



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

IX.—MISCELLANEOUS PROVISIONS

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 naturaliter idiota*, to the Judge Ordinary; and the brieves of furiosity and idiotry 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 induciæ 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 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.

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- C1 Ss. 50–101 repealed (S.) by [Court of Session Act 1988](#) (c. 36, SIF 36:1), s. 52(2), [Sch. 2 Pt.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)

Changes to legislation: *There are currently no known outstanding effects for the Court of Session Act 1868, Section 101. (See end of Document for details)*

- C2** Functions of Chancery (Director of Chancery) now exercisable by Keeper of the Registers of Scotland: S.R. & O. 1932/148 (Rev. III, p. 655: 1932, p. 140), art. 3, [Public Records \(Scotland\) Act 1937 \(c. 43\)](#), [s. 13\(1\)](#) and [Public Registers and Records \(Scotland\) Act 1948 \(c. 57\)](#), [s. 1\(2\)](#)

Changes to legislation:

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