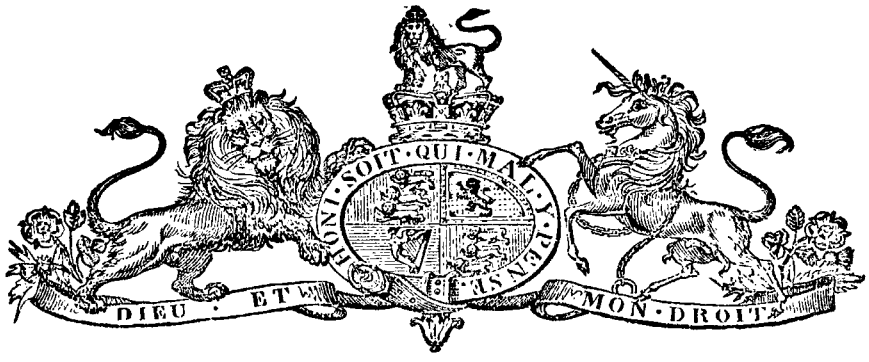


ANNO TRICESIMO PRIMO & TRICESIMO SECUNDO

VICTORIÆ REGINÆ.

****

CAP. C.

An Act to amend the Procedure in the Court of Session and the Judicial Arrangements in the Superior Courts of *Scotland*, and to make certain Changes in the other Courts thereof.

[31st *July* 1868.]

WHEREAS it is expedient to amend the Laws relating to the Procedure of the Court of Session in *Scotland*, and the Judicial Arrangements of the said Court, and Court of Commissioners for Teinds:

Be it enacted by the Queen'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, as follows:

1. This Act may be cited for all Purposes as the "Court of Session Act, 1868." Short Title.

2. The following Words and Expressions in this Act shall have the Meanings hereby assigned to them, unless there be something in Interpretation of Terms.

in the Subject or Context repugnant to such Construction; that is to say,

The Expression "the Court" shall include the whole Court sitting together, also either Division of the Inner House, or any Lord Ordinary:

The Word "Pursuer" shall include Complainer, Suspender, Petitioner, or Appellant:

The Word "Defender" shall include Respondent.

Commencement of Act.

3. Excepting in so far as regards the Power herein-after given to the Court of Session to pass Acts of Sederunt, and also in so far as regards the Power given to the Commissioners of the Treasury by Section One hundred and five hereof (which Powers may be exercised from and after the passing hereof), this Act shall commence and take effect on and after the Fifteenth Day of *October* One thousand eight hundred and sixty-eight.

I.—Judicial Arrangements.

Sittings of Court of Session regulated.

4. The Ordinary Sittings of the Court shall be as follows, *viz.*: The Winter Session shall in each Year commence on the Fifteenth Day of *October*, or the first lawful Day, *Monday* excepted, which shall happen next thereafter, and shall end on the Twentieth Day of *March* following, or when that Day falls on a *Sunday* or *Monday*, then on the *Saturday* immediately preceding; and the Summer Session shall commence on the Twelfth Day of *May*, or the next lawful Day, *Monday* excepted, which shall happen next thereafter, and shall end on the Twentieth Day of *July*, or when that Day falls on a *Sunday* or *Monday*, then on the *Saturday* immediately preceding; but it shall be lawful for the Court at the Time of the *Christmas* Recess to adjourn for a Period not exceeding Fourteen Days, and to adjourn at such Time during the Month of *February* as shall be most convenient for a Period not exceeding Seven Days; and the Sittings of the Divisions of the Court for the Trial of Jury Causes shall be held at such Times in each Period of Vacation and Recess as the Lords President of the Divisions may respectively appoint. The Court, except the Lord Ordinary on the Bills, shall not sit on the Fifteenth Day of *May* or on the Eleventh Day of *November*, or when either of these Days happen to be a *Sunday*, on the following *Monday*.

5. Where

Court may extend Sittings of Inner House in certain Cases.

5. Where in any Year the whole of the Causes coming into the Inner House in the Winter Session shall not have been heard before the End of the Summer Session, the Court may, whenever it is expedient for the Despatch of Business, extend the Sittings of the Inner House at such Time and for such Period as may be necessary: Provided always, that nothing herein contained shall affect the Powers of the Court or of Her Majesty in Council to extend the Sittings of the Court under the Provisions of the Acts First *William* the Fourth, Chapter Sixty-nine, and Second and Third *Victoria*, Chapter Thirty-six.

Blank Days of Lords Ordinary abolished.

6. The Lords Ordinary shall sit in the Outer House upon *Tuesday*, *Wednesday*, *Thursday*, *Friday*, and *Saturday* of each Week during Session; but upon One of these Days in each Week they, in rotation, shall not call their Debate or Motion Rolls, but shall sit for the Purpose of taking Proofs or presiding at Trials by Jury in Causes depending before them respectively: Provided that nothing herein contained shall prevent the Lords Ordinary from taking Proofs or presiding at Trials by Jury on other Days when necessary.

Court to meet at 10 a.m.

7. The Hour of meeting of the Court, both Inner House and Outer House, on Sederunt Days shall be Ten of the Clock Forenoon; and it shall be competent for the Court to adjourn over any Day observed as a General Holiday or as a Sacramental Fast in the City of *Edinburgh*.

The Hours for the Attendance of the Clerks of Court at their Offices shall be as fixed from Time to Time by the Court.

Divisions may meet on Mondays during Session.

8. It shall be competent for either Division of the Inner House to sit on *Mondays* during Session at such Hours as shall be convenient for hearing and advising Causes standing on the Short and Summar Rolls of such Divisions respectively. Notwithstanding anything contained in this Act, *Monday* shall not be, and shall not be reckoned to be, a "Sederunt Day" in the Sense of this or any other Act, or of any Act of Sederunt. It shall further be competent for the Court from Time to Time by Act of Sederunt to appoint any Four Lords Ordinary to meet as a Court at such Times as shall be specified in the Act of Sederunt, for the Purpose of hearing and disposing of such Causes standing on the Rolls of the First and Second Divisions of the Inner House, not being Causes which have come into the Inner House by Reclaiming Note against the Judgment of a Lord Ordinary, and to appoint One or more of the Depute Clerks of Session to act as Clerk or Clerks of said Court; and further

further by Act of Sederunt to make all necessary Regulations as to the Causes which shall from Time to Time be so heard and disposed of; and the Senior Lord Ordinary present shall preside, and shall sign the Judgment of the said Court; and such Judgment shall have the same Effect in all respects as a Judgment of One of the Divisions of the Inner House of the Court.

Quorum of Teind Court which shall meet on alternate Mondays.

9. Any Five Judges, being Lords Commissioners for Teinds (of whom, except in case of Indisposition or Absence from other necessary Cause, the Lord Ordinary in Teind Causes shall be One), shall constitute a Quorum of the Court of Commissioners for Teinds; and the said Court, instead of meeting once a Fortnight on *Wednesday*, shall meet once a Fortnight on *Monday* during the Sitting of the Court of Session, at such Hours as shall be convenient.

Registration Appeals to be heard on Monday.

10. Appeals to Judges of the Court of Session under the Act or Acts in force for the Time in reference to the Registration of Persons entitled to vote at Elections for Members of Parliament shall be heard on *Mondays* during the Sitting of the Court of Session as often as shall be necessary, but with Power to the Court to continue the Hearing of any such Appeal on other Days.

Hearings before consulted Judges to be taken on Mondays.

11. Hearings under the Sixtieth Section of this Act, or under the Act Thirteenth and Fourteenth *Victoria*, Chapter Thirty-six, shall take place on *Mondays* during the Sittings of the Court as often as shall be necessary, but with Power to the Court to continue the Hearing of any such Case on other Days.

Case of Illness or Absence of Judges provided for.

12. In the event of the Indisposition or necessary Absence of any Judge, it shall be competent for the Lord President of the Court to nominate another Judge to officiate in his Room.

II.—Summons.

Summonses may be signed by any Agent practising before the Court of Session.

13. Summonses passing the Signet shall continue to be signeted as at present, but they may competently be signed by any Agent entitled to practise before the Court of Session; provided that in the event of such Agent not being a Writer to the Signet the Summons shall be signed on the last Page only by a Writer to the Signet in testimony of its being written to the Signet, and any Writer to the Signet shall, on a Fee of Two Shillings and Sixpence being tendered to him, be bound so to sign any Summons which may

may be presented to him for that Purpose, but he shall not by so signing incur any Responsibility.

Induciæ of Summonses and other Writs passing the Signet shortened.

14. All Summonses before the Court of Session may proceed on Seven Days Warning or Induciæ where the Defender is within *Scotland*, unless in *Orkney* and *Shetland* or in any other Island of *Scotland*, and Fourteen Days where he is in *Orkney* or *Shetland* or such other Island, or furth of *Scotland*, in place of the longer Induciæ required by the present Practice; and such shorter Induciæ shall also be competent and sufficient in respect to all other Letters passing Her Majesty's Signet bearing a Citation, Charge, Publication, or Service against Persons within or furth of *Scotland* respectively, and in respect to all Edictal Charges upon Decrees and registered Protests: Provided always, that in all Cases where any shorter Induciæ than the Induciæ above mentioned are at present sufficient, such shorter Induciæ shall continue to be sufficient after the passing of this Act.

As to proving lost Summonses or Pleading.

15. Where a Summons, Petition, or other original Writ or Pleading is lost or destroyed, a Copy thereof proved in the Cause to the Satisfaction of the Court before whom the Cause is depending at the Time, and authenticated in such Manner as he or they shall require, may be substituted, and shall be held equivalent to the Original for the Purposes of the Action.

Certified Copy may be used in place of Original in Service of Summonses and Writs.

16. It shall not be necessary that any Messenger or Sheriff Officer serving a Summons, Petition, Appeal, or Note of Suspension or Interdict shall have the original Document in his Hands at the Time of such Service, provided that a Copy certified as correct by the Agent in the Cause shall at the Time be in the Possession of such Messenger or Officer, and shall be exhibited to the Party on whom the Service is made, if required.

Lord Advocate's Concurrence not to be necessary in Actions of Reduction-Improbation and Ranking and Sale.

17. It shall not be necessary to obtain the Concurrence of Her Majesty's Advocate to any Summons of Reduction-Improbation, or Ranking and Sale, and such Summonses in future shall not bear to be instituted with the Concurrence of Her Majesty's Advocate: Provided that nothing herein contained shall affect the Right of Her Majesty's Advocate to institute any such Summons for the Interest of Her Majesty, Her Heirs and Successors.

Warrant of Inhibition may be inserted in

18. It shall be competent to insert in the Will of a Summons passing the Signet a Warrant of Inhibition, which shall have all the like Force and Effect as Letters of Inhibition in the Form in

Will of Summons.

Use at the passing of this Act; and such Warrant shall be, as nearly as may be, in the following Form:

'And also that ye lawfully inhibit the said 'personally or at his Dwelling Place, if within Scotland, and if 'furth thereof, at the Office of the Keeper of the Record of 'Edictal Citations at Edinburgh, from selling, burdening, disponing, 'alienating, or otherwise affecting his Lands or Heritages, to the 'Prejudice of the Pursuer; and that ye cause register this Summons 'and Execution hereof in the General Register of Inhibitions at 'Edinburgh for Publication to Our Lieges:'

Publication of such Warrants and Letters of Inhibition.

When Warrant of Inhibition is contained in the Will of a Summons passing the Signet, such Warrant may be executed either at the same Time as the Summons is served or at any Time thereafter, and it shall not be necessary to publish such Warrants, or to intimate Letters of Inhibition passing the Signet, to the Lieges in any other Way than by Registration in the General Register of Inhibitions; and in registering it shall be sufficient to register the Summons, including the Warrant of Inhibition, and the Execution of such Warrant, without registering any Condescendence or Note of Pleas in Law which may follow the Summons, or where Letters of Inhibition are used, then such Letters, with the Execution thereof, shall be registered; and from and after Registration as aforesaid, the Inhibition, whether contained in a Summons or by separate Letters of Inhibition, shall be held to be duly intimated and published to all concerned.

Summonses against certain Defenders, &c. may be served by Sheriff Officers.

19. Where any Defender called in any Summons, or any Person upon whom Service of any Proceeding is ordered by the Court or by the Judge officiating in the Bill Chamber, or any Witness or Haver requiring to be cited to attend said Court, or any Commissioner appointed by the same, resides within any County, or within any District of a County subject to the Jurisdiction of the ordinary Court of any Sheriff Substitute of such County, in which County or District of any County there shall not be at the Time a resident Messenger-at-Arms, or within any of the Islands of *Scotland*, it shall be competent for a Sheriff Officer of such County or of the Sheriffdom within which such Island is situated (as the Case may be) to serve such Summons or to make such Service or Citation upon such Defender or other Party or Witness or Haver within such County or Island, and such Service and Citation and Execution thereof shall have the same Effect as if done or made by a Messenger-at-Arms.

Amendment of Summonses and

20. In undefended Actions any Error or Defect in any Summons or other Pleading, whereby the Action is commenced in the Court of

of Session, may be amended upon Application to the Lord Ordinary or the Court before whom it depends, if the Lord Ordinary or the Court think such Amendment should be allowed; and such Amendment shall be made in Writing either upon the Summons or Pleading, or in a separate Paper, and shall be authenticated by the Signature of Counsel; and the Lord Ordinary or Court may, if he or they think fit, order the amended Summons or other Pleading to be served upon the absent Defender or Defenders, with Liberty to him or them to enter Appearance within such Time as shall seem proper: Provided that the Expenses occasioned by such Amendment shall not be chargeable against the Defender or Defenders; and provided also, that such Amendment shall not have the Effect of validating Diligence used on the Dependence of the Action so as to prejudice the Rights of Creditors of the Defender interested in defeating such Diligence, but shall be operative to the Effect of obviating any Objections to such Diligence when stated by the Defender himself, or by any Person representing him by a Title, or in right of a Debt contracted by him subsequent to the using of such Diligence.

Pleadings in undefended Causes.

21. No Party appearing in any Action or Proceeding in the Court of Session shall be entitled to state any Objection to the Regularity of the Execution or Service as against himself of the Summons or other Pleading or Writ whereby he is convened.

Party appearing not to state Objections to Execution of Summonses, &c.

III.—Calling and Decree in Absence.

22. Summonses may be called in Court on any Sederunt Day; and the Calling Lists shall be printed and published in the daily Rolls of Court, under such Regulations as the Court may see proper to make, in place of the separate Calling Lists now in use to be published; and in case a Pursuer shall not call his Summons in Court on the First Sederunt Day after the Expiration of the Induciæ thereof, or on One of the Two Sederunt Days next ensuing, the Defender shall be entitled to the like Remedy by Protestation as is now competent, and subject to the like Conditions. The weekly printed Rolls of new Causes shall be discontinued; and where a Defender shall not enter Appearance on or before the Second Day after the Summons has been called in Court, the Cause may immediately be enrolled in the Lord Ordinary's Motion Roll as an undefended Cause for Decree in Absence; and where Appearance is timeously entered as aforesaid on behalf of a Defender, his Defences shall be lodged on or before the Tenth Day after the Date of Calling of the Summons, failing which, the Cause may be immediately enrolled for Decree

New Procedure in reference to calling of Summonses and Enrolment for Decree.

Decree in Absence, or in the Case of Actions containing reductive Conclusions the Cause may be enrolled for the Purpose of obtaining an Order for satisfying the Production, and thereafter the Cause may be enrolled by either Party for further Procedure.

Mode of obtaining Decrees in Absence.

23. When any Cause is enrolled as an undefended Cause before the Lord Ordinary, the Lord Ordinary shall, without any Attendance of Counsel or Agent, grant Decree in Absence in Common Form in Terms of the Conclusions of the Summons, or subject to such Restrictions as may be set forth in a Minute written on the Summons by the Agent of the Pursuer; and such Decree shall, except as herein-after provided, have the like Effect and be subject to the like Conditions in all respects as a Decree in Absence pronounced according to the present Law and Practice: Provided always, that at any Time within Ten Days from the Date of such Decree it shall be competent for the Defender to enrol the Cause in the Lord Ordinary's Motion Roll; or when such Ten Days shall expire in Time of Vacation or Recess, it shall be competent for the Defender at any Time within the said Ten Days to lodge his Defences with the Clerk, and at the next ensuing Sitting of the Lord Ordinary officiating on the Bills in Terms of the Ninety-third Section hereof to move him to recall the Decree in Absence; and if, when the Cause is called in said Roll, or moved before the said Lord Ordinary officiating on the Bills as aforesaid, the Defender shall produce his Defences, and shall pay to the Pursuer the Sum of Two Pounds Two Shillings, the Lord Ordinary or the Lord Ordinary officiating on the Bills, as the Case may be, shall pronounce an Interlocutor recalling the Decree in Absence, and allowing the Defences to be received; and the Cause shall thereupon be treated as if Defences had been lodged in due Time: Provided farther, that after the Lapse of Ten Days it shall be competent to extract any Decree in Absence; and it shall not be competent by Reclaiming Note to the Inner House to obtain the Recall of a Decree pronounced in Absence of the Defender.

Certain Decrees in Absence to have Effect as Decrees in foro.

24. Where a Decree upon which a Charge is competent shall have been pronounced in Absence of a Defender after personal Service of the Summons on such Defender, or after the entering of Appearance for such Defender with his Authority, and such Decree shall not have been recalled in virtue of the Provision to that Effect herein-before contained, such Decree after Extract, and upon the Lapse of Sixty Days after the Expiry of a Charge upon it not brought under Review by Suspension, shall be entitled to all the Privileges of a Decree *in foro* against such Defender; and a Decree of

of Declarator, or any other Decree on which a Charge is not competent, obtained in Absence after such personal Service or Appearance as aforesaid, shall be final after the Lapse of Twenty Years from its Date unless the same shall before that Time have been lawfully recalled or brought under Review by Suspension or Reduction.

IV.—Record, Motions, and Probation.

Revisal of Pleadings not to be allowed as Matter of course.

25. Neither Party shall be entitled as Matter of Right to ask for a Revisal of his Pleadings; but it shall be competent for the Lord Ordinary to allow or to order a Revisal of the Pleadings, upon just Cause shown.

Procedure after Pleadings completed, and Adjustment of Pleadings.

26. If no Motion for Revisal is made as above provided, or if such Motion is refused, or after the Lapse of the Period within which the revised Pleadings fall to be lodged where a Revisal has been allowed or ordered, the Pursuer shall cause the Pleadings which are to form the Record to be printed, and shall within Eight Days from the lodging of the Defences or revised Pleadings, as the Case may be, deliver Two Printer's Proofs thereof to the Agent or to each of the Agents of the other Parties, and also to the Clerk to the Process, who shall transmit the same to the Lord Ordinary, and the Lord Ordinary shall direct the Cause to be put to the Roll for a Day, not less than Four and not more than Six Days thereafter; and upon such Day the Lord Ordinary shall require the Parties then to adjust their Pleadings, and shall close the Record: Provided that if the Pursuer shall fail to deliver the Printer's Proofs as aforesaid the Defender may enrol the Cause, and move for Decree of Absolvitor by Default, which Decree the Lord Ordinary shall grant unless the Pursuer shall show good Cause to the contrary: Provided also, that it shall not be competent of Consent of Parties to prorogate the Time for complying with any Statutory Enactment or Order of the Court, whether with reference to the making up and closing of the Record or otherwise.

Procedure after Record closed, and Adjustment of Issues.

27. The Lord Ordinary shall at the Time of closing the Record require the Parties then to state whether they are ready to renounce farther Probation; and if they are ready to do so the Counsel for the Parties shall sign a Minute to that Effect on the Interlocutor Sheet; and the Lord Ordinary shall, in the Interlocutor closing the Record, pronounce a Finding that farther Probation has been renounced, and shall appoint the Cause to be debated.

If the Parties shall not agree to renounce farther Probation, the Lord Ordinary shall appoint the Cause to be debated summarily at the End of the Motion Roll on a Day to be then fixed, before which Day the Parties shall respectively lodge the Issue or Issues, if any, which they propose for the Trial of the Cause; and the Lord Ordinary, after hearing Parties, shall, on the said Day, determine whether farther Probation should be allowed; and if he shall consider that it is necessary, he shall determine whether it is to be limited to Proof by Writ or Oath, and if not, whether it is to be taken before a Jury, or in what other Manner of Way:

(1.) If the Lord Ordinary considers that the Cause may be disposed of without farther Probation, he may, without any Adjournment, hear the Parties upon their Pleas, and dispose of them as appears to him just:

(2.) If the Lord Ordinary considers that farther Probation should be allowed, but that it should be limited to Proof by Writ or Oath, he may pronounce an Interlocutor to that Effect, and at the same Time determine how such Proof is to be taken, and make such Order as may be necessary:

(3.) If the Lord Ordinary shall think that farther Probation should be allowed, and that it should be taken before a Jury, he may, without Adjournment, proceed to adjust Issues for the Trial of the Cause, and pronounce an Interlocutor approving of the Issue or Issues which have been so adjusted; provided that if the Parties consent, and the Lord Ordinary approves, it shall be competent to direct the Cause to be tried by Jury without adjusting any such Issues, and such Cause shall be tried as nearly as may be in the same Manner in which Causes are tried in which Issues have been adjusted according to the present Law and Practice:

(4.) If the Lord Ordinary shall think farther Probation should be allowed, but that such Probation should not be taken before a Jury, he may pronounce an Interlocutor dispensing with the adjusting of Issues, and determining the Manner in which Proof is to be taken or Inquiry to be made, and make such Order as may be necessary for giving Effect to such Interlocutor.

Review of certain Interlocutors of the Lord Ordinary.

28. Any Interlocutor pronounced by the Lord Ordinary as provided for in the preceding Section, except under Sub-division (1.), shall be final, unless within Six Days from its Date the Parties, or either of them, shall present a Reclaiming Note against it to One of the Divisions of the Court by whom the Cause shall be heard summarily;

summarily; and when the Reclaiming Note is advised, the Division shall dispose of the Expenses of the Reclaiming Note, and of the Discussion, and shall remit the Cause to the Lord Ordinary to proceed as accords: Provided always, that it shall be lawful to either Party within the said Period, without presenting a Reclaiming Note, to move the said Division to vary the Terms of any Issue that may have been approved of by an Interlocutor of the Lord Ordinary, specifying in the Notice of Motion the Variation that is desired: Provided also, that nothing herein contained shall be held to prevent the Lord Ordinary or the Court from dismissing the Action at any Stage upon any Ground upon which such Action might at present be dismissed according to the existing Law and Practice.

Amendment of Records in defended Actions.

29. The Court or the Lord Ordinary may at any Time amend any Error or Defect in the Record or Issues in any Action or Proceeding in the Court of Session, upon such Terms as to Expenses and otherwise as to the Court or Lord Ordinary shall seem proper; and all such Amendments as may be necessary for the Purpose of determining in the existing Action or Proceeding the real Question in Controversy between the Parties shall be so made: Provided always, that it shall not be competent, by Amendment of the Record or Issues under this Act, to subject to the Adjudication of the Court any larger Sum or any other Fund or Property than such as are specified in the Summons or other original Pleading, unless all the Parties interested shall consent to such Amendment: And provided also, that no such Amendment shall have the Effect of validating Diligence used on the Dependence of the Action so as to prejudice the Rights of Creditors of the Defender interested in defeating such Diligence, but shall be operative to the Effect of obviating any Objections to such Diligence when stated by the Defender himself, or by any Person representing him by a Title, or in right of a Debt contracted by him, subsequent to the Execution of such Diligence.

Pleadings in Actions of Multiplepoinding.

30. In Actions of Multiplepoinding it shall not be necessary to lodge Answers to the original Condescendences and Claims, unless it is made to appear to the Satisfaction of the Lord Ordinary that the Claimants are at Issue on Matters of Fact material to the Action, and that Answers are necessary; and in such Actions it shall be competent for Parties having opposing Interests (where they are agreed upon the Facts) to make their Averments in the Form of a Joint Case, appending thereto their respective Claims and Pleas in Law: Provided always, that where the Competition

petition involves the Construction of written Documents, such Documents shall not be set out at Length on the Record, but shall be printed separately, and referred to in the Pleadings as set forth in such separate Print.

Motions in the Outer House.

31. The Motion Rolls of the Lords Ordinary in the Outer House shall, instead of being called before these Judges respectively, be hereafter called before the Clerks to the Processes therein enrolled; such Calling shall take place at such Hours as shall from Time to Time be fixed by the Lord President of the Court, and shall not be attended by Counsel, but by Agents practising before the Court, or by their Clerks duly authorized by them. If any Motion is unopposed, it may be granted by the Clerk, who shall write on the Interlocutor Sheet an Order in Terms of said Motion, which Order, being signed by said Clerk, shall have the same Effect and be treated in all respects as if it were an Interlocutor of the Lord Ordinary before whom the Cause depends, made out and signed according to the present Law and Practice. All Motions which are opposed, and also those which the Clerk thinks should be disposed of by the Lord Ordinary, shall, on a Requisition to that Effect by the said Clerk, be put to a Roll of continued Motions, which the Clerk of the Lord Ordinary is hereby required to make up, and which shall be called before the Lord Ordinary himself on such Days, not exceeding Two in each Week, as he may appoint for the hearing of Motions and summary Debates, and shall be disposed of by the Lord Ordinary after hearing Counsel; and it shall not be necessary that any Notice of the Enrolment of such continued Motions shall be given by either Party to the other. The Lord Ordinary, in disposing of any continued Motion, shall, unless he see Cause to the contrary, award such Sum of modified Expenses as he shall think fit to the Party who has successfully insisted in or opposed the same, as the Case may be.

Regulations as to Time of addressing the Court in Proofs under the Conjugal Rights and Evidence Acts.

32. In all Proofs before the Lord Ordinary under the Acts Twenty-four and Twenty-five *Victoria*, Chapter Eighty-six, and Twenty-nine and Thirty *Victoria*, Chapter One hundred and twelve, no Adjournment shall be allowed, except on special Cause stated in an Interlocutor, and the Evidence shall be summed up by One Counsel on each Side at the Conclusion of the Examination of the Witnesses, as in the Case of Jury Trials; and it shall not be necessary to print the Evidence, unless for the Purpose of bringing the Judgment of the Lord Ordinary thereon under the Review of the Inner House.

33. All

33. All Causes ready for Trial by a Proof before any of the Lords Ordinary, under the last-mentioned Acts, at the End of the Winter and Summer Sessions of the Court respectively, shall be tried at Sittings to be held by the Lord Ordinary before whom the Cause depends, or by some other Judge acting for him at his Request, during the ensuing Vacation, at such Time as may be fixed by the Lord Ordinary.

Time of Trial of Cases under the Conjugal Rights and Evidence Acts.

V.—JURY TRIAL.

34. 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.

Exceptions taken at a Jury Trial may be insisted in, either by Motion for new Trial, or by Bill of Exceptions.

35. 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.

Form of Bill of Exceptions; Evidence need not be set forth at Length in the Bill.

36. 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,

Verdict may be taken subject to the Opinion of the Court on a Point reserved.

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 Judge's Notes may be produced at any Time, if required.

Evidence may of Consent be taken in Shorthand.

37. 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.

Special Case may be substituted for Special Verdict.

38. 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.

Abandonment of Action in the course of a Trial.

39. Any Action may, with Leave of the Judge, be abandoned on the Conditions contained in the Tenth Section of the Act Sixth *George* the Fourth, Chapter One hundred and twenty, 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.

Pursuer recovering less than 5*l.* of Damages not to recover

40. 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

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.

Expenses if the Judge shall certify.

41. No Document tendered in Evidence at any Trial or Proceeding in the Court of Session (and which at the Time when the same is tendered might lawfully be stamped on Payment of a Penalty) shall be rejected by reason of the Omission to affix a Stamp thereto, or by reason of the Insufficiency of the Stamp; provided the Party tendering the same shall, before the Conclusion of such Trial or Proceeding, pay into Court such Sum as the Judge shall certify to be the Amount of Stamp Duty or of additional Stamp Duty chargeable thereon, with the Penalty required by Statute, and an additional Penalty of One Pound; and 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.

Provision for Payment of deficient Stamp Duty pursuant to Judge's Certificate to be final.

42. Every Sum so paid for Stamp Duty and Penalty, including such additional Penalty, together with such Document and the Certificate of the Judge written thereon, shall immediately after the Trial be transmitted by the Clerk of the Process to the Commissioners of Inland Revenue, who shall cause the said Document to be impressed with a denoting Stamp corresponding to the Amount of Duty mentioned in the Certificate, and received by them, and shall return the Document with all convenient Speed to the Clerk.

Clerk to remit the Duty, &c. to Commissioners of Inland Revenue.

43. All Exemptions from Liability to serve as Jurors in *Scotland* depending on any Act passed subsequently to the Act Sixth *George* the Fourth, Chapter Twenty-two, are hereby abolished.

Certain Exemptions from serving as Jurors abolished.

44. 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, and the Names of the Special Jurors shall be put together into One Box or Glass, and the Remainder

In Civil Causes Juries to consist of Eight Common and Four Special Jurors.

Remainder into another, and being respectively mixed, the Clerk shall draw out the said Pieces of Paper or Parchment One by One from both Boxes or Glasses in the Proportion of One from the Box containing the Names of the Special Jurors, and Two from the other Box; 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 containing the Description of Jurors challenged respectively.

Mode of returning Jurors.

45. The Number of Jurors to be cited for the Trial of any Cause or Causes appointed to be tried at *Edinburgh*, or at any Circuit Town (where a Special Diet shall be fixed for such Trial), shall be such as is specified in the Act Fifty-fifth *George* the Third, Chapter Forty-two, and a List of such Jurors shall be returned by the Sheriff of *Edinburgh*, or of any other County or Counties, as provided by the Act Sixth *George* the Fourth, Chapter Twenty-two, but so that One Third of the Number of Jurors required, or, if the Number required cannot be divided equally into Thirds, a Number as near as may be, more or less, at the Discretion of the Sheriff, shall be Persons qualified as Special Jurors, and shall be distinguished in the Return accordingly; provided that in the event of the List to be taken from the General Jury Book, as provided in the said Act, not being found to contain the said Proportion of Special Jurors, the Deficiency shall be supplied by Names to be taken from the Special Jury Book.

Provisions for Trial of Civil Causes by Jury at Circuit.

46. Where a Cause is appointed to be tried at any Circuit Town in any Period of Vacation or Recess, and no Special Diet is fixed for such Trial, it shall be lawful for either of the Judges presiding at the Sittings of the Circuit Court of Justiciary in such Circuit Town to try the same, and such Trial may proceed either at the same Time with the Sittings of the said Circuit Court of Justiciary, or at the Termination thereof; and where a Cause is so tried it shall not be necessary that a separate List of Jurors shall be returned for the Trial thereof, but the Jury shall be chosen from the List of Jurors summoned to attend the Circuit Court of Justiciary, who shall be bound by their Citation to serve, if required, at

at the Trial of all Civil Causes for which no Special Diet of Trial shall have been appointed; but notwithstanding the Provisions herein contained it shall be competent for any Judge of the Court of Session to preside at the Trial of any Civil Cause which may fall to be tried during the Sittings of any Circuit Court of Justiciary, or at the Termination thereof.

Jurors to be cited by registered Post Letter.

47. The present Mode of citing Jurors for the Trial of Civil Causes shall be discontinued, and in place thereof the Sheriff Clerk of the County of *Edinburgh*, where the Trial is to take place at *Edinburgh*, or the Sheriff Clerk of the County in which any Juror is to be cited, where the Citation is for a Trial at a Circuit Town, 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.

Verdicts may be returned by a Majority.

48. A Jury may at any Time, being not less than Three Hours after it has been enclosed, return a Verdict by a Majority of its Number.

Remuneration of Jurors.

49. The Remuneration to be allowed to Jurors empannelled at the Trial by Jury of any Civil Cause shall be at the Rate of Ten Shillings to each Juror for each Day, or Part of a Day, during which such Juror shall be empannelled upon such Trial.

Inferior Court Agents to act at Jury Trials on Circuit.

50. At the Trial of any Civil Cause at a Circuit Town any Agent qualified to practise in the Sheriff Court of any County 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.

VI.—Inner House Procedure.

Form of Reclaiming Notes, and Time of presenting.

51. Reclaiming Notes to the Inner House shall not contain any Prayer, but shall bear in general Terms that the Interlocutor or Interlocutors reclaimed against are submitted to Review.

52. Every

Effect of a Reclaiming Note against a Final Judgment.

52. Every Reclaiming Note, whether presented before or after the whole Cause has been decided in the Outer House, shall have the Effect of submitting to the Review of the Inner House the whole of the prior Interlocutors of the Lord Ordinary of whatever Date, not only at the Instance of the Party reclaiming, but also at the Instance of all or any of the other Parties who have appeared in the Cause, to the Effect of enabling the Court to do complete Justice, without Hindrance from the Terms of any Interlocutor which may have been pronounced by the Lord Ordinary, and without the Necessity of any counter Reclaiming Note; and after a Reclaiming Note has been presented, the Reclaimer shall not be at liberty to withdraw it without the Consent of the other Parties as aforesaid; and if he shall not insist therein, any other Party in the Cause may do so, in the same Way as if it had been presented at his own Instance.

Definition of Final Judgment in the Outer House.

53. It shall be held that the whole Cause has been decided in the Outer House when an Interlocutor has been pronounced by the Lord Ordinary, which, either by itself, or taken along with a previous Interlocutor or Interlocutors, disposes of the whole Subject Matter of the Cause, or of the Competition between the Parties in a Process of Competition, although Judgment shall not have been pronounced upon all the Questions of Law or Fact raised in the Cause; but it shall not prevent a Cause from being held as so decided that Expenses, if found due, have not been taxed, modified, or decerned for; and for the Purpose of determining the Competency of Appeals to the Court of Session, this Provision shall be applicable to the Causes in the Sheriff and other Inferior Courts, the Name of the Sheriff or other Inferior Judge or Court being read, instead of the Words "the Lord Ordinary," and the Name of the Sheriff Court or other Inferior Court being read instead of the Words "Outer House."

No Appeal allowed against Interlocutory Judgment without Leave; Effect of such Appeal.

54. Except in so far as otherwise provided by the Twenty-eighth Section hereof, until the whole Cause has been decided in the Outer House, it shall not be competent to present a Reclaiming Note against any Interlocutor of the Lord Ordinary without his Leave first had and obtained; but where such Leave has been obtained, a Reclaiming Note, presented before the whole Cause has been decided in the Outer House, may be lodged within Ten Days from the Date of the Interlocutor granting Leave with One of the Clerks of the Division of the Court in which the Cause depends, without Transmission of the Process, or any Part thereof; and such Note shall not have the Effect of removing the Cause or the Process from the Outer

Outer House, or of staying Procedure before the Lord Ordinary, or of excusing Obedience to or Implement of the Interlocutor reclaimed against, unless the Lord Ordinary shall otherwise direct, upon Motion made for that Purpose, and the Decision of the Lord Ordinary on such Motion shall be final.

Disposal of such Reclaiming Notes.

55. Failing such Direction by the Lord Ordinary as aforesaid, the Process shall remain, and the Cause shall proceed in the Outer House in all respects as if no such Reclaiming Note had been presented, until it is advised by the Inner House, when the Court shall pronounce such Judgment or Order as they shall think fit; and when the Cause shall be called for Hearing in the Inner House on such Reclaiming Note, the Interlocutor Sheet shall be delivered to the Inner House Clerk that the Judgment of the Court may be written thereon; and the Process shall, if required by either Party or by the Court, be delivered to the Inner House Clerk by the Outer House Clerk, but shall nevertheless be considered as still in the Outer House.

After Reclaiming Note against a Final Judgment, Cause not to be remitted to Outer House.

56. After the whole Cause has been decided in the Outer House within the Meaning of this Act, it shall not in any Case be necessary for the Inner House to remit the same back to the Outer House; but the Cause, when taken to the Inner House, after having been so decided in the Outer House, even though the Interlocutor of the Lord Ordinary or any of the Procedure shall be held to have been incompetent, shall, except in special Circumstances rendering a Remit expedient, remain in the Inner House, until it shall be finally and completely decided in the Court of Session.

Inner House may order Repayment of Money, &c.

57. In the event of any Interim Decree or Interlocutor pronounced in the Outer House having been implemented, it shall be lawful for the Court, in any Interlocutor recalling or altering such Interim Decree or Interlocutor, to order the Repayment of any Money which shall have been paid or recovered in Implement thereof, or to pronounce such Warrant *ad factum præstandum* or other Order as may be necessary in order to give Effect to such Recall or Alteration of the Lord Ordinary's Interlocutor, notwithstanding that the Interlocutor of the Lord Ordinary may have been extracted and put to Execution.

Hearing of Motion for new Trials, &c.

58. When a Motion for a new Trial or a Bill of Exceptions comes before One of the Divisions of the Court, if the Judge who tried the Cause is not One of the Judges of the Division, such Judge shall be called in to hear the Motion or Bill, as the Case may be; and

and when the Cause is advised, such Judge shall give his Judgment with the other Judges, and the Decision shall be in conformity with the Opinion of the Majority of the Judges present.

Provision for Rehearing before Five Judges in case of equal Division of Opinion.

59. In the event of the Judges of either of the Divisions of the Inner House being equally divided in Opinion on a Question of Fact arising upon a Proof, or upon a Cause which in their Opinion does not involve any legal Principle of Importance, it shall be competent for such Division to appoint the Cause to be re-heard before the Judges of the said Division, or such of them as shall be able to give Attendance in Court on the Day appointed, with the Assistance of such additional Judge or Judges to be afterwards named by the President or Judge presiding in the Division as shall make up the Number of Five Judges; and the Judgment to be pronounced upon such Hearing shall be in conformity with the Opinion of the Majority of the Five Judges, and shall bear to be the Judgment of the Division by which the Hearing was appointed, after consulting with such additional Judge or Judges, and may be signed at any ordinary Sitting of the said Division, without the Presence of such additional Judge or Judges, if he or they do not desire to attend for the Purpose of delivering separate Opinions.

Cases of Difficulty and Importance may be referred to Seven Judges in place of to the whole Court.

60. In Cases of equal Division of Opinion not falling under the preceding Section, and in Cases of Difficulty or Importance which, according to the existing Practice, may be referred by One of the Divisions of the Inner House to the whole Court, it shall be competent for such Division to direct that the printed Papers in the Cause shall be laid before Three other Judges to be named in the Interlocutor with a view to their Opinions being communicated in Writing, or to direct that the Cause shall be argued before themselves with the Assistance of such Three Judges (or Four Judges when that is necessary to complete the Number of Seven at the Time of the Re-hearing); and the Judgment to be pronounced thereon shall be in conformity with the Opinions of the Majority of the Seven Judges, and shall bear to be the Judgment of the Division by whom the Hearing was appointed, after consulting with such other Judges, and may be signed in the Absence of such other Judges at any ordinary Sitting of the Division.

New Trial not to be granted if Court equally divided.

61. No Verdict of a Jury shall be discharged or set aside upon a Motion for a new Trial, unless in conformity with the Opinion of a Majority of the Judges of the Division, and in case of equal Division Judgment shall be given in conformity with the Verdict; but this Provision shall not apply to Hearings upon Bills of Exceptions.

62. The

Amendment of 29 & 30 Vict. c. 112. s. 3

62. The Third Section of the Act Twenty-nine and Thirty *Victoria*, Chapter One hundred and twelve, is hereby amended to the Effect of providing that, notwithstanding the Terms of said Section, "where Proof shall be ordered by One of the Divisions of Court," it shall no longer be competent to remit to One of the Lords Ordinary to take such Proof, but it shall be taken before any One of the Judges of the said Division, whose Place may for the Time be supplied by One of the Lords Ordinary called in for that Occasion.

Special Cases on Questions of Law.

63. Where any Parties interested, whether personally or in some fiduciary or official Character, in the Decision of a Question of Law shall be agreed upon the Facts, and shall dispute only on the Law applicable thereto, it shall be competent for them, without raising any Action or Proceeding, or at any Stage of an Action or Proceeding, to present to One of the Divisions of the Court a Special Case, signed by their Counsel, setting forth the Facts upon which they are so agreed, and the Question of Law thence arising upon which they desire to obtain the Opinion of the Court; and which Case may set forth alternatively the Terms in which the Parties agree that Judgment shall be pronounced according to the Opinion of the Court upon the Question of Law aforesaid. When a Special Case is laid before One of the Divisions, the Court may order such Documents as appear to be necessary to be printed and boxed, and shall hear Parties in the Summar Roll, and give their Opinion or pronounce Judgment, as the Case may be, and such Judgment shall be extractible in common Form: Provided always, that the Case may be amended of Consent, and that, if the Court shall think fit, they may appoint the Case to be reheard in Terms of the Sixtieth Section hereof; and the Court shall dispose of all Questions of Expenses. Judgments pronounced in virtue of this Section shall be liable to Review by the House of Lords, unless such Review shall be excluded of Consent of all Parties.

VII.—Appeals from Inferior Courts.

Process of Advocation abolished.

64. The Process of Advocation is hereby abolished.

Appeals substituted for Advocation.

65. Wherever, according to the present Law and Practice, it is competent to advocate to the Court of Session a Judgment (final or not final, as the Case may be) of any Sheriff or other Inferior Court or Judge, it shall be competent, except as herein-after provided, to submit such Judgment to the Review of the Court

of Session by Appeal in the Manner herein-after provided: Provided always, that it shall not be necessary for the Appellant to find Caution for Expenses before taking or prosecuting his Appeal.

Form of Note of Appeal.

66. An Appeal to the Court of Session under this Act may, when otherwise competent, be taken by a Note of Appeal written at the End or on the Margin of the Interlocutor Sheet containing the Judgment appealed from, or any Note thereto annexed, or by a separate Note of Appeal lodged with the Clerk of the Inferior Court; and such Note of Appeal may be in the following or similar Terms:

"The Pursuer [*or* Defender *or* other Party] appeals to "the Division of the Court of Session:"

And the said Note shall specify the Division, and shall be signed by the Appellant or his Agent, and shall bear the Date on which it is signed.

Not competent to appeal after Six Months from Date of Final Judgment.

67. It shall not be competent to take or sign any Note of Appeal after the Expiration of Six Months from the Date of Final Judgment in any Cause depending before the Sheriff or other Inferior Court or Judge, even although such Judgment has not been extracted.

Time at which Interlocutors of Inferior Courts may be extracted.

68. A Party may take an Appeal within the Space of Twenty Days after the Date of the Judgment of which he complains, during which Period of Twenty Days Extract shall not be competent; but on the Expiration of the foresaid Period, if no Appeal shall have been taken, the Clerk of Court may give out the Extract; it being competent, however, to take such Appeal at any Time within the Period of Six Months from the Date of Final Judgment in the Cause, unless the Judgment has previously been extracted or implemented.

Effect of Appeals under this Act.

69. Such Appeal shall be effectual to submit to the Review of the Court of Session the whole Interlocutors and Judgments pronounced in the Cause, not only at the Instance of the Appellant, but also at the Instance of every other Party appearing in the Appeal, to the Effect of enabling the Court to do complete Justice without Hindrance from the Terms of any Interlocutor in the Cause, and without the Necessity of any Counter Appeal; and an Appellant shall not be at liberty to withdraw or abandon an Appeal without Leave of the Court; and an Appeal may be insisted in by any Party in the Cause other than the Appellant, in the same Manner and to the like Effect as if it had been taken by himself.

70. The

Notice of Appeal.

70. The Clerk of the Inferior Court shall, within Two Days after the Date of any Appeal being taken, send written Notice of such Appeal to the Respondent or his Agent: Provided that the Failure to give such Notice shall not invalidate the Appeal; but the Court of Session may give such Remedy for any Disadvantage or Inconvenience thereby occasioned as may in the Circumstances be thought proper.

Form of bringing Appeals into Court of Session.

71. Within Two Days after the Appeal shall have been taken, the Clerk of the Inferior Court shall transmit the Process to One of the Clerks of the Division of the Court to which the Appeal is taken, who shall subjoin to the Appeal a Note of the Day on which it is received; and it shall be lawful for either the Appellant or the Respondent at any Time after the Expiry of Eight Days from the Date of such Note to enrol the Appeal; and when the Appeal is called in the Roll, it shall be competent for the Court to order the whole Inferior Court Record, and the Interlocutors in Causa and Note of Appeal, and Notes of the Evidence and Productions, if any, to be printed and boxed to the Court; or the Court may dispense with the printing and boxing of any Portions of the same; and in case the Record and other Papers ordered to be printed shall not be printed and boxed by the Appellant, or in case he shall not move in the Appeal, it shall be lawful for the Court, on a Motion by any other Party in the Cause, either to dismiss the Appeal with Expenses, and to affirm the Interlocutor of the Inferior Court, or to grant an Order authorizing the Party moving to print and box the Record and other Papers aforesaid, and to insist in the Appeal as if it had been taken by himself.

Proof and Judgment upon Appeals.

72. The Court may, if necessary, order Proof or additional Proof to be taken in any Appeal under this Act, such Proof to be taken in the same Manner as Proof may be competently taken in any Cause depending before the Inner House, and shall thereafter, or without any such Order (if no such Proof or additional Proof is necessary), give Judgment on the Merits of the Cause according to the Law truly applicable in the Circumstances, although such Law is not pleaded on the Record; and the Record may, with Leave of the Court, be amended at any Time, on such Conditions as to the Court shall seem proper.

Appeal under s. 40. of 6 G. 4. c. 120.

73. It shall be lawful, by Note of Appeal under this Act, to remove to the Court of Session all Causes originating in the Inferior Courts in which the Claim is in Amount above Forty Pounds at the

the Time and for the Purpose and subject to the Conditions specified in the Fortieth Section of the Act Sixth *George* the Fourth, Chapter One hundred and twenty; and such Causes may be remitted to the Outer House.

Procedure in place of Advocations ob contingentiam.

74. In place of Advocations of Actions and Proceedings in Inferior Courts *ob contingentiam* of a Process in the Court of Session, it shall be lawful for the Party desiring to remove any such Action or Proceeding to the Court of Session to lay before the Lord Ordinary, or the Division of the Court before which such Court of Session Process shall actually be at the Time, a Copy of the Inferior Court Record or of such Pleadings as may have been lodged, and of the Interlocutors in the Cause, certified by the Clerk of the said Inferior Court, and to move for the Transmission of the Inferior Court Process to the Court of Session; and if upon Consideration thereof the said Lord Ordinary or Division of the Court shall be of opinion that there is Contingency between the said Processes, he or they shall grant Warrant to the Clerk of the Inferior Court Process for the Transmission thereof; and upon such Transmission being made the said Process shall thenceforth be proceeded with in all respects as if it had been advocated *ob contingentiam* to the Court of Session according to the present Law and Practice.

Exclusion of Review in such Cases.

75. The Decision of the Lord Ordinary or of the Court, as the Case may be, upon any such Motion for Transmission, shall be final at that Stage; but, in the event of the Application being refused, it shall be competent for either Party to renew the Motion at any subsequent Stage of the Cause.

Appeals substituted for Advocations under special Enactments.

76. Where, by any Statute now in force, special Provision is made for removing any Action or Proceeding in any Inferior Court to the Court of Session by Advocation, it shall be lawful to remove any such Action or Proceeding to the Court of Session by Appeal under this Act at the same Stage of the Cause, for the same Purpose, and with such and the like Restrictions as are provided by such Statute.

Provisions for completing Record in Processes removed to the Court of Session by Appeal.

77. Where it is necessary in any Action removed to the Court of Session by Appeal under this Act that a Record should be made up in the Court of Session, the Record shall be made up under the Direction of the Division of the Inner House in which the Appeal is depending.

78. Where,

Exclusion of Review by Advocation under special Enactments to imply Exclusion of Review by Appeal.

78. Where, by any Statute now in force, the Right of Review by Advocation to the Court of Session is excluded or restricted, such Exclusion or Restriction of Review shall be deemed and taken to apply to Review by Appeal under this Act.

Regulation of Interim Possession pending Appeal to the Court of Session.

79. In all Cases where the Judgment of any Inferior Court shall be brought under the Review of the Court of Session by Appeal, it shall be competent for the Inferior Court to regulate in the meantime, on the Application of either Party, all Matters relating to Interim Possession, having due Regard to the Manner in which the Interests of the Parties may be affected by the final Decision of the Cause; and such Interim Order shall not be subject to Review, except by the Court at the hearing of such Appeal, when the Court shall have full Power to give such Orders and Direction in respect to Interim Possession as Justice may require.

How far Provisions of Part VII. to apply to depending Actions.

80. The whole Provisions of Part VII. of this Act shall, so far as possible, apply to all Advocations in Dependence before the Inner House at the Commencement of this Act, and to all Advocations which may, after the Commencement of this Act, come before the Inner House by Report or Reclaiming Note from any Lord Ordinary: Provided always, that the Advocations depending before the Outer House at the Commencement of this Act shall be disposed of in the Outer House according to the present Law and Practice.

VIII.—Accountings, Suspensions, and Summary Petitions.

Accountant may be required to attend Debate, and assist in settling the Terms of the Remit.

81. The Court (in any Branch of its Jurisdiction), where a Question of Accounting is to be investigated, may request the Accountant, to whom it is intended to remit the Cause, to attend in Court at the Debate, and in the advising of the Cause may take the Assistance of such Accountant out of Court in settling the Terms of the Remit to be made to him.

Accountant to have Power to compel Production of Documents, and Attendance of Parties and Witnesses.

82. The Accountant shall have Power, by signed Order, to require the Attendance of the Parties before him at such Times, either in Session or in Vacation, as he may appoint; and also to fix the Times within which Notes of Objections and Answers, Vouchers, and other necessary Papers shall be lodged before him; and the Time appointed by such Order may be once prorogated without special Cause shown, and a Second Time upon special Cause to be mentioned in the Order of Prorogation; provided in case of

such Second Prorogation that Application is made before the Expiration of the Time previously appointed. When the Accountant has Power under the Remit to examine Witnesses or Havers, the Clerk of the Bills shall issue Letters of Second Diligence against any defaulting Witness or Haver, on a Bill presented by the Agent, and countersigned by the Accountant.

In case of Default Accountant to proceed ex parte.

83. In case of Failure to lodge any Note or Answer or Productions within the Time appointed, the Accountant shall proceed to dispose of the Cause upon the Evidence and Statements submitted to him; and in case of the Failure of One of the Parties to attend any Diet without reasonable Excuse, he shall proceed to dispose of the Cause, after hearing the Explanations of the other Party, according to his Opinion on its Merits.

Accountant may apply to Court for special Direction.

84. It shall be competent for the Accountant to apply, either by written Note, or *vivâ voce* in Presence of the Parties, to the Court for Direction as to any Point which may arise in the course of the Remit; and the Court may give such Directions either *vivâ voce*, or by Interlocutor thereon, or may suspend the Remit, and proceed to deal with the Point raised as in the Cause, and dispose of it accordingly.

Parties may appeal from Accountant, or move the Court for special Direction.

85. It shall be competent for either Party, with the Leave of the Accountant, to bring under Review of the Court any Interim Order or Proceeding of the Accountant, or, with Leave as aforesaid, to move the Court to give the Accountant special Directions on any Point arising in the Course of the Remit.

Accountant to report Results in the Form of a Certificate of his Opinion.

86. The Report of the Accountant shall state, in the Form of a Certificate, the Facts he has found to be established, and the Results at which he has arrived, and also the Points falling within the Remit which he suggests as proper for the Consideration of the Court; and any necessary Explanations of the Grounds of the Accountant's Findings and Opinion shall be stated in the Form of a Note appended to such Certificate; and such States of Accounts only shall be prepared as the Accountant or the Court shall consider essential for the proper Decision of the Cause.

Court empowered to take the Assistance of the Accountant in

87. The Accountant shall, if required by the Court or by either of the Parties, attend at the Debate on his Report; and it shall be lawful for the Court to take the Assistance of the Accountant out of Court in the Preparation of the Draft of the Judgment in

in which the Opinions they may communicate to him shall be applied to the various Points of the Case, so as to bring out the proper Results of such Opinions, and so as, if possible, to obviate the Necessity of a Second Remit; and for this Purpose the Opinion of the Court may be communicated to the Accountant by the Judge, upon whom the Preparation of the Judgment of the Court may be devolved, in any way he may think fit.

applying their Judgment so as to bring out Results.

88. The whole of the above-mentioned Provisions in relation to Actions of Accounting shall be applicable to Causes in Dependence before any of the Lords Ordinary.

Procedure when Remit to Accountant made by the Lord Ordinary.

89. Where a Respondent in any Application or Proceeding in the Bill Chamber, whether before or after the Institution of such Proceeding or Application, shall have done any Act which the Court, in the Exercise of its preventive Jurisdiction, might have prohibited by Interdict, it shall be lawful for the said Court, or for the Lord Ordinary on the Bills, upon a Prayer to that Effect, in the Note of Suspension and Interdict, or in a supplementary Note, to ordain such Respondent to perform any Act which may be necessary for reinstating the Complainer in his Possessory Right, or for granting specific Relief against the illegal Act complained of.

Lord Ordinary on Bills, &c. may grant Warrant ad factum præstandum.

90. In all Proceedings in the Bill Chamber, as soon as an Interlocutor passing the Note has become final, and Caution has been found or Consignation has been made, in the event of Caution or Consignation having been ordered, the Cause shall become for all Purposes an Action depending in the Court of Session, and may immediately be enrolled by either Party in the Motion Roll of the Lord Ordinary to whom it is marked: Provided that where a Note of Suspension or other original Note in the Bill Chamber is not at the Time of its Presentation, or during the Dependence of the Process in the Bill Chamber, marked by the Respondent to One of the Lords Ordinary, it may, as soon as the Interlocutor passing the Note has become final, be so marked by the Complainer; and it shall not be necessary that any such Process should appear in the Calling Lists.

As soon as Note passed in Bill Chamber, Cause to become Court of Session Process.

91. It shall be lawful for the Court, upon Application by summary Petition, to order the Restoration of Possession of any Real or Personal Property of the Possession of which the Petitioner may have been violently or fraudulently deprived, and also to order the specific Performance of any Statutory Duty under such

Questions of Possession or specific Performance may be presented in the Form of a summary Petition.

such Conditions and Penalties (including Fine and Imprisonment where consistent with the Statute), in the event of the Order not being implemented, as to the Court shall seem proper; and such Petitions may be presented to any Lord Ordinary, or, in Time of Vacation or Recess, to the Lord Ordinary on the Bills, who shall proceed therein as Justice may require; and any such Petition presented to the Lord Ordinary on the Bills may, after the ordinary Sittings of the Court have commenced, be transferred to One of the Lords Ordinary in the Outer House in manner herein-before provided with respect to Bill Chamber Proceedings.

Appointment of Judicial Reporters on summary Petitions.

92. It shall be lawful for the Court to appoint not fewer than Six Agents, being Agents practising in the Court of Session of not less than Five Years standing, and skilled in Conveyancing, to be Judicial Reporters, and who shall hold their Office at the Pleasure of the Court; and all Remits which under the existing Practice are made to Agents practising in the Court of Session shall be made to such Judicial Reporters by Rotation, or in such other Way as may be considered most advisable for the Despatch of the Business entrusted to such Reporters, who shall be remunerated by Fees according to a Scale to be fixed by the Court, and which the Court may alter from Time to Time. The Court also shall have Power to regulate from Time to Time the Fees which shall be payable to any Accountant or Person of Skill, other than the Judicial Reporters foresaid, to whom any Remit is made in the course of any Judicial Proceedings before the Court.

IX.—Miscellaneous Provisions.

Procedure in Time of Vacation.

93. Summonses may be called, and Defences or other Pleadings may be returnable, at any of the Box Days in Vacation or Recess; and on the Fifth lawful Day after each Box Day the Lord Ordinary officiating on the Bills shall sit in Court for the Purpose of granting or recalling Decrees in Absence and hearing and disposing of Motions in any Cause in reference to the Preparation of the Record, or for the granting of Commissions and Diligence for the Recovery of Writings or the taking of Evidence to lie *in retentis*, or for any other Purpose which the Court may specify in any Act of Sederunt which they are empowered by this Act to make.

Lord Ordinary may sign Interlocutors in Vacation.

94. It shall be lawful for the Lords Ordinary at any Time in Vacation or Recess to sign Interlocutors pronounced in Causes heard in Time of Session, or at any extended Sittings, or at the Trial

Trial of Causes by Jury or by Proof, before such Lord Ordinary; provided that where any such Interlocutor is dated at or prior to the First Box Day in Vacation, the same may be reclaimed against on the Second Box Day; and where the Interlocutor is dated after the First Box Day, then on the First Sederunt Day ensuing, or within such Number of Days from the Date of such Interlocutor as may be competent in the Case of a Reclaiming Note against such Interlocutor, dated and signed during Session; and where such Interlocutor is signed during the *Christmas* Recess, the same may be reclaimed against on the First Sederunt Day ensuing, or within such Time after the Date thereof as may be competent as aforesaid: Provided that in the Case of Interlocutors which cannot be reclaimed against without the Leave of the Lord Ordinary, such Leave may be given by such Lord Ordinary, or in his Absence by the Lord Ordinary sitting on the Bills during Vacation or Recess.

New Procedure in place of Actions of Wakening.

95. Where, according to the existing Practice, a Cause would require to be wakened in order to its being proceeded with, it shall be competent for any of the Parties to enrol such Cause before the Lord Ordinary, and to lodge a Minute craving a Wakening of the Cause; and the Lord Ordinary may thereupon direct Intimation of such Minute to be made to the known Agents of the other Parties in the Cause, or to such Parties themselves, and shall direct Intimation to be made in the Minute Book of the Court of Session; and where said Parties have no known Agents, or are themselves furth of *Scotland*, the Lord Ordinary shall also appoint Edictal Intimation thereof to be made by Publication in the Record of Edictal Citations; and on the Expiration of Eight Days from the Date of such Intimation, or from the latest Date thereof, and on a Certificate being lodged in Process under the Hand of the Agent of the Party applying for the Wakening, certifying that he has duly intimated the Minute in Terms of the Lord Ordinary's Interlocutor, the Lord Ordinary may pronounce an Interlocutor holding the Cause as wakened, and the same may thereafter be proceeded with as wakened accordingly.

New Procedure in place of Actions of Transference.

96. Where, according to the existing Practice, a Cause may be transferred against any Party or Parties, it shall be competent to any Party who might have instituted a Summons of Transference to enrol the Cause before the Lord Ordinary, and to lodge a Minute craving a Transference of the Cause against such Party or Parties; and the Lord Ordinary may thereupon grant Warrant for serving a Copy of the Summons or other original Pleading upon the Party or Parties against whom such Cause is sought to be transferred, and

at the same Time shall allow such Party or Parties to give in a Minute of Objections to such Transference within a Time to be specified in the Interlocutor; and such Interlocutor shall also be intimated in common Form to the Agents of the other Parties in the Cause; and such and the like Procedure may be had in virtue of the Service of such Summons or Pleading under the Lord Ordinary's Warrant as might have been had in virtue of the Execution of a Summons of Transference; and if the Lord Ordinary shall think fit to transfer the Cause in Terms of the said Minute (which the Lord Ordinary is hereby authorized to amend if necessary), he shall pronounce an Interlocutor holding the Cause as transferred against the Party or Parties named in such Minute or amended Minute, and the Cause shall be taken to be transferred accordingly.

New Procedure in place of combined Actions of Wakening and Transference.

97. Where, according to the existing Practice, a Cause would require to be wakened in order to its being proceeded with, and also to be transferred against any Party or Parties, it shall be competent to any Party who might have instituted a Summons of Wakening and Transference to enrol the Cause before the Lord Ordinary, and to lodge a Minute craving a Wakening of the Cause, and a Transference thereof against such Party or Parties; and after such Procedure by Intimation and Service as is herein-before directed with respect to Motions for Wakening and Transference respectively, the Lord Ordinary may pronounce an Interlocutor holding the Cause as wakened, and may either in the same Interlocutor, or in an Interlocutor to be subsequently pronounced, as Justice may require, also transfer the Cause against the Parties named in such Minute.

Transference of Actions depending in the Inner House.

98. It shall be lawful, where the Process is in the Inner House, to apply by Minute to the Division of the Court in which the Cause depends for a Transference of the Cause in manner herein-before provided against any Party or Parties named in such Minute: Provided also, that nothing herein contained shall prevent the Lord Ordinary or the Court from sisting any Person upon his own Application by Minute as a Party to the Cause, where such Person is, according to the existing Practice, entitled to be sisted as Representative, Trustee, or Guardian, or in any other Relation to any Party who shall be already a Party to the Cause, or who shall have died during the Dependence thereof; and any such Application to be so sisted may be combined with an Application for Wakening.

99. It

Not competent to object to Productions after Record closed.

99. It shall no longer be competent to object to the Production of any Document after a Record has been closed, on the Ground that it was in the Possession or under the Control of the Party producing it at the Time when the Record was closed: Provided that the Court or the Lord Ordinary may attach such Conditions, as to Expenses or otherwise, to the receiving of such Documents as to them or him shall seem proper.

Amendment of Conjugal Rights Act.

100. "The Conjugal Rights (*Scotland*) Amendment Act, 1861," is hereby amended as follows, *viz.*:

(1.) It shall be sufficient Compliance with the Provision in the Tenth Section of said Act if the Personal Service therein required is made by the Delivery to the Defender personally of the Summons by a Person (although not a Messenger-at-Arms or other Officer of the Law) duly authorized by the Pursuer for that Purpose, and such Person shall return a Certificate that such Delivery has been made: Provided always, that it shall be competent for the Lord Ordinary to call for farther Evidence of the Service by such Delivery, if he shall think proper:

(2.) Notwithstanding the Terms of the Thirteenth Section of said Act, it shall be competent for the Lord Ordinary to grant Commission to any Person competent to take and report in Writing the Deposition of a Haver according to the existing Practice, although such Haver shall be resident in *Scotland*.

Cognition of the Insane regulated.

101. 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

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.

Bonds of Caution for Judicial Factor for Lunatics to be approved of by Principal Clerks of Session only.

102. Whereas by the Act Twentieth and Twenty-first *Victoria*, Chapter Seventy-one, Section Eighty-four, it is provided that no Caution for any Judicial Factor for a Lunatic shall be received as sufficient by any of the Principal Clerks of Session until the Accountant of the Court of Session shall approve thereof: Be it enacted, That the said Provision be repealed, so far as relates to the Approval of Caution for Judicial Factors to Lunatics by the said Accountant of Court, and that after the passing of this Act all such Bonds of Caution shall be received by the Principal Clerks of Session in the same Manner as before the passing of the said last-mentioned Act.

Regulation as to Declinature of Jurisdiction.

103. It shall not be deemed a Ground of Declinature of Jurisdiction that the Judge (whether in the Court of Session or in any of the Inferior Courts) is a Partner in any Joint Stock Company carrying on as its sole or principal Business the Business of Life and Fire or Life Assurance, where such Company is a Party to the Proceeding in which the Judge is called to exercise his Jurisdiction; and it shall not be deemed a Ground of Declinature of Jurisdiction that any such Judge is possessed, merely as a Trustee, of any Stock or Shares in any incorporated Company, where such Company is a Party to the Proceeding.

Annual Returns to be made to Parliament.

104. The Clerks and other Officers of the Court of Session shall make, in such Manner and Form as may from Time to Time be ordered and required by One of Her Majesty's Principal Secretaries of State, annual Returns of the Business of their respective Offices for the Year ending on the Thirty-first Day of *December* immediately preceding, and shall transmit such Returns to Her Majesty's Advocate for *Scotland* on or before the Fifteenth Day of *January* in each

each Year; and Her Majesty's Advocate for *Scotland* is hereby required to prepare from these Returns a general Return for the Court of Session, and on or before the First Day of *March* in each Year to cause the same to be transmitted to One of Her Majesty's Principal Secretaries of State to be laid before Parliament.

Salaries of certain Officers to be regulated.

105. Whereas by the Tenth, Twelfth, Thirteenth, Sixteenth, Nineteenth, Twenty-fifth, and Twenty-sixth Sections of the Act First and Second *Victoria*, Chapter One hundred and eighteen, and by the Third Section of the Act Twentieth and Twenty-first *Victoria*, Chapter Eighteen, certain Salaries were provided to certain therein-named Officers of the Court of Session and of the Bill Chamber of said Court, and of the Court of Commissioners for Teinds: So much of the said Sections of said Acts as fixes the Amounts of said Salaries respectively is hereby repealed; and it shall be lawful for the Commissioners of Her Majesty's Treasury to grant to such Officers of the Court of Session and of the Bill Chamber of said Court, and of the Court of Commissioners for Teinds, such Salaries as to them shall seem proper, payable quarterly out of any Monies to be voted by Parliament for that Purpose, which Salaries shall come in lieu of the Salaries now payable, and of any Fees or other Allowances exigible by such Clerks.

Court to make Acts of Sederunt.

106. The Court of Session may from Time to Time make such Regulations by Act of Sederunt as shall be necessary for carrying into effect the Purposes of this Act; and for regulating the Times and Forms of Summonses and Writs and Modes of Procedure, and of Pleadings; and generally the Practice of the said Court in respect of the Matters to which this Act relates; and for regulating the Fees of the Agents practising before the said Court; and, so far as may be found expedient, for altering the Course of proceeding herein-before prescribed in respect to the Matters to which this Act relates, or any of them; and may also repeal or alter the Provisions of any Act of Sederunt relating to any of the Matters herein-before specified as may be inconsistent with such new Regulations; and for that Purpose the said Court may meet during Vacation as well as during Session: Provided that every such Act of Sederunt shall, within One Month after the Date thereof, be transmitted by the Lord President of the Court of Session to One of Her Majesty's Principal Secretaries of State in order that it may be laid before both Houses of Parliament; and if either of the Houses of Parliament shall, by any Resolution passed within Thirty-six Days after such Act of Sederunt has been laid before such House of Parliament, resolve

 that

that the whole or any Part of such Act of Sederunt ought not to continue in force, in such Case the whole or such Part thereof as shall be so included in such Resolution shall from and after such Resolution cease to be binding.

Repeal of Acts, &c.

107. All Laws, Statutes, Acts of Sederunt, and Usages shall be and the same are hereby repealed in so far only as they may be in any way inconsistent or at variance with the Provisions of this Act, but in all other respects they shall remain in full Force and Effect; and this Act shall be read and construed along with the Tenor thereof.

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