Party to the Proceeding in which the Judge is called to exercise his Jurisdiction; and it shall not be deemed a Ground of Declinature of Jurisdiction that any such Judge is possessed, merely as a Trustee, of any Stock or Shares in any incorporated Company, where such Company is a Party to the Proceeding.

**104 Annual Returns to be made to Parliament.**

The Clerks and other Officers of the Court of Session shall make, in such Manner and Form as may from Time to Time be ordered and required by One of Her Majesty's Principal Secretaries of State, annual Returns of the Business of their respective Offices for the Year ending on the Thirty-first Day of *December* immediately preceding, and shall transmit such Returns to Her Majesty's Advocate for *Scotland* on or before the Fifteenth Day of *January* in each Year; and Her Majesty's Advocate for *Scotland* is hereby required to prepare from these Returns a general Return for the Court of Session, and on or before the First Day of *March* in each Year to cause the same to be transmitted to One of Her Majesty's Principal Secretaries of State to be laid before Parliament.

**105 Salaries of certain Officers to be regulated.**

Whereas by the Tenth, Twelfth, Thirteenth, Sixteenth, Nineteenth, Twenty-fifth, and Twenty-sixth Sections of the Act First and Second *Victoria*, Chapter One hundred and eighteen, and by the Third Section of the Act Twentieth and Twenty-first *Victoria*,

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Chapter Eighteen, certain Salaries were provided to certain therein-named Officers of the Court of Session and of the Bill Chamber of said Court, and of the Court of Commissioners for Teinds: So much of the said Sections of said Acts as fixes the Amounts of said Salaries respectively is hereby repealed ; and it shall be lawful for the Commissioners of Her Majesty's Treasury to grant to such Officers of the Court of Session and of the Bill Chamber of said Court, and of the Court of Commissioners for Teinds, such Salaries as to them shall seem proper, payable quarterly out of any Monies to be voted by Parliament for that Purpose, which Salaries shall come in lieu of the Salaries now payable, and of any Fees or other Allowances exigible by such Clerks.

**106 Court to make Acts of Sederunt.**

The Court of Session may from Time to Time make such Regulations by Act of Sederunt as shall be necessary for carrying into effect the Purposes of this Act; and for regulating the Times and Forms of Summonses and Writs and Modes of Procedure, and of Pleadings; and generally the Practice of the said Court in respect of the Matters to which this Act relates; and for regulating' the Fees of the Agents practising before the said Court; and, so far as may be found expedient, for altering the Course of proceeding herein-before prescribed in respect to the Matters to which this Act relates, or any of them; and may also repeal or alter the Provisions of any Act of Sederunt relating to any of the Matters herein-before specified as may be inconsistent with such new Regulations; and for that Purpose the said Court may meet during Vacation as well as during Session: Provided that every such Act of Sederunt shall, within One Month after the Date thereof, be transmitted by the Lord President of the Court of Session to One of Her Majesty's Principal Secretaries of State in order that it may be laid before both Houses of Parliament ; and if either of the Houses of Parliament shall, by any Resolution passed within Thirty-six Days after such Act of Sederunt has been laid before such House of Parliament, resolve that the whole or any Part of such Act of Sederunt ought not to continue in force, in such Case the whole or such Part thereof as shall be so included in such Resolution shall from and after such Resolution cease to be binding.

**107 Repeal of Acts, &c.**

All Laws, Statutes, Acts of Sederunt, and Usages shall be and the same are hereby repealed in so far only as they may be in any way inconsistent or at variance with the Provisions of this Act, but in all other respects they shall remain in full Force and Effect; and this Act shall be read and construed along with the Tenor thereof.