



# Court of Session Act 1868

1868 CHAPTER 100 31 and 32 Vict

## VI.—INNER HOUSE PROCEDURE

51 .....<sup>F1</sup>

### Textual Amendments

**F1** Ss. 51, 54, 55 repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)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**C1** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt.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)

52 **Effect of a reclaiming note against a final judgment.**

Every reclaiming note, whether presented before or after the whole cause has been decided in the Outer House, shall have the effect of submitting to the review of the Inner House the whole of the prior interlocutors of the Lord Ordinary, of whatever date, not only at the instance of the party reclaiming, but also at the instance of all or any of the other parties who have appeared in the cause, to the effect of enabling the Court to do complete justice, without hindrance from the terms of any interlocutor which may have been pronounced by the Lord Ordinary, and without the necessity of any counter reclaiming note; and after a reclaiming note has been presented, the claimer shall not be at liberty to withdraw it without the consent of the other parties as aforesaid; and if he shall not insist therein, any other party in the cause may do so, in the same way as if it had been presented at his own instance.

### 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**C2** Ss. 50–101 repealed (S.) by [Court of Session Act 1988 \(c. 36, SIF 36:1\)](#), s. 52(2), [Sch. 2 Pt.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)

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### 53 Definition of final judgment in the Outer House.

It shall be held that the whole cause has been decided in the Outer House when an interlocutor has been pronounced by the Lord Ordinary, which, either by itself, or taken along with a previous interlocutor or interlocutors, disposes of the whole subject matter of the cause, or of the competition between the parties in a process of competition, although judgment shall not have been pronounced upon all the questions of law or fact raised in the cause; but it shall not prevent a cause from being held as so decided that expenses, if found due, have not been taxed, modified, or decerned for; and for the purpose of determining the competency of appeals to the Court of Session, this provision shall be applicable to the causes in the sheriff and other inferior courts, the name of the [<sup>F2</sup>sheriff principal] or other inferior judge or court being read instead of the words “the Lord Ordinary,” and the name of the sheriff court or other inferior court being read instead of the words “Outer House.”

#### Textual Amendments

**F2** Words substituted by virtue of [Sheriff Courts \(Scotland\) Act 1971 \(c. 58\), s. 4](#)

#### 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)

54, 55. .... <sup>F3</sup>

#### Textual Amendments

**F3** [Ss. 51, 54, 55](#) repealed by [Administration of Justice \(Scotland\) Act 1933 \(c. 41\)](#), [Sch.](#)

### 56 After reclaiming note against a final judgment, cause not to be remitted to Outer House.

After the whole cause has been decided in the Outer House within the meaning of this Act, it shall not in any case be necessary for the Inner House to remit the same back to the Outer House; but the cause, when taken to the Inner House after having been so decided in the Outer House, even though the interlocutor of the Lord Ordinary or any of the procedure shall be held to have been incompetent, shall, except in special circumstances rendering a remit expedient, remain in the Inner House, until it shall be finally and completely decided in the Court of Session.

#### 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)

### 57 Inner House may order repayment of money, &c.

In the event of any interim decree or interlocutor pronounced in the Outer House having been implemented, it shall be lawful for the Court, in any interlocutor recalling

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or altering such interim decree or interlocutor, to order the repayment of any money which shall have been paid or recovered in implement thereof, or to pronounce such warrant ad factum præstandum or other order as may be necessary in order to give effect to such recall or alteration of the Lord Ordinary's interlocutor, notwithstanding that the interlocutor of the Lord Ordinary may have been extracted and put to execution.

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**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)

## 58 Hearing of motion for new trials, &c.

When a motion for a new trial or a bill of exceptions comes before one of the divisions of the Court, if the judge who tried the cause is not one of the judges of the division, such judge shall be called in to hear the motion or bill, as the case may be; and when the cause is advised, such judge shall give his judgment with the other judges, and the decision shall be in conformity with the opinion of the majority of the judges present.

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**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)

## 59 Provision for rehearing before five judges in case of equal division of opinion.

In event of the judges of either of the divisions of the Inner House being equally divided in opinion on a question of fact arising upon a proof, or upon a cause which in their opinion does not involve any legal principle of importance, it shall be competent for such division to appoint the cause to be re-heard before the judges of the said division, or such of them as shall be able to give attendance in Court on the day appointed, with the assistance of such additional judge or judges to be afterwards named by the president or judge presiding in the division as shall make up the number of five judges; and the judgment to be pronounced upon such hearing shall be in conformity with the opinion of the majority of the five judges, and shall bear to be the judgment of the division by which the hearing was appointed, after consulting with such additional judge or judges, and may be signed at any ordinary sitting of the said division, without the presence of such additional judge or judges, if he or they do not desire to attend for the purpose of delivering separate opinions.

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**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)

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**60 Cases of difficulty and importance may be referred to seven judges in place of to the whole Court.**

In cases of equal division of opinion not falling under the preceding section, and in cases of difficulty or importance which, according to the existing practice, may be referred by one of the divisions of the Inner House to the whole Court, it shall be competent for such division to direct that the printed papers in the cause shall be laid before three other judges to be named in the interlocutor with a view to their opinions being communicated in writing, or to direct that the cause shall be argued before themselves with the assistance of such three judges (or four judges, when that is necessary to complete the number of seven at the time of re-hearing); and the judgment to be pronounced thereon shall be in conformity with the opinions of the majority of the seven judges, and shall bear to be the judgment of the division by whom the hearing was appointed, after consulting with such other judges, and may be signed in the absence of such other judges at any ordinary sitting of the division.

**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)

**61 New trial not to be granted if Court equally divided.**

No verdict of a jury shall be discharged or set aside upon a motion for a new trial, unless in conformity with the opinion of a majority of the judges of the division, and in case of equal division judgment shall be given in conformity with the verdict; but this provision shall not apply to hearings upon bills of exceptions.

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

- C9** 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)

**62 Amendment of 29 & 30 Vict. c. 112. s. 3.**

The third section of the Evidence (Scotland) Act 1866, is hereby amended to the effect of providing that, notwithstanding the terms of the said section, “where proof shall be ordered by one of the divisions of Court,” it shall no longer be competent to remit to one of the Lords Ordinary to take such proof, but it shall be taken before any one of the judges of the said division, whose place may for the time be supplied by one of the Lords Ordinary called in for that occasion.

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

- C10** 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)

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### 63 Special cases on questions of law.

Where any parties interested, whether personally or in some fiduciary or official character, in the decision of a question of law shall be agreed upon the facts, and shall dispute only on the law applicable thereto, it shall be competent for them, without raising any action or proceeding, or at any stage of an action or proceeding, to present to one of the divisions of the Court a special case, signed by their counsel, setting forth the facts upon which they are so agreed, and the question of law thence arising upon which they desire to obtain the opinion of the Court; and which case may set forth alternatively the terms in which the parties agree that judgment shall be pronounced, according to the opinion of the Court upon the question of law, aforesaid. When a special case is laid before one of the divisions the Court may order such documents as appear to be necessary to be printed and boxed, and shall hear parties . . . <sup>F4</sup> and give their opinion or pronounce judgment, as the case may be, and such judgment shall be extractable in common form: Provided always, that the case may be amended of consent, and that, if the Court shall think fit, they may appoint the case to be reheard in terms of the sixtieth section hereof; and the Court shall dispose of all questions of expenses. Judgments pronounced in virtue of this section shall be liable to review by the House of Lords, unless such review shall be excluded of consent of all parties.

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#### Textual Amendments

**F4** Words repealed by [Statute Law Revision Act 1893 \(c. 14\)](#)

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

**C11** [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)

**Changes to legislation:**

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