ANNO QUADRAGESIMO OCTAVO

GEORGII III. REGIS.

CAP. CLI.

An Act concerning the Administration of Justice in Scotland, and concerning Appeals to the House of Lords. [4th *July* 1808.]

WHEREAS the great Extension of Agriculture, Commerce, Manufactures and Population, and the consequent Multiplication of Transactions in *Scotland*, have greatly increased the Number of Law Suits brought into the Court of Session, whereby it has become expedient to make some new Arrangements in that Court, to facilitate the Dispatch of Business: And whereas it is also expedient to make such Regulations as are herein-after provided touching Appeals; may it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That on and after the Twelfth Day of *November* One thousand eight hundred and eight, the Judges or Lords of Session shall usually sit in Two Divisions, and the Lord President of the whole Court and Seven of the Ordinary Lords of Session shall form one and the First of the said Divisions; and the Lord Justice Clerk for the Time being and Six of the Ordinary Lords of Session shall form the other and the Second of the said Divisions. Lords of Session to sit in Two Divisions.

II. And be it enacted, That such Seven of the Ordinary Lords of Session shall be the Judges who shall usually sit in one of the said Divisions, and Of whom such Divisions shall be composed.

and such Six shall be the Judges who shall usually sit in the other of the said Divisions, as His Majesty shall appoint; and the Lord President of the whole Court shall preside in the First of the said Divisions, and the said Lord Justice Clerk shall preside in the Second of the said Divisions; and in the Absence of the Lord President and Justice Clerk respectively, one of the Ordinary Lords of the said respective Divisions, that is to say, such Ordinary Lord as the Judges then present shall appoint shall preside in such Divisions respectively.

An equal Number of Judges of Justiciary to be in each Division.

III. And be it enacted, That in each of the said Divisions there shall be an equal Number of the Judges of the Court of Justiciary, including the Lord Justice Clerk.

Place of Meeting of each Division to be in the Appointment of His Majesty; and the Judges to make Regulations for their Sitting.

IV. And be it enacted, That from and after the said Twelfth Day of *November* One thousand eight hundred and eight, the said Judges in each Division respectively shall sit in such Rooms or Places as His Majesty, His Heirs and Successors, shall appoint, and each of the same shall sit on the same Days as have hitherto been the Days of sitting of the whole Court for the Dispatch of Business during the Time of Session at such Hours as the Court of Session by any Regulations to be made by the whole Court, or a Quorum thereof consisting of Nine of the Judges thereof, shall appoint; and the said Court is hereby authorized and required, by Act of the whole Court or of such Quorum, to make or establish such Regulations before the Twelfth Day of November One thousand eight hundred and eight; provided, that the Judges in each Division shall have the same Powers with respect to Adjournment, which the Judges of the whole Court now possess.

The Ordinary Judges to officiate in the Outer House and Bill Chamber, &c.

V. And be it enacted, That the Ordinary Judges of each Division, exclusive of the Lord President and Lord Justice Clerk, shall officiate in the Outer House and Bill Chamber, and in performing therein the Duties of Ordinaries of each Division in the Manner which has hitherto been practised by the Ordinary Judges of the whole Court, until it shall be otherwise provided by Parliament: Provided always, that Two of the said Judges, One for each Division, shall officiate each Week in the Outer House, for hearing Causes in the Rolls of Suspensions, Advocations, Regulations, and Ordinary Actions, and that Two Judges, one for each Division, shall each Week officiate in the Bill Chamber in the Time of Session, but that it shall be competent to the whole Court, or a Quorum thereof as aforesaid, to establish such Regulations with regard to Lords Ordinary officiating in the Bill Chamber during the Vacation as shall be deemed expedient.

Judges in each Division to exercise the same Powers as heretofore.

VI. And be it enacted, That the Judges sitting in the said respective Divisions, or so many of them as shall form Quorums thereof respectively as herein-after mentioned, shall be competent to exercise, and shall and may exercise, except in Cases herein excepted, the like Duties, Powers, and Functions in all respects, and with the same and the like Authority and Effect, in all Cases and Matters that shall come before them, as are now exercised by the Lords of Session sitting together in Court, or a Quorum of them, and shall also enjoy the like Authorities and Privileges as are now enjoyed by the said Lords so sitting, or such Quorum.

VII. And

VII. And be it enacted, That Four Judges in each Diviſion ſhall be deemed to be a Quorum thereof. Quorum.

VIII. And be it enacted, That the Judges preſiding in each Diviſion ſhall, in caſe of Difference of Opinion, have One Voice, but not a Caſting Voice; and in caſe there ſhall be an Equality of Voices, the Cauſe or Matter ſhall remain for ſubſequent Diſcuſſion and Deciſion; and in caſe upon ſuch ſubſequent Diſcuſſion and Deciſion, there ſhall be again an Equality of Voices, the Judges of the ſaid Diviſion ſhall call in one of the Lords Ordinary of the ſame Diviſion from the Outer Houſe, in the Order of their Seniority as Judges, to be preſent at the Diſcuſſion, and to vote in ſuch Caſe. In Caſes of Equality of Voices, how Deciſions ſhall be made.

IX. And be it further enacted, That all Cauſes, Actions, Proceſſes, or Matters, which according to the preſent Law and Practice come in the firſt Inſtance into the ſaid Court as Inner Houſe Cauſes, ſhall at the Choice of the Party inſtituting the ſame be brought before either of the ſaid Diviſions; and that Cauſes, Actions, Proceſſes, or Matters, which according to ſuch Practice are brought into the Outer Houſe or Bill Chamber before any of the Ordinary Lords, ſhall, at the Choice of the Party inſtituting the ſame, be brought before the Ordinary Lords of ſuch Diviſion, as the Party inſtituting the ſame ſhall think proper to reſort to, and ſhall not be removeable except into that Diviſion to which the Lords Ordinary belong under the Proviſions of this Act; and all Cauſes, Actions, Proceſſes, and Matters ſhall be conſidered as being under the Juriſdiction of the reſpective Diviſions of the Judges before which they are brought, or to which the Lords Ordinary before whom they are brought belong; and the Decrees or Deciſions of ſuch Diviſion of Judges or Lords Ordinary ſhall not be ſubject to review in the Court of Seſſion by the other Judges, ſave that thoſe of ſuch Lords Ordinary ſhall be ſubject to be reviewed by that Diviſion of Judges to which ſuch Lords Ordinary belong; provided, that where any Action, Matter, Proceſs, Complaint, or Cauſe has been brought before One of the ſaid Diviſions or the Lords Ordinary thereof, the other Diviſion or the Lords Ordinary thereof ſhall remit any Action, Proceſs, Matter, Complaint, or Cauſe ſubſequently brought before them, relating to the ſame Subject, Matter, or Thing, or having a Connection or Contingency therewith, to the Conſideration of the Diviſion or Lords Ordinary before whom the Firſt Cauſe, Action, Proceſs, Complaint, or Matter had been previouſly brought; which Remits ſhall be made in ſuch Form and Manner as is now uſed, or as ſhall be eſtabliſhed by future Regulations of the whole Court or a Quorum of Nine Judges thereof, and which ſuch Court or Quorum is hereby authorized, and, if the ſame ſhall be neceſſary, required to make. Inner Houſe Cauſes may be brought before either Diviſion, and Outer Houſe Cauſes before the Lords Ordinary, &c.

X. And be it enacted, That it ſhall be competent to the Judges of either Diviſion, or the Quorum thereof, in any Caſes which ſhall appear to them to be Caſes of Importance and Difficulty, to ſtate Queſtions of Law, in Writing ariſing on ſuch Caſes, and to require the Opinions of the Judges of the other Diviſion to be given thereupon, and ſuch Judges ſhall be bound to communicate their Opinion thereupon, either as a collective Body or as individual Judges. Judges of One Diviſion may ſtate Queſtions of Law requiring the Opinion of the Judges of the other Diviſion.

XI. And

Forms of Proceedings of both Diviſions to be the ſame, and no Alteration to take place but by Acts of Sederunt.

XI. And be it enacted, That the Forms of Proceeding and Proceſs before each of the ſaid Diviſions of the Judges reſpectively, and before the Lords Ordinary of each reſpectively, ſhall be the ſame, and no Alteration thereof ſhall take place but by Acts of Sederunt of the whole Court, or a Quorum of Nine Judges thereof, aſſembled by the Lord Preſident, to which Court or Quorum it ſhall be competent to make ſuch Alterations and Regulations concerning ſuch Forms of Proceeding and Proceſs, as ſhall appear to be neceſſary or expedient; and all the lawful Powers of the Court of Seſſion, or any Quorum thereof, to make Acts of Sederunt, and all other lawful Powers, Duties, or Functions of the ſaid Court, or any Quorum thereof, ſave as the Exerciſe of their Powers, Functions, or Duties is regulated by this Act, ſhall remain and be in full Force.

Regulations to be made reſpecting the Six principal Clerks of Seſſion.

XII. And be it enacted, That it ſhall be competent to the ſaid Court or a Quorum of Nine Judges thereof, aſſembled by the Lord Preſident, to make interim Regulations, until Proviſions ſhall be made for that Purpoſe by Parliament, with regard to the Duties to be performed by the Six principal Clerks of Seſſion in the ſaid Diviſions: Provided always, that each of the ſaid principal Clerks ſhall be entitled to act in either Diviſion, and that the ſaid principal Clerks ſhall be entitled to carry on their official Buſineſs in their Offices and in Court, in conformity to the preſent Practice, and that it ſhall be competent to the ſaid Court to make interim Regulations with regard to the Duties to be performed by the Depute Clerks in the Outer Houſe, and by the Clerk or Clerks in the Bill Chamber, and other Officers of Court, as ſhall appear expedient for carrying on the Buſineſs of each of the ſaid Diviſions in a proper Manner.

Cauſes depending how to be diſpoſed of.

XIII. And be it enacted, That the different Cauſes which ſhall be depending before any Lords Ordinary on the ſaid Twelfth Day of *November* One thouſand eight hundred and eight, ſhall, from and after that Day, belong to the Diviſion of which the Lord Ordinary before whom they are depending ſhall, under the Proviſions of this Act, be a Part or Member; and that ſuch Cauſes as ſhall be depending in the Inner Houſe on and prior to the Twelfth Day of *November* One thouſand eight hundred and eight, ſhall from and after that Day belong to the Diviſion of which the Lord Ordinary before whom they depended at the Time they were laſt brought from a Lord Ordinary into the Inner Houſe, ſhall, under the Proviſions of this Act, be a Part or Member, and that all other Cauſes which ſhall be depending in the Inner Houſe on and previous to the ſaid Twelfth Day of *November* One thouſand eight hundred and eight, whether they were brought into the Inner Houſe originally in the firſt Inſtance, or depended when laſt brought into the Inner Houſe before a Lord Ordinary, ſince deceaſed, ſhall be diſtributed between the ſaid Diviſions of the Judges as they ſtand upon the Roll upon ſuch Day; that is to ſay, the Firſt Cauſe upon the Roll ſhall belong to the Firſt of the ſaid Diviſions, and the Second Cauſe then upon the Roll ſhall belong to the Second of the ſaid Diviſions, and ſo on ſucceſſively and alternately; and in Caſes in which, after ſuch Diviſions of the Judges ſhall have taken place as aforeſaid, Cauſes ſhall be remitted by the Houſe of Lords to the Court of Seſſion, and when there ſhall be at the Date of ſuch Remits no Lords Ordinary to ſuch Cauſes, the Firſt of ſuch Cauſes ſo remitted ſhall belong to the Diviſion

viſion in which the Lord Preſident of the whole Court preſides, and the Second to the other Diviſion, and ſo on ſucceſſively; and where there are Lords Ordinary to ſuch Cauſes, the reſpective Cauſes ſhall be remitted to the Diviſion in which the Lords Ordinary to ſuch Cauſes reſpectively belong: Provided nevertheleſs, that in all Cauſes in which the Houſe of Lords ſhall think proper expreſsly in any Remit to the Court ſo to require the Judges of the Diviſion of the Court of Seſſion to which the Cauſe or Matter ſhall after ſuch Remit belong, ſhall be bound to require the Opinion of the Judges of the other Diviſion in Matters or Queſtions of Law in Writing, and ſuch Judges of the other Diviſion ſhall be bound to give and communicate the ſame in Manner hereinbefore provided.

Court of Seſſion to meet to form Regulations.

XIV. And be it enacted, That for the Purpoſes aforeſaid, the Court of Seſſion is hereby authorized to meet after the paſſing of this Act on any Days, either in Time of Seſſion or during Vacation, Nine of the ſaid Judges being a Quorum, and the ſaid Court being aſſembled by the Lord Preſident, in order that ſuch Regulations may be made, and ſuch Diſtribution of Cauſes may take place as ſhall be neceſſary or proper for carrying this Act into Execution.

Appeals to the Houſe of Lords.

XV. And be it enacted, That hereafter no Appeal to the Houſe of Lords ſhall be allowed from Interlocutory Judgements, but ſuch Appeals ſhall be allowed only from Judgements or Decrees on the whole Merits of the Cauſe, except with the Leave of the Diviſion of the Judges pronouncing ſuch Interlocutory Judgements; or except in Caſes where there is a Difference of Opinion among the Judges of the ſaid Diviſion; nor ſhall any Appeal to the Houſe of Lords be allowed from Interlocutors or Decrees of Lords Ordinary which have not been reviewed by the Judges ſitting in the Diviſion to which ſuch Lords Ordinary belong: Provided, that when a Judgement or Decree is appealed from, it ſhall be competent to either Party to appeal to the Houſe of Lords from all or any of the Interlocutors that may have been pronounced in the Cauſe, ſo that the Whole, as far as it is neceſſary, may be brought under the Review of the Houſe of Lords.

Reſpecting Interlocutors.

XVI. Provided always, and be it enacted, That if the reclaiming or repreſenting Days againſt an Interlocutor of a Lord Ordinary ſhall, from Miſtake or Inadvertency, have expired, it ſhall be competent, with the Leave of the Lord Ordinary, to ſubmit the ſaid Interlocutor by Petition, to the Review of the Diviſion to which the ſaid Lord Ordinary belongs; but declaring always, that in the Event of ſuch Petition being preſented, the Petitioners ſhall be ſubjected in the Payment of the Expences previouſly incurred in the Proceſs by the other Party.

Copy of the Petition of Appeal to be laid before the Judges of the Diviſion to which the Cauſe belongs.

XVII. And be it enacted, That when any Appeal is lodged in the Houſe of Lords, a Copy of the Petition of Appeal ſhall be laid by the Reſpondent or Reſpondents, before the Judges of the Diviſion to which the Cauſe belongs; and the ſaid Diviſion, or any Four of the Judges thereof, ſhall have Power to regulate all Matters relative to Interim Poſſeſſion, or Execution, and Payment of Coſts and Expences already incurred, according to their ſound Diſcretion, having a juſt Regard to the Intereſts of the

Parties, as they may be affected by the Affirmance or Reverſal of the Judgement or Decree appealed from.

Regulations as to Interim Poſſeſſion, &c. not to be ſtopped on Account of Appeal to the Houſe of Lords.

XVIII. And be it enacted, That it ſhall not be competent by Appeal to the Houſe of Lords touching the Regulations ſo made as to ſuch Interim Poſſeſſion, Execution, and Payment of Expences or Coſts, to ſtop the Execution of ſuch Regulations as ſhall have been ſo made as aforeſaid reſpecting the ſame; provided that when the Appeal touching the Judgement or Decree appealed from ſhall be heard, it ſhall be competent for the Houſe of Lords to make ſuch Order and give ſuch Judgement reſpecting all Matters whatſoever which ſhall have been done or have taken place in purſuance of or in conſequence of ſuch Regulations ſo made as to Interim Poſſeſſion, Execution, and Payment of Expences or Coſts, as the Juſtice of the Caſe ſhall appear to the ſaid Houſe of Lords to require.

Houſe of Lords may adjudge Payment of Intereſt.

XIX. And be it enacted, That if upon hearing the Appeal it ſhall appear to the Houſe of Lords to be juſt to decree or adjudge the Payment of Intereſt, ſimple or compound, by any of the Parties in the Cauſe to which ſuch Appeal relates, it ſhall be competent to the ſaid Houſe to decree or adjudge the Payment thereof, as the ſaid Houſe in its ſound Diſcretion ſhall think meet.

Reſpondents in Appeals diſmiſſed may apply for Intereſt to the Diviſion to which the Cauſe belongs.

XX. And be it enacted, That if any Appeal preſented after the paſſing of this Act to the Houſe of Lords againſt an Interlocutor or Decree of the ſaid Court, or either of the Diviſions thereof ſhall be diſmiſſed for want of Proſecution, it ſhall be lawful for any Reſpondent in ſuch Appeal to apply by Petition to that Diviſion of the Court of Seſſion to which ſuch Cauſe ſhall belong, and it ſhall be competent to the Judges of the ſaid Diviſion, upon ſuch Petition, to decree Payment of Intereſt, ſimple or compound, by the Appellant to ſuch Reſpondent, in ſuch Manner as the ſaid Diviſion in its ſound Diſcretion ſhall think meet, together with the Coſts or Expences which have been incurred in conſequence of ſuch Appeal.

Vacancies of Judges to be filled up as heretofore.

XXI. And be it further enacted, That as often as a Vacancy of the Office of a Judge ſhall happen among the Judges of either Diviſion, the ſame ſhall be filled up according to the preſent Law and Practice of Scotland; provided that ſuch new appointed Judge ſhall go through the Forms of Admiſſion in that Diviſion of Judges only to which he is appointed, unleſs an Objection is made to his Admiſſion, in which Caſe the Objection ſhall be decided by the whole Court.

Commiſſioners to be appointed to enquire into the Forms of Proceſs in the Court of Seſſion, and to report in what Caſes Trial by Jury could be uſefully eſtabliſhed, &c.

XXII. And whereas the Appointment of Commiſſioners with Powers to enquire into the Adminiſtration of Juſtice in *Scotland* relating to Matters of a Civil Nature, and particularly into the Forms of Proceſs in the Court of Seſſion whoſe Proceedings ſhall be reported to His Majeſty, and laid before both Houſes of Parliament, would be expedient: And whereas it would be expedient that Regulations ſhould be eſtabliſhed relative to the Cauſes or Proceſſes, which may at preſent be brought into the Court of Seſſion by Advocation Suſpenſion, or Reduction, or in the Firſt Inſtance, and relative to thoſe of a Civil Nature which may be brought before the Circuit Court of Juſticiary by Appeal: And whereas it has been conceived that it might be for the Utility of the Subjects within *Scotland*, that Jury Trial ſhould be introduced into the Proceedings in certain Cauſes before the

Court of Seſſion: And whereas the Fees or Dues exigible by the Clerks and other Officers of the Court of Seſſion, and Members of the College of Juſtice or other Perſons connected with the ſaid Court in their official Capacity, and the Fees exigible by the Clerks and other Officers in the Sheriff, Admiralty, Commiſſary, and other Courts in *Scotland*, require to be reviſed, and in many Particulars regulated: And whereas it would be expedient, that proper Regulations ſhould be eſtabliſhed, relative to the Extracts of Decrees, or of the Proceedings now in uſe in *Scotland* in the ſuperior and inferior Courts, and relative to the ſaid Fees: And whereas it is expedient that due and proper Information ſhould be obtained touching ſuch Matters as aforeſaid, and as are herein-after mentioned, to the Intent that ſalutary Regulations ſhould be made and eſtabliſhed by due Authority; Be it therefore enacted, That it ſhall be lawful, and full Power is hereby given to ſuch Perſons as ſhall be for that Purpoſe named and appointed by His Majeſty, by Letters Patent or any Inſtrument in Writing under His Royal Sign Manual, or any Three of them, to meet at and upon ſuch Place and Day as in ſuch Letters Patent or Inſtrument ſhall be for that Purpoſe named, or at and upon ſuch Place and Day as they, or any Three of them, giving Notice to the others of them, ſhall appoint, and ſo thereafter at ſuch Times and Places as they or thoſe preſent from Time to Time at Meetings ſhall appoint; and after chuſing a Præſes and Clerk to make full Enquiries into the Forms of Proceſs in the Court of Seſſion, and to report in what Caſes, and in what Manner and Form it appears to them that Jury Trial could be moſt uſefully eſtabliſhed in that Court, and further, to report in what Manner the preſent Form of Proceſs in that Court might be improved by conducting more of the Pleadings *viva voce*, by limiting the Power veſted in ſingle Judges of frequently reviewing their own Interlocutory Judgements by obviating Inconveniences ariſing from the Mode now practiſed, in taking Proofs by Commiſſion, and by Regulations relative to the Proceedings in the Bill Chamber, and particularly to enquire and report whether it would be expedient that the ordinary Judges of the ſaid Diviſions ſhould officiate in the Outer Houſe and Bill Chamber, and in performing therein the Duties of Ordinaries, in the Manner which has been hitherto practiſed by the ordinary Judges of the whole Court, or in what other Manner, and eſpecially whether it would be expedient that ſome of ſuch Judges ſhould conſtantly or uſually perform the Duties of Ordinaries in the Outer Houſe and Bill Chamber, and that others of the ſaid Judges ſhould conſtantly or uſually officiate in the Inner Houſe, and alſo to make Inquiry into the Proceedings in the Admiralty and Commiſſary Courts, and in the inferior Courts in *Scotland*, relative to Matters of a Civil Nature, and to report in what Manner theſe may be improved, and alſo to ſtate what Regulations appear to them proper to be adopted relative to Proceſſes or Cauſes brought into the Court of Seſſion by Advocation, Suſpenſion, or Reduction, or in the Firſt Inſtance, or before the Circuit Court of Juſticiary by Appeal, and alſo to make Inquiry into the preſent Forms of the Court of Seſſion in extracting Decrees, Regiſtration of the ſame, and Execution thereon, or upon Letters of Diligence paſſing the Signet, or any other Matters touching the Proceſs or Proceedings of the ſaid Court, and to ſet down in Writing ſuch Alterations or Amendments as ſhall appear to them to be moſt reaſonable and beſt calculated for the due Adminiſtration of Juſtice in the ſaid Courts; and alſo to enquire into the Fees, Perquiſites,

and

and Emoluments claimed by or belonging to the Clerks and Officers of the ſaid Court, and other Members of the College of Juſtice, or Perſons connected with the ſaid Court, the Faculty of Advocates excepted, and how far the ſame are now reaſonable, or ought to be allowed, or increaſed, and particularly what Satisfaction it may be juſt and reaſonable to make to any ſuch Perſons, in conſequence of their being deprived of their Fees, Dues, or Emoluments, or any of them, by reaſon of the Alterations and Regulations introduced by this Act, or in caſe they ſhould be deprived thereof by the Adoption of any Alterations or Amendments to be propoſed by ſuch Perſons as aforeſaid, if the ſame ſhould be adopted; and alſo to enquire into the Fees, Perquiſites, or Emoluments claimed by the Clerks and other Officers in the Sheriff, Admiralty, Commiſſary, and other Courts in *Scotland*; and generally to ſet down in Writing, and report what ſhall appear to them material to be reported touching all and every the Matters aforeſaid; and the ſaid Perſons ſhall and are hereby required to report the Whole of their Proceedings to His Majeſty on or before the Twelfth Day of *November* One thouſand eight hundred and nine, and which Report, when made, it is hereby provided ſhall be laid before both Houſes of Parliament by One of His Majeſty's Principal Secretaries of State: Provided, that it ſhall be competent to the ſaid Perſons to report, from Time to Time, on or before the ſaid Twelfth Day of *November* One thouſand eight hundred and nine, ſuch Part or Parts of their Proceedings as they ſhall have it in their Power to report, relating to any of the Objects of their Enquiry, and particularly they are hereby required to report, as ſoon as conveniently may be, with reſpect to Trial by Jury, the Proceedings in the Outer Houſe and Bill Chamber, the Regulations proper to be adopted relative to Proceſſes in Cauſes brought into the Court of Seſſion by Advocation, Suſpenſion, or Reduction, or in the Firſt Inſtance; and relative to thoſe of a Civil Nature which may be brought before the Circuit Court of Juſticiary by Appeal; and with regard to the preſent Forms of the Court of Seſſion in extracting Decreets; and with reſpect to the other Matters appointed to be the Subjects of their Enquiry, to report thereupon in ſuch Order as to them ſhall ſeem moſt expedient; yet ſo nevertheleſs as that their Report upon the Whole of the Matters ſubmitted to their Conſideration ſhall be made on or before the ſaid Twelfth Day of *November* One thouſand eight hundred and nine.

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