



Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

IX.—MISCELLANEOUS PROVISIONS

93 Procedure in time of vacation.

Summonses may be called, and defences or other pleadings may be returnable, at any of the box days in vacation or recess; . . . ^{F1}

Textual Amendments

F1 Words repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

Modifications etc. (not altering text)

C1 [Ss. 50–101](#) repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt.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)

94 Lord Ordinary may sign interlocutors in vacation.

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 of causes by jury or by proof, before such Lord Ordinary: . . . ^{F2}

Textual Amendments

F2 Words repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

95 New procedure in place of actions of wakening.

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

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, IX.—Miscellaneous Provisions. (See end of Document for details)

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.

Modifications etc. (not altering text)

- C2 Ss. 50–101 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)

96 New procedure in place of actions of transference.

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 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.

Modifications etc. (not altering text)

- C3 Ss. 50–101 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)

97 New procedure in place of combined actions of wakening and transference.

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

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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.

Modifications etc. (not altering text)

- C4 Ss. 50–101 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)

98 Transference of actions depending in the Inner House.

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.

Modifications etc. (not altering text)

- C5 Ss. 50–101 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)

99 Not competent to object to productions after record closed.

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.

Modifications etc. (not altering text)

- C6 Ss. 50–101 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)

100 Amendment of Conjugal Rights Act. 24 & 25 Vict. c. 86.

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 the said Act if the personal service therein required is made by the delivery to the defendant 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

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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.

Modifications etc. (not altering text)

- C7** Ss. 50–101 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)

101 Cognition of the insane regulated.

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 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.

Modifications etc. (not altering text)

- C8** Ss. 50–101 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)
- C9** Functions of Chancery (Director of Chancery) now exercisable by Keeper of the Registers of Scotland: S.R. & O. 1932/148 (Rev. III, p. 655: 1932, p. 140), art. 3, [Public Records \(Scotland\) Act 1937 \(c. 43\)](#), s. 13(1) and [Public Registers and Records \(Scotland\) Act 1948 \(c. 57\)](#), s. 1(2)

Changes to legislation: There are currently no known outstanding effects for the Court of Session Act 1868, IX.—Miscellaneous Provisions. (See end of Document for details)

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Textual Amendments

- F3** [S. 102](#) repealed by [Statute Law Revision Act 1893 \(c. 14\)](#) and S.R. & O. 1913/638, (1913, p.2013)
Book G, c. I, s. 4

103 Regulations as to declinature of jurisdiction.

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.

104 **F4**

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Textual Amendments

- F4** [S. 104](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

105, **F5**
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Textual Amendments

- F5** [Ss. 105, 106](#) repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

107 **F6**

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Textual Amendments

- F6** [S. 107](#) repealed by [Statute Law Revision Act 1875 \(c. 66\)](#)

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