



Court of Session Act 1868

1868 CHAPTER 100

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 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 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.