



Court of Session Act 1839

1839 CHAPTER 36

An Act to regulate the Duties to be performed by the Judges in the Supreme Courts of *Scotland*, and to increase the Salaries of certain of the said Judges. [29th July 1839]

WHEREAS an Act was passed in the First Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for uniting the Benefits of Jury Trial in Civil Causes with the ordinary Jurisdiction of the Court of Session, and for making certain other Alterations and Reductions in the Judicial Establishments of Scotland*, by which the Jury Court and the Admiralty and Commissary Courts were abolished, and the Jurisdiction and Duties of the said Courts were transferred to the Court of Session, whereof the Number of Judges was reduced from Fifteen to Thirteen: And whereas another Act was passed in the Second and Third Years of the Reign of His said late Majesty, intituled *An Act for making Provision for the Dispatch of the Business now done by the Court of Exchequer in Scotland*, by which the Jurisdiction and Duties of the Court of Exchequer were transferred to certain Judges of the Court of Session, after the Retirement or Decease of the last remaining Baron of Exchequer, which Event has now happened: And whereas an Act was passed in the Fiftieth Year of the Reign of His Majesty King *George* the Third, intituled *An Act for augmenting the Salaries of the Lords of Session, Lords Commissioners of Justiciary, and Barons of Exchequer; in Scotland, and Judges in Ireland*, by which the Salaries of Lords of Session and Lords Commissioners of Justiciary were augmented and regulated: And whereas His said late Majesty, by Commission bearing Date the Sixth Day of *August* Eighteen hundred and thirty-four, directed Letters Patent to be forthwith made and passed under the Seal appointed by the Treaty of Union to be kept and made use of in place of the Great Seal of *Scotland*, directing certain Persons therein named to make a diligent and full Inquiry into various Matters relative to the Law and Administration of Justice in *Scotland*; and in particular,

First, " As to the Arrangements of Judicial Business in the Courts of Session and other Courts ; "

Secondly, " As to the Execution of the Duties formerly discharged by the Commissary Court, but now transferred by Statute to the Court of Session ; "

Thirdly, " As to the Execution of the Duties formerly discharged by the Admiralty Court, now transferred by Statute to the Court of Session; " and;

Fourthly, " As to the Execution of the Duties of the Court of Exchequer in *Scotland*: "

And whereas the Commissioners so appointed have made Reports, which have been laid before Parliament; and it is expedient to carry into effect certain of the Recommendations contained in the said Reports, and to regulate the Arrangements of Judicial Business in the Court of Session,

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Court of Justiciary, Court of Exchequer, and Court of Commissioners for Teinds, and to increase the Salaries of certain of the Judges of the Court of Session performing the Judicial Duties of the said Supreme Courts:

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,

Judges of Court of Session bound to perform the Duties of Justiciary and Exchequer.

That Judges of the Court of Session in *Scotland* shall be bound, in addition to the Duties at present discharged by them, to perform the Duties of Lords Commissioners of the Court of Justiciary and of Barons of the Court of Exchequer; and such Duties shall be distributed among the said Judges, with a view to Equality of Duty, as herein-after provided.

II Court of Justiciary to consist of certain Judges.

And be it enacted, That the Court of Justiciary shall consist of the Lord Justice General, the Lord Justice Clerk, and Five Judges of the Court of Session, appointed or to be appointed Lords Commissioners of the Court of Justiciary, and the Quorum of the said Court shall remain as at present: Provided always, that it shall be lawful for Her Majesty, Her Heirs and Successors, to appoint, by Special Commission, any other of the Judges of the Court of Session to act as Judges of the Court of Justiciary on Circuits, and in the High Court of Justiciary in Causes which may be certified from Circuit Courts in which such Judges shall have acted.

III Clerks of Justiciary to be appointed by the Crown.

And be it enacted, That after the present Lord Justice Clerk and the present Principal Clerk of Justiciary shall cease to hold their Offices the Appointment to the Offices of Principal and Depute Clerks of the Court of Justiciary, and also of the Circuit Clerks of the said Court, shall, as Vacancies occur, be vested in Her Majesty, Her Heirs and Successors ; and all Persons to be hereafter appointed to any of the said Offices shall perform the Duties thereof in Person.

IV Two Judges to be appointed to perform the Duties of the Exchequer.

And be it enacted, That the Duties of the Court of Exchequer in *Scotland*, and the whole Powers and Duties of the said Court, and of the Chief Baron and Barons thereof, in so far as the Exercise of such Powers and Duties is not otherwise provided for by Parliament, shall be and the same are hereby transferred to the Judges of the Court of Session (not being Lords Commissioners of the Court of Justiciary), Two of whom, as Judges, shall perform the same successively and in rotation for such equal Periods of Time as shall be fixed by the said whole Judges, and established by Act of Sederunt to that Effect: Provided always, that one of the said Judges may act in the Absence of the other.

V Judges performing the Duties of the Court of Exchequer, in Cases of Importance to state Questions of Law for Opinion, of the other Judges.

And be it enacted, That it shall be competent to the Two Judges performing for the Time the Duties of the Court of Exchequer, in any Case which shall appear to them to be of Importance and Difficulty, to state the Questions of Law arising on such Case in Writing, and to require the Opinion of the other Judges liable to perform the said Duties of the Court of Exchequer thereupon; and such other Judges shall communicate their Opinion thereupon, either collectively or individually ; and the Judgment to be pronounced in the Cause by the Two officiating Judges shall be in accordance with the Opinion of the Majority of all the Judges so Consulting.

VI Her Majesty may accept the Resignation of a Judge of Justiciary or Exchequer.

And be it enacted, That it shall be lawful for Her Majesty, Her Heirs and Successors, where it shall appear expedient for the better Administration of Justice, to accept of the Resignation of any of the Judges in the Court of Session who shall have been or may be appointed to perform the Duties of Lords Commissioners of the Court of Justiciary, in so far as regards such Duties in the Court of Justiciary, and to appoint another of the Judges in the Court of Session to perform such Duties: Provided always, that the Judge whose Resignation is so accepted shall be forthwith appointed to perform some of the other Duties hereby assigned to Judges of the Court of Session.

VII As to the Performance of the Business of the Bill Chamber.

And be it enacted, That the whole Business of the Bill Chamber in the Court of Session falling to be performed during the Spring and Autumn Vacations of the said Court, and during the *Christmas* Recess, shall be performed, in such Rotation as the Court of Session by Act of Sederunt may fix, by the remaining Six Judges of the Court of Session who shall not be Judges in the Court of Justiciary, with Power to all the Judges of the Court of Session, in case of Indisposition or of Absence of any of the said Six Judges, to act for him.

VIII Teind Court regulated.

And be it enacted, That the Judges of the Two Divisions of the Inner House of the Court of Session, along with the Lord Ordinary who shall be Judge in Teind Causes and Proceedings for the Time being, shall be Lords Commissioners for Teinds, and shall constitute the Court of Commissioners for Teinds, and any Five of the said Judges shall be a Quorum of the said Court; and it shall be competent to the said Court, in Causes which they may deem to be of Importance or Difficulty, to order that such Causes shall be heard before the whole Judges of the Court of Session, and to obtain their Opinions, in like Manner as is provided in ordinary Causes depending in either Division of the Court of Session.

IX Sittings of the Court of Session and of the Lords Ordinary regulated.

And be it enacted, That the Sittings of the Court of Session shall be regulated as follows; the Sittings of the whole Court, both Inner and Outer Houses, for the Summer Session, excepting the Summer Session of this present Year, which shall meet and terminate as heretofore, shall commence on the first lawful Day (*Monday* excepted) which shall happen next after the Nineteenth Day of *May* yearly, and shall terminate on

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the Twentieth Day of *July* yearly, or on the *Saturday* immediately preceding the said Twentieth Day of *July* when the same shall happen to fall upon *Sunday* or *Monday*; the Sittings of the Two Divisions of the Inner House for the Winter Session shall commence and terminate as at present; and the Sittings of the Lords Ordinary in the Outer House for the Winter Session shall commence on the first lawful Day (*Monday* excepted) which shall happen next after the Thirty-first Day of October yearly, and shall terminate on the Twentieth Day of *March* yearly, or on the *Saturday* immediately preceding the said Twentieth Day of *March* when the same shall happen to fall upon a *Sunday* or *Monday*; Provided always, that at the Sittings of the Court of Session for Trial of Civil Causes by Jury, before and after the ordinary Sessions of the said Court, the Lords Ordinary shall assist, when required, in the said Jury Trials, and also at the Criminal Trials held before and after the ordinary Sessions of the Court where they are Judges of Justiciary.

X Court of Session to have Power to extend the Sittings.

And be it enacted, That it shall be lawful for the said Court of Session and they are hereby authorized and empowered, if there shall be Arrears of Business in the said Court, or as the State of Business otherwise may require, from Time to Time to direct, by Act or Acts of Sederunt, that the Winter and Summer Sessions of the Court of Session or either of them shall be extended, and to specify the Time or Times of such Extension, and the precise Duration thereof, and to direct that such Extension shall apply either to the whole Court of Session or to either of the Divisions thereof, or to all or any of the Lords Ordinary, and to make all Regulations which may be required in consequence of any such Extension, or connected therewith : Provided always, that such Extension shall not on the whole exceed the usual Period of the Sittings of the said Court previous to the passing of this Act by more than the Space of Two Calendar Months in the course of the Year, and that it shall thereafter in like Manner be lawful for the said Court to alter and limit the said Period of Extension from Time to Time as Occasion may require; and provided also, that Sederunt Days shall be reckoned from and regulated by the meeting of the Inner Houses of the Court, and not by the Sittings of the Lords Ordinary.

XI Her Majesty to have Power to extend the Sittings.

And whereas by the said first-recited Act His Majesty, His Heirs and Successors, with the Consent of His Privy Council, was empowered to order and direct that the Duration of the Sittings of the Court of Session and Lords Ordinary should be extended to any Space not exceeding One Month, and to alter and vary such Extension in manner therein provided ; be it enacted, That it shall be lawful for Her Majesty, Her Heirs and Successors, with the Consent of Her Privy Council, from Time to Time to order and direct the Extension or the Duration of the Sittings of the said Court, or either of the Divisions thereof, or of all or any of the Lords Ordinary, and to alter and limit such Extension to such and the like Duration and in such and the like Manner as the Judges of the said Court are herein-before authorized to alter the Sittings thereof

XII Salaries of the Judges regulated, and certain Judges Salaries increased. Proviso as to retiring Allowance.

And whereas great Reductions have recently been made in the Judicial Establishments of *Scotland*, by the Transference of the Jurisdiction and Duties of the Court of Exchequer, the Jury Court, the Admiralty Court, and the Commissary Court, to the

Judges of the Court of Session, and by the Abolition of the Offices of Two of the Judges in that Court, whereby the Duties formerly performed by Thirteen Judges, whose Offices are now abolished, have been transferred to the remaining Judges of the Court of Session, and a Saving in the Expence of the Judicial Establishments of *Scotland* has been effected to the Amount of more than Fifty thousand Pounds per Annum: And whereas the Judicial Business and Duties of the Supreme Courts are by this Act distributed among the said Judges, and therefore the Salaries of the ordinary Judges ought also to be equalized and in some respects increased: Be it enacted, That the annual Salary of the Lord President of the Court of Session shall be Four thousand eight hundred Pounds, and the annual Salary of the Lord Justice Clerk shall be Four thousand five hundred Pounds, and the annual Salaries of all the other Judges of the Court of Session performing the Duties of the Courts of Session, Justiciary, and Exchequer, and of the Bill Chamber, in manner herein provided, shall be of equal Amount, and shall be Three thousand Pounds ; and the said Salaries shall be issued, paid, and applied in manner provided by the before-recited Act passed in the Fiftieth Year of the Reign of His Majesty King *George* the Third: Provided always, that no retiring Allowance or Increase of Salary shall be received by any Judge under this Act, unless under Deduction of any retiring Allowance or Salary which such Judge now enjoys or may hereafter enjoy on account of any Judicial Office ; but such Deduction shall be made to the Effect only of preventing any of the present Judges from receiving larger Allowances or Salaries than he now receives.

XIII Court of Session to make Regulations to carry this Act into effect.

And be it enacted, That from and after the passing of this Act the Court of Session shall be and is hereby empowered from Time to Time to make such Regulations, by Act or Acts of Sederunt, as the said Court may deem meet, for carrying into effect the Purposes of this Act, as also to make Regulations for allowing Summonses to be called at either of the Box Days in the Autumn Vacation, and making Defences returnable at the Second Box Day, or on the meeting of the Court in *November* ; and the said Court may meet for the above Purposes 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 every future Session of Parliament there shall be transmitted to both Houses of Parliament Copies- of all Acts of Sederunt made and passed under the Powers herein given.

XIV Laws at variance with this Act repealed.

And be it enacted, That all Laws, Statutes, and Usages shall be and the same are hereby repealed, in so far as they may be inconsistent or at variance with the Provisions of this Act: Provided always, that the same shall continue in force in all other respects whatsoever.

XV Commencement of this Act.

And be it enacted, That the Provisions of this Act, unless where otherwise herein specially provided, shall commence and take effect from and after the passing thereof.

XVI Act may be amended.

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