



Exchequer Court (Scotland) Act 1856

1856 CHAPTER 56 19 and 20 Vict

17 Procedure in lieu of writs of habeas and certiorari.

In all cases where at the date of the passing of this Act a writ of habeas or a writ of certiorari might have competently issued from the Court of Exchequer, to the effect of removing any proceedings before or warrant granted or issued by any inferior court or magistrate or public officer to the said Court of Exchequer, in order to examination, it shall be competent to the party against whom such warrant is directed, or to either of the parties to such proceedings, to bring up such warrant or proceedings to the Court of Session sitting as the Court of Exchequer, to the like effect as by such writ of habeas or writ of certiorari before the passing of this Act, and that by lodging in the office of the clerk of court attached to the Lord Ordinary in Exchequer causes a note of appeal, in the form, or as nearly as may be in the form, of the schedule F hereunto annexed; and such note of appeal shall be forthwith submitted by such clerk of court in a summary way to the Lord Ordinary, who may thereupon at once direct such warrant or proceedings to be transmitted to the Court of Session, or may at once refuse to give such direction or to entertain such appeal; or, if he sees fit, may order such note of appeal to be served upon the inferior magistrate or magistrates, or public officer or officers, or upon the opposite party, or both, and them or either of them to lodge answers to such appeal; and may also, if he sees fit, order parties to be heard upon such note of appeal, with or without answers; and may thereupon pronounce such orders or decrees as he may deem proper upon the matters raised by such appeal; and in particular may either dismiss such appeal, and remit back simpliciter the warrant or proceedings, or may give decree quashing or setting aside the warrant, or quashing or setting aside the proceedings, in whole or in part, and may give such directions to such inferior court, or magistrate or public officer, with regard to his or their proceedings, as may be just: Provided, that every clerk of an inferior court or other public officer having in his hands or under his control any such warrant or proceedings shall, on receipt of a copy certified by any depute or assistant clerk of session or any interlocutor of the Court of Session or of the Lord Ordinary in Exchequer causes, directing such warrant or proceedings to be transmitted to the Court of Session or to the Lord Ordinary, be bound forthwith to transmit such warrant or proceedings, with a proper inventory thereof, certified by him to be correct, to the office of the clerk of the Court of Session attached to the Lord Ordinary; and where any such warrant or proceedings so transmitted to the Court of Session or to the Lord Ordinary shall be remitted back, it shall be the duty of the clerk

Changes to legislation: There are currently no known outstanding effects for the Exchequer Court (Scotland) Act 1856, Section 17. (See end of Document for details)

of the Court of Session to re-transmit the same to the clerk of such inferior court or other public officer from whom they were received.

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