ANNO TRICESIMO QUINTO

Georgii III. Regis.

CAP. CXXIII.

An Act for the more eaſy and expeditious Recovery of Small Debts, and determining Small Cauſes, ariſing out of Perſonal Contract or Obligation, in that Part of *Great Britain* called *Scotland*.

[26th *June* 1795.]

WHEREAS an eaſy, expeditious, and cheap Method of recovering Small Debts, and determining Small Cauſes, ariſing out of Perſonal Contract or Obligation, in that Part of *Great Britain* called *Scotland*, would be of great Advantage in the Adminiſtration of Juſtice, particularly to the lower Ranks of People: May it therefore pleaſe Your Majeſty that it may be enacted; and 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, That it ſhall be lawful and competent for any Two or more of His Majeſty's Juſtices of Peace in that Part of *Great Britain* called *Scotland*, within their reſpective Counties or Stewartries, to hear, try, and determine, as ſhall appear to them agreeable to Equity and good Conſcience, all Cauſes and Complaints brought before them concerning the Recovery of Debts, and the determining of Small Cauſes, or making effectual any Demand

Preamble.

Two Juſtices may determine Cauſes not exceeding 40 *l. Scots.*

ariſing out of Perſonal Contract or Obligation; provided always, that the Debt or Demand ſhall not exceed the Value of Forty Pounds *Scots*, excluſive of Coſts, and that in a ſummary Way, as more particularly after mentioned.

How Cauſes ſhall be proceeded upon.

II. And be it enacted by the Authority aforeſaid, That all ſuch Cauſes ſhall proceed upon Petition or Complaint, ſtating ſhortly the Cauſe or Ground of Action, and concluding againſt the Defender; which Complaint, being ſigned by the Juſtice of Peace Clerk, or any Deputy by him appointed, or in caſe of his failing to appoint, by a Clerk to be appointed within the reſpective Diſtricts as herein-after mentioned, ſhall be a Warrant for any Conſtable or Peace Officer for ſummoning the Defender to appear and anſwer at the next Meeting of the Juſtices of Peace in the Diſtrict of the County or Stewartry where the Defender reſides, the ſame not being ſooner than Six Days after the Date of the Citation, and alſo for ſummoning Witneſſes to the ſame Day and Place: Provided always, that a Copy of the ſaid Petition or Complaint, with the Citation annexed, ſhall be delivered by a Conſtable or Peace Officer to the Defender perſonally, or left at his Dwelling-houſe; in which laſt Caſe, if the Defender ſhall not appear, he ſhall be cited a Second Time perſonally, or at his Dwelling-houſe, upon a new Warrant or Order, ſubjoined to the original Petition, and ſigned by any One Juſtice of the Peace, to appear either at the next ſtated Meeting, or at a Meeting to be held by Adjournment for the Purpoſe, and fixed by the Juſtices at the ſaid Firſt Diet, which Second Meeting not to be ſooner than Three Days from the Date of the Firſt, or in Default, to be held as confeſſing the Debt or Juſtice of the Demand; and the Conſtable or Peace Officer ſhall in both Caſes return an Execution of Citation, ſigned by him, or ſhall appear and give Evidence upon Oath of his having duly cited the Defender in Manner aforeſaid.

Warrant to authorize Witneſſes to be ſummoned for Plaintiff and Defender.

III. And be it enacted by the Authority aforeſaid, That the original Warrant, ſigned by the Juſtice of Peace Clerk, or his Deputy, ſhall contain an Authority to the Officer to ſummon Witneſſes not only for the Plaintiff or Purſuer, but alſo for the Defender, if the Officer ſhall at any Time before the Diet of Appearance be required by the Defender to cite ſuch Witneſſes.

Witneſſes not appearing at the Firſt or adjourned Meeting, liable to Penalty.

IV. And be it enacted by the Authority aforeſaid, That if the Witneſſes cited either upon the One Part or the other do not appear at the Time and Place to which they are cited, it ſhall be competent to the Party or Parties to apply for a new Warrant for compelling them to attend at the next ſtated or adjourned Meeting, which Warrant may be ſigned by any One Juſtice of the Peace, and may require them to attend in order to give Evidence, under the Penalty of Twenty Shillings Sterling, to be awarded by the Juſtice of Peace in Default of their Appearance, unleſs a reaſonable Excuſe be offered and ſuſtained, and to be recovered by the Party at whoſe Inſtance they were cited, in the ſame Form and Manner as is herein directed with regard to other Small Debts; or, in the Option of the Juſtices of Peace, to be impriſoned for a certain Time in the County Priſon, not exceeding Ten Days.

V. And

V. And be it enacted by the Authority aforesaid, That when the Parties shall appear, the said Justices shall be empowered to hear them *viva voce*, and to examine Witnesses upon Oath, and also the Parties by Declaration, or upon Oath, proceeding on the Reference of either Party: Provided always, that no Procurators, Solicitors, or any Persons practising the Law, shall be allowed to plead for them, nor shall any of the Pleadings, or Minutes, or Evidence, be taken down in Writing, nor be entered upon any Record. Parties and Witnesses may be examined on Oath, but no Practiser of the Law to plead, &c.

VI. And be it enacted by the Authority aforesaid, That if the Defender who has been personally cited, or who has been cited a Second Time on Default for Non-appearance on his First Citation, shall not appear, and shall not send an Excuse to satisfy the Justices to give him a Delay, he shall be held as confessing the Debt, or Justice of the Demand; but if a sufficient Excuse shall happen to be made, or if the Absence of Witnesses, or any other good Reason assigned, shall move the Justices to adjourn the Meeting to another Day, or to the next stated Time of Meeting, it shall be competent for them to make such Adjournment, and the Parties and Witnesses shall be ordered then to attend. Defender not appearing, or finding a sufficient Excuse, to be held as confessing the Debt, &c.

VII. And be it enacted, That in case it shall be proved to the Satisfaction of the Justices, that the Non-attendance of Parties or Witnesses has been occasioned by any Failure of Duty on the Part of the Officer, or that he has returned a false Execution, it shall be in the Power of the said Justices to punish him, by a Fine to the Poor, or Imprisonment, the Fine not exceeding Twenty Shillings Sterling, nor the Imprisonment not exceeding Ten Days. Justices may punish Officer for Failure of Duty.

VIII. And be it enacted by the Authority aforesaid, That the Clerk or Depute Clerk shall keep a Book, wherein shall be entered a Transcript of the Petition or Complaint, with the Date of giving it in, the several Deliverances, or Interlocutory Orders of the Justices, and the final Judgement or Decree, with the Date thereof, which last shall be signed by the Justices present, or by their Preses, if more than Two are present; and a Copy of said Decree shall, by the Clerk, be annexed to the principal Petition or Complaint, containing Warrant for arresting or poinding the Effects of the Defender, or for committing his Person to Prison; which Copy or Extract, being signed by the Clerk or his Deputy, and delivered to the Party in whose Favour the same is granted, shall be a Warrant for Execution after the Expiration of Six free Days from the Date of pronouncing the Decree, if the Party against whom it is given has been present in Court when it was pronounced; or if he has not been present, Execution shall only proceed after a Charge of Six free Days given by the Officer, by leaving a Copy of the Decree or Judgement against the Party, either personally, or at his Dwelling House, to which Charge the Officer shall make Oath if required. Clerk to enter Transcripts of Petitions and Decrees. Copy of Decree to be Warrant for Execution.

IX. And be it enacted, That the Form of the Poinding shall be summary, *videlicet*, by carrying the Effects poinded to the nearest Market Town, or Kirk Town, or Village within the Parish, and after getting the same duly appraised, selling them between the Hours of Eleven and Twelve Forenoon, at the Cross, or most publick Place, after One Hour's Form of Poinding.

Notice given by a Cryer, by publick Roup to the higheſt Bidder, returning the Overplus, if any, to the Owner, after deducting what is allowed by this Act for Poinding and Sale; and if the Effects are not ſold, delivering them over at the appraiſed Value to the Creditor to the Amount of the Debt, and of the Allowance for poinding: Provided always, that in caſe the Place of Sale is not a Market Town, but only a Kirk Town or Village, the Place and Time of Sale ſhall be advertiſed, Two Days at leaſt before the Day of Sale, at the Door of the Pariſh Church, upon *Sunday* after the Forenoon Sermon: Provided always, that the ſaid Juſtices may, if they ſhall think proper, direct the Sum or Sums found due to be repaid by Inſtalments, Weekly or Monthly, according to the Circumſtances of the Parties found liable.

Juſtices may order Money due to be paid by Inſtalments.

Decree not ſubject to Advocation, &c.

Caution to be found where an Action of Reduction is inſiſted on, &c.

X. And be it enacted by the Authority aforeſaid, That the Decree thus given ſhall not be ſubject to Advocation, nor to any Suſpenſion, Appeal, or other Stay of Execution; and in caſe either Party ſhall thereafter inſiſt in an Action of Reduction, before the Court of Seſſion, for ſetting aſide the Proceedings, on the Ground of alledged Iniquity or Oppreſſion, he ſhall, before being heard in ſuch Action, be obliged to find ſufficient Caution, and to lodge the ſame in the Hands of the Clerk of Court for Payment of ſuch Expences as may be awarded againſt him; nor ſhall any ſuch Action be at all competent, after the Expiration of One Year from the Date of the Decree of the ſaid Juſtices.

Fees to be taken as follows.

XI. And be it enacted by the Authority aforeſaid, That the following Fees, and no other, ſhall be allowed and taken; *videlicet:*

	Sterling. £.	s.	d.
To the Clerk of Court, for drawing up Petition and Complaint - - -	0	0	6
For entering and tranſcribing the ſame in his Book -	0	0	6
To the Clerk, for a Copy of Service - -	0	0	2
To him, for ſigning and entering the ſame in his Book	0	0	4
To him, for entering the Appearance of every Defender	0	0	6
To him, for every Oath - - - - -	0	0	4
To him, for the Decree containing the Warrant of Execution	0	0	6
To him, for Warrant to cite Defender's Witneſſes, or any other Warrant or Order - - -	0	0	4
To him, for every Petition Anſwer - -	0	0	6
To the Cryer, for calling the Action - -	0	0	0½
To the Officers, for ſummoning the Defender or Witneſſes, each - - - - -	0	0	4
To him, for the Execution of Arreſtment of the Defender's Effects - - - - -	0	0	4
To him and the Aſſiſtants, for poinding the Effects -	0	2	0
To him and his Aſſiſtants, for ſelling the ſame - -	0	2	0
To him and Aſſiſtants, for Execution againſt the Defender's Perſon - - - - -	0	3	0
To the Officer, for every Mile he ſhall travel to the Country	0	0	3

A Copy of which Table of Fees, ſigned by the Clerk, ſhall be hung up in every Place for holding of Courts, and in his Office.

XII. And be it enacted, That the Juſtices of Peace of each County or Stewartry in that Part of *Great Britain* called *Scotland*, ſhall, at their Firſt, or any after Meeting of the Quarter Seſſions, make ſuitable Diviſions of the County or Stewartry into Diſtricts, within which the Juſtices of the Peace ſhall meet, at a convenient Place in each Diſtrict, upon the Firſt *Monday* of every Month, at Eleven o'Clock Forenoon, in order to carry the Purpoſes of this Act into Execution, and which Monthly Meetings may be adjourned, if neceſſary, to any other lawful Day or Days of the Month, to be held at the ſame Place; and the Quarter Seſſions ſhall at the ſame Time appoint the Place of Meeting in each Diſtrict, of which they ſhall order due Notice to be given to all concerned, by Advertiſement at the Church Doors of every Pariſh within the County or Stewartry, at leaſt Two *Sundays* after the Places are certified: And in caſe the Juſtice of Peace Clerk ſhall fail to name a Deputy in each of the ſaid Diſtricts, on or before the Time ſo appointed for each Diſtrict Meeting, or before any ſubſequent Meeting, of which the ſaid Juſtice of Peace Clerk has had perſonal Notice. the ſaid Juſtices who ſhall attend at ſuch Diſtrict Meeting or Meetings ſhall, and they are hereby empowered to name a Clerk for that Diſtrict, who ſhall be removeable by any ſubſequent Quarter Seſſions, and another Clerk may then be appointed by the ſaid Quarter Seſſions, from Time to Time, as they ſhall ſee Cauſe.

Juſtices to make Diviſions of Counties for carrying this Act into Execution.

Quarter Seſſions to order Notice of Meetings.

Juſtices to name a Clerk if the Juſtice of Peace Clerk fail to name a Deputy.

XIII. And whereas the Magiſtrates of the City of *Edinburgh* have been in the immemorial Uſe and Poſſeſſion of holding a Weekly Court for determining, in a ſummary Manner, according to Equity and good Conſcience, all Cauſes and Complaints brought before them for ſmall Sums not exceeding Ten Merks *Scots* Money; and of putting their Decrees into immediate Execution againſt all Perſons reſiding within the Sheriffdome of the ſaid City of *Edinburgh*: And whereas extending the Juriſdiction of the ſaid Magiſtrates, ſo far as concerns the Sum to be tried and determined ſummarily by them at their ſaid Weekly Court known by the Name of *The Ten Merk Court*, would be of great Benefit to the Inhabitants within the ſaid Sheriffdome of the City of *Edinburgh*: Be it therefore enacted by the Authority aforeſaid, That the ſaid Magiſtrates ſhall have full Power and Authority, and they are hereby authorized, at their aforeſaid Weekly Courts, to try, hear, and determine, in a ſummary Manner, all Cauſes and Complaints brought before them concerning the Recovery of Debts, or the making effectual any Demand ariſing out of perſonal Contract or Obligation, againſt all Perſons reſiding within the Sheriffdome of the ſaid City of *Edinburgh*: Provided always, that the Debt or Demand ſhall not exceed the Value of Forty Pounds *Scots*.

Magiſtrates of *Edinburgh* may determine Cauſes in the Sheriffdome of the City for Demands not exceeding 40*l.* *Scots*.

XIV. And be it enacted by the Authority aforeſaid, That in every Caſe where the Claim or Demand ſhall exceed the aforeſaid Sum of Ten Merks *Scots* Money, and not exceeding the Sum of Forty Pounds *Scots*, the Proviſions herein-before contained ſhall be, and the ſame are hereby directed to be, obſerved and put in Execution by the ſaid Magiſtrates of *Edinburgh* at their ſaid Weekly Courts; and that their Decrees ſhall be put in Execution in the ſame Way and Manner as herein-before directed and authorized relative to the Proceedings before and by the ſaid Juſtices of the Peace.

Where Claims exceed 10 Merks, and do not exceed 40*l.* *Scots*, the Proviſions herein-contained to be obſerved.

XV. And

Jurisdiction of Justices not regulated by this Act, to remain.

XV. And be it enacted by the Authority aforesaid, That the Jurisdiction of the Justices of Peace in that Part of *Great Britain* called *Scotland*, so far as not regulated by the present Act, shall remain entire, and be exercised in the same Manner as they are entitled to exercise the same before the passing of this Act.

Commencement and Continuance of Act.

XVI. And be it enacted, That this Act shall commence and have Continuance from the First Day of *June* in the Year One thousand seven hundred and ninety-five, for and during the Term of Five Years, and from thence to the End of the then next Session of Parliament.

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FINIS.