



Administration of Justice (Scotland) Act 1933

1933 CHAPTER 41

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 condescendence 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;
 - (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 compearing 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 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.