



# Court of Session Act 1868

## 1868 CHAPTER 100 31 and 32 Vict

### III.—CALLING AND DECREE IN ABSENCE

#### 22 New procedure in reference to calling of summonses and enrolment for decree.

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 defence 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 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.

#### **Modifications etc. (not altering text)**

C1 Ss. 15–44 repealed (S.) by Court of Session Act 1988 (c. 36, SIF 36:1), s. 52(2), Sch. 2 Pt. I (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

#### 23 Mode of obtaining decrees in absence.

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

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*Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, III.—Calling and Decree in Absence. (See end of Document for details)*

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 [<sup>F1</sup>10p], 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 further, 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.

#### Textual Amendments

- F1** Words substituted by virtue of [Decimal Currency Act 1969 \(c. 19\), s. 10\(1\)](#)

#### Modifications etc. (not altering text)

- C2** [Ss. 15–44](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\), s. 52\(2\), Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)

## 24 Certain decrees in absence to have effect as decrees in foro.

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 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.

#### Modifications etc. (not altering text)

- C3** [Ss. 15–44](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\), s. 52\(2\), Sch. 2 Pt. I](#) (and re-enacted in part as referred to in Sch. 2 Pt. II of that Act)
- C4** [S. 24](#) excluded by [Conveyancing Amendment \(Scotland\) Act 1938 \(c. 24\), s. 6\(4\)](#) and [Land Tenure Reform \(Scotland\) Act 1974 \(c. 38\), s. 9\(7\)](#)

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