



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

VIII.—ACCOUNTINGS, SUSPENSIONS, AND SUMMARY PETITIONS

81 Accountant may be required to attend debate, and assist in settling the terms of the remit.

The Court (in any branch of its jurisdiction), where a question of accounting is to be investigated, may request the accountant to whom it is intended to remit the cause to attend in Court at the debate, and in the advising of the cause may take the assistance of such accountant out of court in settling the terms of the remit to be made to him.

Modifications etc. (not altering text)

C1 Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in [Sch. 2 Pt. II](#) of that Act)

82 Accountant to have power to compel production of documents, and attendance of parties and witnesses.

The accountant shall have power, by signed order, to require the attendance of the parties before him at such times, either in session or in vacation, as he may appoint; and also to fix the times within which notes of objections and answers, vouchers, and other necessary papers shall be lodged before him; and the time appointed by such order may be once prorogated without special cause shown, and a second time upon special cause to be mentioned in the order of prorogation; provided, in case of such second prorogation, that application is made before the expiration of the time previously appointed. When the accountant has power under the remit to examine witnesses or havers, the clerk of the bills shall issue letters of second diligence against any defaulting witness or haver, on a bill presented by the agent, and countersigned by the accountant.

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, VIII.—Accountings, Suspensions, and Summary Petitions. (See end of Document for details)

Modifications etc. (not altering text)

- C2** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

83 In case of default accountant to proceed ex parte.

In case of failure to lodge any note or answer or productions within the time appointed, the accountant shall proceed to dispose of the cause upon the evidence and statements submitted to him; and in case of the failure of one of the parties to attend any diet without reasonable excuse, he shall proceed to dispose of the cause, after hearing the explanations of the other party, according to his opinion on its merits.

Modifications etc. (not altering text)

- C3** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

84 Accountant may apply to Court for special direction.

It shall be competent for the accountant to apply, either by written note, or vivâ voce in presence of the parties, to the Court for direction as to any point which may arise in the course of the remit; and the Court may give such directions either vivâ voce, or by interlocutor, thereon, or may suspend the remit, and proceed to deal with the point raised as in the cause, and dispose of it accordingly.

Modifications etc. (not altering text)

- C4** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

85 Parties may appeal from accountant, or move the Court for special direction.

It shall be competent for either party, with the leave of the accountant, to bring under review of the Court any interim order or proceeding of the accountant, or, with leave as aforesaid, to move the Court to give the accountant special directions on any point arising in the course of the remit.

Modifications etc. (not altering text)

- C5** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

86 Accountant to report results in the form of a certificate of his opinion.

The report of the accountant shall state, in the form of a certificate, the facts he has found to be established, and the results at which he has arrived, and also the points falling within the remit which he suggests as proper for the consideration of the Court,

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and any necessary explanations of the grounds of the accountant's findings and opinion shall be stated in the form of a note appended to such certificate; and such states of accounts only shall be prepared as the accountant or the Court shall consider essential for the proper decision of the cause.

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- C6 Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

87 Court empowered to take the assistance of the accountant in applying their judgment as to bring out results.

The accountant shall, if required by the Court or by either of the parties, attend at the debate on his report; and it shall be lawful for the Court to take the assistance of the accountant out of court in the preparation of the draft of the judgment, in which the opinions they may communicate to him shall be applied to the various points of the case, so as to bring out the proper results of such opinions, and so as, if possible, to obviate the necessity of a second remit; and for this purpose the opinion of the Court may be communicated to the accountant by the judge upon whom the preparation of the judgment of the Court may be devolved, in any way he may think fit.

Modifications etc. (not altering text)

- C7 Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

88 Procedure when remit to accountant made by the Lord Ordinary.

The whole of the above-mentioned provisions in relation to actions of accounting shall be applicable to causes in dependence before any of the Lords Ordinary.

Modifications etc. (not altering text)

- C8 Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

89 Lord Ordinary on bills, &c. may grant warrant ad factum præstandum.

Where a respondent in any application or proceeding in the Bill Chamber, whether before or after the institution of such proceeding or application, shall have done any act which the Court, in the exercise of its preventive jurisdiction, might have prohibited by interdict, it shall be lawful for the said Court, or for the Lord Ordinary on the Bills, upon a prayer to that effect, in the note of suspension and interdict, or in a supplementary note, to ordain such respondent to perform any act which may be necessary for reinstating the complainer in his possessory right, or for granting specific relief against the illegal act complained of.

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Modifications etc. (not altering text)

- C9** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

90 As soon as note passed in Bill Chamber, cause to become Court of Session process.

In all proceedings in the Bill Chamber, as soon as an interlocutor passing the note has become final, and caution has been found or consignation has been made, in the event of caution or consignation having been ordered, the cause shall become for all purposes an action depending in the Court of Session, and may immediately be enrolled by either party in the motion roll of the Lord Ordinary to whom it is marked: Provided, that where a note of suspension or other original note in the Bill Chamber is not at the time of its presentation, or during the dependence of the process in the Bill Chamber, marked by the respondent to one of the Lords Ordinary, it may, as soon as the interlocutor passing the note has become final, be so marked by the complainer; and it shall not be necessary that any such process should appear in the calling lists.

Modifications etc. (not altering text)

- C10** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

91 Questions of possession or specific performance may be presented in the form of a summary petition.

It shall be lawful for the Court, upon application by summary petition, to order the restoration of possession of any real or personal property of the possession of which the petitioner may have been violently or fraudently deprived, and also to order the specific performance of any statutory duty, under such conditions and penalties, (including fine and imprisonment, where consistent with the Statute,) in the event of the order not being implemented, as to the Court shall seem proper; and such petitions may be presented to any Lord Ordinary, or, in time of vacation or recess, to the Lord Ordinary on the Bills, who shall proceed therein as justice may require; and any such petition presented to the Lord Ordinary on the Bills may, after the ordinary sittings of the Court have commenced, be transferred to one of the Lords Ordinary in the Outer House in manner herein-before provided with respect to Bill Chamber proceedings.

Modifications etc. (not altering text)

- C11** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)
- C12** S. 91 extended by [Harbours, Piers and Ferries \(Scotland\) Act 1937 \(c. 28\)](#), s. 22(4), S.I. 1955/1752 (1955 I, p. 778), reg. 43(2), [Housing and Town Development \(Scotland\) Act 1957 \(c. 38\)](#), s. 16(3)(b), [Road Traffic Regulation Act 1967 \(c. 76\)](#), ss. 62(2), 69(6), [Rent \(Control of Increases\) Act 1969 \(c. 62\)](#), s. 4(3), [Civil Aviation Act 1971 \(c. 75\)](#), s. 29(6), [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), s. 260(7) and [Finance Act 1975 \(c. 7\)](#), s. 29, [Sch. 6 Pt. I para. 13\(6\)](#)

Changes to legislation: *There are currently no known outstanding effects for the Court of Session Act 1868, VIII.—Accountings, Suspensions, and Summary Petitions. (See end of Document for details)*

92 Appointment of judicial reporters on summary petitions.

It shall be lawful for the Court to appoint not fewer than six agents, being agents practising in the Court of Session of not less than five years standing, and skilled in conveyancing, to be judicial reporters, and who shall hold their office at the pleasure of the Court; and all remits which under the existing practice are made to agents practising in the Court of Session shall be made to such judicial reporters by rotation, or in such other way as may be considered most advisable for the despatch of the business entrusted to such reporters, who shall be remunerated by fees according to a scale to be fixed by the Court, and which the Court may alter from time to time. The Court also shall have power to regulate from time to time the fees which shall be payable to any accountant or person of skill, other than the judicial reporters foresaid, to whom any remit is made in the course of any judicial proceedings before the Court.

Modifications etc. (not altering text)

C13 Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt. I](#) (and re-enacted in part as referred to in [Sch. 2 Pt. II](#) of that Act)

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