



# Administration of Justice (Scotland) Act 1933

## 1933 CHAPTER 41

An Act to amend the law of Scotland relating to the Court of Session and procedure therein, to the appointment of Officers in the said Court and the High Court of Justiciary, to criminal jury trials and to the Sheriffs and procedure in the Sheriff Court, and with regard to solicitors' fees ; and for purposes connected therewith. [28th July 1933.]

BE IT ENACTED by the King'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:—

### PART I

#### COURT OF SESSION

#### **1 Abolition of trials of judges**

- (1) It shall not be necessary for the judges of the Court of Session to make trial or examination of the qualifications of a person nominated and appointed to be a judge of the said Court and the provisions of the Court of Session Act 1723 and of the Acts of the Parliament of Scotland therein referred to shall, in so far as they relate to such trial and examination, cease to have effect.
- (2) This section shall come into operation on the passing of this Act.

#### **2 Provision for extra division of Inner House**

- (1) The Lord President shall have power from time to time to direct any three judges to sit as an additional division of the Inner House for the purpose of hearing and disposing of causes pending before the Inner House, and the senior judge present shall preside, and shall sign any judgment or interlocutor pronounced by that division. Any reference in

any Act or in any Act of Sederunt to a division of the Inner House of the Court shall be construed as including a reference to any such additional division.

- (2) This section shall come into operation on the passing of this Act.

### **3 Abolition of Bill Chamber**

- (1) The Bill Chamber shall cease to exist and any cause which according to the law and practice existing immediately prior to the commencement of this Act required to be brought in the Bill Chamber may be brought in the Outer House and any reference in any Act or in any Act of Sederunt to the Lord Ordinary on the Bills or to the Junior Lord Ordinary shall be construed as a reference to a judge sitting in the Outer House, provided that, in any provision of an Act or an Act of Sederunt as to the exercise of jurisdiction in vacation, any reference to the Lord Ordinary on the Bills shall be construed as a reference to the judge acting as vacation judge in pursuance of section four of this Act.
- (2) Notwithstanding anything in the foregoing subsection a solicitor shall have, as regards any cause which according to the law and practice existing immediately prior to the commencement of this Act required to be brought in the Bill Chamber, the like rights of audience and appearance as if the said subsection had not been enacted.

### **4 Sessions of the Court**

- (1) The ordinary sessions of the Court shall in every year be as follows:—  
from the Tuesday preceding the tenth day of January to the Saturday preceding the thirty-first day of March; from the Tuesday preceding the tenth day of May to the Saturday preceding the twenty-third day of July; and from the Tuesday preceding the fifteenth day of October to the Saturday preceding the twenty-fourth day of December.
- (2) It shall be lawful for the Court, if at any time they shall be of opinion that the business before the Court so requires, by Act of Sederunt to extend any ordinary session of the Court for such period as may be deemed necessary: Provided always that it shall be competent for any division or for any Lord Ordinary to sit during vacation, notwithstanding that no Act of Sederunt under this subsection may have been made, and at such sitting to hear and determine any cause pending before such division or Lord Ordinary.
- (3) During vacation the judges of the Court, other than the Lord President and the Lord Justice Clerk, shall in rotation act as vacation judge, and it shall be competent for such vacation judge, at any time during vacation, and whether sitting in Court or in chambers, to do anything delegated to him by the Inner House, or to do anything which the Lord Ordinary officiating on the Bills was empowered by the law and practice existing immediately prior to the commencement of this Act to do either at the Courts appointed to be held by him or at any other time during vacation or recess, or to do any other thing which he may, by Act of Sederunt, be authorised to do.
- (4) Section ninety-three of the Act of 1868, in so far as it requires the Lord Ordinary officiating on the Bills to sit in Court on the fifth day after each box-day in vacation or recess, shall cease to have effect.
- (5) Without prejudice to the provisions of section eight of the Act of 1868 relating to sittings on Monday—

- (a) the Court may continue on the ensuing Monday the taking of any proof proceeding on a Friday or Saturday and not finished on that day, and shall, unless it is impracticable, do so, where the Court is of opinion that undue expense or delay can thereby be avoided, and
  - (b) the Court shall, where it is necessary in order to avoid interference with the regular sittings of any judge of the Outer House, hold on a Monday any hearing in the Inner House at which the presence of such judge is required.
- (6) Section nine of the Court of Session Act, 1830, shall cease to have effect in so far as it requires causes to be tried by jury at sittings of the Court to be held during vacation or during the Christmas recess.

## **5 Right of party to choose Lord Ordinary and Division abolished**

The right of a party to a cause, including an appeal, to mark the same to a specified Lord Ordinary or Division, or otherwise to select the Lord Ordinary or Division by whom the cause shall be heard, shall cease. Every cause in the Inner House shall be heard and determined by such Division thereof, and (save as in section ten of this Act otherwise expressly provided) every cause in the Outer House shall be heard and determined by such Lord Ordinary as may be determined in accordance with this Act or any Act of Sederunt made in pursuance thereof.

## **6 Form of proceedings in the Court of Session**

- (1) Save as hereinafter provided all causes initiated in the Court shall be initiated in the Outer House either by summons or by petition, which summons or petition shall be in such form as may be prescribed, and any enactment in force at the commencement of this Act prescribing or regulating the form of any summons or petition in the Court shall cease to have effect.
- (2) Save as hereinafter provided there shall be annexed to every summons, and included in every petition, a statement in the form of an articulate condensation of the allegations in fact which form the grounds of the pursuer's claim, or on which the prayer of the petition is based, and there shall also be annexed to every summons and to every petition for suspension, suspension and interdict, or suspension and liberation, a note of the pursuer's or petitioner's pleas-in-law. The defences to every such summons and the answers to every such petition shall be in the form of articulate answers to the aforesaid statement, and there shall be annexed to such defences and to the answers to every petition for suspension, suspension and interdict, or suspension and liberation, a note of the defender's or respondent's pleas-in-law. Where a counterclaim is made by the defender or where it is otherwise necessary, a statement of facts founded on by the defender shall be annexed to the defences.
- (3) The foregoing subsections shall not apply to Exchequer causes or to special cases under section sixty-three of the Court of Session Act, 1868, and, notwithstanding anything in the foregoing subsections, such special cases and the following petitions, viz. :—
- (a) petitions and complaints;
  - (b) petitions in respect of failure to perform a statutory duty;
  - (c) petitions in respect of failure to perform any public or official duty which would according to the law and practice existing immediately prior to the commencement of this Act require to be presented in the Inner House;

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- (d) petitions under the Acts relating to solicitors or notaries public (other than petitions for admission as a solicitor);
  - (e) petitions incidental to a cause already before the Inner House;
  - (f) petitions under the Evidence by Commission Act, 1843 or under the Foreign Tribunals Evidence Act, 1856 or under the Evidence by Commission Act, 1859 or under the British Law Ascertainment Act, 1859 or under any similar enactment;
  - (g) petitions to the Court invoking the exercise of the nobile officium; shall be presented in the Inner House.
- (4) Notwithstanding anything in the immediately preceding subsection it shall be competent to the Division or to the Lord Ordinary before whom any cause in which interim interdict has been granted, is depending, to deal, on enrolment of the cause, with any breach of such interim interdict without the presentation of a petition and complaint.
- (5) Notwithstanding anything in the foregoing provisions of this section, no condescendence or note of pleas-in-law shall be annexed to the summons and no defences shall be lodged in any cause between vessels in respect of damage by collision at sea, but any such summons shall specify the time and place of the collision, the vessels involved, and the damages claimed, and each party to the cause shall, not later than the day when, but for the provisions of this subsection, defences would be due, lodge a statement in such form and giving such particulars regarding the collision as may be prescribed, and such statements shall be sealed up and shall not be opened until the Court so directs or the parties so agree: Provided always that the Court, if after consideration of the aforesaid statements, it deems it expedient to do so, may order a condescendence and answers thereto to be lodged, or may require the parties to lodge such further information or particulars in such form as the Court may think fit.
- (6) Any application to the Court for suspension, suspension and interdict, or suspension and liberation which, according to the law and practice existing immediately prior to the commencement of this Act, would require to be in the form of a note, shall be in the form of a petition which shall be presented in the Outer House.
- (7) In any cause containing a conclusion or a crave for interdict or liberation, the Court shall have power on the motion of either party to grant interim interdict or liberation, and in any cause in dependence before the Court, the Court shall have power on the motion of either party to make such order regarding the interim possession of any property to which the cause relates, or regarding the subject matter of the cause, as the Court may think fit.

## 7 Proceedings in revenue cases

Notwithstanding anything contained in section two or section eight of the Exchequer Court (Scotland) Act, 1856, proceedings in any appeal by way of stated case, whether under the Taxes Management Act, 1880, the Income Tax Act, 1918, or the Stamp Act, 1891, and all special cases lodged in process in pursuance of section eight of the first-mentioned Act shall not be brought in the first instance before the Lord Ordinary but shall be presented in the Inner House.

**8 Signature of a summons by writer to signet no longer necessary**

Section thirteen of the Act of 1868 in so far as it requires the last page of a summons to be signed by a writer to the signet shall cease to have effect and accordingly the proviso to the said section shall be repealed.

**9 Printing, boxing, and c**

Any enactment in force at the commencement of this Act requiring any petition, summons, note or other document for the purpose of any cause in the Court to be printed or boxed, or specifying the number of copies to be printed or boxed, shall cease to have effect.

**10 Provision for summary trial of certain cases**

- (1) The parties to any dispute or question to which this section applies may present a petition in the Outer House setting forth the dispute or question and craving that it may be decided by a particular Lord Ordinary, and any such petition shall stand referred to such Lord Ordinary for his determination of the dispute or question.
- (2) For the purpose of the hearing and determination of any such dispute or question, the procedure, in lieu of the procedure ordinarily obtaining in proceedings in the Outer House, shall, subject to the provisions of any Act of Sederunt made under this Act, be such as the parties may, with the consent of the Lord Ordinary, agree, or, failing such agreement, as the Lord Ordinary may order.  

Provided always that any evidence led shall not be taken down in shorthand and recorded unless the parties so agree.
- (3) The Lord Ordinary may, on cause shown, hear and determine in chambers any dispute or question submitted for his decision under this section.
- (4) The Lord Ordinary shall pronounce any decree which he may deem necessary to enable his decision of a dispute or question under this section to be carried into effect.
- (5) Any decree or interlocutor of the Lord Ordinary in any proceedings under this section shall be final and binding on the parties and shall not be subject to review by reclaiming note or otherwise.
- (6) It shall be competent to the parties to any cause in dependence in the Outer House not affecting the status of any person, to agree by joint minute, or in such other manner as may be prescribed, that the provisions of this section shall apply to such cause, and thereafter the said provisions shall apply accordingly.
- (7) Provision shall be made by Act of Sederunt under this Act for securing that causes under this section shall be disposed of with as little delay as possible.
- (8) This section shall apply to any dispute or question not affecting the status of any person which might competently be the subject of any cause in the Outer House, or which might competently have been the subject of any such cause but for the provisions of section seven of the Sheriff Courts (Scotland) Act, 1907.

## 11 Provisions as to jury trial

- (1) A jury impanelled to try any cause in the Court may at any time return a verdict by a majority of its members, and if such a jury, after it has been enclosed for three hours, shall be unable to agree upon a verdict or to return a verdict by a majority, the presiding judge may discharge the jury without their having given a verdict, and on the jury being discharged shall order the cause to be tried by another jury.
- (2) Where in the course of any jury trial in the Court the presiding judge is satisfied that any member of the jury is, by reason of illness, unable to continue to serve on the jury or ought, for any other reason, to be discharged from further service on the jury, it shall be lawful for the judge to discharge such member, and in any such case or in any case where in the course of such a jury trial, a member of the jury dies, the remaining members of the jury (if they shall be not less than ten in number) shall in all respects be deemed to constitute the jury for the purpose of the trial and any verdict returned by them whether unanimous or by majority shall be of the like force and effect as a unanimous verdict or a verdict by majority of the whole number of the jury.
- (3) This section shall come into operation on the passing of this Act.

## 12 Choosing of curators

- (1) The action of choosing curators shall cease to be competent, and, where a minor desires to choose curators, it shall be competent to him, in lieu of bringing such an action, to present a petition, in such form, and subject to such conditions as to citation and service or otherwise, as may be prescribed, for the appointment of a curator or curators, and in any such petition the Court may appoint to the office of curator any person resident in Scotland, or any person not so resident if he finds security and prorogates the jurisdiction of the Court.
- (2) The [Act of the Parliament of Scotland 1555 cap. 8](#) is hereby repealed.

## 13 Assessors

- (1) Without prejudice to the provisions of the Nautical Assessors (Scotland) Act, 1894, or of the Patents and Designs Acts, 1907 to 1932, regarding the summoning of assessors, the Court may, in any cause, on the joint request of the parties thereto summon to its assistance, at the trial or proof or at any subsequent hearing, whether on reclaiming note, appeal, or otherwise, a specially qualified assessor.
- (2) The remuneration to be paid to an assessor under this section shall, unless the Court otherwise directs, be treated as expenses in the cause.

## 14 Provisions as to reclaiming

- (1) Section fifty-one of the Act of 1868 (which relates to the form of reclaiming notes) shall cease to have effect and a party desiring to submit to the review of the Inner House an interlocutor of the Lord Ordinary may do so in such form as may be prescribed and any submission to review in such form shall be of the like force and effect as a reclaiming note in the form required by the law and practice existing immediately prior to the commencement of this Act.
- (2) Any enactment in force at the commencement of this Act precluding the presentation of a reclaiming note against an interlocutor without the leave of the Lord Ordinary, or

fixing, whether by reference to the date of the interlocutor or by reference to the date of granting such leave, the period within which a reclaiming note may be presented shall cease to have effect and the Court shall, by Act of Sederunt, prescribe—

- (a) the interlocutors which may, and the interlocutors which may not, be submitted to the review of the Inner House without obtaining the leave of the Lord Ordinary;
- (b) the manner in which, and the time within which, such leave may be obtained and the Lord Ordinary by whom it may be granted, in session as well as in vacation; and
- (c) the period within which any interlocutor pronounced by a Lord Ordinary may be submitted to the review of the Inner House.

## **15 Form of extract of decree**

Any enactment in force at the commencement of this Act prescribing or regulating the form of the extract of a decree of the Court shall cease to have effect, and an extract of such a decree in such form as may be prescribed, shall be of the like effect in all respects as an extract in the form required by the law and practice in existence immediately prior to the commencement of this Act.

## **16 Power to regulate procedure, and c, by Act of Sederunt**

The Court shall have power by Act of Sederunt—

- (a) to regulate and prescribe the procedure and practice to be followed in various categories of causes in the Court or in execution or diligence following on such causes, whether initiated in the said Court or brought there by way of appeal, removal, remit, stated case, or other like process, and any matters incidental or relating to any such procedure or practice including (but without prejudice to the foregoing generality) the manner in which, the time within which, and the conditions on which any interlocutor of the Lord Ordinary may be submitted to the review of the Inner House, or any application to the Court, or any thing required or authorised to be done in relation to any such causes as aforesaid shall or may be made or done;
- (b) to prescribe the form of any summons, defence, petition, answer, writ, pleading or other document whatsoever to be used in, or for the purposes of, any such causes as aforesaid, or in, or for the purposes of, execution or diligence following on such causes and the manner in which, and the person by whom, any such summons, petition, writ, pleading or document shall be signed or authenticated;
- (c) to prescribe the manner in which, the time within which, and the conditions on which any verdict of a jury may be submitted to the review of the Inner House on any ground set forth in section six of the Jury Trials (Scotland) Act, 1815;
- (d) to regulate the production and recovery of documents;
- (e) to provide for the admission, on such conditions as may be prescribed, of affidavits, in lieu of parole evidence, in any issue not affecting the status of any person;
- (f) to provide for the payment into Court and the investment or application of sums of money awarded in any action of damages in the Court to a pupil or a minor;
- (g) to regulate the fees of solicitors practising before the Court;
- (h) to regulate the summoning, remuneration, and duties of assessors;

- (i) to make such regulations as may be necessary to carry out the provisions of this Act or of any Act conferring powers or imposing duties on the Court or relating to proceedings therein; and
- (j) to modify, amend or repeal any enactments, including enactments contained in this Act, relating to matters with respect to which an Act of Sederunt is made under this Act.

## **17 Allocation of business, and c, by Act of Sederunt**

With a view to securing that causes coming before the Court may be heard and determined with as little delay as is possible, and to the simplifying of procedure and the reduction of expense in causes before the Court, the Court shall, in the exercise of the powers conferred on them by the last foregoing section, provide by Act of Sederunt:—

- (i) for the classification of the causes brought into the Court according to the manner in which they are initiated, and for the institution of (a) an Ordinary Roll; (b) an Admiralty and Commercial Roll; and (c) a Consistorial Roll; and the assignment to the Consistorial Roll of all consistorial causes and to the Ordinary Roll or to the Admiralty and Commercial Roll of all other causes initiated by summons, according to the subject matter of such causes;
- (ii) for the allocation of the causes before the Inner House among the divisions thereof and of the causes before the Outer House among the Lords Ordinary;
- (iii) for enabling the enforcement of a maritime lien over a ship by an action in rem directed against the ship and all persons interested therein without naming them and concluding for the sale of the ship and the application of the proceeds in extinction pro tanto of the lien, and for enabling arrestment of the ship on the dependence of such an action, and for the regulation of the procedure in any such action;
- (iv) for enabling the inclusion, in any such action as is mentioned in the immediately preceding paragraph, of conclusions in personam against the registered owners of the vessel, whether their names are or are not known to the pursuer, and the granting of decree in any such action containing such conclusions against any comparing defender;
- (v) for the inclusion in defences to any action of any counter claim arising out of the matters on which the action is based, to the effect of enabling such counter claim to be enforced without a separate action being raised ;
- (vi) for enabling trustees under any trust deed to obtain the direction of the Court on questions relating to the investment, distribution, management or administration of the trust estate, or the exercise of any power vested in, or the performance of any duty imposed on, the trustees notwithstanding that such direction may affect contingent interests in the trust estate, whether of persons in existence at, or of persons who may be born after, the date of the direction;
- (vii) for enabling arrestment ad fundandam jurisdictionem to proceed on a warrant contained in the summons in like manner as arrestment on the dependence of the action.

## **18 Rules Council**

- (1) There shall be established a Rules Council consisting of the Lord President ex officio, two other judges of the Court to be appointed by the Lord President, five members of the Faculty of Advocates to be appointed by the Faculty, and five solicitors, of whom



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not less than two shall be solicitors practising before the Court, to be appointed on the first occasion by the Lord President and thereafter by the General Council of Solicitors in Scotland.

- (2) The members of the Rules Council, other than the Lord President, shall, so long as they retain the respective qualifications hereinbefore prescribed, hold office for three years and be eligible for reappointment.
- (3) Any vacancy in the membership of the Rules Council occurring by death, resignation, or other cause prior to the expiry of three years from the date of appointment of the member whose office is so vacated shall be filled by the appointment by the person or body by whom that member was appointed of another person possessing the same qualification:  
Provided that—
  - (i) where the vacancy occurs after the first day of March, nineteen hundred and thirty-four, and the member whose office is vacated was a solicitor appointed by the Lord President, such vacancy shall be filled by appointment by the General Council of Solicitors in Scotland; and
  - (ii) any person appointed in pursuance of this subsection to fill a vacancy shall remain a member of the council only until the expiry of three years from the date of the appointment of the member whose office is so vacated.
- (4) The Rules Council may from time to time frame rules regarding any of the matters relating to the Court, which the Court are empowered to regulate by Act of Sederunt, and shall submit any rules so framed to the Court, and the Court shall consider such rules and, if approved, embody them (with or without amendment) in an Act of Sederunt. At any meeting of the Rules Council seven members shall form a quorum.
- (5) This section shall come into operation on the passing of this Act.

## PART II

### CRIMINAL JURY TRIALS, &C

#### **19 Provision for death or illness of jurors in trials on indictment**

Where in the course of the trial on any indictment any juror chosen to serve on such trial dies, or the court is satisfied that any juror so chosen is, through illness or for any other reason, unfit to continue to serve on the trial, the court may, on application made by or on behalf of the Lord Advocate or an accused, in its discretion, direct that the trial shall proceed before the remaining jurors (if they shall be not less than twelve in number), and where any such direction is given the remaining jurors shall be deemed in all respects to be a properly constituted jury for the purpose of the trial and shall have power to return a verdict accordingly whether unanimous or by majority, provided always that they shall not be entitled to return a verdict of guilty by majority unless eight of their number are in favour of such verdict and if, in any such case, the remaining jurors shall inform the Court that less than eight of their number are in favour of a verdict of guilty, and that there is not a majority in favour of any other verdict, they shall be deemed to have returned a verdict of not guilty.

## **20 Admissions by parties in trials on indictment**

- (1) In any trial on indictment it shall not be necessary for the prosecutor or the accused to prove any documents which are admitted by the other party, and copies of any documents may, where the parties so agree, be accepted as equivalent to the originals, provided that no such admission or agreement by the accused shall be accepted, except in a case in which he has legal assistance in his defence.
- (2) For the purposes of the foregoing subsection any admission or agreement may be made by lodging with the clerk of court a minute signed by the person making the admission or agreement, or, in the case of the accused, by his counsel or solicitor, and the documents so admitted shall be deemed to have been duly proved, and copies of any documents so agreed to be accepted as equivalent to the originals shall be accepted as if they were the originals.

## **21 Intimation of proceedings in High Court of Justiciary to Lord Advocate**

In any proceeding in the High Court of Justiciary (other than a proceeding to which the Lord Advocate or a procurator fiscal is a party) it shall be competent for the said Court to order intimation of such proceeding to the Lord Advocate, and on such intimation being made, the Lord Advocate shall be entitled to appear and be heard in such proceeding.

## **22 Commencement of this Part of this Act**

This Part of this Act shall come into operation on the passing thereof.

### **PART III**

#### OFFICERS OF THE HIGH COURT OF JUSTICIARY AND OF THE COURT OF SESSION

## **23 Appointment of clerks in the Court of Justiciary**

- (1) The right of appointing any Depute, Assistant or other Clerk in the Justiciary Office shall be vested in the Secretary of State and shall be exercised after consultation with the Lord Justice General.
- (2) The duties of Clerk of the High Court of Justiciary when sitting in Edinburgh or elsewhere may be performed by the Principal Clerk or by such Depute, Assistant, or other Clerk in the Justiciary Office as the Lord Justice General may approve, and the said Principal Clerk and any such Depute, Assistant, or other Clerk shall perform such duties in relation to the business of the said High Court as the Lord Justice General may direct.

## **24 Appointment of officers of the Court of Session**

- (1) Any enactment in force at the passing of this Act as to the number or appointment of the Clerks of Court shall cease to have effect and the Secretary of State shall, after consultation with the Lord President, appoint a Principal Clerk of Session and such other clerks and officers of the Court as he may, with the sanction of the Treasury as to numbers, determine to be necessary to discharge the duties devolving, according to the law and practice existing immediately prior to the passing of this Act, on the whole

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staff of clerks in the Inner and Outer Houses and in the Bill Chamber and on the clerks to the judges, and such other clerks and officers shall, subject to the directions of the Lord President, be under the general supervision of the Principal Clerk of Session, and shall, subject as aforesaid, perform such duties in relation to the business of the Court as the Principal Clerk may require.

- (2) There shall be a Central Office of the Court which shall comprise the clerks and officers appointed in pursuance of this section and which shall be divided into a General Department and a Petition Department. Causes initiated in the Court by petition shall be assigned to the Petition Department and there shall be assigned to the General Department—
  - (a) causes initiated by summons in the Court;
  - (b) special cases;
  - (c) causes brought before the Court by appeal, removal, remit, stated case or other like process; and
  - (d) Exchequer causes.
- (3) The Petition Department and the General Department shall be respectively responsible under the supervision of the Principal Clerk and subject to the directions of the Lord President, for the allocation among the Divisions of the Inner House or the Lords Ordinary, as the case may be, of the causes assigned to the said departments in pursuance of the foregoing subsection, and the General Department shall be responsible for the division of the causes initiated by summons among—
  - (a) the Ordinary Roll;
  - (b) the Admiralty and Commercial Roll; and
  - (c) the Consistorial Roll;in accordance with any Act of Sederunt made under section seventeen of this Act.
- (4) The clerks and officers appointed in pursuance of this section shall be assigned by the Principal Clerk, subject to the directions of the Lord President and the provisions of any Act of Sederunt, to one or other of the aforesaid departments, provided always that any clerk or officer in the Central Office shall be capable of performing, and shall perform, any duty in relation to the business of the Court as may be required by the Principal Clerk, subject to such directions and provisions as aforesaid.
- (5) Notwithstanding anything in the foregoing provisions of this section, it shall not be competent to allocate any Exchequer Cause to any Lord Ordinary other than the Lord Ordinary in Exchequer Causes.
- (6) Any provision in an Act or an Act of Sederunt regarding the Principal Clerk of Session or the Clerks of Court shall apply to the Principal Clerk and to the clerks appointed in pursuance of this section in like manner as it applies to the Principal Clerk and to the clerks holding office at the passing of this Act, and any reference in any enactment to a depute, assistant or other clerk in the Court of Session or in the Bill Chamber, shall apply, in like manner as it applies to such depute, assistant or other clerk to the clerk required in pursuance of this section to perform the duties devolving on such depute, assistant or other clerk according to the law and practice existing immediately prior to the passing of this Act.
- (7) The right of appointing to the office of Macer, which in accordance with the law and practice existing immediately prior to the passing of this Act was vested in His Majesty, shall be transferred to and vested in the Secretary of State, and shall be exercised on nomination by the Lord Advocate, and it shall be competent to the

Secretary of State in pursuance of the power so vested in him to appoint the same persons to be Macers in the High Court of Justiciary and in the Court of Session.

**25 Appointment of Principal Clerk of Justiciary, and c**

The right of appointing to the offices of Principal Clerk of Justiciary, Accountant of Court, Auditor of the Court of Session, and Principal Extractor of the Acts and Decrees of the Court of Session shall be vested in the Secretary of State, and shall be exercised on nomination by the Lord Advocate.

**26 Age limit for officers of High Court of Justiciary and Court of Session**

A person appointed, in pursuance of the powers vested in the Secretary of State by this Part of this Act, to any office shall vacate his office on attaining the age of sixty-five years:

Provided that, where the Secretary of State after consultation with the Lord President considers it desirable in the public interest to retain any such person in office after he attains the age of sixty-five years, he may, with the approval of the Treasury, authorise the continuance in office of such person, up to such later age, not exceeding seventy years, as he may think fit.

**27 Remuneration of officers of High Court of Justiciary and Court of Session**

- (1) The remuneration of the persons appointed to any office in pursuance of the powers vested in the Secretary of State by this Part of this Act, and of any clerk or officer in the High Court of Justiciary or in the Court of Session (including any clerk to a judge) holding office at the passing of this Act, and of any person holding, at the passing of this Act, any office mentioned in section twenty-five of this Act, shall be of such amounts as the Secretary of State may, after consultation with the Lord President and with the concurrence of the Treasury, from time to time, determine, and such remuneration shall be payable out of moneys provided by Parliament.
- (2) The sole remuneration of the persons holding any office mentioned in the immediately preceding subsection (other than the office of Auditor of the Court of Session) shall be the remuneration determined in pursuance of the said subsection, and any fee or other sum paid or received, by virtue of his office, to or by any such person, other than such remuneration, shall be paid over and accounted for in such manner as the Treasury may direct.

**28 Regulations for admission of officers of High Court of Justiciary and Court of Session**

The Secretary of State may, after consultation with the Lord President and with the concurrence of the Treasury and the Civil Service Commissioners, make regulations prescribing the manner in which persons are to be admitted to any office the right of appointment to which is vested in the Secretary of State by this Part of this Act, and the conditions on which the said Commissioners may issue certificates in accordance with section eight of the Clerks of Session (Scotland) Regulation Act, 1889, which section shall apply to any such office as aforesaid in like manner as it applies to the offices therein mentioned.

## **29 Existing officers**

- (1) Any clerk or officer in the High Court of Justiciary or the Court of Session (not being clerk to a judge), holding office at the passing of this Act, and any person holding, at the passing of this Act, any office mentioned in section twenty-five of this Act, shall be deemed to have been appointed in pursuance of the powers vested in the Secretary of State by this Part of this Act, provided that any such clerk, officer or person shall be in no worse position as regards tenure of office, remuneration or superannuation allowance than he would have been if this Act had not passed.
- (2) It shall be lawful for the Secretary of State, after consultation with the Lord President, to direct that any person holding office as clerk to a judge who was appointed clerk to that judge prior to the passing of this Act shall be deemed to have been appointed, in pursuance of the powers vested in the Secretary of State by this Part of this Act, provided that no such direction shall be given without the consent of such person and of such judge. Any such person in whose case such a direction is given shall on his retirement from his employment be entitled, in addition to any superannuation allowance or gratuity payable under the Superannuation Acts, 1834 to 1919, to such annuity in respect of his service as clerk to the judge as he would have been entitled to if such judge had retired immediately before the date when the direction aforesaid was given; and any such person, in whose case no such direction is given, shall continue to hold his office on the terms on which he held it at the passing of this Act.

## **30 Commencement of this Part of this Act**

This Part of this Act (except subsections (2), (3) and (4) of section twenty-four) shall come into operation on the passing thereof.

# **PART IV**

## **SHERIFFS AND SHERIFF COURT**

## **31 Number of sheriffs and sheriffdoms**

- (1) On the occurrence of a vacancy in the office of the Sheriff of Chancery that office shall be united with the office of the sheriff in whose sheriffdom the city of Edinburgh is included.
- (2) It shall be lawful for the Secretary of State, from time to time, as vacancies in the office of sheriff occur, by order, to form new sheriffdoms by uniting into one sheriffdom two or more counties, or parts of counties, whether the counties affected by any such order form, at the passing of this Act, separate sheriffdoms or are united with other counties into one sheriffdom.
- (3) Any union into one sheriffdom effected by an order under the last foregoing subsection shall, notwithstanding anything in any Act, have effect as a complete union as regards the jurisdiction, powers and duties of the sheriff and his substitutes, and the powers, duties, rights and privileges of solicitors practising in the sheriff courts.
- (4) An order made under this section shall be laid before each House of Parliament forthwith and shall not come into force until it has been approved by a resolution of each House.

- (5) When a vacancy shall occur in the office of sheriff of any sheriffdom the Secretary of State may, if he deems it expedient to do so, pending the consideration of the question whether an order under this section affecting such sheriffdom should be made, or the coming into force of any such order, appoint a sheriff of some other sheriffdom, or an advocate of not less than five years' standing, to act as interim sheriff of such sheriffdom or of any part thereof, and on such interim appointment being made the Treasury may, on the recommendation of the Secretary of State, allow such interim sheriff such remuneration as they think fit out of moneys to be provided by Parliament.
- (6) In this section the expressions "sheriff" shall not include a sheriff-substitute.

### **32 Amendment of 7 Edw. VII. c. 51, s. 15**

Where the Secretary of State in pursuance of section fifteen of the Sheriff Courts (Scotland) Act, 1907, appoints an interim sheriff to act in the place and during the absence on leave, granted on account of temporary illness, of a sheriff who is restricted by the terms of his appointment from engaging in private practice, the provisions of the said section with regard to payment to the interim sheriff shall not apply and it shall be lawful for the Treasury to allow to any interim sheriff so appointed such remuneration as they think fit out of moneys to be provided by Parliament, and in the event of a vacancy in the office of such sheriff prior to the expiry of the period of leave of absence so granted to him, the appointment of the interim sheriff shall have effect as an appointment to act as sheriff until such vacancy shall be filled.

### **33 Sheriffs not to be entitled to annuity unless restricted from private practice**

- (1) Section twenty of the Sheriff Courts (Scotland) Act, 1907 (which relates to annuities to sheriffs and salaried sheriffs-substitute), shall not apply to any sheriff (other than a sheriff holding office at the passing of this Act) unless he is restricted by the terms of his appointment from engaging in private practice.
- (2) In this section the expression "sheriff" shall not include a sheriff-substitute.

### **34 Court of Session may regulate procedure in the Sheriff Court**

- (1) The Court of Session shall have power by Act of Sederunt—
- (a) to regulate and prescribe the procedure and practice to be followed in any proceedings in the sheriff court or in execution or diligence following thereon and any matters incidental or relating to any such procedure or practice including (but without prejudice to the foregoing generality) the manner in which, the time within which, and the conditions on which any application to the sheriff court or anything required or authorised to be done in relation to any such proceedings shall or may be made or done;
  - (b) to prescribe the form of any petition, writ, pleading or other document to be used in, or for the purposes of, any such proceedings as aforesaid, or in, or for the purposes of, any execution or diligence following on such proceedings, and the manner in which, and the person by whom, any such petition, writ, pleading or document shall be signed or authenticated;
  - (c) to provide for the admission, on such conditions as may be prescribed, of affidavits in lieu of parole evidence;
  - (d) to modify, amend or repeal any enactments relating to matters with respect to which an Act of Sederunt is made under this section.

- (2) Section forty of the Sheriff Courts (Scotland) Act, 1907, shall, except in so far as it relates to the regulation of fees, cease to have effect, provided always that any regulations under the said section (other than regulations relating to fees) which shall be in force at the passing of this Act shall continue in full force and effect unless and except in so far as they may be repealed or amended by Act of Sederunt under this section.

### **35 Sheriff Court Rules Council**

- (1) There shall be established a Rules Council for the sheriff court, consisting of the Lord President ex officio, two sheriffs and four sheriffs-substitute to be appointed by the Lord President, one member of the Faculty of Advocates to be appointed by the Faculty and six solicitors to be appointed by the General Council of Solicitors in Scotland, provided that in the event of the said Rules Council being established before the first day of March, nineteen hundred and thirty-four, the first appointment of solicitors to be members thereof shall be made by the Lord President. The provisions of subsections (2), (3), and (4) of section eighteen of this Act with regard to the Rules Council appointed under that section shall apply to the Rules Council appointed under this section with the substitution of matters relating to the sheriff court for matters relating to the Court of Session, and with any other necessary modifications.
- (2) In this section the expression " sheriff " shall not include a sheriff-substitute.
- (3) A person appointed a member of the Rules Council under section eighteen of this Act may also be appointed a member of the Rules Council under this section.

### **36 Commencement of this Part of this Act**

This Part of this Act (except sections thirty-four and thirty-five) shall come into operation on the passing thereof.

## **PART V**

### **MISCELLANEOUS**

### **37 Agreements between solicitors as to sharing fees**

- (1) An agreement between solicitors acting for the same client to share fees or profits shall be lawful if the following conditions are complied with but not otherwise:—
- (i) The share payable under the agreement, by the solicitor to whom the fees or profits are due, to the other solicitor shall not exceed one-third.
  - (ii) The solicitor to whom such share is payable shall, not later than the time when he renders his account to the client, inform the client of the terms of the agreement.
  - (iii) The solicitor to whom such share is payable shall make no charge against the client for communications or correspondence with the other solicitor in the matter of the business to which the agreement relates.
  - (iv) The fees or profits to be shared under the agreement shall not include any charge in respect of clerk's writings.

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- (2) Section forty-one of the Solicitors (Scotland) Act, 1933, in so far as it relates to the legality of agreements between solicitors acting for the same client is hereby repealed.

**38 Amendment of 58 and 59 Vict. c. 36, s. 5(4)**

- (1) Where the evidence adduced at any inquiry under the Fatal Accidents Inquiry (Scotland) Act, 1895, or under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act, 1906, shall have been taken down in shorthand, it shall, notwithstanding anything in subsection (4) of section five of the first-mentioned Act, not be necessary that such evidence be afterwards written out unless the sheriff shall so direct ex proprio motu or on application made to him not later than one month after the close of the inquiry by any person appearing or entitled to appear at the inquiry.
- (2) This section shall come into operation on the passing of this Act.

**39 Repeal**

The enactments mentioned in the Schedule to this Act shall be repealed to the extent specified in the third column of that schedule : Provided that any Act of Sederunt in force at the passing of this Act made under any enactment so repealed shall have effect as if it had been made under this Act.

**40 Interpretation**

In this Act unless the context otherwise requires:—

" The Court " means the Court of Session, and, in any provision conferring a power on the Court with regard to a cause before it, " the Court " includes a reference to a division of the Inner House or to the Lord Ordinary.

" The Lord President " means the Lord President of the Court of Session.

The expression " cause " includes any petition, action, case, or proceeding whatsoever competent in the Court.

The expression " consistorial cause " has the meaning assigned to the expression " consistorial action" by the Conjugal Rights (Scotland) Amendment Act, 1861.

The " Act of 1868 " means the Court of Session Act, 1868.

The expression " solicitor " has the like meaning as in the Solicitors (Scotland) Act, 1933, provided that for the purpose of the construction of any provision of this Act with reference to any time prior to the first day of March, nineteen hundred and thirty-four, any reference to a solicitor shall be construed as a reference to a law agent as defined in the Law Agents (Scotland) Act, 1873.

The expression " General Council of Solicitors in Scotland " means the General Council of Solicitors in Scotland constituted under the Solicitors (Scotland) Act, 1933.

" Prescribed " means prescribed by Act of Sederunt under this Act.

**41 Extent, short title and commencement**

- (1) This Act shall extend to Scotland only, and may be cited as the Administration of Justice (Scotland) Act, 1933.



- (2) Save as otherwise expressly provided, this Act shall come into operation on such day or days not later than the ninth day of October, nineteen hundred and thirty-four, as the Secretary of State, after consultation with the Lord President, may appoint, and the Secretary of State may, after such consultation, appoint different days for different purposes and different provisions of this Act.
- (3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date when that provision comes into operation.

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## SCHEDULE

Section 39.

## ENACTMENTS REPEALED

Session and Chapter.	Short Title.	Extent of Repeal.
10 Geo. I. c. 19.	The Court of Session Act, 1723.	Section one from " and the qualifications " to the end of the section.
2 Geo. III. c. 27.	The Court of Session Adjournment Act, 1762.	The whole Act.
48 Geo. III. c. 151.	The Court of Session Act, 1808.	Sections nine, eleven, twelve, fourteen and sixteen.
50 Geo. III. c. 112.	The Court of Session Act, 1810.	Sections one to ten; Sections sixteen and seventeen; Section thirty from " but shall not extend " to the end of the section; Sections forty to forty-three; Schedules A to I.
53 Geo. III. c. 64.	The Court of Session Act, 1813.	Sections two to six, and ten to twelve.
55 Geo. III. c. 42.	The Jury Trials (Scotland) Act, 1815.	Sections thirty-five and forty.
1 & 2 Geo. IV. c. 38.	The Court of Session Act, 1821.	Sections four, eight, ten, sixteen, twenty-two, twenty-three, twenty-five and twenty-eight.
6 Geo. IV. c. 120.	The Court of Session Act, 1825.	Sections eighteen, twenty-seven, fifty and fifty-eight.
11 Geo. IV. and 1 Will. IV. c. 69.	The Court of Session Act, 1830.	Sections five, six, seven; Section nine from " and all causes" to the end of the section; Sections ten, thirteen and fourteen; Section sixteen from " and the said Court of Session " to the end of the section; Section eighteen from " and the appointment " to the end of the section.

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Session and Chapter.	Short Title.	Extent of Repeal.
1 & 2 Vict. c. 86.	The Court of Session (No. 1) Act, 1838.	Section nine.
1 & 2 Vict. c. 114.	The Debtors (Scotland) Act, 1838.	Section one.
1 & 2 Vict. c. 118.	The Court of Session (No. 2) Act, 1838.	Section one from " and it shall accordingly" to the end of the section; Section four, from " and the partibus " to the end of the section; Sections five, nine, eleven and twelve; In section eighteen the words "to be appointed by Her Majesty " and the words from " and in preparing extracts " to the end of the section; Sections nineteen, thirty and thirty-three.
2 & 3 Vict. c. 36.	The Court of Session Act, 1839.	Sections three, nine, ten, eleven and thirteen.
13 & 14 Vict. c. 36.	The Court of Session Act, 1850.	Sections one, eleven, thirty-three, thirty-seven, and fifty-four; Schedule A.
20 & 21 Vict. c. 18.	The Bill Chamber Procedure Act, 1857.	Sections one, two, four and seven.
20 & 21 Vict. c. 56.	The Court of Session Act, 1857.	Sections one, two, three and four; Section six from " provided that " to the end of the section; Sections seven and ten.
24 & 25 Vict. c. 86.	The Conjugal Rights (Scotland) Amendment Act, 1861.	Section seventeen.
29 & 30 Vict. c. 71.	The Glebe Lands (Scotland) Act, 1866.	Section twenty-three.
29 & 30 Vict. c. 112.	The Evidence (Scotland) Act, 1866.	Section five.
30 & 31 Vict. c. 126.	The Railway Companies (Scotland) Act, 1867.	Section twenty-two.

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Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict. c. 84.	The Entail Amendment (Scotland) Act, 1868.	Section sixteen.
31 & 32 Vict. c. 100.	The Court of Session Act, 1868.	Sections four and five; in section thirteen, the proviso; Sections thirty-three, forty-eight, fifty-one, fifty-four and fifty-five; Section ninety-three from " and on the fifth lawful day" to the end of the section; Section ninety-four from " Provided that where " to the end of the section; Sections one hundred and five and one hundred and six.
31 & 32 Vict. c. 125.	The Parliamentary Elections Act, 1868.	In section fifty-eight the words in paragraph 12 from " and there shall be awarded" to the end of the paragraph.
50 & 51 Vict. c. 35.	The Criminal Procedure (Scotland) Act, 1887.	In section forty-four from the words " and every Senator " to the words " in vacation "where first occurring and the words " or in the Bill Chamber."
52 & 53 Vict. c. 54.	The Clerks of Session (Scotland) Regulation Act, 1889.	Sections one, two, three, four, five, eleven, and thirteen.
55 & 56 Vict. c. 55.	The Burgh Police (Scotland) Act, 1892.	Section four, in paragraph (11) the words " either Division of."
57 & 58 Vict. c. 40.	The Nautical Assessors (Scotland) Act, 1894.	Section five from the beginning to the words " their remuneration."
61 & 62 Vict. c. 40.	The Circuit Clerks (Scotland) Act, 1898.	Section two.
7 Edw. VII. c. 51.	The Sheriff Courts (Scotland) Act, 1907.	Section forty, from " not inconsistent " to "Small Debts Acts; and" and from "and for altering " to " Schedule hereto ; " Section forty-one.

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Session and Chapter.	Short Title.	Extent of Repeal.
2 & 3 Geo. V. c. 23.	The Clerks of Session (Scotland) Regulation Act, 1913.	The whole Act.
6 & 7 Geo. V. c. 49.	The Court of Session (Extracts) Act, 1916.	Section one.
23 & 24 Geo. V. c. 21.	The Solicitors (Scotland) Act, 1933.	Section forty-one, from the beginning to the words "lawful and."