



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

V.—JURY TRIAL

34 Exceptions taken at a jury trial may be insisted in, either by motion for new trial, or by bill of exceptions.

When an exception is taken in the course of a jury trial a note thereof shall be taken by the judge, or, if he shall so direct, or the party excepting shall think proper, a note thereof shall be written out, and signed by such party or his counsel, and also by the judge at the time; and such exception may be made the ground of an application to set aside the verdict, either by motion for a new trial, or by bill of exceptions.

Modifications etc. (not altering text)

C1 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt.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)

35 Form of bill of exceptions; evidence need not be set forth at length in the bill.

The bill of exceptions (which may be subsequently prepared, and of which notice shall be given as in the case of a motion for a new trial,) shall consist of a distinct statement of the exception or exceptions so noted, with such a statement of the circumstances in which the exception or exceptions were taken (including, if necessary, a statement of the purport of the evidence, or extracts therefrom, so far as bearing upon such exception or exceptions, but without any argument,) as, along with the record in the cause, may enable the Court to judge of such exception or exceptions; and, unless the party excepting shall choose, or the judge at the trial, or the Court at the discussion of the bill, shall so direct, it shall be unnecessary to print or submit to the Court the notes of evidence or the documentary evidence adduced at the trial; and when such notes and documents are submitted to the Court, they shall form no part of the bill of exceptions; and in discussing a bill of exceptions it shall be competent for either party to refer to the record, and to every document produced and put in evidence at the trial, and the notes of evidence at the trial may be produced and founded on at any time.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, V.—Jury Trial. (See end of Document for details)

Modifications etc. (not altering text)

- C2 Ss. 15–44 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), **Sch. 2 Pt.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)

36 Verdict may be taken subject to the opinion of the Court on a point reserved.

The judge at the trial may direct the jury upon any matter of law (subject to the opinion of the Court upon such direction), and with liberty to either party to move the Court to enter the verdict for such party, although returned against him, if the Court should be of opinion that such direction was erroneous, and that such party was truly entitled to a verdict. The opinion of the Court upon any direction so given may be obtained upon motion to enter the verdict for the party moving; and if the Court shall be of opinion that the direction was erroneous, and that the party moving is truly entitled to the verdict in whole or in part, they shall direct the verdict to be entered for him in whole or in part, either absolutely, or on such terms as they may think fit; otherwise they shall refuse the motion, or they may, if necessary, set aside the verdict and order a new trial: Provided also, that in such applications, as well as in motions for a new trial, it shall not be necessary to print the notes of the evidence for the use of the Court, but the judges's notes may be produced at any time, if required.

Modifications etc. (not altering text)

- C3 Ss. 15–44 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)

37 Evidence may of consent be taken in shorthand.

Where the parties agree, the evidence at a jury trial taken in shorthand, and extended by the shorthand writer, may, with the consent of the judge, be substituted for the judge's notes of the evidence for all purposes; and in such cases it shall not be competent to ask for the judge's notes of evidence.

Modifications etc. (not altering text)

- C4 Ss. 15–44 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)

38 Special case may be substituted for special verdict.

It shall be lawful to substitute a special case signed by counsel for a special verdict, and thereupon to discharge the order for trial, or the jury, if one has been empannelled, without returning a verdict; and such special case shall have the like force and effect as a special verdict.

Modifications etc. (not altering text)

- C5 Ss. 15–44 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)

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, V.—Jury Trial. (See end of Document for details)

39 Abandonment of action in the course of a trial.

Any action may, with leave of the judge, be abandoned on the condition contained in the tenth section of the ^{M1}Court of Session Act 1825 and relative act of sederunt, section one hundred and fifteen, in the course of a trial, at any time before the judge has commenced to charge the jury, or, where there is no jury, at any time before the judge has made avizandum with the evidence: Provided, that such abandonment shall not be competent without the leave of the judge, who shall be of opinion that it is just and proper in the circumstances: Provided further, that in granting such leave the judge shall specify the time within which the expenses shall be paid to the defender; and if the expenses shall not be paid within such time, the defender shall be entitled to be assoilzied from the conclusions of the action, with expenses.

Modifications etc. (not altering text)

C6 Ss. 15–44 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)

Marginal Citations

M1 1825 c. 120.

40 Pursuer recovering less than 5*l.* of damages not to recover expenses if the judge shall certify.

Where the pursuer in any action of damages in the Court of Session recovers by the verdict of a jury less than five pounds, he shall not be entitled to recover or obtain from the defender any expenses in respect of such verdict, unless the judge before whom such verdict is obtained shall certify on the interlocutor sheet that the action was brought to try a right besides the mere right to recover damages; or that the injury in respect of which the action was brought was malicious; or, in the case of actions for defamation or for libel, that the action was brought for the vindication of character, and was in his opinion fit to be tried in the Court of Session.

Modifications etc. (not altering text)

C7 Ss. 15–44 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)

41 Provision for payment of deficient stamp duty pursuant to judge's certificate to be final.

.....^{F1} the deliverance of the judge that the stamp upon any document is sufficient, or that such document does not require a stamp, shall not be subject to review.

Textual Amendments

F1 Words repealed by Inland Revenue Repeal Act 1870 (c. 99), Sch.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, V.—Jury Trial. (See end of Document for details)

Modifications etc. (not altering text)

C8 Ss. 15–44 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)

42 **F2**

Textual Amendments

F2 S. 42 repealed by [Inland Revenue Repeal Act 1870 \(c. 99\)](#), **Sch.**

Modifications etc. (not altering text)

C9 Ss. 15–44 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)

43 **Certain exemptions from serving as jurors abolished.**

All exemptions from liability to serve as jurors in Scotland depending on any Act passed subsequently to the ^{M2}Jurors (Scotland) Act 1825 are hereby abolished.

Modifications etc. (not altering text)

C10 Ss. 15–44 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)

Marginal Citations

M2 1825 c. 22.

44 **In civil causes juries to consist of eight common and four special jurors.**

In all civil causes appointed to be tried by jury the jurors for the trial of any cause shall be chosen in open court by ballot from the list of persons summoned; and for that purpose the clerk of court shall cause the name and designation of each juror to be written on a separate piece of paper or parchment, all the pieces being of the same size, and shall cause the pieces to be rolled up as nearly as may be in the same shape, [^{F3}and to be put into a box or glass and mixed and the clerk shall draw out the said pieces of paper or parchment one by one from the box or glass]; and if any of the persons whose names shall be so drawn shall not appear, or shall be challenged with or without cause assigned, and be set aside, then such further number shall be drawn until the number required for the trial shall be made out; and the persons so drawn and appearing, and being sworn, shall be the jury to try the cause, and their names shall be taken down and recorded, according to the present law and practice, but providing that when challenges are made, and jurors set aside, their places shall be filled up with other names, by drawing by ballot as aforesaid from the box or glass . . . ^{F4}

Textual Amendments

F3 Words substituted by [Juries Act 1949 \(c. 27\)](#), **Sch. 1**

F4 Words repealed by [Juries Act 1949 \(c. 27\)](#), **Sch. 3**

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, V.—Jury Trial. (See end of Document for details)

Modifications etc. (not altering text)

C11 Ss. 15–44 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)

45 Mode of returning jurors.

The number of jurors to be cited for the trial of any cause or causes appointed to be tried at Edinburgh, . . . ^{F5}, shall be such as is specified in the ^{M3}Jury Trials (Scotland) Act 1815; and a list of such jurors shall be returned by the sheriff [^{F6}principal], as provided by the ^{M4}Jurors (Scotland) Act 1825 . . . ^{F7}

Textual Amendments

- F5** Words repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 2 Pt. I**
- F6** Word substituted by Local Government (Scotland) Act 1973 (c. 65), **Sch. 27 Pt. II para. 9**
- F7** Words repealed by Juries Act 1949 (c. 27), **Sch. 3**

Marginal Citations

- M3** 1815 c. 42.
- M4** 1825 c. 22.

46 ^{F8}

Textual Amendments

F8 S. 46 repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 1 Pt. I**

47 Jurors to be cited by registered post letter.

The present mode of citing jurors for the trial of civil causes shall be discontinued, and in place thereof the sheriff clerk of the [^{F9}sheriffdom of Lothian and Borders], . . . ^{F10}, or his depute, shall fill up and sign a proper citation addressed to each such juror, and shall cause the same to be transmitted to him in a registered post letter, directed to him at his place of residence, as stated in the roll of jurors; and a certificate under the hand of such sheriff clerk or his depute of the citation of any jurors or juror in manner herein provided shall have the like force and effect as an execution of citation according to the present law and practice.

Textual Amendments

- F9** Words substituted by virtue of Sheriff Courts (Scotland) Act 1971 (c. 58), **Sch. 1 para. 1** and S.I. 1974/2087
- F10** Words repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), **Sch. 2 Pt. I**

48 ^{F11}

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, V.—Jury Trial. (See end of Document for details)

Textual Amendments

F11 S. 48 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), **Sch.**

49

.....^{F12}

Textual Amendments

F12 S. 49 repealed by [Juries Act 1949 \(c. 27\)](#), **Sch. 3**

50 Inferior court agents to act at jury trials on circuit.

At the trial of any civil cause at a circuit town any agent qualified to practise in the sheriff court of any [^{F13}Sheriffdom] comprised within such circuit may attend such trial as sole agent in the cause, and shall be allowed for his attendance, and for all necessary business performed by him in connexion with such trial, the same fees as are allowed to agents in the Court of Session.

Textual Amendments

F13 Word substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\)](#), **Sch. 1 para. 1**

Modifications etc. (not altering text)

C12 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)

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

There are currently no known outstanding effects for the Court of Session Act 1868, V.—Jury Trial.