

ANNO PRIMO & SECUNDO

VICTORIÆ REGINÆ.

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CAP LXXXVI.

An Act to diminish Delay and Expence in Advocations and Suspensions in the Court of Session in *Scotland*. [10th *August* 1838.]

WHEREAS it is expedient that it should be made competent to bring Advocations and Suspensions into the Court of Session in *Scotland*, without the Necessity of presenting Bills of Advocation or Suspension in the Bill Chamber in the present Form, and expeding Letters of Advocation or Suspension under the Signet, and thereby to diminish the Delay and Expence arising from the present Mode of Procedure: Be it therefore 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, That the final Judgments of Sheriffs or other inferior Judges of which Advocation is at present competent may be brought under Review of the Court of Session, before Extract, by lodging with one of the Depute Clerks of Session or his Assistant a written Note of Advocation, signed by an Agent in the said Court, having prefixed thereto the Interlocutor or Interlocutors complained of, together with the Notes of

Final Judgments may be brought underReview by Note of Advocation.

of the Judge, if any, affixed thereto, and setting forth in a Prayer the Relief or Remedy craved; and such Note shall be received and marked by such Depute or Assistant Clerk on such Caution as is by the present Practice required, being certified by the Clerk of the inferior Court to have been found in common Form; and certified Notice, under the Hand of the said Depute or Assistant Clerk, of such Note of Advocation having been received being transmitted to the Clerk of such inferior Court, all further Proceedings in the original Cause shall cease, and the Process shall forthwith be transmitted to the Court of Session; and such Note of Advocation and Notice shall be intimated to the opposite Party by delivering a Copy of the same to him or his known Agent, and a Certificate of Intimation shall be indorsed on the said Note by the Agent of the Advocator; and within Fifteen Days after the Date of such Intimation, it shall be competent to call and thereafter to enrol the Cause in the weekly printed Roll, and the same shall proceed in like Manner as at present on expede Letters of Advocation.

Cases of Competitions of Brieves and Services may be removed to Court of Session.

II. And be it enacted, That in Cases of Competitions of Brieves, as well as where a Party claiming Right to appear and oppose a Service has made Appearance, it shall be lawful to any Party to remove the Cause or Proceedings to the Court of Session, by written Note of Advocation as aforesaid, not only from any inferior Judge, but also from the Sheriff of *Edinburgh* acting under special Commission by Authority of the Court of Session; and such Note shall be received and marked in manner and to the Effect aforesaid, and be laid before a Lord Ordinary named in the Note, who shall advocate the Brief and be the Judge in the said Service, without Prejudice nevertheless to the Power of the Court, on Declinature or other Cause shown, to remit to any other Ordinary to be Judge in any Service; and thereafter the Cause shall proceed in the Form in such Cases made and provided.

Advocation of Interlocutory Judgments may be brought. 50G.3.c.112.

III. And be it enacted, That such Advocations of Interlocutory Judgments of Sheriffs and other inferior Judges as are allowed by an Act passed in the Fiftieth Year of the Reign of His Majesty King *George* the Third, intituled *An Act for abridging the Form of extracting Decrees of the Court of Session in* Scotland, *for the Regulation of certain Parts of the Proceedings of that Court*, may be brought by lodging in the Bill Chamber a written Note of Advocation in manner aforesaid; and there shall be annexed to such Note an articulate Statement of the Reasons of Advocation, together with a Note of Pleas in Law; and on such Caution as is by the present Practice required being certified as aforesaid to have been found in the inferior Court in common Form, such Note of Advocation shall be received and marked by the Clerk in the Bill Chamber, and be forthwith laid before the Lord Ordinary on the Bills, who shall pronounce such Order or Interlocutor thereon as shall be just; and where Answers shall be ordered, such Answers

shall be in a similar Form to the Reasons of Advocation; and in case the Lord Ordinary shall pass such Note of Advocation, the Cause may, after the Expiry of Fifteen Days from the passing of the Note, be called, and thereafter enrolled in the weekly printed Roll, in like Manner as at present on expede Letters of Advocation; and if Parties shall not be prepared to close the Record upon the Note and Reasons of Advocation, it shall be competent to order them to be revised, with a view to their forming the Record, or to order a Condescendence and Answers, as in the Case of ordinary Actions, and the Cause shall thereafter proceed before the Lord Ordinary and the Court of Session in common Form.

Suspensions may be brought of Decrees in foro.

IV. And be it enacted, That where the Judgment of any inferior Court pronounced *in foro*, which may at present be brought under Review of the Court of Session by Suspension, with the Exception of any Judgment pronounced in Actions of Removing, is intended to be brought under Review in that Form, it shall be competent to suspend the Decree, and any Diligence or Proceedings following thereon, by lodging in the Bill Chamber a written Note of Suspension, signed by an Agent in the Court of Session, reciting the Import and Effect of the Decree sought to be suspended, and setting forth in a Prayer the Relief or Remedy craved; the Presentment of which Note, on being certified by the Clerk, shall operate as an interim Sist of Diligence; and on such Caution as is by the present Practice required being found for Implement of such Decree, and also for such Expences as may be incurred in the Court of Session, such Note shall be forthwith passed by the Lord Ordinary on the Bills, and certified Notice of the Note having been passed being transmitted to the Clerk of the inferior Court the Process shall be forthwith transmitted to the Court of Session; and such Note and Interlocutor passing, the same shall be served on the opposite Party by a Messenger at Arms in common Form; and it shall be competent after the Expiry of Fifteen Days from the Date of Service to call and thereafter to enrol the Cause in the weekly printed Roll, and to proceed therein in like Manner as at present on expede Letters of Suspension: Provided always, that where a Party is desirous to have such Decree of any inferior Court pronounced *in foro* suspended without Caution or on juratory Caution, and also in Suspensions of Decreets of Removing, there shall be annexed to such Note of Suspension an articulate Statement of the Facts on which the Suspension is founded and a Note of Pleas in Law; and such Note shall be laid before the Lord Ordinary on the Bills, who may pronounce such Order or Interlocutor as shall be just; and where Answers shall be ordered, such Answers shall be in a similar Form to the Reasons of Suspension; and in case the Lord Ordinary shall pass the Note, the same Procedure shall take place as is herein-before provided in the Case of Advocations of Interlocutory Judgments, it being always competent to reclaim to the Inner House against the Interlocutor of the Lord Ordinary passing or refusing such Note; and provided also, that in all Cases of Suspension it shall be competent to the inferior Court or the Court of Session to regulate all Matters regarding interim Possession in like Manner as

as is by the present Law and Practice competent in the Case of Advocations.

Suspensions of Decrees in Absence may be brought.

V. And be it enacted, That it shall be lawful for any Party to bring a Suspension of any Decree in Absence pronounced in the Court of Session, by lodging in the Bill Chamber a Note of Suspension of the Form and Effect of Notes of Suspension herein-before allowed to be brought of Decrees *in foro* of inferior Courts; and upon Consignation in the Hands of the Clerk of such Expences as may have been decerned for, such Note of Suspension shall be received and marked by the Clerk in the Bill Chamber, and shall thereupon be laid before the Lord Ordinary on the Bills, and shall be passed; and the Lord Ordinary shall have Power to award to the Pursuer such Part of the Expences consigned as may appear to be just; and such Note of Suspension and Interlocutor passing, the same shall be served on the opposite Party by a Messenger at Arms in common Form, and it shall be competent after the Elapse of Fifteen Days from the Date of Service to call and thereafter to enrol the Cause before the Judge who pronounced the original Decree or his Successor, and to proceed therein in common Form, without Prejudice to the Power of the Court, on Cause shown, to remit the same to any other Lord Ordinary; and the Lord Ordinary before whom such Cause shall come may grant Warrant to transmit the original Proceedings to the Clerk to such Cause.

Form of Suspensions and Interdicts, &c. not otherwise provided for in this Act.

VI. And be it enacted, That all Suspensions and Interdicts, and Advocations and Suspensions, not otherwise provided for in this Act, may be brought by lodging in the Bill Chamber a Note in manner aforesaid, and there shall be annexed to such Note an articulate Statement of the Facts on which such Advocation or Suspension is founded, together with a Note of Pleas in Law, and such Note of Advocation or Suspension shall be received and marked by the Clerk in the Bill Chamber, and be forthwith laid before the Lord Ordinary on the Bills, who shall pronounce such Order or Interlocutor thereon as may be just; and such Note and Order or Interlocutor thereon shall be served on the opposite Party by a Messenger at Arms in common Form, and shall be answered in a similar Form to the Reasons of Advocation or Suspension; and in case the Lord Ordinary shall pass the said Note, the same Procedure shall take place as is herein-before provided in the Case of Advocations of Interlocutory Judgments: Provided always, that the Practice as to Caution in such Cases, and Power to reclaim to the Inner House, shall remain as at present.

Authorizing Compensation to Persons affected by this Act.

VII. And be it enacted, That it shall be lawful for any Person entitled to Compensation for Loss to be suffered through the Operation or Effect of this Act to make Application to the Lord High Treasurer or to the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland* for the Time being, claiming such Compensation, giving at the same Time Notice of such Application

Application to Her Majesty's Advocate; and it shall be lawful for the said Lord High Treasurer or Commissioners of the Treasury to investigate such Claim, and call for such Evidence in relation thereto as he or they may think necessary; and upon such Claim being established to his or their Satisfaction, the said Lord High Treasurer or Commissioners of Her Majesty's Treasury, or any Three of them, is and are hereby authorized and empowered to award to such Person such Compensation as he or they shall think him entitled to, either by the Payment of a gross Sum or by way of Annuity, as he or they shall think proper: Provided always, that a Copy of every such Award for Compensation shall be laid before both Houses of Parliament within Two Calendar Months after the Commencement of the Session next ensuing after making the same; and no such Award shall be final and conclusive until Two Calendar Months after the same shall have been so laid before Parliament: Provided also, that if any Person to whom Compensation shall be so awarded by way of Annuity shall be afterwards appointed to any other Public Office, such Compensation shall be accounted *pro tanto* of the Salary payable to such Person in respect of such other Office while he shall continue to hold the same.

Compensation how to be paid.

VIII. And be it enacted, That the several Compensations which may be awarded under the Authority of this Act shall be payable and paid out of the Monies which by the Acts of the Seventh and Tenth Years of the Reign of Her Majesty Queen *Anne* were made chargeable with the Fees, Salaries, and other Charges allowed or to be allowed for keeping up the Courts of Session, Justiciary, or Exchequer in *Scotland*.

Court of Session authorized to make Acts of Sederunt relative to this Act.

IX. And be it enacted, That the Court of Session shall be and is hereby empowered from Time to Time to make such further Regulations, by Act or Acts of Sederunt, as the said Court may deem proper for carrying into effect the Purposes of this Act; and for such Purposes the said Court may meet during Vacation as well as during Session, and may alter and amend such Regulations from Time to Time: Provided always, that within Fourteen Days from the Commencement of the Session of Parliament next ensuing the making of any such Regulations, there shall be transmitted to both Houses of Parliament Copies of all such Acts of Sederunt to be made and passed under the Powers hereby given.

Acts inconsistent with this Act repealed.

X. And be it enacted, That all Laws, Statutes, and Usages relative to the Subject Matter of this Act shall be and the same are hereby repealed, in as far as they may be in any respect inconsistent or at variance with the Provisions of this Act: Provided always, that the same shall in all other respects be of full Force and Effect.

Commencement of Act.

XI. And be it enacted, That the Provisions of this Act shall commence and take effect from and after the Thirty-first Day of *December* One thousand eight hundred and thirty-eight.

Act may be altered or repealed.

XII. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present Session of Parliament.

LONDON: Printed by GEORGE EYRE and ANDREW SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1838.