

ANNO TRICESIMO NONO & QUADRAGESIMO

GEORGII III. REGIS.

CAP. XLVI.

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

[30th *May* 1800.]

Preamble. 35 *Geo.* III, Cap. 123, recited,

WHEREAS the Regulations introduced by the Act, made in the Thirty-fifth Year of the Reign of His present Majesty, *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, and which Act is near expiring, having in general been found useful and beneficial to the Publick, it is proper that they should be renewed and made perpetual, with such Amendments as Experience has suggested, and that other and further Regulations should be made for attaining the same salutary Ends: 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 all Causes and Complaints brought under the Authority of the said Act, and depending

and Causes brought under its Authority, and depending at the Commence-

ment of this Act, to be carried on according to its Rules.

depending at the Commencement of this Act, ſhall be carried on to a Concluſion, according to the Rules thereby preſcribed, notwithſtanding this preſent Act.

From *June* 1, 1800, Two Juſtices may determine Cauſes for Sums not exceeding 5 *l.* Sterling.

II. And be it enacted, That, from and after the Firſt Day of *June* One thouſand eight hundred, (which is hereby declared to be the Commencement of this Act), 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 or the making effectual any Demand: Provided always, That the Debt or Demand ſhall not exceed the Value of Five Pounds Sterling, excluſive of Coſts, and that in a ſummary Way, as more particularly herein-after mentioned.

How Cauſes ſhall be proceeded upon.

III. And be it enacted, That all ſuch Cauſes ſhall proceed upon Petition or Complaint, ſtating ſhortly the Cauſe or Ground of Action, and concluding againſt the Defender; which Petition or 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 upon the Sixth Day 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, and alſo a Copy of the Account, Document of Debt, or State of the Demand, with the Names of the Witneſſes, or other Means of Proof, ſhall be delivered by a Conſtable or Peace Officer to the Defender perſonally, or at his Dwelling Houſe or Place of Abode, in which laſt Caſe, if the Defender ſhall not appear, he ſhall be cited a Second Time perſonally, or at his Dwelling Houſe or Place of Abode, upon the Words *de novo* being either ſubjoined to the original Petition, and ſigned by any One Juſtice of the Peace, or written in the Procedure Book kept by the Clerk, and ſigned by the Juſtices, to appear either at the next ſtated Meeting, or at a Meeting to be held by Adjournment for that Purpoſe, and fixed by the Juſtices at the Firſt Diet, which Second Meeting ſhall not 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: Provided nevertheleſs, That if the Defender ſhall appear at any Time before ſuch Second Citation, and the Parties and Witneſſes ſhall be then ready, the Juſtices may proceed to hear and determine the Cauſe.

Warrant to authorize Witneſſes to be ſummoned for both Parties.

IV. And be it enacted, 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 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.

V. And be it enacted, 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 a Penalty not exceeding 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 Juſtice of Peace, to be impriſoned for a certain Time in the County Priſon, not exceeding Ten Days.

Witneſſes not appearing on a ſecond Summons liable to Penalty.

VI. And be it enacted, That when the Parties ſhall appear, the ſaid Juſtices ſhall hear them *viva voce*, and examine Witneſſes upon Oath, and alſo the Parties by Declaration or upon Oath: Provided always, That no Procurators, Solicitors, or any Perſons practiſing the Law, ſhall be allowed to plead for them, either *viva voce* or by Writing, nor ſhall any of the Pleadings, or Minutes or Evidence, be taken down in Writing, or be entered upon any Record.

Parties and Witneſſes may be examined on Oath, but no Practiſer of the Law to plead, &c.

VII. And be it enacted, That if the Defender who has been perſonally cited, or who has been cited a ſecond Time on Default for Non-appearance on the firſt Citation, ſhall not appear by himſelf or by one of his Family, 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 not ſending a ſufficient Excuſe, to be held as confeſſing the Debt, but for good Reaſon the Juſtices may adjourn the Meeting.

VIII. And be it enacted, That where a Decree has gone in Abſence or by Default, it ſhall be ſtill competent for the Defendant, upon conſigning the Sums decreed for in the Clerk's Hands, and making Intimation of this to the Purſuer perſonally, or by two Citations at his Dwelling Houſe or Place of Abode, at any Time before the Days of the Charge elapſe, to have the Matter re-heard at the following Court Day; and in like Manner where Abſolvitor has paſſed in Abſence, it ſhall be competent for the Purſuer, upon conſigning Two Shillings and Sixpence in the Hands of the Clerk, and giving the like Notice to the other Party, to have the Cauſe again called at the next Court Day, the Two Shillings and Sixpence being paid over to the Defender, in order to defray his previous Expence.

Matters may be reheard on certain Conditions.

IX. 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, and 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 Officers for Failure of Duty.

X. And

Clerk to enter Tranſcripts of Petitions and Decrees.

X. And be it enacted, 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 the 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.

Copy of Decree to be Warrant for Execution.

Form of Poinding.

XI. 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 apprized, ſelling them between the Hours of Eleven and Twelve, Forenoon, at the Croſs or moſt publick Place, after One Hour's Notice given by a Crier 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 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 advertized Two Days at leaſt before the Day of Sale, at the Door of the Pariſh Church upon *Sunday* after the Forenoon Sermon.

Juſtices may order Debts to be repaid by Inſtalments.

XII. And be it enacted, That the ſaid Juſtices may, if they 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, and under ſuch Conditions or Qualifications as they ſhall think fit to annex.

Decree not ſubject to Advocation, &c.

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

XIII. And be it further enacted, That the Decree given by the ſaid Juſtices ſhall not be ſubject to Advocation, nor to any Suſpenſion, Appeal, or other Stay of Execution; and in caſe either Party ſhall afterwards inſiſt in an Action of Reduction before the Court of Seſſion, for ſetting aſide the Proceedings on the Ground of alleged Iniquity or Oppreſſion, he ſhall, before he be 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.

XIV. And

XIV. And be it enacted, That the following and no higher Fees, ſhall be allowed and taken; (*videlicet*), The following Fees to be taken.

	s.	d.
To the Clerk of the Court:		
For drawing up Petition and Complaint - - -		6
For entering and tranſcribing the ſame in his Book -		6
To the Clerk, for a Copy of Service - - -		2
To him, for ſigning and entering the ſame in his Book -		4
To the Clerk, for entering the Appearance of a Defender		6
To him, for every Oath - - - - -		4
To him, for the Decree containing the Warrant of Execution - - - - - -		6
To him, for Warrant to cite Defenders, Witneſſes, or any other Warrant or Order - - - -		4
To the Crier, for calling the Action - - -		1
To the Officer, for ſummoning the Defender or Witneſſes, on giving any of the Notices required by this Act, each Time - - - - -		4
To him, for the Execution of Arreſtment of the Defender's Effects - - - - - -		6
To him and the Aſſiſtants, for poinding the Effects -	2	
To him and his Aſſiſtants, for ſelling the ſame -	2	
To him and Aſſiſtants, for Execution againſt the Defender's Perſon - - - -	3	
To the Officer, for every Mile he ſhall travel into the Country - - - - - -		4
And to each Aſſiſtant, where Aſſiſtance is neceſſary -		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; and the ſaid Fees ſhall be ſubject to the Modification of the Juſtices in very ſmall Caſes, or where One Petition and Complaint is directed againſt different Defenders. A Table of Fees to be hung up in the Courts, which may be modified by the Juſtices.

XV. And be it enacted, That an Account ſhall be kept by the Clerk of Court of all Fines awarded by the Juſtices, by virtue of this Act, (excepting Penalties for Witneſſes on Non-appearance, which are to be paid to the Parties at whoſe Inſtance they were ſummoned), and ſhall be paid to the Poor, in ſuch Way and Manner as the ſaid Juſtices ſhall direct. Fines, except for Non-attendance of Witneſſes, to paid to the Poor.

XVI. And be it enacted, That the Juſtices of Peace for 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 (or upon ſuch other lawful Day of the firſt Week of every Month, as the Juſtices of the Peace at their Quarter Seſſions ſhall fix as moſt convenient) at Eleven of the 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 Juſtices to make Diviſion of Counties for carrying Act into Execution.

Quarter Seſſions to order Notice of Meetings to be given.

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 in the County or Stewartry, at leaſt Two *Sundays* after the Places are certified.

If the Juſtice of Peace Clerk fail to name a Deputy, the Juſtices may name One.

XVII. And be it enacted, That in caſe the Juſtice of Peace Clerk ſhall fail to name a Deputy in each of the ſaid Diſtricts, on or before the Time 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 removable 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 at Quarter Seſſions may make Rules for the Purpoſes of this Act.

XXVIII. And be it further enacted, That for the better regulating the Proceedings of the ſaid Juſtices empowered to hear and determine the ſaid Cauſes, it ſhall and may be lawful to and for the Juſtices at their Quarter Seſſions, from Time to Time, to make ſuch Rules and Orders as ſhall ſeem to them moſt expedient and conducive for the Purpoſes of this Act, ſo as ſuch Rules and Orders ſhall be agreeable to Law, and according to the true Intent and Meaning of this Act; which ſaid Rules and Orders having been made by the ſaid Juſtices at their Quarter Seſſions, ſhall be in force, and kept and obſerved by the Juſtices empowered to hear and determine the ſaid Cauſes, and their Officers and the Suitors before them, until the ſame ſhall be repealed or varied by the Juſtices at their ſaid Quarter Seſſions, or by the Lords of Seſſion or Juſticiary in *Edinburgh*, or by the Circuit Courts of Juſticiary, upon Application of any Two or more Juſtices of the Peace.

No Member of any other Court exempt from the Juriſdiction of the Juſtices.

XIX. And be it enacted, That no Privilege ſhall be allowed to exempt any Perſon liable to be ſummoned by virtue of this Act, from the Juriſdiction of the ſaid Juſtices, on Account of his being a Member of any other Court of Juſtice.

Act not to extend to certain Caſes.

XX. Provided always, and be it enacted, That this Act, or any Thing herein contained, ſhall not extend to any Debt for Rent, upon a Tack, or Leaſe, or real Contract, where the Title of any Lands, Tenements, or Hereditaments can or may come to be brought in queſtion, nor to any other Debt, Matter, or Thing, that ſhall or may ariſe upon or concerning the Validity of any Will, Teſtament, or Contract of Marriage, although the ſame ſhall not amount to the Sum of Five Pounds Sterling, nor to any Debt for any Money or Thing won at or by Means of any Horſe Race, Cock Match, or any Kind of Gaming or Play, or any Debt or Demand for or on Account of any Spirituous Liquors; any Thing herein contained to the contrary in anyways notwithſtanding.

Magiſtrates of *Edinburgh* may determine Cauſes at their Weekly Courts againſt

XXI. And whereas the Magiſtrates of the City of *Edinburgh* have long been in the 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 ſaid City and Liberties thereof: And whereas it would be expedient to extend their Juriſdiction ſo far as regards the Sum or Value of the Cauſe to be tried in that Manner at their ſaid Weekly Courts; be it therefore enacted, That the Magiſtrates of *Edinburgh* ſhall have full Power and Liberty as Juſtices of the Peace, 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 againſt all Perſons reſiding within the ſaid City of *Edinburgh* and Liberties thereof, as deſcribed in a Royal Charter in favour of the City, dated the Twenty-third Day of *October* in the Year One thouſand ſix hundred and thirty-ſix: Provided always, That the Debt or Demand ſhall not exceed the Value of Forty Pounds *Scots*.

Reſidents within the City and its Liberties for Demands not exceeding 40*l. Scots*.

XXII. And be it enacted, That in every Caſe where the Claim or Demand ſhall not exceed the aforeſaid 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 other Juſtices of the Peace.

Where the Claim ſhall not exceed 40*l. Scots*, the Proviſions of this Act to be obſerved by the Magiſtrates of *Edinburgh*.

XXIII. And be it enacted, That the Juriſdiction of the Juſtices of the Peace in that Part of *Great Britain* called *Scotland*, ſo far as not regulated by this 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.

The Juriſdiction of Juſtices not hereby regulated, to remain entire.

LONDON: Printed by GEORGE EYRE and ANDREW STRAHAN, Printers to the King's moſt Excellent Majeſty. 1800.