STATUTORY INSTRUMENTS

1965 No. 321 (S. 16)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court, consolidation and amendment) 1965

Made - - - - 10th *November* 1964

Coming into Operation 4*th May* 1965

THE LORDS OF COUNCIL AND SESSION, under and by virtue of the provisions of the Administration of Justice (Scotland) Act 1933(a) considering that the Rules of Court enacted by the Act of Sederunt of 1st July 1948(b) have been amended by subsequent Acts of Sederunt, and that it is desirable to make further amendments and to consolidate the Rules as so amended, do hereby ENACT AND DECLARE that the Rules attached hereto and embodied herein are approved as the Rules of the Court of Session in place of the Rules enacted and amended as aforesaid, and shall come into force on 4th May 1965,

And the Lords do further ENACT AND DECLARE as follows:—

(1) The provisions of any Act of Parliament or Act of Sederunt relating to any of the matters regulated or prescribed by these Rules are hereby repealed, in so far as inconsistent with the provisions of these Rules, as from 4th May 1965.

(2) Where any *induciae* or other period of time appointed or allowed by order of court or by pre-existing law and practice for taking any step of procedure is still current on 4th May 1965, such *induciae* or other period of time shall continue to be in force notwithstanding the provisions of these Rules.

(3) If in any cause in dependence on 4th May 1965, it is shown to the Court that the enforcement in any particular of the provisions of these Rules would be productive of hardship or injustice to any of the parties, the Court may grant such relief as may be necessary to prevent such hardship or injustice.

(4) From and after 4th May 1965, the Court may in its discretion relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other cause, not being wilful non-observance of the same, on such terms and conditions as shall appear to be just; and in any such case the Court may make such order as may be just by way of extension of time, lodging or amendment of papers or otherwise so as to enable the cause to proceed as if such failure had not happened.

This Act may be cited as the Act of Sederunt (Rules of Court, consolidation and amendment) 1965.

And the LORDS appoint this Act to be inserted in the Books of Sederunt.

J. L. CLYDE,
I.P.D.

Edinburgh, 10th November 1964.

(a) 23 & 24 Geo. 5. c. 41. (b) S.R. & O. 1948/1691 (1948 I, p. 3778).

RULES OF THE COURT OF SESSION

ENACTED BY ACT OF SEDERUNT OF THE LORDS OF COUNCIL AND SESSION DATED 10th NOVEMBER 1964

PREFACE

The Rules of the Court of Session were last consolidated in 1948. Since then experience has shown the need for many amendments, and the steady flow of legislation has required new rules and much alteration of existing rules.

The present Act of Sederunt brings the Rules of Court up to date and supersedes all previous issues of the Rules.

The main changes are as follows:—

(1) A reduction in the *induciae* in consistorial actions where the defender is furth of Europe.

(2) Intimation of actions of divorce on the ground of insanity now to be made to the *curator bonis* of the defender.

(3) Abolition of the Debate Roll.

(4) New procedure in place of Minute of Wakening.

(5) Changes in the preliminary Act in cases of collisions at sea.

(6) New provisions consequent upon the passing of the Succession (Scotland) Act 1964, the Divorce (Scotland) Act 1964, the Representation of the People Act 1949 and the Solicitors (Scotland) Acts 1949–1958.

(7) Abolition of Affidavit by haver in commission for recovery of documents and substitution therefor of a Certificate.

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CHAPTER I

General

SECTION 1

Vacation Judge

1. Powers

(*a*) Subject to the provisions contained in these Rules, it shall be competent for the Vacation Judge, whenever necessary or convenient during vacation or recess, to deal with:

(i) any matter which might competently be disposed of from day to day by the Petition Judge;

(ii) any motion in a cause initiated by summons and depending in the Outer House;

(iii) any application in a cause depending in the Outer House which might, in accordance with these Rules, competently be disposed of during session by a Lord Ordinary sitting in chambers;

(iv) any motion in a cause depending before the Inner House, provided that the motion does not affect the merits of the cause;

(v) any motion for approval of a Report by the Auditor of Court (including objections, if any, thereto), as well in causes depending before the Inner House, as in causes depending before the Outer House; and

(vi) the taking of evidence under Rule 100.

(*b*) The Vacation Judge shall not be bound to dispose of any motion, application, or other matter, if in his opinion such motion, application, or other matter can more conveniently be postponed until the meeting of the Court after the vacation or recess.

SECTION 2

Solicitors and Notaries Public

2. Admission

(*a*) All petitions under Sections 14 and 15 of the Solicitors' (Scotland) Act, 1933 (in this Section referred to as " the Act of 1933 ") shall be presented to the Court by the clerk to the examiners appointed by the Council of the Law Society of Scotland (in this Section referred to as " the Council "), and there shall be payable to the said Clerk by any applicant the following fees:

(i) For the preparation of and carrying through the petition under Section 14 of the Act of 1933, including obtaining the interlocutor of admission, extract thereof and certificate of enrolment where the applicant holds the certificate of the Council—£7 17s. 6d.

(ii) For obtaining the interlocutor of admission of an applicant under Section 15 of the Act of 1933, including extract thereof and certificate of enrolment—£5 5s.

(*b*) Where a petition for admission as a law agent has been presented to the Court prior to the first day of March 1934, and the examiners of law agents have signed a report to the Court thereon to the effect that the applicant has complied with the requirements for admission and is duly qualified to be admitted as a law agent in terms of the Law Agents (Scotland) Act 1873, and relative amending Acts, the Court may, without a further petition being presented, admit the applicant as a solicitor and cause his name to be enrolled as such in terms of Section 15 of the Act of 1933; provided that, where a period of seven or more years has elapsed since the date of the report of the examiners, the applicant shall lodge with the clerk to the examiners an affidavit setting forth his occupation since the date of the report, and shall also furnish any further particulars which the Council may require, and the Council may make such further or additional report on the said petition as they may consider proper.

3. Registration and enrolment of solicitors

(*a*) A register shall be kept by the Registrar of Solicitors under the Solicitors' (Scotland) Acts 1933 to 1958 for the registration and enrolment of persons admitted as solicitors; and there shall be payable to the said Registrar for each enrolment in the register of solicitors and granting certificate of such enrolment a fee of £2 2s.

(*b*) Every solicitor whose name is for the time being included in the Roll or Register of Solicitors shall pay to the Registrar annually a fee of ten shillings in respect of the cost of maintaining the Roll or Register, which fee shall be payable on the first day of November in each year; provided that no fee shall be payable by a solicitor for the period between the date of his enrolment and the thirty-first day of October occurring immediately thereafter.

4. Admission of solicitors as notaries public

(*a*) All petitions to be admitted a notary public shall be framed and presented by the Clerk to the Admission of Notaries Public who shall obtain the Royal Authority for the petitioner's admission by a presentation; and the said Clerk shall administer the oath of office, keep the roll of notaries, and prepare and issue all commissions as notary public.

(*b*) On presentation of any such petition the fee payable to the said Clerk shall be £9 9s.; and, in addition, intrants shall make payment of the fee fund dues, and dues of presentation.

(*c*) The said Clerk shall supply each notary public on his admission with a duly certified and docqueted protocol book of ninety-one folios.

5. Appeals under paragraphs 2(2) and 3(4) of the Fifth Schedule to the Act of 1949 and Sections 3(2) and 17(3) of the Act of 1958.

(*a*) Appeals under paragraphs 2(2) and 3(4) of the Fifth Schedule to the Solicitors' (Scotland) Act 1949 (in this Section referred to as " the Act of 1949 ")

and Sections 3(2) and 17(3) of the Solicitors' (Scotland) Act 1958 (in this Section referred to as " the Act of 1958 ") shall be by petition to the Inner House. Any such petition shall be lodged in the Petition Department, not later than fourteen days in the case of an appeal under paragraph 2(2) of the Fifth Schedule to the Act of 1949, and not later than twenty-one days in the case of appeals under Sections 3(2) and 17(3) of the Act of 1958 from the date when the decision appealed against shall have been intimated to the petitioner and shall set forth the decision appealed against and state the date on which it was intimated to the petitioner, and shall contain an articulate statement in numbered paragraphs of the facts relevant to the disposal of the petition.

(*b*) On the petition being so lodged it shall be brought before one or other Division in Chambers, and the Division may, without hearing parties, order service of the petition on the Council and intimation in the Minute Book and allow the Council to lodge Answers thereto within seven days after service.

(*c*) The Court shall thereafter proceed in the petition summarily in such manner as shall be necessary and proper.

(*d*) Any petitioner may at any time after lodging a petition abandon the same by giving notice of abandonment to all persons upon whom the petition may have been served.

6. Applications under paragraphs 1(3) of the Fifth Schedule and 5(5) of the Sixth Schedule to the Act of 1949.

Applications under paragraph 1(3) of the Fifth Schedule and paragraph 5(5) of the Sixth Schedule to the Act of 1949 shall be by petition to the Inner House. Any such petition shall be lodged in the Petition Department (in the case of applications under paragraph 5(5) of the Sixth Schedule to the Act of 1949 within fourteen days after a notice under sub-paragraph (3) of paragraph 5 of that Schedule has been served and stating the date on which the notice was served on the petitioner) and shall contain an articulate statement in numbered paragraphs of the facts relevant to the disposal of the petition. On the petition being so lodged paragraphs (b), (c) and (d) of Rule 7 shall apply.

7. Appeals under Section 7 of the Act of 1958.

(*a*) Appeals under Section 7 of the Act of 1958 by persons aggrieved by a decision of the Discipline Committee shall be by petition to the Inner House.

(*b*) Any such petition shall be lodged in the Petition Department not later than twenty-one days from the date on which the decision of the Discipline Committee shall have been intimated to the petitioner and shall set forth the decision appealed against and state the date on which it was intimated to the petitioner and shall contain an articulate statement in numbered paragraphs of the facts relevant to the disposal of the petition.

(*c*) On the petition being so lodged it shall be brought before one or other Division in chambers and the Division may, without hearing parties, make such order for intimation and service as may be necessary, including intimation to the Discipline Committee (who shall, however, not be regarded as parties to the cause except as after-mentioned) ordaining the Committee to lodge in process

within the period of the *induciae* the Findings appealed against, together with the documents lodged by either party and (if available) the notes of the evidence adduced before and heard by the Discipline Committee.

(*d*) The Court shall thereafter proceed in the petition summarily in such manner as shall be necessary and proper.

(*e*) Where the petitioner is the person or one of the persons who complained of the solicitor's alleged professional misconduct the Court may order him to give security for expenses (including the cost of extending the notes of evidence adduced before and heard by the Discipline Committee) as a condition of proceeding with the petition.

(*f*) Any petitioner may at any time after lodging a petition abandon the same by giving notice of abandonment to all persons upon whom the petition may have been served.

(*g*) The Court may substitute any other punishment for that inflicted by a finding appealed against, or make any order in relation thereto it may think fit.

8. Applications under Section 29 of the Act of 1933, paragraph 5(2) and paragraph 6 of the Sixth Schedule to the Act of 1949 and Section 15 of the Act of 1958.

(*a*) Applications under Section 29 of the Act of 1933, paragraph 5(2) and paragraph 6 of the Sixth Schedule to the Act of 1949 and Section 15 of the Act of 1958 shall be by petition to the Inner House. The petition shall contain an articulate statement of the facts in numbered paragraphs relevant to the petition and shall be lodged in the Petition Department.

(*b*) On the petition being so lodged it shall be brought before one or other Division in Chambers, and the Division may, without hearing parties, order service of the petition on the Respondent and intimation in the Minute Book and allow him to lodge Answers thereto within seven days after service.

(*c*) The Court shall thereafter proceed in the petition summarily in such manner as shall be necessary and proper.

9. Petitions under Section 6(1) (a) of the Act of 1958.

(*a*) Petitions unders Section 6(1) (a) of the Act of 1958 shall be presented in the Inner House and lodged in the Petition Department and shall contain an articulate statement of the facts necessary to show cause why the applicant's name should be restored to the Roll of Solicitors.

(*b*) On the petition being so lodged it shall be brought before one or other Division in chambers and the Division may, without hearing parties, make such order for intimation and service as may be necessary, the Discipline Committee and the Council both being deemed to be the Respondents in the petition.

(*c*) Paragraphs (c) and (d) of Rule 7 shall thereafter apply.

10. Remit for further enquiry

In any proceedings under any of the preceding rules of this Section, the Court may, if it thinks necessary or expedient in the interests of justice, remit to any person to make further enquiry into the facts, or to take further evidence and to report to the Court.

11. Deprivation of office of notary public

Where an order has been made by the Court causing a solicitor who is also a Notary Public to be struck off the Roll of Solicitors, or suspending him from practice, the Court may also deprive him of his office of Notary Public, or suspend him from discharging his said office, as the case may be; and, in the event of a person who has been struck off the Roll of Solicitors and has been deprived of his office of Notary Public in terms of this Rule, having his name restored to the Roll of Solicitors under Section 6(1) of the Act of 1958, the Court may grant warrant to the Keeper of the Roll or Register of Notaries Public to restore his name to the said Roll or Register as a Notary Public.

SECTION 3

Offices of Court

12. The General and other offices of the Court

(*a*) The Central Office of the Court (generally referred to in these Rules as " the Office of Court ") shall combine and comprise:

1. The General Department;
2. The Petition Department;
3. The Extracts Department; and
4. The Teind Office;

but shall not include the offices of the Accountant of Court or the Auditor of Court.

(*b*) The General Department and the Petition Department shall be under the charge of a Deputy Principal Clerk of Session; the Extracts Department shall be under the charge of a Depute Clerk of Session, who shall be known as the Extractor of the Court of Session, and the Teind Office shall be under the charge of a Clerk of Session, who shall be known as the Teind Clerk, all acting under the directions of the Principal Clerk of Session in consultation with the Lord President.

(*c*) Any reference to the Principal Extractor or to his office in any Act of Parliament, or in any Order made pursuant to an Act of Parliament or in any Act of Sederunt shall be construed as a reference to the Extractor or to his Department.

13. Distribution of business.

(*a*) To the General Department there shall belong all processes in:

(i) causes originating in the Court of Session and initiated by summons;

(ii) appeals from inferior courts, remits from sheriff courts, appeals under particular statutes, and stated cases or special cases, including references and submissions under particular statutes;

(iii) causes transmitted from any inferior court to the Court of Session *ob contingentiam*; and

(iv) appeals under the Lands Valuation and Rating Acts.

(*b*) To the Petition Department there shall belong all processes in causes originating in the Court of Session and initiated by petition.

(*c*) To the Teind Office there shall belong all processes which by statute or practice have been dealt with by the Teind Court and the Lord Ordinary on Teinds.

(*d*) All bonds of caution and consignation receipts in any process shall be lodged with or transmitted to the Accountant of Court.

SECTION 4

The Rolls

14. Keeper of the Rolls

The rolls of Court shall be kept by the Principal Clerk of Session as Keeper of the Rolls with the assistance of the Deputy Principal Clerk of Session and in consultation with the Lord President, the Lord Justice-Clerk and the senior Lord Ordinary in the Outer House.

15. Classification of causes in the General Department

In the records kept in the Offices of Court, all causes belonging to the General Department shall be classified as (i) ordinary causes, (ii) admiralty and commercial causes, and (iii) consistorial causes.

16. Putting out causes for hearing or trial

(*a*) Subject to the provisions contained in these Rules, it shall be the duty of the Keeper of the Rolls to cause lists to be prepared of all causes sent to procedure roll in the Outer House, and of all causes sent to the summar and short rolls in the Inner House, and also of all causes in which proofs, jury trials, or special hearings have been fixed in terms of the immediately succeeding rule, and to put out such causes for hearing or trial before such Lord Ordinary, or before such Division as may be convenient; provided always that any continued adjustment of record or pleadings, and any continued motion, in either the Outer or the Inner House, shall, if possible, be put out before the Division or Lord Ordinary by whom the continuation was granted; and that if the merits of a cause have once been discussed in whole or in part before a particular Division or a particular Lord Ordinary, the cause shall, if possible, be put out for any further hearing, or for proof, or jury trial, before the same Division or Lord Ordinary, as the case may be.

(*b*) Causes put out in the printed rolls of Court for hearing in any roll or at any diet shall be so put out in the printed rolls issued not later than the second day before the day on which the cause is to be heard.

17. Fixing diets for proofs, jury trials, and special hearings in the Outer House

When a proof is allowed, or an issue or issues approved, or when a cause is appointed to be heard at a special diet, the Court shall not itself proceed to fix

the diet for the proof or jury trial or special hearing, but shall leave the date of such diet blank in the interlocutor. The Keeper of the Rolls shall, in the case of a proof, as soon as convenient after the lodging in process of copies of the Closed Record as required by Rule 91(e), or in the case of a jury trial, as soon as convenient after the approval of an issue or issues, publish such causes in the Rolls of Court and in consultation with the parties assign a day or days for the proof or jury trial, and shall cause the blank in the interlocutor to be filled in accordingly and to be initialled by the Clerk in charge of the process.

18. Printing and Publishing of rolls

(*a*) The daily rolls, the minute-book, the teind minute-book, and the record of edictal citations shall be published, and delivered to subscribers, under directions made from time to time by the Lord President.

SECTION 5

The Process

19. Form, size, etc., of papers forming the process

(*a*) In all causes originating in the Court of Session, and initiated by summons or petition, the principal summons or petition shall be on the official printed forms, and may be filled in in writing, typescript, or print, and shall be backed with the official printed backing.

(*b*) All special cases originating in the Court of Session, all written appeals, all stated or special cases and generally all writs whereby any cause first comes to depend before the Inner House, may be in writing, typescript or print or other suitable method of reproduction approved by the Court and shall, if in writing, be written on process paper, or, if in typescript or print, be typed or printed on paper of a texture not less durable than process paper and of a like size.

(*c*) All steps of process lodged in any cause depending before the Court of Session, whether originating there or appealed or remitted to that Court from any inferior court, may be in writing, typescript, or print; and shall, if in writing, be written on process paper, or, if in typescript or print, be typed or printed on paper of a texture not less durable than process paper, and of a like size.

(*d*) All the writs and documents mentioned in the three immediately preceding paragraphs of this rule shall be folded and backed lengthwise, and shall bear on the first page and on the backing a delimited square space for the serial letter and number assigned to the principal writ on lodging, and the backings of all the writs and documents mentioned in the two immediately preceding paragraphs of this rule shall be of cartridge paper or paper of similar durability.

20. Steps of process

A process shall consist of an Inventory of Process, the principal writ, an interlocutor sheet, a duplicate inventory of process, a copy of the principal writ

certified by the solicitor lodging the same, a motion sheet and a minute of proceedings. Each of these steps of process (other than the principal writ and the certified copy thereof) shall consist of at least four pages of process paper. If productions are lodged at the same time, there shall also be lodged an inventory of such productions No minute of proceedings need be lodged in any petition unless and until answers have been lodged.

21. Intimation of lodging documents

The solicitor lodging a step of process shall give written intimation of such lodging to the solicitor of the other party; and the clerks shall not mark any step as received until a certificate of intimation has been endorsed thereon, provided that no intimation need be given of the lodging of an open or closed record, or the original writ or defences or answers.

22. Writs on which interlo cutor has to be signed.

Every petition, note, principal copy issues, or counter issues, and the like, on which any interlocutor, order, verdict, or authentication falls to be written for signature, shall have annexed a sheet of process paper on which such interlocutor, order, verdict or authentication may be written and signed.

23. Lost summonses, etc.

Where a summons, petition, or other original writ or pleading or interlocutor sheet is lost or destroyed, a copy thereof, proved in the cause to the satisfaction of the Court, and authenticated in such manner as the Court shall require, may be substituted, and shall be held equivalent to the original for the purposes of the action, including the use of diligence.

24. Duplicate inventory of process

The duplicate inventory of process shall be written up by the solicitor lodging the steps of process or productions at the time of lodging. The process number of each production in the process shall be marked opposite its number in the inventory of productions by the solicitor when he lodges the same.

25. Productions

Each production consisting of more than one sheet shall be securely fastened together and backed up by the solicitor lodging the same, and each production shall be marked at lodging with the serial letter and number assigned to the principal writ. Copies of productions for the use of the Court shall be lodged within 48 hours of the date of the proof or jury trial.

26. Copies and reproductions of documents and notes of evidence

(*a*) All records, petitions, answers, proofs, or other documents which require to be copied for the use of the Court, may be either printed or typewritten or reproduced by any other process approved by the Court. The clerks shall

refuse to accept any reproduction which does not conform to a standard approved by the Court in size, spacing, lettering, legibility, quality of paper, or otherwise, and any party tendering a document which is so refused by the clerks of Court shall have the right to appeal in writing to the Principal Clerk of Session; provided that, where such appeal is refused, the Principal Clerk of Session may extend the time for lodging; and the decision of the said Principal Clerk sustaining or refusing such appeal, or granting or refusing an extention of time, shall be final.

(*b*) In all causes initiated in the Inner House, and in all causes reclaimed or appealed to the Inner House, at least ten copies or reproductions of the record, petition and answers, appeal, stated or special case, as the case may be, and also (in the case of motions for review by the Inner House) of the interlocutor or interlocutors reclaimed against shall be lodged in the appropriate Department at the same time as the cause is submitted to the Inner House; and ten copies or reproductions of any documents or notes of evidence or opinions which it is desired to submit for the consideration of the Court, shall be lodged in the General or Petition Department, as the case may be, as soon as possible thereafter. The party lodging any of the documents referred to in this paragraph shall at the same time deliver to the solicitor for the opposite party, unless otherwise agreed between the parties, ten copies thereof.

27. Interlocutors ordering or allowing papers to be given in

(*a*) In all interlocutors ordering or allowing papers from both or either of the parties a time shall be fixed for giving in the same, which time may be prorogated, provided that before the elapse thereof a motion shall be enrolled for such prorogation; and no prorogation shall be granted in any instance, except on cause shown.

(*b*) Every paper produced in process, in terms of an interlocutor ordering or allowing the same to be given in, shall have prefixed thereto a full copy of the interlocutor ordering or allowing such paper and a copy of any interlocutor prorogating the time originally allowed.

28. Signature of papers

Except as otherwise provided in these Rules, petitions to the Court and all defences, answers, notes, minutes and other papers in causes depending before the Court shall be signed by an advocate, who shall be looked upon as the drawer thereof and shall be answerable for what they contain.

29. Papers not to be received after due date

Before marking any paper as lodged the clerks shall examine the copy interlocutor or interlocutors ordered to be prefixed, and shall not in any instance receive and mark any paper after the lapse of the day on which it is receivable. The Clerks of Court shall mark the true date of lodgment on every paper (not being a production) given into process.

30. Amendment of interlocutors

The Lord Ordinary who has pronounced an interlocutor may on cause shown correct or alter such interlocutor at any time before extract.

31. Certain writs not borrowable

(*a*) The principal writ by which a process is commenced in the Court of Session shall remain constantly in the office of Court, subject to inspection by any party interested, and shall on no account be lent out; provided always that:

(i) this rule shall not apply to the copy of such writ, certified as provided in Rule 20 which may be lent out when required;

(ii) this rule is without prejudice to the general right of a defender to borrow the principal Summons and any productions lodged therewith upon entering appearance, in terms of Rules 86 and 87; the same being in that case returnable in accordance with the provisions of said rules;

(iii) each party may, after the record is closed, borrow his own principal writ for the purpose of writing on it and authenticating such amendments as may have been made, and similarly when any amendment has been allowed by the Court;

(iv) this rule shall not apply in the case of a party intending to do diligence on the dependence of the action.

(*b*) The minute of proceedings shall only be borrowable for transmission to the auditor of Court.

32. Borrowing and returning process

(*a*) The Clerks of Court shall, except as after-mentioned, receive back no process or part of a process without at once either comparing it with the principal inventory and receipt in presence of the solicitor or his clerk and scoring the receipt; or, in the case of a partial return, marking on the principal inventory the numbers so returned; or otherwise, if the whole numbers borrowed be not then returned, or if the process be bulky so that it cannot at the time be conveniently examined, the Clerks of Court shall not receive back such process or part of a process without a separate slip or note accompanying the same, dated and signed or initialled by the solicitor or his clerk, specifying the numbers so returned; and it shall be the duty of the Clerks of Court in all cases where they receive back a process or part of a process without at once scoring the receipt or making a marking on the inventory as aforesaid, to examine the same before the close of the following business day at latest, and to give notice to the solicitor of any inaccuracy in the slip or note aforesaid; and if no notice to the solicitor be delivered or put into the post office in the course of such following day, stating that such slip or note is inaccurate, the accuracy thereof shall be presumed, and the solicitor shall be equally exonered as if the receipt had been scored, or a marking made as aforesaid.

(*b*) The solicitor returning the whole or any part of a process shall see that the numbers so returned are previously arranged in their regular order according to the inventory and the Clerks of Court may refuse to receive any process or part of a process the numbers of which are not so arranged.

33. Index of processes

All persons having interest in a process in the custody of the Keeper of the Records shall have access to the index and also to exhibition of the process on payment of fees to be charged at the rates after specified.

34. Retransmission of unextracted process to Office of Court

(*a*) Where a person having interest in an unextracted process in the custody of the Keeper of the Records shall require any such process to be retransmitted to the Office of Court, in either Department, it shall be retransmitted accordingly and an entry shall be made in a book to be kept in the department of the Keeper of the Records recording the retransmission, which shall be signed by the clerk who receives the process.

(*b*) No process, or part of a process, shall be allowed to be borrowed by any person while the process remains in the custody of the Keeper of the Registers and Records; provided that when any person having interest desires to borrow any process, or part of a process, in such custody, he shall be entitled to have the process retransmitted to the Offices of Court in terms of the immediately preceding section.

(*c*) The fee for retransmission of a process shall be £1 1s.

35. Certified copy interlocutors and steps of process

The Keeper of the Records may allow inspection of the indices, and may issue to any person desiring the same certified or " plain " copies of any interlocutors or steps of process on payment of the fees hereinafter provided, namely:

	£	s.	d.
For inspection of the indices of a single office . . .	0	2	0
For inspection of the indices of the whole offices . . .	0	5	0
For inspection of a process	0	7	6
Certified Official Copies			
For each sheet of 250 words or part thereof of all typed or written certified official copies	0	3	0
This fee is exclusive of fees of writing.			
For each page or part thereof reproduced by photography .	0	2	0
Excerpts of " Plain " Copies			
For typed or written excerpts or copies whether complete or partial per sheet of 250 words or part thereof . .	0	2	0
For photographed excerpts or copies whether complete or partial per page or part thereof	0	2	0
For excerpts or copies made by the public in addition to the fee for inspection, each sheet of 250 words or part thereof	0	0	6

SECTION 6

Taxes upon Funds in Manibus Curiae

36. Certificate by officer of Inland Revenue

(1) No decree, warrant or order for payment to any person of any money consigned in name of the Accountant of Court in terms of the Court of Session Consignations (Scotland) Act 1895, or any part thereof, (2) no decree, warrant or order for payment of any consigned money or for transfer or conveyance to any person of any stocks, shares, or other property, heritable or moveable, in any process for the distribution of the estate of any deceased, pending in the Court of Session, and (3) unless where appropriate procedure has been taken for the continued administration of any lapsed trust, intestate estate, partnership estate, or other estate, moveable or heritable, no decree for exoneration and discharge of any judicial factor appointed by the said Court for the purpose of administering and distributing such trust or other estates, shall issue until there is lodged with the Clerk of Court a certificate by the proper officer in the Department of Inland Revenue that all income tax, estate duty, legacy duty, succession duty, and any other duty payable thereon to the Commissioners of Inland Revenue has been paid and satisfied to the Department; provided that in an action of multiplepoinding it shall not be a condition precedent to the issue of a Certificate by the Commissioners of Inland Revenue under (2) above that all income tax, estate duty etc. exigible on the estate of a deceased claimant has been paid.

Clerks to enforce above provision.

The Clerks of Court shall not present for the signature of the Court, any such decree, warrant or order as aforesaid, without the provisions of the above section having been first complied with.

SECTION 7

Assessors

37. Nautical assessors and assessors in an action for the infringement of a patent

In any cause arising out of or relating to a collision at sea, salvage, towage, or any other maritime matter, and in any action for the infringement of a patent the Court, if it shall think fit, may, and on the application of any party to the cause shall, summon to its assistance at the trial, or proof, or at any hearing in the cause, whether in the Outer or Inner House, a specially qualified assessor to sit with the Court and act as assessor at such trial, proof, or hearing, but where it is proposed to summon any person as an assessor, objection to him, either personally or in respect of his qualification, may be stated by any party to the cause and shall be disposed of by the Court.

38. Assessors in other causes

In any cause other than those to which the immediately foregoing rule applies, the Court may, on the joint motion of parties, summon to its assistance at the

trial or proof or at any hearing, whether in the Outer or Inner House, a specially qualified assessor, who shall be selected either by the parties and named in the said joint motion, or by the Court if the parties shall leave the selection of the assessor to the Court, to sit with the Court and act as assessor at such trial, proof, or hearing.

39. Application for assessor to be summoned

In any cause, whether falling under Rule 37 or Rule 38, an application for an assessor at the instance of the parties to the cause or any one or more of the parties shall be made by motion; provided that:—

(*a*) All such motions shall be enrolled at least fourteen days before the date of the trial, proof or hearing, at which the presence of such assessor is desired.

(*b*) Where the application is at the instance of the parties jointly, the motion shall be signed on behalf of all the parties and shall be disposed of as a motion which is not marked " opposed " by any of the parties.

(*c*) The party or parties enrolling the motion shall at the time of such enrolment lodge in process for the use of the assessor a copy of the closed record or other papers setting forth the pleadings in the cause: and where an assessor is to be summoned *ex proprio motu* of the Court, such copy of the closed record or other pleadings shall be lodged in process by the pursuer or petitioner as the case may be, unless the Court shall otherwise direct.

40. Where the Court decides to summon an assessor ex proprio motu

In any cause to which Rule 37 applies, if the Court shall think that the cause is one in which the presence of an assessor is desirable although none of the parties may have moved to that effect, the Court shall hear parties before summoning the assessor.

41. Interlocutor ordering assessor to be summoned

Upon a motion for an assessor selected and named by the parties being granted, or upon the Court deciding *ex proprio motu* to summon an assessor, or upon a motion for an assessor to be selected by the Court being granted, the Court by interlocutor shall order the assessor to be summoned to attend the trial, proof or hearing, as the case may be, and shall remit to the Principal Clerk of Session to arrange for the attendance of such assessor.

42. Expert evidence when assessor summoned

It shall not be competent, at any trial or proof in a cause in which an assessor is summoned to sit, to lead evidence by more than one witness for each side of expert opinion on any matter within the special qualifications of the assessor; and in the event of any question arising at the trial or proof with regard to the application of this rule, the decision of the judge presiding at the trial or proof shall be final; provided that the Court may, on the motion of either party enrolled not later than fourteen days before the date of the trial or proof, on special cause shewn, allow the examination of a greater number of witnesses to

expert opinion. The provisions of this rule are without prejudice to the special provisions of Rule 146.

43. Number of assessors

For any trial, proof, or hearing in the Outer House one assessor only shall be summoned; for any trial or proof before one of the Judges of the Inner House or for any hearing in the Inner House whether on reclaiming motion, appeal, or otherwise, the number of assessors to be summoned shall be one, or more than one, as the Court shall think fit.

44. Remuneration of assessors

(*a*) The remuneration of an assessor other than a nautical assessor shall be such fees and expenses as the Court shall in each cause determine.

(*b*) The remuneration to be paid to an assessor, whether nautical or otherwise, shall, unless the Court otherwise directs, be treated as expenses in the cause.

(*c*) A motion for an assessor to be summoned shall only be granted on condition that the party or parties making the motion shall consign in the name of the Accountant of Court such sum to meet the fees and expenses of the assessor as the Court may determine: and, when an assessor is to be summoned *ex proprio motu* of the Court, such consignation shall be made by the pursuer or petitioner as the case may be, unless the Court shall otherwise direct.

45. Note to be made of questions submitted to assessor

In every cause the judge who presides at the trial, proof, or hearing at which an assessor attends shall make a note of the questions submitted to such assessor and of the answer or answers thereto, and shall cause the same to be lodged in process.

46. Special provisions applicable to nautical assessors

In any cause arising out of or relating to a collision at sea, salvage, towage or any other maritime matter, the following provisions shall apply:—

(*a*) Nautical assessors shall be selected from a list of persons approved for the purpose by the Lord President. Such list shall be kept by the Principal Clerk of Session and shall be published as the Lord President shall direct and shall be in force for three years only; but persons entered in any such list may be again approved in any subsequent list.

(*b*) The remuneration of every person attending as a nautical assessor shall be six guineas a day for each day on which he so attends and also for any Sunday over which he is necessarily detained at the seat of the Court, besides subsistence and travelling expenses. In the case of an assessor resident out of Scotland he shall be entitled to charge for a day for coming and a day for returning at the above rate; but other assessors shall not be entitled to a fee for travelling days unless owing to the distance of their ordinary residence from the seat of the Court, it is impossible with reasonable convenience to travel on the day or days on which they are required to sit in Court.

SECTION 8

Messengers-at-Arms

47. Dues for change of address

In the event of any messenger-at-arms changing his address, he shall forthwith give notice of the same in writing to the Lyon Clerk, which notification shall be accompanied by the statutory fee of 2s. 6d., and shall be recorded by the Lyon Clerk; and each messenger failing to give notice as aforesaid shall be liable in a penalty of £3 sterling upon each transgression.

As greater dues are payable at the admission of messengers to practise in the county of Edinburgh than elsewhere, each messenger already admitted to practise out of the county of Edinburgh shall, before being admitted to practise in the said county, pay the difference of these dues.

48. Messenger bound to serve the lieges

No messenger shall refuse to serve any of the lieges in the way of his office, upon their reasonable expenses, either from respect of persons or other frivolous excuses, as he shall be answerable in any court competent.

49. Transmission of diligence

When diligence of any kind is transmitted from one place to another to any messenger in order to be executed, such messenger shall be obliged, within twenty-four hours at farthest after receiving such diligence, to acknowledge to his employer the receipt thereof; and any messenger neglecting to acknowledge the receipt of diligence so transmitted and received by him, and failing or delaying at the same time to execute such diligence, shall, upon conviction, be fined the sum of £2 sterling for each offence *toties quoties.*

50. No sum other than fees to be exacted

No messenger in executing diligence of any kind shall exact, take, or receive on his own account from the person against whom such diligence is executed or meant to be executed any sum whatever, under any name or pretence whatsoever, other than his recognised fees as he shall be answerable to any court competent.

51. No messenger to purchase goods sold under diligence

No messenger by himself or others commissioned by him for his use and behoof in whole or in part shall, upon the execution of any poinding and the goods poinded exposed for sale by the creditor to whom they have been adjudged, become the purchaser thereof under the pain of deprivation.

52. No messenger to be private servant

No messenger shall be a servant to any particular master during the time he continues in office, under the pain of deprivation.

53. Affixed copy of execution not to be defaced

In every execution, when a messenger is bound by law to affix a copy, he shall be nowise aiding or assisting or otherwise accessory to the taking down or otherwise defacing the copy so affixed, as he shall be answerable in any court competent.

54. Annual declaration as to cautioner

Each messenger shall be obliged annually, twenty days at least before the 6th day of May, to transmit by post to the Lyon Clerk at Edinburgh a declaration stating whether his cautioner is dead or alive, and the address of his cautioner, which declaration shall be recorded by the Lyon Clerk gratis; and any messenger failing to transmit annually such declaration shall be liable to a penalty of £2 sterling for each transgression.

55. Death or bankruptcy of cautioner

In the event of the death or bankruptcy of a cautioner bound for any messenger, such messenger shall be bound within twenty-one days to send notice of the same to the Lyon Clerk, and shall be obliged forthwith to find another responsible cautioner and renew his bond of cautionry, paying therefor the statutory fee of £2 10s. besides the stamp duty; and in case of failure or neglect to lodge such new bond of cautionry within twenty-one days after the death or bankruptcy of the former cautioner, it shall be competent for the Lyon Court to suspend the messenger guilty of such failure or neglect from the exercise of his office as a messenger; and if, from the date of the order of suspension until he is replaced in his office by order of the Lyon Court, he shall take upon himself to officiate in any branch of the duties of a messenger-at-arms, he shall for every such offence forfeit the sum of £10 sterling.

56. Suspension or deprivation

When the Lord Lyon King of Arms is of opinion that the conduct of any messenger-at-arms is such as to render it expedient that he should be suspended from or deprived of his office, the Lyon Clerk shall send notice to the messenger by registered or recorded delivery letter that unless he shows cause to the contrary within fourteen days from the date of the said notice, sentence of suspension of deprivation will be pronounced by the Lyon Court; and if the messenger intimates his desire to be heard, he shall be cited to a diet of the Lyon Court, and shall have reasonable opportunity of showing cause why he should not be suspended or deprived of his office.

57. Sentence of suspension or deprivation

When sentence of suspension or deprivation shall be pronounced by the Lyon Court against any messenger, the same shall be placarded or intimated upon the walls of the Court of Session, and also upon the walls of the sheriff court of the county in which such messenger resides, and from and after the time appointed for such sentence to take effect the messenger so suspended or deprived shall not act as a messenger in any respect under a penalty of £10 sterling for each transgression.

58. Bond of caution for messenger

All future bonds of cautionry for messengers shall be prepared by the Lyon Clerk in such form as may be necessary to bring them into accordance with the present regulations, with the addition that the cautioner shall become bound (1) in the sum of £2 sterling for the safe return of the messenger's wand and badge of office in the event of his death, suspension from or deprivation of office and (2) to the observance of these regulations under the respective penalties mentioned therein.

59. Dues payable by messenger

Previous to the 6th day of May in each year there shall be paid to the Lyon Clerk, for behoof of H.M's Exchequer, the sum of 17s. sterling by each messenger practising in the county of Edinburgh, and the sum of 17s. 6d. sterling by each messenger practising out of the county of Edinburgh; and in case of failure or neglect to make regular and punctual payment of said sums they shall, besides payment of said sums, be liable in full costs of process, all which shall be recoverable in any court competent by the Procurator-Fiscal of the Lyon Court for behoof of H.M.'s Exchequer.

60. Jurisdiction of courts competent

Messengers shall continue to be answerable in any court competent for all offences or breaches of duty besides those specially provided against by the preceding regulations; and nothing contained in the preceding regulations shall prejudice the jurisdiction of any court competent to take cognisance of such offences.

61. Right of appeal

All existing rights of appeal against any order, deliverance, or sentence of the Lord Lyon King of Arms of the Lyon Court are hereby reserved.

62. Messengers to receive copy regulations

The Lord Lyon King of Arms shall cause these regulations to be printed, and each messenger on his admission shall receive a copy of the same.

SECTION 9

Extracts

63. (*a*) Until otherwise directed, the form of the extract of a decree of the Court shall continue to be in the form required by the law and practice as hitherto existing and the formalities of making and authentication of extracts shall be as provided for by Section 2 of the Court of Session (Extracts) Act, 1916; and the insertion in an interlocutor of the word " decern " shall no longer be necessary in order to warrant the issue of an extract.

(*b*) It shall be competent to submit to the review of the Inner House any interlocutor of the Outer House notwithstanding that extract has been issued before the expiry of the reclaiming days.

(*c*) Where the Court awards a lump sum by way of modified expenses, the interlocutor shall be construed as allowing in addition to such sum the dues of any extract required to enforce the award, and the extractor shall include in the extract the amount of the said dues.

64. In every Extract of a decree pronounced or to be pronounced by the Court of Session on which execution may competently proceed there shall be included a warrant for execution in the following terms, viz.:—' and the said Lords grant warrant for all lawful execution hereon '.

65. The following provisions shall apply to the short form of warrant for execution added to said Extracts: It shall be lawful by virtue of said warrant to arrest the readiest goods gear debts and sums of money of the debtor or obligant mentioned in said Extract in payment and satisfaction of the sum or sums of money or obligation or obligations therein specified; as also charge the debtor or obligant therein mentioned to pay the sum or sums of money or to perform the obligation or obligations therein specified within the appropriate days of charge under pain of poinding (and also under the pain of imprisonment where the debt or obligation is of such a nature as the payment or implement thereof may be enforced by imprisonment), the terms of payment or implement being first come and bygone; and if a debtor fail to obey the said charge then so far as competent to apprise poind and distrain all his readiest goods gear and other effects in payment and satisfaction of the said sum or sums or obligation or obligations; and, if necessary for effecting the said poinding, to open shut and lockfast places.

66. Where interest is included in or exigible under a decree or extract, it shall be deemed to be at the rate of five per centum per annum, unless otherwise stated.

67. Execution on said extracts shall be carried out by Messengers-at-Arms or other officers entitled to execute diligence thereon.

68. The Officer's execution of charge shall be as nearly as the circumstances permit in the terms shown in Form 44.

CHAPTER II

Ordinary Actions

SECTION 1

Summons, Citation, Calling

69. Initiation of proceedings

Save as hereinafter provided, all causes originating in the Court of Session shall be commenced in the Outer House either by summons or by petition.

70. Form of summons

All summonses shall be on the official printed form (Form 1), which, along with the official printed backing thereon, shall be filled in and completed either in manuscript, typescript or print; provided that:—

(*a*) The conclusions shall be stated in one or more of the short forms exemplified in Form 2, or in such similar short form as the circumstances may require.

(*b*) There shall be annexed to every summons a statement in the form of an articulate numbered condescendence of the averments of fact which form the grounds of the pursuer's claim, and there shall also be annexed to every summons a note of the pursuer's pleas-in-law.

71. Designation of defender furth of Scotland

In any summons against a party not therein designed as resident or carrying on business within Scotland, the pursuer shall either state the defender's known residence or place of business, or set forth expressly that the defender's residence and place of business are unknown to the pursuer.

72. Induciae in summons

In all summonses the *induciae* shall be seven days after the date of the execution of service if the defender is on the mainland of Scotland, and fourteen days if the defender is in Orkney or Shetland or in any of the islands of Scotland, or if he is furth of Scotland; provided that:

(*a*) In the case of service anywhere in Scotland by registered or recorded delivery letter the *induciae* shall be reckoned from twenty-four hours after the date of posting;

(*b*) It shall be competent for the pursuer in any summons, at any time after signeting and before service, to apply by letter addressed to the Deputy Principal Clerk craving that the *induciae* should be shortened or extended by the Court; and any such application shall be brought forthwith before a Lord Ordinary in chambers by the said Deputy Principal Clerk or by one of the clerks in his department instructed by him. The applicant's solicitor

shall attend the Lord Ordinary along with the clerk, and shall produce to the Lord Ordinary the principal summons bearing the signet; and the Lord Ordinary may, on cause shewn, shorten or extend the *induciae* as he may think proper and expedient in the circumstances; and the interlocutor so shortening or extending the *induciae* shall be written by the clerk on the said principal summons and signed by the Lord Ordinary, and shall be final.

73. Signature of summons and letters

(*a*) All summonses shall be signed by the pursuer's solicitor, being a solicitor entitled to practise before the Court of Session, and to his signature there shall be appended his business address in Edinburgh; and no further or other signature shall be required.

(*b*) All letters passing the signet and all applications to the Petition Department for warrants under the Debtors (Scotland) Act 1838, or otherwise shall be signed by a solicitor entitled to practise before the Court of Session and no further or other signature shall be required.

74. Signeting; service; diligence to found jurisdiction and on dependence, recall of arrestment or inhibition.

All summonses shall pass the signet and no summons shall bear any date but the date of signeting which shall be held to be the date of the summons; when signeted, the summons shall not only be warrant for service on the defender or defenders, including edictal citation of any defender furth of Scotland, but shall also be warrant (i) for arrestment to found jurisdiction, (ii) for any competent form of diligence by way of inhibition on the dependence or of arrestment on the dependence, or *in rem*, or to dismantle a ship, or (iii) in consistorial causes, for any of the intimations referred to in Rule 155; provided that application be made therefor before the summons is signeted by filling in the blank in the official printed form of summons after the words " warrant for ".

(*a*) In the case of the service of a summons or other writ by registered or recorded delivery letter, the citation and execution thereof shall, as nearly as may be, be in the forms shewn in Form 3.

(*b*) In the event of the defender or his known solicitor, being a solicitor entitled to practise before the Court of Session, accepting service and dispensing with the *induciae*, the *induciae* shall be deemed to expire on the day on which the pursuer receives intimation of such acceptance and dispensation.

(*c*) When both warrant for arrestment to found jurisdiction and warrant for arrestment or inhibition on the dependence are contained in the summons as signeted it shall not be necessary for the messenger-at-arms to serve separate schedules; but it shall be competent to combine in one schedule the arrestments to found jurisdiction and the arrestments on the dependence.

(*d*) Where warrant for diligence on the dependence of the action is not obtained when the summons is signeted, it shall be competent for the pursuer to apply for such warrant at any stage of the proceedings by motion to the Lord Ordinary. A certified copy of the interlocutor

granting warrant for diligence on the dependence shall be sufficient authority for service of the appropriate schedules.

(*e*) The warrant for inhibition contained in the summons in terms of this rule shall have the like force and effect as the warrant referred to in section 18 of the Court of Session Act 1868, and the summons, containing such warrant and the execution thereof, may be registered in accordance with the terms of said section. Notice of said summons may also be registered in terms of section 155 of the Titles to Land Consolidation (Scotland) Act 1868, and Schedule (PP) thereof, and the registration thereof shall have the like force and effect as registration of a notice under said last-mentioned section and schedule.

(*f*) Where a minute of amendment is lodged by the pursuer in terms of Rule 92(*c*) calling in an additional or substitute defender it shall be competent for the pursuer to apply for warrant to use any form of diligence by way of arrestment or inhibition which might have been competent on the dependence of a separate action. Such application shall be made by appending to the minute " Warrant for (arrestment to found jurisdiction, or arrestment or inhibition on the dependence, or all of them, or arrestment *in rem* or to dismantle a ship as the case may be) applied for " and shall be granted by the Clerk who receives the minute when lodged by adding the words " warrant granted as craved " and adhibiting his signature together with the date below those words. Such warrant shall be equivalent to the like warrant in a signeted summons. The registration of the warrant of inhibition and execution thereof or notice thereof as the case may be shall be made in accordance with the provisions of paragraph (*e*) of this rule and shall then have the force and effect as therein mentioned.

(*g*) Any application for the recall of any arrestment or inhibition used on the dependence of an action made in a cause before calling shall be made by letter addressed to the Deputy Principal Clerk craving that the Court should grant such application and enclosing a copy of the Summons. The letter shall at the same time be intimated to the pursuer. The Deputy Principal Clerk, or a clerk instructed by him, shall bring the application before a Lord Ordinary in chambers, making intimation to the parties of the place and hour. The solicitors for the parties shall attend along with the said clerk, and the solicitor for the pursuer shall produce to the Lord Ordinary the principal summons bearing the signet. The Lord Ordinary may either recall or restrict such arrestment or inhibition, on caution or without caution, and dispose of the question of expenses, and his interlocutor shall be written on the principal summons; provided that his judgment shall be subject to the review of the Inner House by a reclaiming motion, without leave, within seven days from the date thereof.

(*h*) Any application for the recall of any arrestment or inhibition used on the dependence of an action made after calling shall be made by motion to the Outer House or Inner House, according as the cause depends before one or the other, or to the Vacation Judge; provided that the judgment of the Lord Ordinary or Vacation Judge shall be subject to the review of the Inner House, by a reclaiming motion, without leave, within seven days from the date thereof.

(*i*) It shall not be necessary that any messenger-at-arms or sheriff-officer serving a summons or other writ or order of Court shall have the original document in his hands at the time of such service, provided that a copy of the summons or other writ certified as correct by the Solicitor in the cause or a certified copy of the order of Court shall at the time be in possession of such messenger or officer, and shall be exhibited to the party on whom the service is made, if required.

75. Edictal citation

(*a*) All citations against persons furth of Scotland shall be made at the office of the Extractor of the Court of Session on an *induciae* of fourteen days. The citation shall, as nearly as may be, be in the form shown in Form 4.

(*b*) In all cases in which one and the same writ is to be executed at one and the same time against two or more persons as furth of Scotland, such execution may be made by delivery at the office of the Extractor of one copy only, provided that such copy bears upon its face that it is delivered for each and all of such persons.

(*c*) Edictal citation shall not be sustained as sufficient citation against any defender who has a known residence or place of business in England or Northern Ireland or elsewhere furth of Scotland, unless in addition to such edictal citation the solicitor for the pursuer shall post in Edinburgh a registered or recorded delivery letter addressed either to the defender's known solicitor in Scotland, if he any have, or to the defender himself at his residence or place of business within England or Northern Ireland or elsewhere furth of Scotland, enclosing a full copy of the summons or other writ with citation.

(*d*) The provisions of this rule are without prejudice to the special provisions regarding the citation of defenders and co-defenders in consistorial causes contained in Rule 155.

(*e*) No notice given under this rule to any defender not resident in Scotland, even though given to such defender personally, shall be deemed to be personal service of a summons under section 24 of the Court of Session Act 1868.

76. Intimation to heritable creditors

In any action relating to heritage it shall not be necessary to call as a defender any person by reason only of any interest he may have as the holder of a heritable security over such heritage, but intimation of the action shall be made to such a person; and accordingly in such case the official printed form of summons shall be filled up so as to contain a warrant for such intimation in the following terms as nearly as may be:—

" Warrant to intimate to (name and address) as a person who is believed to be a heritable creditor of the defender ";

such warrant may be executed contemporaneously with, or after, the citation of the defender, by any messenger-at-arms, or by the pursuer's solicitor (being a solicitor entitled to practise in the Court of Session), by serving personally or by posting a registered or recorded delivery letter addressed to such person and containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 5.

77. Certificates of execution

All certificates of execution or intimation of a summons shall be written thereon.

78. Calling of summons

(*a*) In order that a summons may be called during session, it shall be lodged for calling in the General Department not later than 1 p.m. on the day before that on which it is to be called, provided always that the *induciae* of such summons expire on or before the day on which it is to be so called.

(*b*) In order that a summons may be called during vacation, it shall be lodged for calling as aforesaid not later than 1 p.m. on the second day preceding any calling day, of which notice will be given in the printed rolls prior to the commencement of each vacation, provided always that the *induciae* of such summons expire on or before such calling day.

(*c*) As lodged, every summons shall be accompanied by a slip containing the instance. If there are more than two pursuers, the slip shall contain only the name and designation of the pursuer first named with the words " and others "; and, if the defenders are more than three, it shall contain the name and designation of the defender first named with the words " and others as per roll ", referring to a separate roll of all the defenders, which roll shall be lodged along with the summons itself. In naming and designing a pursuer or defender who is a body of persons, such as a trust or partnership, whether individual members are also parties or not, it shall be sufficient to use the collective name of such body, *e.g.* the testamentary trustees of the late A.B., the firm or partnership of A.B. and Company or A.B. and Son, as the case may be.

(*d*) Each step of the process, lodged along with the summons, shall be marked on the backing thereof with the same letter and number as shall be given to the summons itself; and along with the summons and process the pursuer shall also produce and lodge per inventory any deeds or writings founded on in the summons, or in the conclusions thereof, or in the condescendence annexed thereto, so far as in his possession or within his control; and the Court may attach such conditions as to expenses or otherwise as may seem fit to the receiving of such documents if tendered at a later date.

(*e*) The calling of any summons shall be published on the walls and in the printed rolls of Court on the day on which the summons is called.

79. Interim interdict (Administration of Justice (Scotland) Act 1933, s. 6 (7)

If in any cause initiated by a summons which includes a conclusion for interim interdict, the pursuer desires to move therefor before the calling of the summons or after the calling of the summons but before lodging of defences, it shall not be necessary to present a separate petition for suspension and interdict, but the summons when signeted may forthwith be lodged in the General Department and a motion enrolled craving interim interdict in terms of the conclusions of the summons. The same procedure shall then be followed *mutatis mutandis* as is prescribed with regard to interim orders in petitions by Rule 236, provided (1) that the Deputy Principal Clerk or the clerk instructed by

him shall report to the Lord Ordinary before any order is made whether a caveat has been lodged for any of the defenders, and (2) that, if the Lord Ordinary so determines, the *induciae* for service of the summons may be shortened in terms of Rule 72(b).

80. Protestation for not calling summons

(*a*) If a pursuer shall not lodge his summons for calling on the day on which the *induciae* expire, or on one of the three sederunt days next ensuing if in session, or, if in vacation on the first ensuing calling-day, or, failing a calling day, on the first sederunt day after vacation, the defender may proceed by way of protestation in the same form and to the same effect as under present practice, provided that written intimation of intention to make protestation shall be given by the defender's solicitor so as to reach the pursuer's solicitor at his office before protestation is made.

(*b*) Where protestation is put up in the minute book for not calling any summons, and warrant is issued for extract thereof, such extract shall contain a decerniture for £3 3s. of protestation money, as expenses; provided that a pursuer may be reponed against a protestation for not calling at any time not later than ten days after the same has been given out for extract, whether extract shall have issued or not, by lodging with the clerk, for calling, his summons, with the relative documents, accompanied by the receipt of the solicitor for the defender for the said sum of £3 3s. of protestation money, or consigning the money itself in the hands of the clerk, for the use of the solicitor for the defender, and payable to him on demand.

(*c*) When protestation is put up in the minute-book for not calling any summons, the Extractor of the Court of Session shall be bound to score the same on production to him of a certificate from the Deputy Principal Clerk that the summons has been duly lodged for calling; and, after the granting of such certificate, the procedure will be regularly and immediately followed out in calling the same.

SECTION 2

Appearance, Defences and Counter-claims

81. Appearance

Appearance may be entered by the defender's solicitor marking on the margin of the printed calling list in the General Department the name of the defender's counsel and the name of his solicitor not later than three days after the day on which the summons is called, whether in session, vacation or recess, and the defender's solicitor shall at the same time intimate by letter to the solicitor for the pursuer the name of defender's counsel.

82. Party appearing not to state objections to execution of summonses, etc.

No party appearing in any action or proceeding in the Court of Session shall be entitled to state any objection to the regularity of the execution or service as against himself of the summons or other pleading or writ whereby he is convened.

83. Defences

(*a*) Defences may be lodged on any day after the day on which the summons is called, but not later than the fourteenth day after the day on which the summons is called, or, if such fourteenth day is in vacation or recess, on the first calling day or sederunt day, whichever is earlier; provided that, if defences are lodged earlier than the said fourteenth day or first calling-day or sederunt day, notice in writing shall be given to the pursuer on the day of lodging that such defences have been lodged.

(*b*) Defences shall be in the form of articulate numbered answers to the condescendence annexed to the summons, and there shall be annexed to such defences a note of the defender's pleas-in-law.

(*c*) Along with the defences the defender shall lodge per inventory any deeds or writings founded on in the defences, so far as in his possession or within his control; and the Court may attach such conditions as to expenses or otherwise as may seem fit to the receiving of such documents if tendered at a later date.

(*d*) On lodging defences, the defender's solicitor shall send a copy thereof to the pursuer's solicitor.

84. Counter-claim

(*a*) It shall be competent for a defender either in his defences as lodged, or at adjustment, or, subject to such conditions, if any, as to expenses or otherwise as the Court may think just, by way of amendment at any later stage of the case at which amendment is competent, to counter-claim against the pursuer in respect of any matter forming part of, or arising out of the grounds of, the pursuer's action, or the decision of which is necessary for the determination of the question in controversy between the parties, or which, if the pursuer had been a person not otherwise subject to the jurisdiction of the Court, might competently have formed the subject of an action against such pursuer in which jurisdiction would have arisen *ex reconventione*; provided that, in any case, the counter-claim is such as might have formed matter of a separate action, and that, if such separate action had been raised, it would not have been necessary to call as defender thereto any person other than the pursuer.

(*b*) Any such counter-claim shall be headed "Counter-claim for the Defender", and shall be preceded by the conclusion or conclusions, in the like short form or forms as exemplified with regard to the conclusions of a summons in Form 2 in the Appendix, which, if the counter-claim had been enforced by a separate action, would have been appropriately used in the summons in such separate action. The counter-claim shall also contain an articulate numbered statement of facts setting forth the facts on which the counter-claim is founded. Such statement of facts may incorporate by reference any matter contained in the defences. The note of pleas-in-law for the defender shall include any pleas which may be necessary to support the counter-claim.

(*c*) On lodging defences containing a counter-claim, or on a counter-claim being included in the defences at adjustment, or on a counter-claim being incorporated in a closed record by way of amendment it shall be competent for the defender to apply for warrant to use any form of diligence by way or arrestment or inhibition which might have been competent on the dependence of a

separate action brought to enforce the matter of the counter-claim. Such application shall be made by appending to the conclusion or conclusions which precede the counter-claim the words " Warrant for (*arrestment or inhibition on the dependence, or both, or arrestment* in rem *or to dismantle a ship, as the case may be*) applied for ", and shall be granted by the clerk who receives the defences when lodged, or who receives the record as closed or as closed anew after amendment, adding the words " Warrant granted as craved ", and adhibiting his signature, together with the date, below those words. Such warrant shall be equivalent to the like warrant in a signeted summons. The registration of the warrant of inhibition and execution thereof or notice thereof, as the case may be shall be made in accordance with the provisions of paragraph (*e*) of Rule 74 and shall then have the force and effect as therein mentioned.

(*d*) The right of a pursuer to abandon his action shall not be affected on account of a counter-claim by the defender; but any expenses payable by the pursuer as a condition of, or in consequence of, such abandonment shall be exclusive of the expenses of the counter-claim.

(*e*) It shall be competent for a defender who has counter-claimed in manner aforesaid to abandon his counter-claim on condition of paying any expenses occasioned to the pursuer by the counter-claim.

(*f*) Notwithstanding abandonment by the pursuer, the defender may insist on his counter-claim, and the proceedings therein shall continue in dependence as if the counter-claim were a separate action.

(*g*) A counter-claim may be heard and tried along with, or before, or after, the claim in the pursuer's summons, as the Court may consider just and expedient in the circumstances; and, if evidence is led with regard to either claim separately from the other, such evidence shall, so far as competent and relevant, be evidence with regard to the other claim.

(*h*) Any interlocutor or decree, which would have been competent in a separate action brought to enforce the conclusions stated in the counter-claim may competently be pronounced on the counter-claim.

(*j*) Procedure by way of counter-claim shall not be applicable to consistorial causes, but shall apply in the case of counter-claims concluding for declarator, or for production and reduction of any writ founded on by the pursuer.

(*k*) Answers to a counter-claim may be lodged by the pursuer not later than the fourteenth day after the day on which the counter-claim is lodged.

85. Third party notices

Where in any action, a defender claims that he has any right of contribution, relief, or indemnity against any person who is not already a party to the action, or that a person whom the pursuer is not bound to call as a defender should be made a party to the action along with the defender in respect that such person is either solely liable or jointly or jointly and severally liable with the defender to the pursuer in respect of the subject matter of the action, the defender may set forth in his defences or in a separate statement of facts the grounds upon which he maintains that any such person (hereinafter called a third party) is liable to him by way of contribution, relief, or indemnity, or should be made a party to the action. The defences or statement of facts shall also contain

appropriate pleas-in-law directed against such third party. Thereafter the defender may enrol the cause for the purpose of obtaining an order of Court for the service of a third party notice upon such third party. The Court shall have complete discretion to grant or refuse such order. If it be granted, it shall be competent to such third party, within such period after service as the Court shall appoint, to appear and lodge answers. Averments directed against a third party shall ordinarily be made prior to the closing of the record, but may, in the discretion of the Court and subject to such conditions as the Court may attach, be made at a later stage, but in no event later than the commencement of the trial or hearing of the cause on its merits, by amendment of the record. Subject as aforesaid, the amendment of the record with a view to bringing in a third party shall apply to a cause remitted from the Sheriff Court to the Court of Session as to a cause originating in the Court of Session. A third party notice shall be as nearly as may be in one or other of the forms shown in Form 7 in the Appendix; and the answers by a third party shall be headed 'Answers for E.F. Third Party in the action at the instance of A.B. Pursuer against C.D. Defender'; and the following provisions shall apply to the procedure under such third party notice:

(*a*) The third party notice shall be served upon the third party in any manner in which a summons may competently be served upon a defender and shall be accompanied by a copy of the summons and defences, or the record, if any. A copy of the third party notice shall be lodged in process with a certificate of execution thereon.

(*b*) The order granting leave to serve a third party notice may contain a warrant for arrestment to found jurisdiction, or for arrestment or inhibition on the dependence.

(*c*) Upon the lodging of answers for a third party, a record shall be made up and adjusted in the same way as if the third party had been originally a defender to the action. The third party, if he so desires, may answer the averments of the pursuer in the same way as if the third party had been called as a defender; and the averments of one party against another may be adopted by any of the other parties to the action. Save as herein provided, the same procedure shall be followed, as between the defender and the third party, or as between the pursuer and the third party, as would have been followed in an ordinary action between those parties as pursuer and defender therein respectively.

(*d*) The Court, if satisfied that no competent or relevant averments of a right of contribution, relief or indemnity, or connecting the third party with the subject matter of the action, have been stated against the third party, may, after hearing parties in the procedure roll, dismiss the case so far as directed against the third party.

(*e*) Where enquiry by way of proof or jury trial is necessary between the parties to the action, or any of them, the Court may allow the case so far as directed against the third party to proceed to proof, or jury trial, along with the action between the pursuer and the defender, or separately therefrom, or may deal with the matter otherwise as in its discretion it thinks fit. In any case in which the merits of the pursuer's case are challenged by a third party, such third party shall be entitled to appear at

the proof or trial of the pursuer's case, and to take part in the cause and lead evidence therein as if he were a defender; and such evidence, so far as competent and relevant, shall be evidence for or against the pursuer, or for or against the defender, and shall be available to all the parties in the cause.

(*f*) In any action in which a third party notice has been served, the Court may after a proof or jury trial pronounce a decree in favour of the pursuer against the third party, or may assoilzie the third party from any liability to the pursuer in respect of the subject matter of the action, as if he had been a party to the original action, but without prejudice to any liability of the third party to the defender.

(*g*) Where a third party in his answers makes, as against any person who is not already a party to the action, a claim of the nature specified in this Rule, the provisions hereof shall apply *mutatis mutandis* to the claim between the third party and such other person.

(*h*) Subject to the provisions herein contained, the Court shall have full power to pronounce a judgment or judgments or apply a verdict or verdicts in favour of or against any of the various parties to a cause in which a third party notice has been served and to deal with expenses as between them.

(*i*) Any judgment or verdict applied against a third party shall take effect and be extractable in the same way as a judgment or verdict against a defender.

86. Borrowing process

Upon entering appearance, the defender shall have right to borrow the principal summons and any productions which may have been lodged and he shall be bound to return the same not later than the last day on which defences may be lodged, or along with the defences if these are lodged earlier.

87. Borrowing process where several defenders

(*a*) If appearance is separately entered by two or more defenders, they shall have right to borrow the principal summons and any productions which may have been lodged in the order in which they have entered appearance; and such order shall be recorded in the Office of Court, and as so recorded shall be final and conclusive.

(*b*) Subject to agreement among all the defenders who enter appearance, the defender who is first in order shall not be entitled to retain the principal summons and any productions which may have been lodged beyond the seventh day if there are two defenders and not more, or the fifth day, if there are three defenders and not more, after the day on which he entered appearance; and the defender who is next in order shall not be entitled to retain the principal summons and any productions which may have been lodged beyond the fourteenth day, if there are two defenders and not more, or the tenth day, if there are three defenders and not more, after the day on which he entered appearance: provided that in no case shall the principal summons and any productions which may have been lodged be retained by any defender beyond the fourteenth day after entering appear-

ance, and that, if there are more than three defenders, any one of them who has not been permitted to borrow the principal summons and any productions which may have been lodged before his defences were due, may enrol a motion to be allowed to borrow the same and to lodge defences within such time as the Court may fix; provided that, where two or more defenders have entered appearance through the same solicitor, they shall be deemed for the purposes of this paragraph to be one defender.

88. Caption on failure of defender to return summons etc.

If a defender shall fail to return the principal summons and any productions which may have been lodged on or before any of the days above provided respectively, the clerk in charge of the process shall, if required, issue a caption for the same in common form.

SECTION 3

Decree in Absence

89. Decree in absence and recall thereof

(*a*) If in any cause other than a cause in which it is incompetent to decern without proof a defender fails to enter appearance in terms of Rule 81, or if, having duly entered appearance he fails to lodge defences in terms of paragraph (*a*) of Rule 83, the pursuer may enrol for decree in absence; and the cause will then appear in the printed rolls, in the roll of undefended causes, on the first available day thereafter whether in session or vacation. The cause shall then proceed according to present law and practice.

(*b*) In all undefended causes, where a defender is designed in the summons or other writ as resident or carrying on business in some particular place within England or Northern Ireland or elsewhere furth of Scotland, the Court, before pronouncing decree in absence against such defender, shall require proof of compliance with the provisions of paragraph (*c*) of Rule 75; and the Court shall not pronounce decree in absence against such defender until the Court is satisfied that the said provisions have been duly complied with; and the interlocutor of the Court shall expressly bear that the Court has been satisfied by proper evidence that the provisions of the said paragraph have been duly obtempered. The post office receipt for the registered or recorded delivery letter, together with a certificate by the pursuer's solicitor, shall be sufficient proof of compliance with the said provisions.

(*c*) Nothing contained in the said interlocutor shall operate to prevent such defender from shewing, in a reduction of the said decree in absence, or in any other subsequent proceeding, that the said provisions were not in fact duly obtempered.

(*d*) *When defender furth of Scotland, England, and Northern Ireland and without known solicitor in Scotland.*—In any undefended cause in which the defender is described as resident or carrying on business furth of Scotland and elsewhere

than in England or Northern Ireland, and has no known solicitor in Scotland, the Court shall, in the interlocutor granting decree in absence, supersede extract of such decree for a period which shall be ascertained by adding together ten days and such further days as may be found by the Court to be approximately equivalent to the excess, beyond four, of the number of days required, in the ordinary course of post, for the transmission of a letter from Edinburgh to the defender's residence or place of business and the like transmission of an answer from such residence or place of business to Edinburgh. Intimation thereof shall be made to the defender by the pursuer by registered or recorded delivery letter containing a copy of the said interlocutor. The defender may, at any time not later than the last day of the period so ascertained, enrol for recall of such decree and for allowing defences to be received; provided that should the said last day not be an enrolling day the motion may be enrolled on the next enrolling day thereafter, and, on such enrolment, the Court shall recall the decree and allow the defences to be received without any award of expenses against the defender; and the cause shall thereupon proceed as if the defences had been lodged in due time.

(*e*) *When defender resident or carrying on business in England or Northern Ireland, and without known solicitor in Scotland.*—In any undefended cause in which decree is pronounced against a defender who is described as resident or carrying on business in England or Northern Ireland and has no known solicitor in Scotland, such defender may, at any time not later than the tenth day after the day on which such decree was pronounced, enrol for recall of such decree and for allowing defences to be received provided that should the said tenth day not be an enrolling day the motion may be enrolled on the next enrolling day thereafter; and the Court shall recall the decree and allow defences to be received without any award of expenses against the defender; and the cause shall thereupon be treated as if defences had been lodged in due time.

(*f*) Without prejudice to the other rules of this section, the defender may, not later than the tenth day from the date of a decree in absence, enrol for the recall of such decree and for allowing defences to be received, provided that should the said tenth day not be an enrolling day the motion may be enrolled on the next enrolling day thereafter; and on such enrolment, and on the defender paying £4 4s. to the pursuer and exhibiting to the Clerk of Court a receipt therefor, the Court shall recall the decree in absence and allow the defences to be received, and the cause shall thereafter proceed as if the defences had been lodged in due time.

SECTION 4

Making-up and Closing Record: Amendment

90. Making up record

(*a*) The pursuer shall, not later than the fourteenth day after the day on which the time for lodging defences expired, or on which the defences were lodged and intimation made to the pursuer in terms of paragraph (*a*) of Rule 83 whichever is the earlier, deliver at least six copies of the Open Record to the

solicitor for the defender, or to each of the solicitors for the defenders, if more than one, and shall at the same time lodge two copies in the General Department.

(*b*) If the pursuer shall fail to deliver and lodge the copies as aforesaid, the defender may enrol the cause and move for decree of dismissal.

(*c*) The parties shall forthwith proceed to adjust the pleadings, and the case shall appear in the Adjustment Roll on the earliest available day. When a cause appears in the Adjustment Roll for the first time a continuation of fourteen days shall be given by the Court without requiring the attendance of Counsel, and the appropriate Interlocutor shall be pronounced. Should, however, a party intend to move on such first appearance that the record be closed, or the cause sisted, or for a continuation of more than fourteen days, he must give 48 hours' notice of such intention to the opposite party and in these circumstances the attendance of Counsel will be necessary.

91. Closing record

(*a*) No continuation of the adjustment of the record after the first shall be allowed except on special cause shown. For the purposes of this paragraph the fact that the parties jointly move for a continuation shall not *per se* be treated as a special cause. Where no special cause is shown to the satisfaction of the Court for a further continuation, an interlocutor shall be pronounced closing the Record, and any alteration of the pleadings thereafter proposed shall only be capable of being effected by amendment.

(*b*) If at the closing of the record any party to the cause, being a cause appropriate for trial by jury, applies for such trial on issues, the procedure shall be regulated by Rule 114.

(*c*) In any other case, subject always to the discretion of the Court to deal exceptionally with special cases, the following procedure shall apply when the record is closed:

(i) If the parties are then agreed that a proof should be allowed the Court shall so appoint.

(ii) If the parties, or any of them, shall not then renounce probation, the Court shall require them to state what proof they propose, and, if parties are agreed that proof is necessary and as to what proof ought to be allowed, then, except in the case in which one or more of the parties apply for jury trial, the Court, if satisfied as to the propriety of the proof proposed, shall appoint the same to be taken and shall proceed as in Rule 17.

(iii) All causes, except those where parties are agreed on a proof or jury trial, will be appointed to a " By Order (Adjustment) Roll " and will appear therein on the fourth Friday after the closing of the Record; where the fourth Friday falls in vacation or recess the cause will appear on the first Friday of the ensuing session. The parties shall appear on said date and shall state what course they respectively propose. If the parties are at variance as to whether there shall be a jury trial or proof, or as to what proof ought to be allowed, or if any of them shall maintain that one or more of the pleas stated on Record should be disposed of before determining the matter of proof, the Court shall appoint the cause to the Procedure Roll, and after hearing parties in the said Roll the Court shall

pronounce such interlocutor as shall seem just, and may either approve of issues or appoint proof to be taken or dispose of such pleas on record as the Court thinks ought to be disposed of at that stage. Notwithstanding that a case has been sent to the " By Order (Adjustment) Roll " issues and counter-issues must still be lodged in terms of Rule 114.

(*d*) It shall be competent for the Court at or after the closing of the record to appoint one of the several actions arising out of the same cause of action to be the leading action and to sist the other actions pending the determination of the leading action.

(*e*) The pursuer shall, within fourteen days from the date of the interlocutor closing the record, deliver not less than fifteen copies of the closed record to the solicitor of the defender (or to each of the solicitors of the defenders, if more than one) and shall at the same time lodge in the General Department three copies, one of which shall be the process copy.

(*f*) If the pursuer shall fail to deliver and lodge the copies as aforesaid, the defender may enrol the cause and move for decree of dismissal.

92. Amendment of pleadings: powers of the court

(1) In any defended cause it shall be competent to the Court at any time before final judgment:—

(*a*) To allow any amendment of the summons or other writ which may be necessary for the purpose of determining in the existing action the real question in controversy between the parties, notwithstanding that in consequence of such amendment the sum sued for is increased or restricted or a different remedy from that originally concluded for is thereby sought.

(*b*) To allow any amendment which may be necessary to correct or supplement the designation of any party to the action, or to enable any party who has sued or has been sued in his own right to sue or be sued in a representative capacity, or to enable any party who has sued or who has been sued in a representative capacity to sue or be sued in his own right or in a different representative capacity, or to add the name of an additional pursuer or of a person whose concurrence is necessary, or where the action has been commenced in the name of the wrong person as pursuer or where it is doubtful whether it has been commenced in the name of the right person, to allow any other person to be sisted as pursuer in subsitution for, or in addition to, the original pursuer.

(*c*) In any case in which it appears that all parties having an interest have not been called, or that the action has been directed against the wrong person, to allow any amendment inserting in the summons or other writ an additional or substitute defender and containing averments of fault directed against said defender and to order the record as so amended to be served on such additional or substitute defender along with a notice in terms of Form 6 specifying the date by which defences or answers must be lodged; and thereafter the action as so amended shall proceed in every respect as if such defender had originally been made a party to the cause.

(*d*) To allow any amendment of the condescendence, defences, answers, or pleas-in-law which may be necessary for determining in the existing action the real question in controversy between the parties.

(2) In exercising the powers hereinbefore conferred, the Court shall attach such conditions as may be just, and shall hold the party making the amendment liable in the expenses thereby occasioned unless it is made to appear that it is just and equitable that the expenses occasioned by the amendment should be otherwise dealt with.

(3) In any undefended action it shall be competent to the Court to allow the like amendments to be made as are hereinbefore authorised in the case of defended actions: provided that unless the amendment is formal in character the Court shall direct the summons or other writ as amended to be served upon the absent defender with liberty to him to lodge defences within such time as may be proper.

(4) Any amendment allowed under this Rule shall not have the effect of validating diligence used upon the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but shall be operative to the effect of obviating any objections to such diligence, when stated by the defender himself or by any person representing him by a title, or in right of a debt contracted by him subsequent to the execution of such diligence.

SECTION 5

Motions

93. Motions

(*a*) Motions on behalf of any party to a cause, other than motions made at the bar during any hearing of the cause, shall be enrolled and made by entry in the motion sheet.

(*b*) The entry shall specify the terms of the motion, and shall bear the date of the enrolment and a certificate that the motion has been intimated to the other party, and shall be signed by the solicitor making the enrolment or by his clerk on his behalf, who shall also hand to the Clerk of Court a slip containing the names of the parties and the counsel in the cause.

(*c*) All such enrolments shall be made at the Office of Court, and may be made at any time before one o'clock (on Saturday before twelve o'clock), provided that written intimation of intention to make such enrolment, and of the terms of the motion, shall have been given to the solicitor or solicitors of the other party or parties to the cause so as to reach the said solicitor or solicitors at his or their office or offices not later than one o'clock (on Saturdays twelve o'clock) on the day of enrolment.

(*d*) All such motions so enrolled shall appear, if in session, in the issue of the printed rolls issued on the day after the day of enrolment as for hearing in the motion roll or single bills on the second day after the enrolment, If the attendance of Counsel is required the motion shall be starred.

(*e*) If on the day after the day on which the enrolment is made as aforesaid, the solicitor or solicitors for the other party or parties or any of them or their clerks shall mark the motion as appearing in the motion sheet with the word

" Opposed ", the motion shall be heard in the motion roll or single bills on the second day after the day of enrolment, if in session; and, in that case, the cause shall be starred in the issue of the printed rolls issued on the day after the day of enrolment, as to be heard by counsel; provided that written intimation of the fact that a motion has been marked as " Opposed " shall be given to the solicitor or solicitors of the other party or parties to the cause so as to reach the offices of such solicitor or solicitors not later than one o'clock (on Saturday twelve o'clock) on the day on which the motion is marked as " Opposed ".

(*f*) When a cause is called for hearing in the motion roll or single bills, and is dropped without any motion being made, the Auditor shall, in taxing any expenses found due (either as between party and party or as between solicitor and client) to the party on whose behalf the enrolment in the motion sheet was made, disallow the expenses occasioned by the said enrolment, unless he is satisfied that the cause was properly enrolled and properly dropped.

(*g*) Examples of the enrolment of a motion in the motion sheet, and of the marking of the same with the word " Opposed ", will be found in Form 8.

SECTION 6

Procedure Roll

94. Procedure Roll

(*a*) Causes sent to procedure roll may be put out for hearing in the course of any week; provided that no such additional cause shall, except of consent of parties, be called earlier than the second day after the day on which it is so put out in the printed rolls.

(*b*) The calling of any cause put out for hearing in the procedure roll shall be peremptory in the same way as the calling of a cause in the summar or short roll of the Inner House.

(*c*) If no counsel attends on either side, the Lord Ordinary may pronounce an interlocutor dismissing the action, and finding neither party entitled to expenses, and the said interlocutor may be recalled only on being reclaimed to the Inner House, upon such conditions as to expenses or otherwise as may be imposed by the Court.

(*d*) When on such calling of a cause counsel shall appear on one side only, the Lord Ordinary, if the pursuer's counsel fails to attend, may pronounce an interlocutor dismissing the action and finding the pursuer liable in expenses; if the defender's counsel fails to attend, the Lord Ordinary may pronounce an interlocutor granting decree by default with expenses; and the said interlocutors, may be recalled only in the like manner and on the like conditions as are mentioned in paragraph (*c*) of this rule.

(*e*) It shall always be competent for parties having a cause standing in the procedure roll, in regard to which they have come to be agreed that it should be disposed of by a proof, or by a trial by jury, or otherwise, to enrol the cause in order that the matter may be brought before the Court, which may allow a proof or jury trial, or may pronounce such other interlocutor as may be just and proper in the circumstances.

SECTION 7

Commissions for Recovery of Documents for Examination of Witnesses, etc

95. Application for commission and diligence for recovery of documents

(*a*) Any application for commision and diligence for the recovery of documents made in a cause before calling shall be made by letter addressed to the Deputy Principal Clerk craving that the Court should grant such commision and diligence and enclosing a copy of the specification. The letter shall at the same time be intimated along with a copy of the specification, to the other party and where necessary to the Lord Advocate, and the Deputy Principal Clerk, or a clerk instructed by him, shall forthwith bring the application before a Lord Ordinary in chambers, making intimation to the parties of place and hour. The applicant's solicitor shall attend along with the said clerk, and shall produce to the Lord Ordinary the principal summons bearing the signet; and the solicitor of the other party, or the Lord Advocate if he or they desire to oppose the application, shall also appear. After hearing parties' explanations, the Lord Ordinary may either grant or refuse the commission in whole or in part, or as amended by or before him. The Lord Ordinary's interlocutor shall be final.

(*b*) Any application for commision and diligence for the recovery of documents made after calling shall be made by motion. A detailed and articulate specification of the documents sought to be recovered shall be lodged in the General Department at the time of enrolling such motion as aforesaid, and a copy or copies of such specification shall be sent to the solicitor or solicitors of the other party or parties, or where necessary to the Lord Advocate, along with the intimation of the enrolment.

96. Optional procedure before executing commission and diligence

(*a*) Any party who has obtained a commission and diligence for the recovery of documents may, at any time before executing the same against another party or other parties to the cause, or against any third-party haver, serve upon such party, or parties, or haver, an order on the printed official form shewn in Form 9.

(*b*) Such order shall be served by registered or recorded delivery letter, and may be addressed to the care of the known solicitor or solicitors for the party or parties, or for the third-party haver, from whom the documents are sought to be recovered.

(*c*) Such order shall be obtempered by such party, or parties, or by such third-party haver, in the manner and within the time specified therein.

(*d*) Not later than the day after the day on which the order, certificate in terms of Form 9, and inventoried productions (if any) are received by the Deputy Principal Clerk, official intimation shall be given by him to the solicitors of the parties to the cause that the order has been served and obtempered; and it shall not be competent for any party, other than the party who served the order, to borrow any of the productions until after the expiry of seven days from the date of such official intimation.

(*e*) If the party who served the order is not satisfied that full production has been made under the specification, or that adequate reasons for non-production

have been given, he may execute the commission and diligence as provided in Rule 97, notwithstanding his adoption in the first instance of the foregoing procedure by order.

(*f*) In the event of the production under such order as aforesaid of extracts from books, whether such extracts are certified or not, the Court may, on motion enrolled, order that the party who served the order shall be at liberty to inspect and take copies of any entries in any books falling under the specification, subject, in the event of any question of confidentiality arising, to the inspection being made, and the copies being taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence; and the Court may, on cause shewn, order the production of any books (not being bankers' books or books of public record) falling under a specification, notwithstanding the production of certified extracts therefrom.

97. Execution of commission and diligence for recovery of documents

(*a*) The report of the execution of any commission and diligence, together with any documents recovered, and inventory thereof, shall be lodged by the commissioner in the hands of the Deputy Principal Clerk; and the report as so lodged shall have endorsed thereon a note of all fees and outlays incurred to or by the commissioner and his clerk.

(*b*) Not later than the day after the day on which the report with the relative documents (if any) and inventory are lodged as aforesaid, official intimation thereof shall be given by the said Deputy Principal Clerk to the solicitors of the parties to the cause.

(*c*) The intimation so given to the solicitor of the party who obtained the commission and diligence shall include a note of the fees and outlays of the commissioner and his clerk as endorsed on the report; and, upon delivery by the said solicitor to the said Deputy Principal Clerk of a written discharge of the amount of said fees and outlays such solicitor may lodge in process any of the productions he may wish so to lodge.

(*d*) If the solicitor for the party who obtained the commission and diligence shall fail to deliver a written discharge as provided in the immediately preceding paragraph of this rule within three days of the date of the official intimation referred to in paragraph (*b*) of this rule, the solicitor for the other party may, within four days thereafter, deliver such discharge, and uplift and lodge in process any of the productions he may wish so to lodge.

(*e*) It shall not be competent for any party, other than the party whose solicitor delivers the foresaid discharge to the said Deputy Principal Clerk, to borrow any of the productions until after the expiry of seven days from the date of such delivery.

98. Confidentiality

In any case in which, either under the optional procedure provided in Rule 96, or in the execution of a commission and diligence in manner provided by Rule 97, confidentiality is claimed for any of the documents produced, such documents shall be enclosed in a separate sealed packet, which shall not be opened

or put in process except by authority of the Court obtained on the motion of the party serving the order, or executing the commission and diligence, after opportunity has been given to the party, parties or third-party haver, making production, to be heard.

99. Demand for admission

Either party may by letter call upon the other party to admit without prejudice the date, signature, transmission, or receipt, of any relevant document, or the verbal accuracy of a copy thereof, within such time as the Court may appoint; and in case of refusal or delay to admit any such matter within the time appointed, the expense of any proof rendered necessary by such refusal or delay shall be paid by the party refusing or delaying, whatever the result of the cause may be, unless the Court shall certify that the refusal or delay was reasonable; and no expense of proving any document shall be allowed unless the procedure authorised by this paragraph has been followed forth.

100. Commission for examination of witness

(*a*) Any application for a commission to examine a witness in a cause before calling shall be made by letter addressed to the Deputy Principal Clerk containing a note of the names and addresses of the witnesses and the reason why it is considered necessary to have their evidence taken on commission. The letter shall be accompanied by the principal summons bearing the signet, and an interlocutor sheet, and the Deputy Principal Clerk shall forthwith bring the application before a Lord Ordinary in Chambers. The Lord Ordinary's interlocutor shall be final.

(*b*) Any application for a commission to examine a witness in a cause made after calling shall be made by motion.

(*c*) Where a commission is granted by the Court for the examination of a witness, the Court may, on the motion of any party to the cause, dispense with interrogatories in all cases where the commission falls to be executed within the United Kingdom, and may also dispense with interrogatories where the commission is to be executed abroad, on being satisfied that such a course is expedient in the interests of the parties to the cause and conducive to the administration of justice.

(*d*) The provisions of Rule 97 shall apply *mutatis mutandis* to the report of a commission for examination of witnesses, provided that the party obtaining the report shall lodge the same in process.

101. Evidence liable to be lost

Where there is reason to believe that the evidence of a witness may be lost, or delay and inconvenience occasioned in obtaining the evidence of such witness at a proof, it shall be competent at any time after service of the summons to apply to the Court to have the evidence of such witness taken by a Lord Ordinary or by a commissioner appointed by the Court: if the application is made before calling, it shall be made as directed in Rule 100 (*a*); if after calling, it shall be made by motion; provided that, in ship-collision cases, such application shall

only be granted on condition that the applicant shall, at least twenty-four hours before the evidence is taken before the Lord Ordinary or the commissioner, lodge in the General Department a preliminary act, which the Lord Ordinary or commissioner shall be entitled to open before the witness is examined.

102. Letters of request

(*a*) Where the evidence of any witness resident outwith Her Majesty's dominions is material for the determination of a cause depending before the Court of Session, the party desiring to obtain such evidence may apply to the Court, in session or vacation, by minute, in terms of Form 10, for a letter of request addressed to the judge or judges of the foreign tribunal within whose jurisdiction the witness is residing.

(*b*) On consideration of such minute, and after hearing any objections thereto, the application may be granted and a letter of request authorised to be issued, which letter of request shall be in the terms of Form 11. The said letter of request shall be prepared by the party moving for the same, and shall be lodged in process along with the minute mentioned in the preceding paragraph.

(*c*) It shall be a condition of granting any such letter of request that the solicitor for the party applying therefor shall, before the letter of request is issued, become personally liable for the whole expenses which may become due and payable in respect thereof to the Court before which the evidence is to be taken, as well as to the witnesses examined, and made consignation of such sum to meet said expenses as the Court shall determine.

(*d*) There shall be lodged by the party obtaining a letter of request a translation, into the language of the Court to which the letter is directed, of the letter and of the relative interrogatories.

(*e*) The letter of request, when issued and signed as aforesaid, shall, along with the interrogatories adjusted according to the present practice and the relative translations, be forthwith forwarded by the Deputy Principal Clerk to Her Majesty's Secretary of State for Foreign Affairs, requesting that the evidence taken under the same shall, when received, be forwarded to him, under seal, to abide the orders of Court.

103. Warrant for production of original documents from public records

(*a*) Where any party to a cause desires to obtain from the Keeper of any public record production of the originals of any register or deed under his custody, he shall apply by motion to the Court, in session or vacation, after two days notice of such application given in writing to the Keeper in charge of the originals.

(*b*) If it shall appear to the Court that it is necessary for the ends of justice that such application should be granted, authority shall be given to such Keeper, on production of a certified copy of the interlocutor, to exhibit the original registers or deeds to the Court and that in the hands of an officer to be selected by the said Keeper.

(*c*) The expense attending the transmission and exhibition of such original registers or deeds shall be defrayed, in the first instance, by the party or parties on whose application they are exhibited.

(*d*) Where production or exhibition of such original registers or deeds is desired in any Court outwith Scotland, the application for such production or exhibition shall be made by letter addressed to the Principal Clerk of Session, who shall forthwith bring the application before a Lord Ordinary in Chambers who may grant authority to the said Keeper to exhibit the original registers or deeds to the said Court, and that in the hands of an officer to be selected by the said Keeper. Paragraph (*c*) of this rule shall apply to such applications.

104. Warrant for transmission of process from another Court

When it is deemed necessary by any of the parties to a cause that any extracted or unextracted process in the custody of the Keeper of the Records of Scotland or any process depending, or that may have depended, in any inferior Court in Scotland, should be lodged in process, it shall be competent for the party to apply to the Court by motion duly intimated to the opposite party or to his solicitor, as required by Rule 93, for a warrant to authorise and direct the Keeper of the Records of Scotland or the Clerk of any inferior Court before which such process is depending, or may have depended, on production of a certified copy of the interlocutor, to deliver up the same to the Deputy Principal Clerk, in order that the same may be lodged in process, upon delivery of the warrant, and a proper receipt and obligation for redelivery after the disposal of the cause; and, provided that such application has been intimated to the Keeper of the Records of Scotland or such other custodier two days before such motion is enrolled, it shall be competent to the Court, if it shall see cause, to grant such warrant, in such terms and under such conditions as may be deemed necessary.

105. New procedure in place of minute of wakening

It shall not be necessary to waken a cause which, according to the existing law and practice, would be deemed to have fallen asleep by reason of the fact that no interlocutor had been pronounced therein within a year and a day of the date of the last interlocutor. Instead, any motion to be made after the lapse of one year from the date of the last interlocutor shall be intimated to the opposite party not less than fourteen days prior to the date of enrolment thereof, provided that if the address of the opposite party is unknown and cannot be found the Court may, on a statement to that effect made at the bar, dispense with intimation, and the interlocutor shall bear to be pronounced in respect of such statement.

106. Minute of transference

It shall be competent to any party having an interest to have the cause transferred against any party or parties to lodge a minute craving a transference of the cause against such party or parties; and the Court may thereupon grant warrant for serving a copy of the summons or other original pleading upon the party or parties against whom such cause is sought to be transferred, and at the same time shall allow such party or parties to give in a minute of objections to

such transference within a time to be specified in the interlocutor; such interlocutor shall also be intimated to any other parties in the cause; and if the Court shall think fit to transfer the cause in terms of the said minute an interlocutor shall be pronounced holding the cause as transferred against the party or parties named in such minute; provided that nothing herein contained shall prevent the Court from sisting any person upon his own application by minute as a party to the cause where such person is, according to the existing practice, entitled to be sisted as representative, trustee, or guardian, or in any other relation to any party who shall be already a party to the cause or who shall have died during the dependence thereof.

SECTION 8

Proofs

107. Lodging and returning productions for proofs

In all causes in which a proof shall be allowed, all productions which are intended to be used or put in evidence at the proof, shall be lodged according to inventory on or before the seventh day prior to the day appointed for the proof, and notice of the lodging thereof shall at the same time be sent to the solicitor of the opposite party; and no other production shall be used or put in evidence at the proof, unless by consent of parties or by permission of the judge presiding thereat, on cause shewn to his satisfaction, and on such terms, as to expenses or otherwise, as to him shall seem proper. All steps of process and productions borrowed shall be returned to process before noon on the day preceding the date of the proof.

108. Separate parts of proof

Without prejudice to the existing law and practice with respect to preliminary proofs, in any action with pecuniary conclusions the Court may separate the proof on the merits from proof on the question of the amount for which decree should be pronounced.

109. Admissions by parties

(*a*) When the parties are agreed in admitting any facts alleged on record, or any matter of fact whether alleged therein or not, or the authenticity of writings or the sufficiency of copies or extracts as equivalent to the originals, a minute of the admissions, signed by the counsel for the party or parties making such admissions, shall be lodged in process.

(*b*) All admissions so made may be read and used in evidence at the trial, if otherwise competent.

(*c*) In taxing any account of expenses, the Auditor shall disallow the expense of any evidence led on matters covered by such admissions, unless special cause is shewn to him to the contrary.

110. Rulings by Lord Ordinary on matters of evidence

If, in the course of the proof, any of the parties is dissatisfied with a ruling by the Lord Ordinary admitting or rejecting any evidence or line of evidence, such party may request that the Lord Ordinary's ruling and such party's objections, which he stated at the time, be immediately recorded in the notes of evidence, and they shall be so recorded under the direction of the Lord Ordinary.

111. Rules as to witnesses at proofs

(*a*) It shall be the duty of solicitors to see that all witnesses are enclosed under the charge of the macers of Court in one of the witness-rooms provided for that purpose.

(*b*) Each solicitor, before the examination of his witnesses commences, shall give to the macer a numbered list of his witnesses in the order in which it is proposed to call them.

(*c*) No witness shall leave the witness-room except with the permission of the clerk of Court until called by the macer to be in readiness for being examined. Witnesses shall not walk about the passages or enter any of the Court-rooms until after examination, or until dismissed by the macer by order of the Court.

(*d*) After a witness has been enclosed by the macer, no person other than the solicitor of the party citing the witness, shall have access to him, nor shall any person interfere with the macers in regard to such witness.

(*e*) The macers shall enforce the provisions of the foregoing paragraphs of this rule, and report to the Court if any person, solicitor or other, shall transgress the same.

112. Death, disability or retiral of judge

In the event of the death, disability or retiral of a Lord Ordinary before whom a proof has been taken in whole or in part, it shall be competent for the Court on an application by any party made by motion in the Inner House to direct:—(*a*) that the cause shall be continued before, and shall be disposed of by, another Lord Ordinary, (*b*) that the notes of evidence already taken, as certified by the shorthand writer, shall be evidence in the cause, and (*c*) that the original Lord Ordinary's notes shall be made available to the Lord Ordinary before whom the cause continues.

113. Recording of evidence in proofs

(*a*) Unless otherwise provided in these Rules, evidence in all actions depending before the Court of Session whether taken in Court or on Commission shall be recorded by a shorthand-writer, to whom the oath *de fideli administratione* in connection with Court of Session service generally shall have been administered. Notes of evidence provided for the use of the Court shall be certified by the shorthand-writer or shorthand-writers (if more than one) as a faithful record of the evidence. The Court may make such alterations on the notes of evidence as appear to be necessary, and where such alterations are made shall authenticate the notes as the notes used by the Court as the record of evidence.

(*b*) Transcripts of Notes of Evidence will only be made on directions from the Court, and the cost thereof in defended cases will in the first instance be payable by the solicitors for the parties in equal shares. Where an undefended case is continued, or where for other reasons the Court considers it necessary that the notes should be extended for the use of the Court and so directs, the cost will be borne by the pursuer's solicitor in the first instance. In any case where the Notes of Evidence have not been extended, but are required for a reclaiming motion, the solicitor for the reclaimer may request the shorthand-writer to extend the notes, and the transcript will thereupon be lodged in process, the cost being payable in the first instance by the reclaimer's solicitor.

(*c*) Notes of evidence shall, except by leave of the Court, only be borrowable for the purpose of enabling parties to consider the taking of a reclaiming motion.

(*d*) *Carbon Copies.* Where Notes of Evidence have been directed to be supplied for the use of the Court, carbon copies may be made available to parties at a cost of 1s. 3d. per sheet payable to the shorthand-writer by the solicitors for the parties obtaining the said copies.

SECTION 9

Trial by Jury

114. Application for trial of the cause by jury on issues

(*a*) If at the closing of the record, any party to the cause, being a cause which, according to the present law and practice, is appropriate for jury trial, applies for trial of the cause by jury on issues, the party so applying shall, at the time when copies of the closed record are delivered and lodged in terms of paragraph (*e*) of Rule 91, also lodge in process such issues as may be proposed for the trial of the cause, together with a copy of the same for the use of the Court, and intimate the same to the solicitor or solicitors for the other party or parties by delivery of a copy thereof to him or them.

(*b*) In the event of the party who applies for trial of the cause by jury on issues failing to lodge and intimate in terms of the immediately preceding paragraph, he shall, unless, on special cause shewn, the Court otherwise determines, be held to have passed from his application for trial of the cause by jury, and any enquiry into the facts of the cause shall be taken by a proof, provided that the other party or parties to the cause, on such failure to lodge and intimate issues as aforesaid, may, if he or they maintain that the cause should be tried by jury, within seven days after the lodging of the closed record, enrol a motion to have the cause sent to the procedure roll.

(*c*) Not later than the third day after the day on which such issues are lodged and intimated as aforesaid, the other party or parties to the cause may lodge in process such counter-issues as he or they may propose, together with a copy of the same for the use of the Court. Such counter-issues shall be intimated to the solicitor or solicitors for the other party or parties by delivery of a copy to him or them: provided that it shall be competent for such other party or parties to propose in the form of a counter-issue any question of fact which is made the subject of specific averment on the record and is relevant to his or their pleas,

notwithstanding that it does not in terms meet the issues proposed by the party applying for jury trial, and notwithstanding any practice heretofore to the contrary, and where a counter-issue is allowed it shall be competent for the presiding judge after the evidence has been led, instead of adopting the procedure authorised by Rule 128, to submit to the jury in writing along with the issue and counter-issue such further question or questions as may appear to him to be required by the circumstances of the case.

(*d*) On the seventh day after such issues have been lodged and intimated in terms of paragraph (*a*) of this rule, the respective parties shall enrol a motion for the approval of the issues or counter-issues, and such motion may be marked as " opposed " in accordance with Rule 93.

(*e*) If the said motion shall not have been marked as " opposed ", the Lord Ordinary in chambers, without hearing any party, may either grant the said motion and authenticate by his signature the issues and counter-issues as adjusted; or, if in his discretion he thinks proper, he may send the cause to procedure roll.

(*f*) If the motion for approval of the issues or counter-issues is marked " opposed " such motion shall be starred, and the Lord Ordinary shall send the cause to the procedure roll, unless the exigencies of business admit of the matter being immediately disposed of.

(*g*) The enrolments and markings referred to in this rule shall be made and intimated in the same manner as the enrolments and markings referred to in Rule 93.

115. Application for trial of the cause by jury without issue, when unopposed

If, at the closing of the record, any party to the cause applies for trial of the cause by jury without issues, and if such application is not opposed by any of the other parties, the Court may, in its discretion, either order the cause to be so tried, or may order issues for the trial of the cause; and, in the latter event, Rule 114 shall apply, and the procedure therein provided shall be followed forthwith.

116. Application for trial of the cause by jury, when parties at variance

(*a*) Notwithstanding that a cause has been sent to procedure roll in terms of Rules 91 or 114, the provisions of paragraphs (*a*), (*b*), and (*c*), of Rule 114, with regard to the lodging and intimation of issues and counter-issues, shall apply in the same way as in the case of an unopposed application for trial of the cause by jury on issues; provided always that such lodging and intimation shall be without prejudice to the whole contentions and pleas of the parties so lodging and intimating, which contentions and pleas shall be deemed to be reserved entire for disposal in procedure roll.

(*b*) After hearing parties in the procedure roll, the Court shall dispose of the contentions and pleas of parties as shall seem just; and, in the event of the cause being found, in whole or in part, relevant for enquiry, the Court may either adjust or dispense with issues and appoint the cause to be tried by jury, or, if the Court thinks that such enquiry or any part thereof should not be taken before a jury, the Court may pronounce an interlocutor allowing a proof.

117. Objections to issues as adjusted

(*a*) In any cause in which issues are adjusted in the Outer House for trial by jury, and in which any of the parties objects to the issues so adjusted, or desires to obtain a variation of such issues, or to have other issues added to, or substituted for, those which have been so adjusted, such party may, subject to the provisions of paragraph (*b*) of Rule 264, reclaim to the Inner House against the interlocutor adjusting such issues in manner directed in Rule 262; and generally the provisions of all the rules of Chapter V shall apply.

(*b*) Any party so reclaiming shall, at the same time as he enrols his motion for review lodge in process the issues or counter-issues proposed by him (shewing the deletion, variation, addition or substitution he desires) together with ten copies thereof; and he shall also at the same time deliver to the other party or parties copies of the said issues or counter-issues.

118. Procedure under the Sex Disqualification (Removal) Act 1919 with reference to jury trials

(*a*) Any application by the parties or any of them under section 1(*b*) of the Sex Disqualification (Removal) Act 1919, shall be made by motion at the time when a date is appointed for the trial, or, if a newtrial is ordered, at the time when a date is appointed for such new trial.

(*b*) In all cases in which a precept is issued for the preparation of a list of jurors, the precept shall state, in the event of any order having been made under section 1(*b*) of the said Act, either on the motion of any of the parties or in the discretion of the judge, that the list is to be composed of men only or of women only, as the case may be. In all such cases the sheriff-clerk shall make up a panel or list so that the same is composed of men only, or of women only, as the case may be.

(*c*) Where no order has been made under section 1(*b*) of the said Act, the list of jurors prepared in pursuance of such precept shall be composed of equal numbers of men and women jurors.

119. Exemption from jury service

(*a*) Any person summoned to serve on a jury may as soon as may be after receipt of the citation apply to the Deputy Principal Clerk of Session for exemption from service, and the Deputy Principal Clerk may, if he is satisfied that there are good and sufficient grounds for exemption, grant such application.

(*b*) Every citation upon a person to attend as a juror shall contain a notification as nearly as may be in the terms shewn in Form 12 in the Appendix.

(*c*) Nothing herein shall prejudice the right of the judge presiding at the trial at any time before the jury is empannelled to excuse any person summoned to attend as a juror from attendance.

120. View

Any party intending to apply for a view shall not later than the fourteenth day before the day fixed for the trial enrol a motion for a view.

121. Lodging and returning productions

Rule 107 shall apply, *mutatis mutandis*, in all causes appointed to be tried before a jury, and all steps of process and productions borrowed shall be returned two days before the trial.

122. Admissions by parties

(*a*) When the parties are agreed in admitting any facts alleged on record, or any matter of fact whether alleged therein or not, or the authenticity of writings or the sufficiency of copies or extracts as equivelant to the originals, a minute of the admissions, signed by the counsel for the party or parties making such admissions, shall be lodged in process.

(*b*) All admissions so made may be read and used in evidence at the trial, if otherwise competent.

(*c*) In taxing any account of expenses, the Auditor shall disallow the expense of any evidence led on matters covered by such admissions, unless special cause is shewn to him to the contrary.

123. Rulings by the presiding judge on matters of evidence

If, in the course of the trial, any of the parties is dissatisfied with a ruling by the presiding judge admitting or rejecting any evidence or line of evidence, such party may request that the judge's ruling and such party's objections, which he stated at the time, be immediately recorded in the notes of evidence, and they shall be so recorded under the direction of the presiding judge.

124. Exceptions to the judge's charge

(*a*) If any of the parties desires to except to any direction by the judge in his charge to the jury on a point of law, or desires the judge to give a direction differing from or supplementary to the directions in the charge, he shall, immediately on the conclusion of the charge, intimate his desire to the presiding judge, who shall thereupon either direct the jury to retire and hear counsel for the parties in Court, or direct the jury to remain in Court and hear counsel in Chambers.

(*b*) At such hearing, counsel for the party dissatisfied with the charge shall formulate in writing the particular exception taken by him, or the particular direction desired by him; and the exception or direction, together with the judge's determination thereon, shall be recorded in a note of exceptions under the direction of the judge and shall be certified by him.

(*c*) Thereafter the judge may give such further or other directions to the jury in open Court as the circumstances may seem to him to require, before the jury are enclosed to consider their verdict.

125. Applying the verdict

(*a*) After a verdict has been returned by the jury, it shall be engrossed on the issue, or on the closed record if the cause is tried without issues, and shall in either case be dated and signed by the clerk of Court who attends the trial.

(*b*) It shall be competent for either party, at any time after the expiry of seven days after the day on which the verdict was engrossed and signed, to enrol a motion for application of the verdict, entering up of judgment and awarding of expenses, and such motion shall be disposed of by the Court in the same way as other motions so enrolled.

126. Motion for new trial

(*a*) If any of the parties is dissatisfied with the verdict, either on the ground that it is contrary to the evidence, or on the ground of misdirection by the judge, or on the ground of the undue admission or rejection of evidence, or on the ground of excess or inadequacy of damages, or of *res noviter veniens ad notitiam*, or for any other cause which is essential to the justice of the cause, he may before 1 p.m. on the eighth day after the day on which the verdict was engrossed and signed, enrol a motion for the granting by the Inner House of a new trial, specifying the ground or grounds of such motion; provided that when a special verdict has been returned and applied under Rule 128 any of the parties may enrol a motion for a new trial upon any of the grounds above specified not later than the twenty-first day after the day on which the special verdict was applied, and provided that a motion for a new trial on the ground of undue admission or rejection of evidence, or on the ground of misdirection by the judge, shall not be granted unless the admission or rejection of such evidence was objected to at the trial and recorded in the notes under direction of the judge or in the case of misdirection, unless the procedure prescribed in Rules 123 and 124 has been complied with.

(*b*) The provisions of Rules 262 and 263 shall apply to all such motions, and the procedure laid down therein shall be followed forth.

(*c*) All such motions shall be heard and disposed of by one or other Division of the Inner House or by such Division sitting along with the judge who presided at the trial, subject to the same procedure including production of the notes of evidence and other papers if any, and of any exception together with the presiding judge's determination thereon, as would apply in the case of a motion for review of an interlocutor pronounced in the Outer House enrolled and made by a party reclaiming against such interlocutor. If, after hearing parties upon such motion or upon an appeal under section 31(2) of the Sheriff Courts (Scotland) Act 1907, the Court are unanimously of the opinion that the verdict under review is contrary to the evidence and, further, that they have before them all the evidence that could reasonably be expected to be obtained relevant to the cause, they shall be entitled to set aside the verdict and, in place of granting a new trial, to enter judgment for the party unsuccessful at the trial.

127. Failure to appear

If either party shall not appear at the trial of the cause, then if the party appearing is the pursuer in the issue or the party on whom the burden of proof lies, he shall be entitled to lead evidence, and go to the jury for a verdict; and, if the party appearing is the defender in the issue or the party on whom the burden of proof does not lie, he shall be entitled to obtain a verdict in his favour without leading evidence.

128. Special verdict

(*a*) Where, in any case set down for trial by jury, it appears to the presiding judge that it is expedient that the jury should return a special verdict in the form hereinafter set forth, the presiding judge may so direct the jury.

(*b*) Such special verdict shall be returned in the form of answers to specific questions, which shall include a question relative to the amount at which the jury assesses damages, if any damages are awarded.

(*c*) Such specific questions shall be settled by the presiding judge who may hear the parties before finally settling the same. The presiding judge may so hear parties either in Court or in chambers, and, in the former case, either outwith or in the presence of the jury.

(*d*) Where a special verdict has been so returned the answers to the specific questions shall be read over to the jury and upon their assent thereto shall be recorded and signed by the clerk who officiated at the trial, and the jury shall thereupon be discharged but said answers shall not be held to constitute a verdict until their effect has been determined by the Court. Thereafter, the presiding judge either at the same or at a subsequent diet, shall hear parties and apply the verdict.

129. Reclaiming against application of special verdict

(*a*) If any of the parties is dissatisfied with the application of the verdict by the presiding judge as provided for by Rule 128 he may bring the interlocutor applying the verdict under review by a reclaiming motion in the mode prescribed by Rule 262, without leave, not later than the twenty-first day after the day on which the said interlocutor is pronounced.

(*b*) At the hearing of said reclaiming motion, whether alone, or along with a motion for a new trial under Rule 126, the Court shall not enter the verdict against any party in whose favour it has been applied by the presiding judge, without giving such party an opportunity of moving for a new trial, upon any ground or grounds upon which he might have desired to move for a new trial under Rule 126 if the verdict had not been applied in his favour by the presiding judge.

130. Recording evidence and judge's charge in jury trials

The provisions of Rule 113 relating to the recording of evidence in proofs shall apply *mutatis mutandis* to the recording of the evidence and judge's charge in jury trials.

SECTION 10

Minors' and Pupils' Damages

131. Factors for administration of sums of damages recovered by minors and pupils

(*a*) In any action of reparation in which decree is granted for payment of a sum of damages to, or in which decree of absolvitor has been pronounced following upon an extra-judical settlement in favour of, any

(i) pupil child, acting with the concurrence of a curator *ad litem*; or

(ii) minor *pubes* acting with or without the concurrence of his or her father or of a curator *ad litem*; or

(iii) parent acting on behalf of his or her pupil child,

it shall be competent for the Court granting such decree, if it appears that there is no person available to give a full and valid discharge for the damages, or if the Court is satisfied that the administration of the damages for the benefit of such minor or pupil cannot otherwise be reasonably secured, to appoint *de plano* some responsible person as factor in accordance with the provisions hereinafter contained.

(*b*) Every appointment of a factor under this rule shall be limited to take effect in so far only as regards the said damages.

(*c*) In appointing any such factor, the Court may give him such powers of disbursing both the capital and the income of said damages to or for behoof of the minor or pupil, and such other powers as may be thought necessary or expedient in the interest of such minor or pupil, and may direct that the said damages (both capital and income) shall be paid to or for behoof of the minor or pupil in such amounts and at such times as the Court may fix.

(*d*) Such factor shall be bound to find caution for his intromissions and shall be under the superintendence of the Accountant of Court by virtue of the Pupils Protection (Scotland) Act 1849, and the Judicial Factors (Scotland) Act 1889.

132. Procedure in application for factor

(*a*) Application for the appointment of a factor under this section may be at the instance of any party to the action, and shall be made by motion relative to a minute lodged in process, at any time before extract; and the Court may order such intimation of the minute as the circumstances of the case may require.

(*b*) The party lodging the minute shall at the same time furnish a copy thereof to the Accountant of Court, and shall certify on the principal minute that such copy has been furnished.

(*c*) The minute may be incorporated in a minute of a judicial tender or acceptance thereof or in a joint minute for the parties, or may be in the form of a separate paper, and in any case shall set forth (i) the kind of factor to be appointed, and the name of the person or persons for whom he is to be appointed, (ii) the amount of the sum to be under his administration, and (iii) the name and designation of the person proposed as factor.

133. Extracts

Where a factor has been appointed, the process shall forthwith be transmitted to the Accountant of Court in like manner as if the appointment had been made upon a separate petition; and upon the interlocutor sheet being marked to the effect that caution has been received, such marking shall be an authority for extract of the appointment; and the factor may obtain extract of the decree for payment of the sum or sums to which his appointment relates in his own name as factor either *in gremio* the extract of his appointment or in a separate and subsequent extract.

134. Discharge, death or resignation of factor

(*a*) Any factor appointed under this section may apply for discharge by letter addressed to the Deputy Principal Clerk of Session, who, with the concurrence of the Accountant of Court, may bring the application before a Lord Ordinary sitting in chambers; and such Lord Ordinary may grant the discharge and order delivery of the bond of caution.

(*b*) In the event of the death or resignation of a factor appointed under this section, any person interested, or the Accountant of Court, may apply for a new appointment by letter addressed to the Deputy Principal Clerk of Session, who may bring the application before a Lord Ordinary sitting in chambers, and such Lord Ordinary may make the appointment.

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CHAPTER III

Special Actions

SECTION 1

Admiralty Causes

135. Definition of admiralty causes

Admiralty causes include causes arising out of:—

(i) Claims for possession of a ship, or the earnings of a ship, or the protection of the interests of one or more co-owners as against the others to enable a ship to be employed, the examination of accounts between the co-owners, or the apportionment of the earnings of a ship after such examination;

(ii) Claims or disputes in regard to mortgages of ships or shares in a ship;

(iii) Contracts of bottomry and *respondentia*;

(iv) Claims under contracts of affreightment, charter-parties and bills of lading;

(v) (*a*) Loss of life or personal injury and (*b*) loss of or damage to property arising out of collisions at sea;

(vi) Claims by owners of cargo for damage occurring to cargo;

(vii) Claims for limitation of liability;

(viii) Pilotage;

(ix) Civil salvage;

(x) Claims for necessaries;

(xi) Towage;

(xii) Masters' and seamen's wages and disbursements;

(xiii) General average;

(xiv) Forfeiture of ships to the Crown;

(xv) Marine insurance;

(xvi) Maritime liens.

All such causes shall be initiated in the Outer House by summons on the official printed form, and shall conform to the provisions of Rule 70, except as otherwise provided by any of the Rules of this Chapter.

136. Forms of action

(*a*) Action against the owners or parties interested in a ship or cargo may be brought (i) *in rem*, or (ii) *in personam*, or (iii) both *in rem* and *in personam*, according as the conclusions appended to the summons are directed (i) to recovery in respect of a lien against the ship or cargo or the proceeds thereof, as sold under order of Court, or (ii) to a decree in common form against the defenders, or (iii) to both (i) and (ii).

(*b*) The nature of the cause, as being (i) *in rem*, or (ii) *in personam*, or (iii) both *in rem* and *in personam*, shall be distinguished on the official printed form of summons, and on the official backing thereof, by inserting immediately below the space for the letter and number of the cause the words " Admiralty Action *in rem* ", or " Admiralty Action *in personam* ", or " Admiralty Action *in rem* and *in personam* ".

137. Actions *in rem*

In proceedings by action *in rem* directed against a ship or cargo the ship or cargo shall be arrested under an arrestment hereinafter referred to as an arrestment *in rem*. Such arrestment may be effected upon a warrant to arrest contained in the summons.

(*a*) If the owners of, and parties interested in, the ship or cargo, are known to the pursuer they shall be called by name; but if the names of the owners of the ship or cargo are unknown, it shall be competent to call those whose names are unknown as " the owners of, or parties interested in, the ship " (*name her and her port of registry, if known, and call the master if known as representing the owners thereof or of the cargo*). Specimens of the filling in of the official printed form of summons for the purposes of an action *in rem* are shown in Form 13, and of a suitable conclusion in Form 2.

(*b*) Any person who is an owner of, or a party interested in, the *res* may enter appearance at any time before final judgment in the cause, notwithstanding that the time for entering appearance has expired, and may enrol a motion for leave to lodge defences, or to take such steps in the process as he may be advised.

138. Actions *in personam*

In an action *in personam* directed against the owners of a ship or cargo, such owners shall, so far as their names are known to the pursuer, be called by name. In the case of a vessel not being a British ship, where the names of the owners of the ship or cargo are unknown to the pursuer, the master of the ship may be called as defender representing the owners of the ship or cargo. In such a case the warrant to arrest to found jurisdiction must be used against the master in his representative capacity. A specimen of the filling in of the official printed form of summons for the purposes of an action *in personam* directed against the master as representing the owners is shewn in Form 14.

139. Actions both *in rem* and *in personam*

In an action *in rem* and *in personam*, the form of summons will be a suitable combination and adaption of Forms 13 and 14.

140. Execution of arrestments and intimation and advertisement of actions *in rem*

(*a*) When the summons as signeted bears warrant for arrestment *in rem* (as provided for in Rule 74) the arrestment shall be executed by a messenger-at-arms affixing a schedule of arrestment to the mainmast or single mast of the vessel, or where there is no mast, in some prominent part. At the time of executing any

such arrestment as aforesaid, the messenger-at-arms shall deliver to the master of the ship or other person on board and in charge thereof, or of the cargo, as representing the owners and parties interested, a copy of the schedule and execution. If no such person is on board, the execution of arrestment shall so state and the pursuer may then serve the arrestment on the Customs Officer at the port where the ship lies or apply by motion to the Court for a direction. The Court may order such other intimation or advertisement of the dependence of an action *in rem* as it may deem necessary.

(*b*) If any cargo has been landed or transhipped, or is in course of being landed or transhipped, the arrestment of the cargo (but only in so far as it has not been delivered to the owner thereof, or to his agents) shall be effected by the messenger-at-arms placing the schedule of arrestment in the hands of the custodier for the time being of the cargo, or, when such cargo has been landed on to the quay, or into the shed of any port or harbour authority, by the messenger-at-arms delivering to the harbour-master a schedule of arrestment of the cargo.

(*c*) It shall not be necessary for the messenger-at-arms to serve separate schedules of arrestment to found jurisdiction on the dependence or *in rem*, but it shall be competent to combine one or other of such arrestments in one schedule of arrestment.

(*d*) Where a *res* has been arrested under warrant contained in an action *in rem*, or where the pursuer has used arrestment on the dependence, and the defender or other person shewing an interest desires to have such arrestment recalled before the calling of the summons, it shall be competent for him to apply to the Court, by letter addressed to the Deputy Principal Clerk, for recall of the arrestment; and the said clerk shall, so soon thereafter as is practicable, intimate to the parties when and where the application will be disposed of by a Lord Ordinary in chambers, or in vacation or recess by the Vacation Judge. The solicitors of the parties shall, with or without counsel, attend the Lord Ordinary or Vacation Judge along with the clerk. The pursuer's solicitor shall produce to the Lord Ordinary or Vacation Judge the principal summons and the certificate of the execution of the arrestment; and the Lord Ordinary or Vacation Judge may, on cause shewn, and on such terms as may be proper and expedient in the circumstances, recall the arrestment; and the interlocutor recalling the arrestment shall be written on, or securely attached to, the principal summons.

(*e*) A commission fee paid to a person finding security for release of a ship from arrestment, whether in an action *in rem* or otherwise in security, may be recovered on taxation in a judicial account to an amount not exceeding one pound per cent. of the amount secured.

141. *Induciae* on summons

In all summonses in Admiralty causes, the *induciae* shall be determined in accordance with the provisions of Rule 72.

142. Service on master and decree *in personam*

In all causes *in personam* in which the summons is served on the master of the ship as representing the owners or parties interested, it shall be competent to

pronounce decree against the master in his representative capacity; provided that in any cause *in personam* or in any combined action *in rem* and *in personam* it shall be competent to pronounce a decree *in personam* against an owner or party interested only when such owner or party interested has been called or added as a defender.

143. Order for sale of ship or other arrested property

In an Admiralty action in which a finding is made by the Court that the pursuer has a claim which falls to be satisfied out of the arrested *res*, it shall be competent for the pursuer to apply to the Court by motion to order the sale of the ship or other arrested property at such upset price or reduced upset price as the Court may fix. Where the sale of the ship or other arrested property is ordered by the Court, the entire conduct of the sale, including advertisement, shall be under the direction of the Deputy Principal Clerk. The interlocutor directing the sale, if the *res* is a ship or a share therein, shall contain a declaration vesting in the Deputy Principal Clerk the right to transfer the ship or share, and the Deputy Principal Clerk shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof. The price received shall be consigned in the Court under deduction of all dues payable up to the date when the Court adjudges the ship or other arrested property to belong to the purchaser to Her Majesty's Customs or to the dock or harbour authority within whose undertaking the said ship or other arrested property is then lying and in respect of which such dock or harbour authority has a statutory power to detain the ship or other arrested property. Upon such consignation being made, the interlocutor adjudging the ship or other arrested property shall declare the same to belong to the purchaser thereof, freed and disburdened of all bonds, mortgages, liens, rights of retention and other incumbrances affecting the same and shall order the said ship or other arrested property to be delivered to the purchaser on presentation of a certified copy of the said interlocutor; and the Court shall order such advertisement and intimation for claims on the consigned fund as it shall think fit. The Court shall, after such enquiry and hearing as it may consider necessary, deal with all questions of expenses and rank and prefer the other claimants in their order of preference to the balance of the said fund, or make such other order as may be just.

144. Ship collisions: preliminary Acts: procedure

The provisions of this rule shall apply, subject to Rule 145, to all actions of damages arising out of collisions between vessels at sea.

(*a*) The summons shall be in a form as shewn in Forms 13 and 14 or a suitable combination and adaption thereof, with the appropriate conclusion or conclusions and such warrants to arrest as may be considered necessary appended thereto. The summons shall not have annexed to it any condescendence or note of pleas-in-law.

(*b*) Within seven days after the day on which the summons is called the pursuer shall lodge in the process a sealed envelope containing (i) a document to be called the preliminary act for the pursuer in the form shewn in Form 15 with the particulars required duly filled in, and (ii) a short condescendence and note of pleas-in-law.

Intimation of the lodging of the said envelope shall be given by the pursuer to the defender or his solicitor. Except as provided in (*d*) below the sealed envelope shall only be opened on an order by the Court.

(*c*) The defender shall lodge in the General Department not later than seven days after the day on which the preliminary act for the pursuer is lodged a sealed envelope containing a preliminary act for the defender in the form shewn in Form 15 with the particulars required duly filled in.

(*d*) When the preliminary act for the defender is lodged, the sealed envelopes for the pursuer and the defender shall be opened by the clerk of the process and the contents shall be marked as numbers of process. The solicitors for the parties shall exchange copies of the documents contained in their respective envelopes.

(*e*) Not later than seven days after the day upon which the said envelopes are opened the defender if so advised may lodge defences with a note of pleas-in-law and any counter claim upon which he proposes to found with the appropriate conclusion or conclusions and with an articulate numbered statement of facts and note of pleas-in-law. If the defender lodges a counter claim the pursuer may lodge answers thereto within seven days.

(*f*) Not later than seven days after the day on which defences are lodged or after the day on which the pursuer lodges answers to a counter-claim the pursuer's solicitor shall make up and deliver to the solicitor for the defender six copies of the open record in ordinary form with copies of the preliminary acts for the pursuer and the defender appended thereto. He shall also lodge two copies of the said record in the process.

(*g*) No amendment, adjustment or alteration may be made upon a preliminary act after it has been lodged except by order of the Court. If it appears to the Court that the statements required by the preliminary act are not fully set out the Court may order the party concerned to make the necessary additions thereto. Statements made in a preliminary act shall have effect as formal admissions of fact.

(*h*) Save as provided in (*g*) above, parties may adjust the open record. When the record has been closed the case shall thereafter proceed as in an ordinary action.

(*j*) The Court may on cause shewn extend or abridge the time for carryng out any of the foresaid steps of process.

145. Application to dispense with preliminary acts

(*a*) Any party may within seven days after the day on which the summons is called, apply to the Court by written note for an order dispensing with procedure by way of preliminary acts.

(*b*) The note shall be intimated to the other party or parties who may, if so advised, lodge answers thereto within such time as the Court may direct.

(*c*) The Court, after hearing the party or parties, may if satisfied that procedure by way of preliminary act is not appropriate to the circumstances of the case, order that they may be dispensed with.

(*d*) If the Court orders that preliminary acts shall be dispensed with the pursuer shall lodge a condescendence and note of pleas-in-law within such time as the Court shall direct and the case shall thereafter proceed as in an ordinary action.

(*e*) If the Court refuses the said note the pursuer shall, if he has not already done so, lodge a preliminary act and condescendence and note of pleas-in-law in terms of Rule 144 within such time as the Court shall direct and the case shall thereafter proceed in accordance with the provisions of said Rule.

(*f*) It shall not be competent to reclaim against an interlocutor of the Lord Ordinary dispensing or refusing to dispense with preliminary acts.

146. Nautical assessors

In causes arising out of collisions at sea, where the Court is assisted by a nautical assessor at the proof, it shall not be competent for any of the parties to lead expert evidence of nautical matters.

147. Lodging productions for proofs in ship-collision and salvage causes

Without prejudice to the provisions of Rule 107 the parties shall, in all ship collision and salvage causes, within four days of the interlocutor allowing proof, or within four days before the taking of evidence on commission, or on or before such other date as the Court, on special cause shewn, shall fix, lodge in process (i) the ship's log-books, including scrap log-books, of the ships concerned, (ii) all *de recenti* written reports in connection with the collision or salvage by the masters or mates of the vessels concerned to their owners, and (iii) any report of any survey of the vessel in respect of which damages or salvage is claimed.

SECTION 2

Commercial Causes

148. The commercial list

(*a*) If, at closing of the record, the parties are agreed that any cause, being a cause arising out of the ordinary transactions of merchants and traders, or (without prejudice to the foregoing generality) relating to the construction of mercantile documents, export or import or merchandise, contracts of affreightment, charter-parties, bills of lading, insurance, banking, mercantile agency, mercantile usages, or customs of trade should be put in the list of commercial causes, the Lord Ordinary shall so direct.

(*b*) In any cause arising or relating as aforesaid, where the dispute between the parties depends on the construction of documents, it shall be competent for the pursuer to serve a summons, the conclusions whereof shall specify the document or documents the construction of which is in dispute, and shall conclude for the construction thereof contended for by the pursuer; and it shall not be necessary for the pursuer to annex to such summons any condescendence or note of pleas-in-law. If, at any time during the currency of the *induciae*, the defender shall intimate to the pursuer in writing his consent to the summons being treated as a summons under this paragraph, such written intimation shall be lodged by the pursuer along with the summons when lodged for calling; and the cause shall be put on the list of commercial causes. Within seven days after calling, the parties shall lodge in process (1) a joint minute

signed by counsel setting forth concisely in numbered paragraphs the nature of the dispute between the parties, and (2) the original documents, or copies certified as correct by the parties' solicitors, the construction of which is in dispute. The cause shall thereafter be put out for hearing by the Lord Ordinary.

(*c*) If, in any cause in which a summons is served in terms of the immediately preceding paragraph of this rule, the defender shall not intimate to the pursuer in writing his consent to the summons being treated as a summons under the said paragraph, the pursuer shall within seven days after the day on which the summons is called lodge a condescendence and note of pleas-in-law, and the cause shall thereafter proceed as if the summons had been called on the day on which such condescendence and note of pleas-in-law are lodged.

149. Commercial causes of small value

In all causes in the commercial list in which the sum in dispute does not exceed £500 sterling the fees of one counsel only shall be allowed on taxation between party and party, unless the parties agree that the fees of two counsel on each side shall be allowed or the Court certifies that the cause is a fit and proper case for the employment of two counsel.

150. Summary procedure

In any cause in the commercial list the Court may, at any time after the closing of the record (or, in any cause in which the procedure prescribed in paragraph (*b*) of Rule 148 is followed, after lodging of the joint minute therein referred to), make such order as the Court thinks fit for the speedy determination of the question in dispute between the parties.

151. Customs of trade

(*a*) In any cause in the commercial list, where a custom of trade or any commercial usage is pleaded, the Court may, if no objection is taken by the party against whom the custom or usage is pleaded to the legality or validity of such custom or usage, remit to any person or persons engaged in the particular trade whose custom or usage is invoked to report as to (i) the existence of the custom or usage pleaded, and (ii) its scope. The said report shall be conclusive in regard to the existence and scope of the said custom or usage. The report shall be transmitted by the reporter or reporters to the Deputy Principal Clerk who shall intimate (i) to the parties the receipt by him of the report, and (ii) to the party alleging the custom or usage the fees of the reporter or reporters. On production by the said party of a discharge of the said fees, for which such party shall be liable in the first instance, the report will be lodged in process. In any case in which custom or usage is pleaded, and its existence or scope requires to be established, the Court may, if it thinks fit, allow a proof instead of making a remit.

(*b*) Where objection is taken to the legality or validity of the custom or usage, the party so objecting shall, prior to the cause appearing for hearing, enrol a motion for a hearing on such objection, and the Lord Ordinary shall hear counsel on the legality or validity of the alleged custom or usage. If the objection is not sustained, the Lord Ordinary may either repel it or reserve it, and in

either event, may make a remit in terms of the preceding paragraph of this rule; and, in any case in which disputed facts require to be ascertained for determining the legality of an alleged custom or usage, he may either include the determination of such disputed facts in the remit or allow proof thereof.

PROVISIONS COMMON TO ADMIRALTY AND COMMERCIAL CAUSES

152. Evidence and admissions

In any admiralty or commercial cause the Court may accept as evidence affidavits. Where, in the opinion of the Court, any affidavit produced is insufficient to enable the question at issue to be disposed of, the party lodging the same may be called upon to lodge a supplementary affidavit, or, where the circumstances reasonably permit, to prove the relevant facts by the ordinary rules of evidence.

153. Applicability of other rules to admiralty and commercial causes

So far as not inconsistent with the rules in this section the rules dealing with ordinary actions shall apply *mutatis mutandis* to admiralty and commercial causes.

SECTION 3

Consistorial Actions

154. Actions of aliment between husband and wife

(*a*) Actions of aliment only between husband and wife, shall, notwithstanding the terms of sections 10, 15, and 19 of the Conjugal Rights (Scotland) Amendment Act 1861, be served and proceed as ordinary actions.

(*b*) All other consistorial actions within the meaning of the said Act shall be subject to the following special rules, in addition to the statutory provisions thereanent so far as not altered or modified thereby. So far as applicable to consistorial causes, and in so far as not inconsistent with the rules in this section of this Chapter, the rules in the other chapters of these rules shall apply *mutatis mutandis* to consistorial causes.

155. Official form of summons

(*a*) Where a co-defender is convened under paragraph (*b*) of Rule 156 of this Chapter, the official printed form of summons shewn in Form 1 shall be filled up so as to shew which party is defender and which party is co-defender. It shall not be competent in any other case to convene a party as co-defender.

(*b*) Where it is desired to intimate the action to any person with whom the defender is alleged to have committed adultery, other than a co-defender, the said official printed form shall be filled up so as to contain a warrant for such intimation in the following terms as nearly as may be:— " Warrant to intimate to (*name and address*) as a person with whom the defender is alleged to have committed adultery "; provided that such warrant may be executed contemporaneously with, or after, the citation of the defender, by any messenger at-arms, or by the pursuer's solicitor, being a solicitor entitled to practise in the

Court of Session, by serving personally or by posting a registered or recorded delivery letter addressed to such person and containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 16.

(*c*) Where it is desired to intimate the action to the children of the marriage who are above the age of puberty, or to any next of kin of the defender who are above the age of puberty, the official printed form of summons shall be filled up so as to contain a warrant for such intimation in the following terms as nearly as may be:— " Warrant to intimate to (*names and addresses*) as children of the marriage and (*name and address*) brother (*or as the case may be*) and one of the next of kin of defender " provided that such warrant may be executed contemporaneously with, or after, the edictal citation of the defender by any messenger-at-arms or by the pursuer's solicitor, being a solicitor entitled to practise in the Court of Session, by serving personally or by posting a registered or recorded delivery letter addressed to each of such persons, containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 17.

(*d*) Execution of the warrants for intimation under paragraphs (*b*) and (*c*) of this Rule shall be certified by attaching to the Summons copies of the said intimations with certificates of execution thereof.

(*e*) Notwithstanding anything contained in section 40 of the Court of Session Act 1830, the summons shall pass the signet. The signature of any solicitor entitled to practise in the Court of Session shall be a warrant for the summons passing the signet. The summons when signeted shall be a warrant for citing any defender or co-defender named in it.

156. Conclusions of summons

(*a*) The conclusions of the summons shall be such as are exemplified in Form 2.

(*b*) In any action of divorce or separation on the ground of adultery, it shall not be competent to call as a co-defender or to name in the conclusions of the summons any person with whom the defender is alleged to have committed adultery, except where the summons contains a conclusion for damages, or expenses, or both, against such person in respect of the adultery; in which case, such person shall be convened as a co-defender in the action, and the conclusion founded on adultery shall be to the effect that such adultery was committed with the co-defender.

(*c*) Every conclusion for custody, maintenance or education of a child of the marriage or such a child as is mentioned in section 7 of the Matrimonial Proceedings (Children) Act 1958 (in this section of this chapter referred to as " the Act of 1958 ") shall be accompanied by a request for a direction reserving leave to apply to the Court thereanent until the date when the youngest child would attain the age of sixteen years.

157. Application to prohibit removal of a child furth of Scotland.

An application under section 13 of the Act of 1958 for interim interdict prohibiting the removal of a child furth of Scotland or out of the control of the person in whose custody the child is, shall, if made prior to the calling of the summons in the action to which the application relates, be made by letter

addressed to the Deputy Principal Clerk of Session, who shall lay it before a Lord Ordinary in chambers or, in vacation or recess, before the Vacation Judge; and where application is so made on behalf of the pursuer, his solicitor shall produce to the Lord Ordinary or the Vacation Judge the principal summons, and where it is so made by the defender, his solicitor shall so produce the service copy summons.

Any such application made after the summons is lodged for calling shall be made by motion.

158. Applications under Succession (Scotland) Act 1964 and Divorce (Scotland) Act 1938 as amended by Divorce (Scotland) Act 1964.

(*a*) An application to the Court in terms of Section 26(1) of the Succession (Scotland) Act 1964 or Section 2(1) of the Divorce (Scotland) Act 1938 as amended by Section 7 of the Divorce (Scotland) Act 1964 for payment to a pursuer of a capital sum or a periodical allowance or both, or an application in terms of Section 26(1) of the Succession (Scotland) Act 1964 for an order varying the terms of a settlement, shall be made by concluding for the same in the conclusions of the Summons and by setting forth in the condescendence of the summons a statement of facts in support of the application.

(*b*) An application to the Court in terms of Section 26(3) of the Succession (Scotland) Act 1964 for an order for payment of a periodical allowance, or in terms of Section 26(4) of that Act for an order varying or recalling an order for a periodical allowance, or in terms of Section 27 of that Act for an order reducing or varying any settlement or disposition of property belonging to a defender or interdicting a defender from making any such settlement or disposition shall be made by minute in the process which shall contain a statement of facts in support of the application.

(*c*) An application for any order under Sections 26 or 27 of the Succession (Scotland) Act 1964 or Section 2(1) of the Divorce (Scotland)Act 1938 amended as aforesaid shall specify the nature of the order which the pursuer or minuter seeks to have pronounced by the Court.

159. Induciae

(1) The *induciae* for the citation of all defenders and co-defenders shall be as follows, viz.:—

(*a*) Where any defender or co-defender is resident in a country outside Europe, three weeks if the citation is personal and six weeks if the citation is postal.

(*b*) Where resident beyond the mainland of Scotland but within Europe, fourteen days.

(*c*) Where resident on the mainland of Scotland seven days, or at an address unknown to the pursuer fourteen days.

(*d*) Where the citation is postal, the *induciae* shall be reckoned from twenty-four hours after the date of posting.

(*e*) Where, under heads (*a*), (*b*) and (*c*) of this rule, different periods are applicable to the defender and co-defender called in any action the *induciae* for all shall be the longest period applicable to any of them.

(2) Any intimation of an action made to any person with whom the defender is alleged to have committed adultery, or to any child of the marriage or next of kin of the defender in virtue of paragraphs (*b*) and (*c*) of Rule 155 shall be made upon the same *induciae* as would have been required had such person, child, or next of kin been called as a defender in the action.

160. Citation of defenders and co-defenders

(*a*) Defenders resident within Scotland shall be cited as in ordinary actions. In all cases where the defender's address is unknown the citation shall be edictal. Where the citation is edictal, it shall not be necessary to serve the summons on the children of the marriage or any next of kin of the defender, but the summons shall be intimated to such children, if any, as are above the age of puberty, and also to one or more of the next of kin of the defender, where the said children or next of kin are known, wherever such children or next of kin may be resident, and such children and next of kin may appear and state defences to the action.

(*b*) It shall not be necessary to serve the summons upon any defender personally where the address of such defender is known; and where any defender is resident at a known address furth of Scotland, it shall not be competent to execute the citation edictally, but the same may be lawfully executed in either of the following ways, viz:— (i) personally; or (ii) by any messenger-at-arms or solicitor entitled to practise in the Court of Session, by posting to the address of the defender a registered or recorded delivery letter containing a copy of the summons with citation (in the form shewn in Form 3); and such posting shall constitute a legal and valid citation, unless the defender shall prove that such letter was not tendered or left at his address. On the face of the registered or recorded delivery letter, besides the address, there shall be written or printed a notice in the same or similar terms to that which is required in the case of ordinary service by registered letter, by sub-section (4) of section 4 of the Citation Amendment (Scotland) Act 1882; and the execution to be returned by the messenger-at-arms or solicitor shall be accompanied by the Post Office receipt for the registered or recorded delivery letter, and may be in the terms shewn in Form 3.

(*c*) Every co-defender shall be cited by one or other of the methods of citation in use in ordinary actions.

161. Sisting of alleged paramour, child of the marriage or next of kin

(*a*) The person who is alleged to have committed the adultery founded on by way of action or of defence may apply to the Court to be sisted as a party. Such application shall be made by a minute craving leave to be sisted and setting forth articulate numbered answers to the averment of adultery made against him or her in the condescendence annexed to the summons or in the defence. Thereafter such person may be sisted as a party minuter in the action.

(*b*) Any child of the marriage or next of kin of the defender to whom intimation of the action has been made may apply to the Court by motion for leave to state defences.

(*c*) It shall be competent for the Court at any stage to appoint intimation of the action to be made to any person with whom a party to the action is alleged to have committed adultery founded on by way of action or of defence.

162. Procedure before proof allowed

(*a*) The Lord Ordinary may in any undefended action appoint intimation of the action to be made to such of the children of the marriage as are above the age of puberty, and to one or more of the next of kin of the defender who are above the age of puberty (wherever such children or next of kin may be resident); and such children and next of kin, whether the action has been intimated to them or not, may apply for leave to state defences to the action.

(*b*) Where, in any action of divorce on the ground of adultery, the pursuer avers that the defender committed adultery with a person named in the condescendence annexed to the summons but not convened as a co-defender, the Lord Ordinary shall not, except upon cause shewn, allow a proof before answer until he is satisfied that due intimation of the action has been made to such person. Where the Lord Ordinary is informed that such person's address is unknown and that he or she cannot be found, he may dispense with intimation of the action to him or her, provided that the interlocutor allowing proof before answer shall bear to be pronounced in respect of such information; and if, at the proof, the name and address of such person or of any person with whom the defender is alleged to have committed adultery shall appear, the Lord Ordinary shall not grant decree on the ground of adultery committed by the defender with him or her unless and until the action shall have been intimated to him or her at such address.

163. Undefended actions, where no appearance entered

(*a*) Subject as hereinbefore provided, where no appearance shall have been entered, the pursuer may at once enrol a motion to allow a proof before answer, provided that the date of the diet shall not be earlier than the day after the last day for lodging defences if appearance had been entered.

(*b*) It shall be in the discretion of the Court, upon such conditions as shall seem proper:

(i) to allow a defender to appear and be heard at the diet of proof although he may not have lodged defences, provided that such defender shall not be allowed to lead evidence at such diet unless the pursuer consents;

(ii) to allow a defender to reclaim within the reclaiming days, although not present or represented at the proof; and

(iii) to allow a defender to lodge defences and to lead evidence in support thereof at any time before judgment shall have been given by the Court, provided that the pursuer shall in that case be entitled to lead further evidence notwithstanding that he may have closed his proof, and that any witnesses already examined may be recalled for further examination.

(*c*) In every undefended action, where there is any child of the marriage, or any such child as is mentioned in Section 7 of the Act of 1958, with respect to

whose custody, maintenance and education the Court has jurisdiction to make provision in the final decree, there shall be inserted in the interlocutor a direction reserving leave to apply to the Court anent the custody, maintenance or education of such child at any time until the date when the youngest child would attain the age of sixteen years.

(*d*) It shall not be competent for the defender to bring a suspension of any decree of divorce pronounced in an undefended action.

164. Defended actions

In every defended action, where there is any child of the marriage, or any such child as is mentioned in section 7 of the Act of 1958, with respect to whose custody, maintenance and education the Court has jurisdiction to make provision in the final decree, there shall be inserted in the interlocutor a direction reserving leave to apply to the Court anent the custody, maintenance or education of such child at any time until the date when the youngest child would attain the age of sixteen years.

165. Actions defended on amount of capital sum, periodical allowance or aliment only.

(*a*) In any action for divorce, nullity of marriage or separation where the only matter in dispute is the amount of aliment payable by the defender, and in any action of divorce where the only matters in dispute are the amount of such aliment and the nature of any order which the Court should make under section 26(1) of the Succession (Scotland) Act 1964 or section 2(1) of the Divorce (Scotland) Act 1938 amended as aforesaid it shall not be necessary for the defender or his curator *ad litem* to lodge defences. Instead the defender or his curator *ad litem* shall lodge a minute setting forth as appropriate the amount of aliment which he claims should be payable by him, or the nature of the order which he claims the Court should make, along with a statement of facts in support of his claim: provided that where an application for an order under sections 26 (3) and (4) ofthe Succession (Scotland) Act 1964 or section 2(1) of the Divorce (Scotland) Act 1938 amended as aforesaid is made by separate minute, the other party shall, if so advised, answer such minute in ordinary form within such time as the Court may allow.

(*b*) When such a minute as is referred to in the last foregoing paragraph is lodged by a defender, the pursuer may lodge answers thereto within such period as the Court may allow.

166. Effect of direction reserving leave to apply for variation anent custody, maintenance or education of children.

(*a*) A direction reserving leave to apply to the Court anent the custody, maintenance or education of any child of the marriage or any such child as is mentioned in section 7 of the Act of 1958, shall not prevent the interlocutor in which it is inserted from being a final decree for the purposes of reclaiming.

(*b*) Where a final decree containing such reservation is not reclaimed against, or where (a final decree being reclaimed against) any reservation shall ultimately be affirmed or shall ultimately be made, the process shall continue to be in dependence until the date stated in the reservation, to the effect that either

party may apply to the court anent the custody, maintenance or education of any child continuing to be under the age of sixteen years.

(*c*) The final decree in every process continuing to be in dependence as aforesaid shall be capable only of interim extract.

167. Custody and maintenance claimed by defender

(*a*) In any action for divorce, nullity of marriage or separation where the summons does not include conclusions with respect to the custody and maintenance of any child of the marriage to which such action relates or any such child as is mentioned in section 7 of the Act of 1958, it shall be competent at any time before judgment shall have been given by the Court for the defender, whether he has lodged defences or not, to claim the custody of and maintenance for such child.

(*b*) Where a defender claims the custody of and maintenance for such child, he shall lodge a minute which shall contain conclusions in the form exemplified in Form 2, an articulate numbered statement of facts setting forth the facts on which the claim is founded, and a note of any pleas-in-law in support thereof. Such statement of facts may incorporate by reference any matter contained in the defences to the pursuer's summons. On such minute being lodged the pursuer may lodge answers thereto within such period as the Court may allow.

(*c*) The said claim may be heard and tried along with or after the claim in the pursuer's summons as the Court may consider just and expedient in the circumstances; and if evidence is led with regard to either claim separately from the other, such evidence shall, so far as competent and relevant, be evidence with regard to the other claim.

(*d*) In the final decree in any action the Court shall insert in the interlocutor a direction reserving leave to apply for variation of any provisions made therein as to the custody and maintenance or education of any such child until the date mentioned in the conclusions of the minute or until such other date as the Court shall determine.

(*e*) In any such action where the parties are agreed as to such custody or maintenance they may embody the agreement in a joint minute, and the Court may interpone authority thereto without requiring amendment of the summons or the lodging of a minute under this Rule.

168. Matrimonial Proceedings (Children) Act 1958

(*a*) In any action for divorce, nullity of marriage or separation in which the Court may make provision for the custody, maintenance and education of any such child as is mentioned in section 7 of the Act of 1958 intimation shall be made to any person other than a party to the marriage who may be liable to maintain the child, and such party may apply to the Court to be heard with respect to the maintenance of the child. Any such application shall be made by minute craving leave to be sisted as a party to the action and setting forth any relevant averments with respect to the aliment of the child.

(*b*) Where it appears to the Court that any child for whose custody, maintenance and education it has jurisdiction to make provision in connection with any action for divorce, nullity of marriage or separation should not be entrusted to either of the parties to the marriage but that the care of the child should, in

pursuance of section 10 of the Act of 1958, be committed to some other individual or to a local authority, the Court shall appoint intimation to be made to the individual or the local authority, and he or they may make such representations to the Court as are relevant. Such representations may be made by minute, and on such a minute being lodged the parties to the action may lodge answers thereto within such period as the Court may allow.

(*c*) When the Court, in pursuance of section 12 of the Act of 1958, makes an order placing a child under the supervision of a probation officer or of a local authority, the Court shall appoint intimation of the order to be made to the officer or authority specified in the order.

(*d*) Without prejudice to any other provision in this section of this Chapter requiring the insertion in any interlocutor making provision with respect to the custody, maintenance and education of any child of a direction granting leave to apply for variation of such provision, there shall be inserted in any order made by the Court under Part II of the Act of 1958 a direction granting leave for any person concerned to apply for the variation or revocation of the order.

169. Certificate of divorce

The Principal Clerk of Session shall, on a written letter of request by a pursuer or defender or their respective solicitors, which may be in the terms of Forms 22, 24 or 26 and on payment of a fee of seven shillings and six pence issue to the person making the request a certificate, certifying that any decree of divorce or decree of dissolution of marriage or decree of nullity of marriage was pronounced, and such certificate shall be *prima facie* evidence that the decree so certified was pronounced on the date stated in the certificate. No such certificate shall be issued until at least twenty-one days after the date of the decree.

170. Divorce (Scotland) Act 1938

(*a*) *Means of parties to be stated in action on ground of incurable insanity.*—Subject to the provisions of Rule of Court 152, the condescendence of the summons in every action on the ground of incurable insanity shall contain a short statement of the respective means of the parties so far as known to the pursuer.

(*b*) *Service of summons on insane defender.*—A summons concluding for divorce on the ground of incurable insanity shall be served by transmitting a copy of the summons by registered or recorded delivery letter addressed to the medical officer in charge of the asylum, institution or home in which the defender is confined, along with a request that he deliver it personally to the defender and explain to him or her the contents or purport thereof, unless the person to whom the copy summons has been transmitted is satisfied and certifies on soul and conscience that such delivery or explanation would be dangerous to the health or mental condition of the defender. The request shall be as nearly as possible in the form shewn in Form 20. There shall also be sent to the person to whom a copy summons is transmitted a form of certificate stating whether or not it has been delivered to the defender or whether the contents or purport have been

explained to him or her, and, if not, giving the particular reasons. The certificate shall be as nearly as possible in the form shewn in Form 21, and shall be annexed to the Summons lodged for calling. Where the said certificate bears that no delivery of the summons was made to the defender, it shall be competent for the Court at any stage in the proceedings before decree to order such further medical enquiry and such further service as it may think fit or to dispense with such service.

(*c*) *Intimation to children and next of kin.*—In every action on the ground of incurable insanity, the summons shall be intimated to such children of the marriage, if any, as are above the age of puberty, and also to one or more of the next of kin of the defender who are above the age of puberty, where the said children or next of kin are known and wherever they may be resident and to the *curator bonis* of the defender, if he any have. The children, next of kin or *curator bonis* may appear and state defences to the action. In such action the printed form of summons shall be filled up so as to contain a warrant for intimation to the children of the marriage who are above the age of puberty, to one or more of the next of kin of the defender who are above the age of puberty and to the *curator bonis* as nearly as may be in the following terms: "Warrant to intimate to (*names and addresses*) as children of the marriage, (*name and address*) brother (*or as the case may be*) and one of the next of kin of defender, and (*name and address*) as *curator bonis* of the defender" and such warrant shall be executed contemporaneously with the service of the summons as provided by the immediately preceding rule by any messenger-at-arms or by the pursuer's solicitor (being a solicitor entitled to practise in the Court of Session) by posting a registered or recorded delivery letter addressed to each of such persons, containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 18. Any intimation of an action made to any child or next of kin of the defender or to the *curator bonis* under this rule shall be made upon the same *induciae* as would have been required had such child, next of kin or *curator bonis* been called as a defender in the action. Certificates of execution of intimation shall be annexed to the Summons lodged for calling.

(*d*) *Curator ad litem.*—In every action of divorce on the ground of insanity, on the day following the expiry of the time for lodging defences as provided by Rule 83 (*a*), the process shall be laid before a Lord Ordinary who shall, without motion enrolled, appoint a curator *ad litem* to the defender and at the same time make an order calling upon the Mental Welfare Commission for Scotland to furnish a report in terms of section 3 of the Act; and it shall be the duty of the pursuer's solicitor not later than the following day to furnish the curator *ad litem* with the principal summons containing the execution of service and any defences that may have been lodged. The principal summons may be borrowed from process for this purpose. The said curator *ad litem* may within fourteen days after the Mental Welfare Commission have furnished their report, lodge either defences to the action, or a minute adopting defences already lodged, or a minute stating that he does not intend to lodge defences. The pursuer's solicitor may at any time thereafter, if no defences have been lodged, enrol a motion to allow a proof before answer in accordance with Rule 163, and if the action is defended, the pursuer's solicitor shall proceed as provided for by Rules 90 and 91. Notwithstanding that he has not lodged defences

within the time above stated, the curator *ad litem* may appear at any stage of the case to protect the interests of the defender.

(*e*) *Sodomy.*—Where, in any action of divorve on the ground of sodomy, the pursuer avers that the defender committed sodomy with a person named in the condescendence annexed to the summons, the Lord Ordinary shall not, except upon cause shewn, allow a proof before answer until he is satisfied that due intimation of the action has been made to such person. Where the Lord Ordinary is informed that such person's address is unknown and that he cannot be found, he may dispense with intimation of the action to him, provided that the interlocutor allowing proof before answer shall narrate that the Lord Ordinary has been so informed; and the Lord Ordinary shall have power in his discretion to order the deletion from the pleadings of the name of the person with whom the defender is alleged to have committed sodomy, and if at the proof the name and address of such person or of any person with whom the defender is alleged to have committed sodomy shall appear, the Lord Ordinary shall not grant decree of divorce on the ground of sodomy committed by the defender with him unless and until the action shall have been intimated to him at such address. The official printed form of summons shall be filled up so as to contain a warrant for such intimation in the following terms as nearly as may be: " Warrant to intimate to (*name and address*) as a person with whom the defender is alleged to have committed sodomy "; provided that such warrant shall be executed contemporaneously with, or after, the citation of the defender, by any messenger-at-arms, or by the pursuer's solicitor (being a solicitor entitled to practise in the Court of Session), by posting a registered or recorded delivery letter addressed to such person and containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 19. A Certificate of execution of intimation shall be annexed to the Summons lodged for calling.

(*f*) *Dissolution of marriage*—In every petition for dissolution of marriage under section 5 of the Act, the Court shall order such advertisement as it thinks fit.

(*g*) *Service on spouse, children and next of kin.*—Every petition for dissolution of marriage under section 5 of the Act shall be served edictally upon the spouse to be presumed dead, and upon such children of the marriage as are above the age of puberty, and also upon one or more of the next of kin of the defender who are above the age of puberty, where the said children or next of kin are known and wherever they may be resident. Service upon said children or next of kin who are furth of Scotland shall be on an *induciae* of 14 days.

SECTION 4

Reductions

171. Defences

It shall not be competent for a defender who objects on any ground to satisfy the production to lodge only preliminary defences; but if he intends to defend the action, he shall lodge his defences on the merits along with his preliminary defences.

172. Where no objection to satisfy production

Where the defender does not state any objection against satisfying production, he shall, along with his defences, produce the writs or documents sought to be reduced so far as the same are in his possession or within his control.

173. Where production objected to

If in his defences (so far as preliminary), the defender objects to production on the ground that the action is incompetent, or irrelevant, or otherwise, and in the event of his defences (so far as preliminary) being repelled by the Court, the defender shall satisfy production by lodging in process the writs or documents sought to be reduced, so far as in his possession or within his control, within seven days after the day on which the interlocutor repelling his defences (so far as preliminary) was pronounced; and, if he shall fail so to do, the pursuer may enrol the cause for decree by default; provided that, with consent of parties, the Court may hold production satisfied by copies of the writs or documents sought to be reduced.

174. Challenge of deed or writing *ope exceptionis*

Where, in any cause, a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception without the necessity of bringing a reduction thereof, unless the Court shall consider that the matter would be more conveniently tried in a separate action of reduction.

SECTION 5

Multiplepoindings

175. Service on nominal raiser

When a multiplepoinding is raised in the name of a holder of a fund by one of the claimants, it shall be served on him in the same manner, and on the same *induciae*, as if he were one of the defenders.

176. Condescendence of the fund

(*a*) If the pursuer (and real raiser) is the person possessed of the fund *in medio*, he shall condescend on the said fund, either in the condescendence annexed to the summons, or in a separate paper lodged along with the summons at calling.

(*b*) If the nominal raiser is the person possessed of the fund *in medio*, then, not later than the fourteenth day after the day on which the summons is called, he shall either lodge a precise and articulate condescendence of the funds in his hands (stating any claim or lien which he may profess to have upon those funds), or, if he objects to the action on the ground of incompetency or otherwise, he may lodge defences to the action not later than said fourteenth day.

177. Defences; record on summons and defences

(*a*) If any of the parties to the action (other than the pursuer who is also real raiser) objects to the action on the ground of incompetency or otherwise, he or

they may lodge defences not later than the fourteenth day after the day on which the summons is called.

(*b*) If defences are lodged either in terms of paragraph (*b*) of Rule 176, or in terms of paragraph (*a*) of this rule, a record shall be made up and closed, and the cause shall proceed for the purpose of determining the objections stated in the defences, all as in the case of an ordinary action.

178. Advertisement for absent parties

If no defences are lodged, or if (even when defences are lodged) it is for any reason considered advisable to intimate the dependence of the action by advertisement, the real raiser may enrol (not earlier in any case than the day after the last day for lodging defences) for an order for the advertisement of the dependence of the action in such newspapers, and for such number of insertions, as he may desire, in order that any party not otherwise cited may enter appearance on or before a date named; provided always that it shall be competent for the Court at any time to order such advertisement, or to order intimation of the dependence of the action to any person not called as a defender to the action, *ex proprio motu*; and a copy of the advertisement or advertisements, together with a certificate signed by the solicitor of the party who obtained the order or on whom the order was made, that the advertisements have been duly made, and a return of the execution of any intimation so ordered, shall be lodged in process by such solicitor.

179. Once and single payment: order and advertisement for claims

When no advertisement for absent parties is moved for or ordered in terms of the immediately preceding rule, the real raiser may not earlier than the day after the last day for lodging defences enrol for a finding that he is liable only in once and single payment, and that the condescendence annexed to the summons shall be held as a condescendence of the fund *in medio*, and for an order for claims by a specified date, and for advertisement of such order; provided always that it shall be competent for the Court at any time to make an order, or renewed order, for claims, and to appoint advertisement thereof, and to order intimation thereof to any person not called as a defender to the action, *ex proprio motu*; and a copy of the advertisement or advertisements, together with the solicitor's certificate, and a return of the execution of any intimation so ordered, shall be lodged in process.

180. Form of claims

The claimants shall state their respective claims in the form of condescendences, claims, and pleas-in-law, and shall produce per inventory therewith their grounds of debt and other writings for instructing their claims.

181. Claims not timeously lodged

A claimant who fails to lodge his claim on or before the date specified in the order for claims may enrol to have his claim received at a later date; and the Court may allow the claim to be received on such terms as to expenses as to the Court shall seem proper.

182. Record on condescendence of the fund and objections thereto

(*a*) If a condescendence of the fund *in medio* shall have been lodged in terms of paragraph (*a*) or paragraph (*b*) of Rule 176, or if such a condescendence shall have been lodged at any time before the expiry of the period fixed for lodging claims, and if any of the parties desires to object to such condescendence, it shall be competent for him, or them, not earlier than the day after the expiry of the period for lodging claims, to enrol for an order appointing objections to be lodged by a certain date.

(*b*) If no condescendence of the fund *in medio* shall have been lodged before the expiry of the period for lodging claims, it shall be competent for any of the parties to the cause to enrol for an order on the party or claimant who is possessed of the funds to lodge such a condescendence, and appointing any objections thereto to be lodged by a certain date.

(*c*) A record shall be made up on such condescendence and objections and the cause shall proceed for the purpose of determining such objections as in the case of an ordinary action.

183. Where no competition: ranking for aught yet seen

If no objections shall have been lodged to the condescendence of the fund *in medio*, or if objections shall have been lodged after the condescendence shall have been approved by the Court, and if it shall appear that there is no competition, the Court may, for aught yet seen rank and prefer the parties who have lodged claims, and, in the event of the fund *in medio* not having been consigned, may grant decree for payment out of the fund *in medio* of the sums in respect of which the said parties have been respectively ranked, or may grant warrant to the bank to pay to the said parties the sums for which they have been so ranked, and warrant to the Accountant of Court to endorse and deliver the consignation receipt to the bank in order that said payments may be made, either on an extract or on a certified copy of the interlocutor, as may be desired, provided that no decree for payment out of the fund *in medio* shall be made until the Certificates referred to in Rule 36 have been lodged in process.

184. Reclaiming by belated claimant against a ranking for aught yet seen

It shall be competent for a claimant who has failed to lodge a claim before such ranking for aught yet seen, to reclaim against the interlocutor making such ranking at any time while the action is still in dependence by enrolling a motion for review; and, on consideration of such motion, the Division before which it is brought may recall the interlocutor, and remit the cause to the Outer House to receive the claim on such terms as to expenses as may be just and proper.

185. Where there is competition: record on condescendences and claims

Where there is competition, a motion shall be enrolled for an order to print the record and thereafter a record shall be made upon the condescendences and claims as in an ordinary action, any of the claimants being allowed, at adjustment, to state at the close of his condescedence his objections to any other claim or claims, in the form of answers to a condescendence with a note of pleas-in-law; and the cause shall proceed as in the case of an ordinary action.

SECTION 6

Proving of the Tenor

186. Parties

In any action of proving of the tenor, all parties interested in the deed shall be called as defenders, and if the pursuer alone has an interest, it shall not be necessary to call the lieges as defenders.

187. Lodging of adminicles

All adminicles of the tenor of the deed to be proved, such as drafts, copies, letters, bills, and the like, so far as in the possession of the pursuer or within his control, shall be lodged along with the summons at calling.

188. Procedure

The cause shall proceed in all respects as in the case of an ordinary action; provided that, where no appearance has been entered or no defences lodged, the Lord Ordinary shall appoint a proof to be led, and dispose of the cause as accords.

CHAPTER IV

Petitions

SECTION 1

Petitions other than for Suspension, Suspension and Interdict and Suspension and Liberation

189. Outer House petitions

(*a*) Save as hereinafter provided, all petitions initiated in the Court of Session and not invoking the *nobile officium*, including (notwithstanding the generality of sub-head (*g*) of sub-section (3) of section 6 of the Administration of Justice (Scotland) Act 1933) the following:—

(i) Petitions for the appointment of judicial factors, factors *loco tutoris* or *loco absentis*, factors pending litigation, or *curator bonis* to a minor or incapax:

(ii) Petitions, whether at common law or under statute, for the appointment of factors on the estates of partnerships or joint adventures;

(iii) Petitions, whether at common law or under statute or invoking the *nobile officium* relating to the administration of trusts, or to the office of trustee, in trusts not being charitable trusts or educational endowments, but excluding petitions for the variation of trust purposes under section 1 of the Trusts (Scotland) Act 1961;

(iv) Petitions for the appointment or removal of trustees in trusts not being charitable trusts;

(v) Petitions under the Companies Acts in a voluntary winding-up or for winding-up by the Court or for winding-up subject to the supervision of the Court;

(vi) Petitions under the Entail Acts;

(vii) Petitions under the Bankruptcy (Scotland) Act 1913;

(viii) Petitions under the Conveyancing (Scotland) Act 1874;

(ix) Petitions under the Presumption of Life Limitation Acts;

(x) Petitions under the Registration of Business Names Act 1916;

(xi) Petitions under the Lands Clauses Consolidation (Scotland) Act 1845;

(xii) Petitions for summary trial under section 10 of the Administration of Justice (Scotland) Act 1933;

(xiii) Petitions for appointment of curators under section 12 of the Administration of Justice (Scotland) Act 1933;

(xiv) Petitions under the Judgments Extension Act 1868, section 9 of the Administration of Justice Act 1920, and the Foreign Judgments (Reciprocal Enforcement) Act 1933;

(xv) Petitions for recall of arrestments and inhibitions which have been granted on a bill or a bill for letters;

(xvi) Petitions for suspension, suspension and interdict, and suspension and liberation;

(xvii) Petitions under the Patents Act 1949 and the Registered Designs Act 1949.

(xviii) Petitions under section 5 of the Divorce (Scotland) Act 1938;

(xix) Petitions under the Special Roads Act 1949, sections 13-15, Part IV of the First Schedule;

(xx) Petitions for the custody of children brought under any Act of Parliament;

(xxi) Petitions for admission as a solicitor; and

(xxii) Any other petitions which, according to former practice, were presented in the Bill Chamber,

shall be presented to the Outer House, and shall be lodged in the Petition Department.

(*b*) All applications for fiats shall be presented to the Outer House and lodged in the Petition Department and shall be disposed of by the Deputy Principal Clerk or an officer delegated by him. If a fiat is refused the application may on request be placed before a Lord Ordinary who may authorise a fiat to be granted or may refuse the same. The decision of the Lord Ordinary shall be final and shall not be subject to review by reclaiming or otherwise.

190. Inner House petitions

Save as provided in the immediately foregoing rule, all petitions initiated in the Court of Session and falling within any of the classes following:—

(i) Petitions and Complaints;

(ii) Petitions for possession or specific performance;

(iii) 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 the Administration of Justice (Scotland) Act 1933, be presented to the Inner House;

(iv) Petitions under the Acts relating to solicitors or notaries public (other than petitions for admission as a solicitor);

(v) Petitions incidental to a cause already before the Inner House;

(vi) Petitions 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 enactments;

(vii) Petitions to the Court invoking the *nobile officium* except those falling under Rule 189 (*a*) (iii);

(viii) Petitions under the Adoption Act 1958;

(ix) Petitions by trustees for directions;

(x) Petitions under the Companies Acts other than petitions in a voluntary winding-up or for winding-up by the Court or for winding-up subject to the supervision of the Court,

(xi) All applications under the Companies Act 1948, other than those for which provision is made in these Rules;
(xii) Petitions under section (1) of the Trusts (Scotland) Act 1961;
(xiii) Petitions under section 128(7) and (8) of the Education (Scotland) Act 1962,

shall be presented to the Inner House, marked " Inner House " on the backing thereof and shall be lodged in the Petition Department; provided that petitions incidental to a cause already before the Inner House shall be lodged either in the General Department, or in the Petition Department, according as the cause itself belongs to the one or the other of said Departments; and provided further that Petitions under the Companies Acts presented in terms of this Rule to the Inner House may be remitted to the Outer House with such instructions for their disposal as the Judges of the Inner House may deem appropriate.

191. Form of petition

All petitions shall be on the printed official form, which, with the official printed backing thereon (Form 28), shall be filled in and completed either in manuscript, typescript or print; provided that:—

(*a*) A narrative or statement of facts in articulate numbered paragraphs setting forth the facts and circumstances which form the grounds of the petition shall in all cases precede the prayer; and in all petitions presented under any statute or statutes authorising the petition or regulating the proceedings therein, the narrative shall expressly refer to the relevant section or sections of such statute or statutes.

(*b*) The prayer shall specially crave warrant for such intimation, service and advertisement as may be necessary, having regard to the nature of the petition, or as the petitioner may desire; and the names, designations, addresses and capacities of all persons on whom the petition is to be served, distinguishing any upon whom the petition is to be served edictally, shall be set forth in a Schedule annexed to the Petition and referred to in the prayer.

(*c*) If any dispensation with intimation or service is desired, it must be specially craved in the prayer, and the grounds of dispensation must be set forth in the narrative; and in petitions for appointment of *a curator bonis* to an incapax, if dispensation of service on the incapax is craved, two medical certificates stating reasons for such dispensation, in respect of the dangerous effects of service on the incapax or otherwise, shall be lodged along with the petition.

192. *Induciae* in petitions

In all petitions in which service is required or appointed the *induciae* shall, unless shortened or extended by the Court in the circumstances of any particular case, be seven days after the date of service if the person to be served is on the mainland of Scotland, and fourteen days if such person is in Orkney or Shetland or in any of the islands of Scotland, or if he is furth of Scotland.

193. Signature of petitions

Petitions for suspension, suspension and interdict, suspension and liberation and petitions under the Bankruptcy (Scotland) Act 1913, except petitions under

section 163 thereof, may be signed by the petitioner's solicitor, and a petitioner for sequestration of his own estates may sign the petition himself. All other petitions shall be signed by counsel and no further or other signature shall be required.

194. Papers to be lodged along with petition

Each step of the process lodged along with the petition shall be marked on the backing thereof with the same letter and number as shall be given on lodging to the petition itself; and, along with the petition and process the petitioner shall also produce and lodge per inventory any deeds or writings founded on in the petition so far as in his possession or within his control; and in an opposed petition the Court may attach such conditions as to expenses or otherwise, as it may think fit, to the receiving of such documents if tendered at a later date.

195. Intimation and service including edictal service

(*a*) All petitions shall, without enrolment, appear, if in session, in the printed rolls of Court for the first available day after lodging, in the motion roll of the Outer House or in the single bills of the Inner House, as the case may be, for an order for such intimation, advertisement and service as may be necessary; and, if in vacation or recess, all such petitions shall, without enrolment, be brought before the Vacation Judge for a like order; provided that, in the case of proceedings under the Bankruptcy (Scotland) Act 1913, a petition for warrant to cite may, on being lodged, be brought forthwith by the Deputy Principal Clerk, or by a clerk instructed by him, before a Lord Ordinary in Court or in chambers, who, notwithstanding that the petition has not appeared in the motion roll, may grant warrant.

(*b*) the following rules shall apply *mutatis mutandis* to the service of petitions, namely:—

(i) Paragraph (*a*) of Rule 72 anent the reckoning of the *induciae* in the case of service anywhere in Scotland by registered or recorded delivery letter;

(ii) Rule 75 anent edictal citation but subject to the provisions of paragraph (*c*) hereof;

(*c*) The citation and execution of service shall be as nearly as may be in the terms set forth in Form 30.

(*d*) All certificates of execution or intimation of a petition or note shall be written upon a certified copy of the petition or note lodged in process.

196. Answers

(*a*) Answers may be lodged at any time within the *induciae*, whether such *induciae* expire in session, vacation or recess; provided that the Court may, on cause shewn, prorogate the time for lodging answers and allow the same to be received though not lodged within the *induciae*.

(*b*) All answers shall be in the form of articulate numbered answers to the narrative or statement of facts in the petition.

(*c*) The Court may at any time, before disposal of the petition, allow the parties to adjust their pleadings; and replies and duplies shall not be lodged except by order of the Court.

197. Unopposed petitions

After the period of intimation and service in a petition has expired without answers being lodged, the petition shall, after such enquiry into, or verification of, the grounds of the petition (whether by evidence, remit, affidavit, or otherwise) as may be necessary, and subject to the provisions of Rule 198, be disposed of as accords; provided that:—

(*a*) In any petition which has been edictally served (in manner provided in reference to ordinary actions in Rule 75) on any person who is resident or carries on business furth of Scotland, and elsewhere than in England or Northern Ireland, and has no known solicitor in Scotland, and if the interlocutor granting the crave of the prayer in the petition is pronounced before the expiry of a period (reckoned from the date of execution of the edictal service) of fourteen days, added to such further days, if any, as may be found by the Court to be approximately equivalent to the excess, beyond four, of the number of days required, in the ordinary course of post, for the transmission of a letter from Edinburgh to the respondent's residence or place of business and the like transmission of an answer from such residence or place of business to Edinburgh, the person who has been edictally served may, at any time before the expiry of the aforesaid period, enrol a motion for allowing answers to be received, and for recall of the interlocutor (if already pronounced) granting the whole or any part of the prayer of the petition; but any recall (if granted) shall be without prejudice to the validity of anything already done or transacted, or of any contract made or obligation incurred, under and in virtue of such interlocutor, or of any appointment made or power granted therein or thereby.

(*b*) The provisions of this rule are without prejudice to the power of the Court to make interim appointments or orders at any stage of the cause.

198. Motions in opposed and unopposed petitions

Save as herein otherwise provided, all motions, other than motions made at the bar during any hearing of the cause, shall be enrolled and made by entry in the motion sheet; and the provisions of Rule 93 shall apply *mutatis mutandis* to all petitions.

SECTION 2

Judicial Factors

PUPILS PROTECTION (SCOTLAND) ACT 1849; JUDICIAL FACTORS (SCOTLAND) ACT 1889; BANKRUPTCY (SCOTLAND) ACT 1913.

199. Definition of judicial factor

The expression " judicial factor " includes *curator bonis*, factor *loco tutoris*, factor *loco absentis*, and factor on trust or other estates, and also includes guardians where caution is required.

200. Accountant of court: caution, penal interest, etc.

(*a*) *Copies of proceedings for Accountant of Court.*—Copies of all petitions, answers, and other papers, relative to the appointment of any judicial factor, or to any judicial factory, shall, at the same time as they are lodged in the Petition Department, be supplied to the Accountant of Court by the party or parties lodging the principal document, and copies of all interlocutors granting or refusing applications for special powers shall be supplied, within two days of issue, to the Accountant by the solicitor.

(*b*) *Transmission of processes to Accountant of Court.*—The clerks of the Petition Department are authorised and directed to transmit to the Accountant of Court at all times, on his requisition, the proceedings, or such part thereof as he may require, in all processes of judicial factory, or other processes relative thereto, depending in the Court, in so far as such proceedings may not at the time be required for the use of the Court.

(*c*) *Time for finding caution.*—When not otherwise expressed in the interlocutor appointing a judicial factor, the time for finding caution shall be limited to one calendar month from the date of the interlocutor; provided that on motion enrolled at any time before the expiry of that period the Court may on cause shewn, prorogate the time for finding caution.

(*d*) *Bonds of caution received by Accountant of Court.*—The Accountant of Court shall receive bonds of caution offered for judicial factors.

(*e*) *Procedure in finding caution.*—On a judicial factor being appointed subject to caution being found, the process shall be forthwith transmitted to the Accountant of Court, in order that the matter of caution may be dealt with; and:—

(i) The Accountant of Court shall, on the bond of caution being delivered to him, and on being satisfied as to its form and due execution, and as to the sufficiency of the cautioner, make a marking on the margin of the interlocutor sheet to the effect that caution has been received, stating the amount for which caution has been found, and adding his signature and the date; and such marking shall be an authority for extract of the appointment;

(ii) Where it is proposed that the caution be limited as authorised by section 27 of the Pupils Protection (Scotland) Act 1849, caution to the extent of not less than two-thirds of the value of the moveable and other easily realisable estate shall be found to the satisfaction of the Accountant of Court, who shall not report thereon to the Court except in the event of his requiring larger caution than aforesaid and then only if the factor in writing shall require him so to report; and the Court, in considering the said report, shall instruct the amount of caution to be found, being for not less than two-thirds of the value of the said moveable and other easily realisable estate;

(iii) During the subsistence of a factory, the Accountant of Court may at any time require the factor to increase the amount of the existing cautionary bond, or to find new or additional caution, or to procure a company bond in substitution for, or in addition to, that of an existing cautioner; and may also at any time authorise the factor to decrease the amount of the existing caution by a certain sum; and, on the caution

being increased or decreased in amount in terms of these provisions, the Accountant of Court shall mark the margin of the interlocutor sheet as directed in head (i) of this paragraph: provided always that, if the Accountant of Court should require caution to be found or increased to cover more than two-thirds of the value of the moveable and other easily realisable estate, the factor may require him in writing to report the matter to the Court; and the Court, on considering such report, shall instruct the amount of caution to be found as hereinbefore provided;

(iv) The Accountant of Court shall, in January yearly, prepare and submit a list of approved guarantee companies for the consideration and approval of the Lord President. In the event of a company not on the list being proposed as cautioner for a factor, the Accountant of Court may at any time submit the name of such company for the consideration of the Lord President, and such company, if approved by him, shall be included in the said list.

(*f*) *Premiums to guarantee companies and expenses of bond of caution.*—The Accountant of Court shall allow as a charge against the factory estates (1) the premium paid by the factor where a company bond of caution has been accepted, or such part thereof as he deems proper, and (2) the expense of the necessary procedure in obtaining the approval of a bond of caution or the limitation, increase, or reduction of the amount.

(*g*) *Penal interest.*—When the Accountant of Court is satisfied that the circumstances under which penal interest has been incurred under section 5 of the Pupil's Protection (Scotland) Act 1849, are such as to justify remission or modification of the penalty, he may, in his sole discretion, remit or modify it.

201. Factors under the Bankruptcy (Scotland) Act 1913.

In addition to the regulations in the foregoing rules of this Chapter, the following shall apply to factories under section 163 of the Bankruptcy (Scotland) Act 1913:—

(*a*) *Form of petition.*—In the case of any petition presented to the Court under section 163 of the said statute for appointment of a judicial factor on the estate of a person deceased, the official printed form of petition shall be filled in and completed as nearly as may be in the terms set forth in Form 29.

(*b*) *Intimation and service.*—Besides intimation on the walls and in the minute book in common form, of which certificates shall be produced, intimation shall be made in the *Edinburgh Gazette*, in the terms as nearly as may be of Form 31; and a full copy of the petition shall be served on such of the persons named in the petition as representatives of the deceased as are not parties thereto; and a copy of the *Edinburgh Gazette* containing the intimation and an execution of service of the petition shall be produced before the petition is disposed of. The citation and the execution of service shall be as nearly as may be in the terms set forth in Form 30.

(*c*) *Appointment of judicial factor.*—The Court shall not make the appointment of the judicial factor until the lapse of fourteen days, or such other

time as the Court may fix, after the publication of the foresaid notice in the *Edinburgh Gazette* and after the date of service (when such service is required) of the petition on the representatives of the deceased; provided always that the Court, if in any case it shall see cause to do so, may make an interim appointment of such factor at an earlier date.

(*d*) *Notice calling for claims.*—In order to ascertain the claims upon the estate, the factor shall, within fourteen days of extracting his appointment, cause to be inserted in the *Edinburgh Gazette* a notice in the form, as nearly as may be, set forth in Form 32, and shall lodge in process a copy of the *Edinburgh Gazette* containing the said notice and he shall also insert a similar notice in such newspapers as may appear to him to be proper.

(*e*) *Claims.*—The factor shall examine the claims of the creditors in order to ascertain whether the debts are justly due from the estate of the deceased, and may call for further evidence in support of the claims, and may, if he sees fit, require the creditors to constitute the same by decree in a competent court in an action to which the factor shall be called as a defender. For the purpose of ranking and payment of creditors, the date of the factor's appointment shall be the date equivalent to the date of sequestration.

(*f*) *Inventory of estate.*—The factor shall, within six months at latest from the date on which his appointment shall have been extracted, lodge with the Accountant of Court a full inventory of the estate of the deceased, and shall produce therewith or exhibit all such writs and documents of importance belonging to the estate as may have been obtained by him, and shall, at the same time, or at such later time as the Accountant of Court may sanction, report a state of the debts appearing to be due by the deceased, distinguishing those for which claims have been lodged by creditors and the evidence upon which the same rest, and the claims made and lodged with him by persons interested in the succession of the deceased and the grounds thereof; and the said inventory, when adjusted and signed as after mentioned, with the state of debts, shall remain in the possession of the Accountant of Court; and all creditors and persons interested in the succession of the deceased, or their solicitors, shall have access to the same in the hands of the Accountant of Court, at his office.

(*g*) *State of funds and scheme of division.*—The judicial factor shall prepare a state of funds and scheme of division amongst the creditors, and shall lay the same before the Accountant of Court, along with all writings and documents upon which it proceeds, and shall afford to the Accountant of Court all explanations thereon which may be required by him; and the Accountant of Court shall make a report in writing on the said state of funds and scheme of division, containing such observations thereon as he shall think fit and proper to be submitted to the Court. Should there be no funds available for division after payment of the debts specified in paragraph (*n*) of this rule, the factor shall prepare and lay before the Accountant of Court a state of funds only, and the Accountant of Court shall report thereon. Should there be no creditors the Factor shall immediately proceed to prepare a Report with regard to the disposal of

the surplus estate in terms of paragraph (*o*) of this rule, without lodging any State of Funds.

(*h*) *Notice of scheme of division to creditors.*—Immediately on the Accountant of Court's report being made, the factor shall lodge the same in Court, and shall transmit to each person who has lodged with him a claim on the estate of the deceased a notice by post intimating that the state of funds and scheme of division (or state of funds only, as the case may be), and report thereon, have been lodged in Court, and stating the amount for which the creditor has been ranked, and whether his claim is to be paid in full, or by a dividend, and the amount thereof, and in case of claims rejected, or for payment of which no funds are available, stating that fact; and a notice as nearly as may be in the terms of Form 33 shall also be inserted in the *Edinburgh Gazette*; and if any persons, other than those who have lodged claims with the factor shall be stated in the petition to the Court, or in the books, deed of settlement, or other papers of the deceased, to be creditors of the estate or interested therein, or if the factor shall otherwise have reason to believe that other persons are either creditors of the estate or interested therein, he shall give notice by letter, through the post office, to such persons, that no dividend is allotted to them in the scheme of division.

(*j*) *Objections to scheme of division.*—All creditors, and other persons interested in the succession of the deceased, shall be entitled to examine the state of funds and scheme of division lodged in Court, and also the claims and the vouchers or evidence thereof lodged with the factor; and any creditor, or other person dissatisfied either with the state of funds or with the scheme of division, may lodge a notice of objections thereto, signed by counsel, in the Petition Department, within three weeks from the last date of such notices; and until the lapse of said period of three weeks the Court shall not approve of the state of funds or scheme of division.

(*k*) *Objections to be disposed of by the Court.*—If objections are lodged to the state of funds or scheme of division, the Court shall dispose of the same, after hearing counsel for the objectors and for the judicial factor and making all necessary investigations in regard to the same. If the objections be sustained to any extent, the necessary alterations shall be made on the said state or scheme.

(*l*) *Adjusted scheme of division.*—When the scheme of division is adjusted, it shall be approved of by the Court; and the factor shall pay, deliver, or convey to the parties therein set forth the sums or receipts allocated to them respectively in the said scheme of division.

(*m*) *Partial dividends on first scheme of division.*—Where a partial division of funds among the creditors who have claimed may be made with safety to the interests of all concerned, the judicial factor may, with the approval of the Accountant of Court, prepare a state of the funds and first scheme of division as soon as may be after the time notified for lodging the claims of creditors; and, the same having been submitted to the Accountant of Court and reported on by him to the Court, and notice having been given in terms of paragraph (*h*) of this Rule to each creditor of such state of funds and first scheme of division having been lodged, the Court may, on

considering the same (but not earlier than six months after the death of the deceased), approve of that scheme of division, and the factor shall pay, deliver, or convey, in terms thereof; provided always that dividends corresponding to the amount of the claims of creditors whose debts have not at that period been admitted by the judicial factor, or whose debts are future or contingent, and also the full amount of such debts as are claimed as preferable, but the priority of which is not admitted by the factor, shall be retained and deposited in bank to meet such claims, if ultimately sustained, or when the same shall become payable or prestable.

(*n*) *Deathbed and funeral expenses, etc., of deceased.*—Out of the first funds realised by him the factor shall reserve sufficient to defray the estimated cost of his administration (including the expenses connected with his appointment and of all necessary intimations to creditors); thereafter he shall be entitled, out of the said funds, and without waiting for the expiry of six months from the death of the deceased, to pay the deathbed and funeral expenses of the deceased, rent, taxes, and such servants' wages as are privileged debts, and interest becoming due or past due, to creditors having preferences over the estate.

(*o*) *Disposal of surplus of estate.*—In the event of there being a residue after payment of the creditors, the judicial factor shall submit to the Accountant of Court a statement of the amount of the residue, the parties claiming the same, and their respective grounds of claim; and shall pay over the said residue to the party or parties found entitled thereto by the Court on report by the Accountant of Court. Should it appear to the Court that it is desirable that the factor should continue to administer the surplus estate, the Court may direct accordingly. The factor shall report the surplus under this paragraph, notwithstanding that there may remain unpaid debts to secured creditors who do not desire immediate payment of their loans or debts, or whose securities cannot be realised owing to their immaturity or owing to statutory restrictions applicable to them. The parties claiming the estate shall be advised by the Factor of the date on which his Report, and the Accountant of Court's Report, are being considered by the Court, so that they may, if they so desire, lodge objections thereto.

(*p*) *Discharge of factor.*—When applying to the Court for his discharge the factor shall serve the petition on the representatives of the deceased and also upon the cautioner for the judicial factor, and insert a notice thereof in the *Edinburgh Gazette* in terms of Form 34, and the petition shall not be disposed of until fourteen days after such service and notice, and until a copy of the *Edinburgh Gazette* containing such notice, and an execution or acceptance of service of the petition and a certificate of intimation on the walls and in the minute book shall be lodged in process.

SECTION 3

Companies

(COMPANIES ACT 1948)

202. Petitions for winding-up by Court of Session and under supervision

(*a*) All petitions for winding-up by the Court of Session and for winding-up subject to the supervision of the Court of Session shall be presented to the Outer House, and shall be dealt with by a liquidation judge to be appointed by the Lord President. Such petitions shall contain at least:—

(i) the full name, designation and address of the petitioner, if other than the company itself;

(ii) the full name of the company (whether petitioner or not); the full address of the company's registered office (together with a note of any change in the address of the said office which has to the knowledge of the petitioner taken place in the preceding six months); a statement of the nature and objects of the company, of the amount of its capital, nominal and issued, and shewing what part thereof is called up, paid up, and credited as paid up, and of the amount of the assets of the company so far as known to the petitioner;

(iii) a narrative of the facts on which the petitioner relies, together with any particulars (referred to in section 224 of the Act or otherwise) required to instruct the petitioner's title to present the petition; and

(iv) a prayer setting out the particular order or orders applied for, including any intimation, service and advertisement of the petition and any appointment of liquidator or liquidators.

(*b*) All such petitions shall be accompanied, on lodging, with any documents instructing the petitioner's title, or founded on, or instructing the facts relied on, by the petitioner.

(*c*) All such petitions, unless summarily dismissed by the Court, shall be intimated, served and advertised as the Court shall direct; provided that it shall be competent for any company, debenture holder or shareholder who is apprehensive that such a petition will be presented and is desirous of being heard before any order for intimation service and advertisement is pronounced, to lodge a caveat in the Petition Department, which caveat shall be in the same terms *mutatis mutandis* as a caveat against an apprehended suspension and interdict; and, in that event, no such order shall be pronounced except after hearing parties. Any such caveat shall endure for one month, but may be renewed by the presenter dating it anew.

(*d*) The advertisements shall be inserted once in the *Edinburgh Gazette* and, as the Court may direct, in one or more newspapers circulating in the district where the company's registered office is situate; and the said advertisement shall state (i) the day on which the petition was presented, (ii) the name, designation and address of the petitioner and of the solicitor acting for such petitioner, (iii) the precise order applied for, and (iv) the *induciae* within which answers may be lodged by any person who intends to oppose, or otherwise to appear in the petition.

(*e*) The Court may on presentation of any such petition, or at any time in the course of the proceedings following thereupon, appoint a provisional liquidator or liquidators.

203. Remits under section 220 of the Act

Without prejudice to the general powers of the Court under section 220 of the Act:—

(*a*) In any petition for winding-up by the Court of Session, or for winding-up subject to the supervision of the Court, application for a remit of such petition under sub-head (*a*) of sub-section (3) of said section 220 may be made by note by the liquidator, or by any creditor or contributory at any stage of the proceedings subsequent to intimation, service and advertisement, and to the expiry of the *induciae*. Any such note shall be presented to the Inner House, and shall be lodged in the Petition Department, and shall be disposed of by one or other Division.

(*b*) In any petition for winding-up by the Court, or for winding-up subject to the supervision of the Court, pending before any Sheriff Court, application to the Sheriff for transmission of the process to the Court of Session, with a view to a remit of the petition under sub-heads, (*a*) or (*b*) of sub-section (3) of section 220 of the Act, may be made by note by the liquidator, or by any creditor or contributory, at any stage of the proceedings subsequent to intimation, service and advertisement, and to the expiry of the *induciae*. On presentation in any Sheriff Court of any such notice, it shall be the duty of the sheriff-clerk forthwith to transmit the process in the petition (including the note, together with any report thereon which the Sheriff to whom such note was presented may think it proper to make) to the Petition Department; and the note shall be disposed of by one or other Division of the Inner House which may order the process to be transmitted before deciding the matter.

(*c*) All such notes in the Court of Session or in any Sheriff Court shall contain a statement of the grounds on which remit is applied for; and, if the remit applied for is under sub-head (*a*) of sub-section (3) of section 220, the note shall also contain a statement of the assets of the company.

(*d*) In any petition for winding-up by the Court, or for winding-up subject to the supervision of the Court, pending before any Sheriff Court, if the Sheriff for any reason considers that the petition should be remitted to the Court of Session, or to a different Sheriff Court, he may at any stage of the proceedings subsequent to intimation, service and advertisement, and to the expiry of the *induciae* of such service (if any), and after such hearing as he thinks proper, order the process to be transmitted to the Petition Department, together with a report stating the reasons for remit. The report shall then be brought before one of the Divisions of the Inner House, which shall do in the matter as seems proper.

204. Substitution of creditor or contributory for withdrawing petitioner

When a petitioner in a petition for winding-up by the Court, or for winding-up subject to the supervision of the Court, is found not entitled to present such

petition, or when (whether found so disentitled or not) he either (i) fails to make intimation, service and advertisement as directed by the Court, or (ii) consents to withdraw his petition or to allow it to be dismissed or refused, or (iii) fails to appear in support of his petition when it is called for hearing, or (iv) if appearing, does not apply for an order in terms of the crave of the said petition, the Court may, upon such terms as it thinks just, sist as petitioner in room and place of the original petitioner (to the effect of enabling the sisted petitioner to insist in the petition) any creditor or contributory who at any time prior to the withdrawal, dismissal or refusal of the petition applies by note to be so sisted, provided that such creditor or contributory has, in the opinion of the Court, a title to present a petition.

205. Intimation of winding-up orders to the Registrar of Companies

All orders for winding-up by the Court, and all orders for winding-up under supervision of the Court, and all orders of the Court appointing a liquidator in any winding-up (including appointments or nominations made under sections 294, 304, and 314 of the Act) shall forthwith (i) be intimated to the Registrar of Companies in Scotland, by delivery to him, or by forwarding to him by registered or recorded delivery letter a certified copy of the order, within fourteen days of the date of the order, and (ii) be advertised once in the *Edinburgh Gazette*, within fourteen days of the date of the order, by the petitioner or applicant at whose instance such order or orders were made.

(*a*) Evidence of such delivery or of the posting of such registered or recorded delivery letter and a copy of the *Edinburgh Gazette* containing such advertisement shall forthwith be lodged by the petitioner or applicant in the proceedings in which the order or orders were made.

(*b*) Any finding of expenses in favour of the petitioner or applicant in connection with the obtaining of such order or orders shall be deemed to be conditional on compliance with these Rules, and, in the event of non-compliance therewith, the Court may refuse to decern for the said expenses, or to allow them to be recovered.

206. Caution by liquidators in winding-up by Court

(*a*) All liquidators appointed in any winding-up by the Court shall, on their appointment, find caution of such nature and amount as the Court may direct; provided that, where it is proposed that the caution be limited to a specified amount, either on appointment, or on application by the liquidator (which shall be made by note) at any subsequent stage of the proceedings in the winding-up the Court may, after such enquiry as may be requisite, approve or vary the proposed limitation.

(*b*) The cautioner may be either a private person or (if the Court approves) a guarantee company, provided that such company is on the list hereinafter mentioned.

(*c*) The Accountant of Court shall, in January yearly, prepare and submit a list of approved guarantee companies for the consideration and sanction of the Lord President. A list of approved guarantee companies shall be kept in the Petition Department.

(*d*) When a bond of caution has been marked as received by a clerk of Court (if the appointment of the liquidator has been made in the Court of Session) or by a sheriff-clerk (if the appointment has been made in any Sheriff Court), the bond shall be transmitted by him to the Accountant of Court, who shall be the custodier of all bonds granted under these Rules.

(*e*) In all bonds by guarantee companies, the guarantee company shall be taken bound to intimate to the Accountant of Court any default in payment of the annual premium, and that within four days from the date when such annual premium falls due, On receiving such intimation it shall be the duty of the Accountant of Court forthwith to transmit the same to the clerk by whom the bond was originally marked as " received "; and it shall be the duty of such clerk to bring such intimation to the notice of the Court before whom the liquidation depends; and the said Court may thereupon pronounce an order or orders to enforce payment of such premium, and in default may treat such default as cause shewn within the meaning of section 242 of the Act, and remove the liquidator and appoint another liquidator in his place, or do otherwise as shall seem proper.

(*f*) When not otherwise expressed in the order appointing the liquidator, the time for finding caution shall be limited to fourteen days from the date of the order: provided that on cause shewn before the expiry of that period the Court may, on the motion of the liquidator, prorogate the time for finding caution. In the event of the liquidator failing to find caution within the time limited or prorogated, it shall be the duty of the clerk of Court to bring such failure to the notice of the Court, and the Court may treat such failure as cause shewn within the meaning of section 242 of the Act, and may remove him and appoint another liquidator in his place, or do otherwise as shall seem proper.

207. Removal of liquidators in any winding-up

Applications for removal of a liquidator shall, in a winding-up by the Court, or in a winding-up under supervision of the Court, be made by note in the winding-up process; and in all other cases by petition to be dealt with by the liquidation judge.

208. Meetings of creditors and contributories for appointment of committee of inspection in winding-up by Court

In a winding-up by the Court the meetings of creditors and contributories respectively, directed to be held under section 252 of the Act, shall be held not later than one calendar month after the date of the advertisement in the *Edinburgh Gazette* of the liquidator's appointment (unless the Court otherwise directs) at a convenient place or places and at a specified hour or hours on a specified day or days to be fixed by the liquidator.

(*a*) The liquidator shall summon the said meetings by giving not less than seven days' notice of the time and place thereof in the *Edinburgh Gazette*, and in one or more newspapers circulating in the district where the registered office of the company is situated, and shall, not less than seven days before the day appointed for the meeting, send by post to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributors.

(*b*) The notice to each creditor shall be sent to the address given in his claim, or, if he has not yet claimed, to such other address as may be known to the liquidator; and the notice to each contributory shall be sent to the address mentioned in the company's books as the address of the contributory, or to such other address as may be known to the liquidator.

(*c*) A certificate by the liquidator, lodged in the winding-up petition, that the notice of any such meeting has been duly posted shall be *prima facie* evidence of such notice having been duly sent to the person to whom the same was addressed; and the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors or contributors may not have received notice.

(*d*) The liquidator or some person nominated by him shall be preses of the said meetings.

(*e*) At a meeting of contributories a resolution shall be deemed to be passed when a majority in value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on such contributories by the regulations of the company.

(*f*) The preses may, with the consent of the meeting, adjourn it from time to time and from place to place; but any adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified, or unless the Court otherwise orders.

(*g*) A meeting may not act for any purpose (except the production and marking of creditors' oaths and productions, and the adjournment of the meeting) unless there are present or duly represented by mandatories or proxies at least three creditors entitled to vote, or three contributories (as the case may be), or all the creditors entitled to vote, or all the contributories, if the number of creditors entitled to vote, or the contributories (as the case may be), shall not exceed three; and, if within half an hour from the time appointed for the meeting a quorum of creditors or contributories (as the case may be) is not present or represented, the meeting shall be adjourned to such other day or time or place as the preses may appoint, but so that the day appointed shall be not less than seven nor more than twenty-one days from the day from which the meeting was adjourned.

(*h*) At an adjourned meeting the creditors or contributories (as the case may be) present or duly represented shall form a quorum.

209. Powers and duties of committee of inspection

Without prejudice to any other powers and duties given by the Act to the committee of inspection or herein contained:—

(*a*) The committee of inspection shall at all times have right of access to the liquidator's whole books and accounts relative to the liquidation.

(*b*) The committee or any member thereof may make reports to any meeting of creditors or contributories, and may apply at any time to the Court by note for an order on the liquidator to summon a meeting of creditors or contributories or both.

(*c*) The committee shall act with the liquidator and give their advice and assistance to him relative to the management of the company's estate and affairs and the conduct of the liquidation.

210. General meeting of creditors and contributories

Subject to the provisions of the Act, to any order of the Court, and to the Rules of this Chapter so far as regards companies:—

The regulations in paragraphs (a) to (h), inclusive of Rule 208 relative to the meetings of creditors and contributories respectively directed to be held under section 252 of the Act, shall apply to all general meetings of creditors or contributories in any winding-up; provided always that:—

(i) The expense of summoning a meeting of creditors or of contributories at the instance of any person other than the liquidator shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned deposit with the liquidator security for the payment of the said expense, which expense (including all disbursements for printing, stationery, postage, and hire of room) shall be calculated at the rate of two shillings per creditor or contributory to whom notice is required to be sent for the first twenty creditors or contributories, one shilling per creditor or contributory for the next thirty creditors or contributories, and sixpence per creditor or contributory after the first fifty; provided that the said expense shall be repaid out of the assets of the company if the Court shall by order, or if the creditors or contributories (as the case may be) shall by resolution, so direct.

(ii) Paragraph (d) of Rule 208 shall not apply to any meeting or meetings summoned at the instance of any person other than the liquidator; and the preses at such meetings shall be such person as the meeting by resolution shall appoint.

(iii) In the case of meetings under section 297 of the Act, the continuing liquidator, or, if there is no continuing liquidator, any creditor, may summon the meeting; and the expenses of summoning the meeting by a creditor, including the hire of room, shall be paid out of the assets of the company.

(iv) The regulations contained in Rule 208 (a) (b) and (c) shall not apply to a meeting under section 293 or under section 300 of the Act; and those contained in head (i) of this rule shall not apply to a meeting under section 293 of the Act.

211. In winding-up by Court or in winding-up subject to the supervision of the Court: Settlement of list of contributories

(*a*) In a winding-up by the Court, or in a winding-up subject to the supervision of the Court, unless the Court shall dispense in whole or in part with

the settlement of a list of contributories, either because the shares appear to be fully paid and it appears that there is no likelihood of there being a surplus available for the contributories, or for any other reason, the liquidator shall, after his appointment, forthwith make up a list of contributories of the company for settlement by the Court. The list shall contain a statement of the name and address of, and the number of shares and extent of interest to be attributed to, each contributory, the amount called up, and the amount paid up, in respect of such shares or interest, and shall distinguish the several classes of contributories. The liquidator shall, so far as practicable, observe the requirements of sub-section (2) of section 257 of the Act with respect to representative contributories.

(*b*) On completion of the list in whole or in part, the liquidator shall apply to the Court by note for settlement thereof. The note shall have appended to it the list so far as completed by the liquidator. The Court shall, unless it sees fit to do further or otherwise, order the liquidator to intimate the note by registered or recorded delivery letter to each person whose name is entered in the list, and shall allow answers or objections to be lodged within seven days from the date of such intimation. The intimation shall contain a copy of the note, and of the list, or at least of the particulars stated therein relative to each person to whom intimation is made, and also a copy of the order of the Court.

(*c*) Evidence of the posting of the registered or recorded delivery letters shall be lodged in process, and the said seven days must have expired, before any order for calls is made by the Court.

212. In winding-up by Court or in winding-up subject to the supervision of the Court: Note by liquidator for calls

(*a*) In a winding-up by the Court, or in a winding-up subject to the supervision of the Court, an application to the Court for leave to make any call on the contributories of the company settled on the list or any of them shall be made by note stating the proposed amount of the call and the reasons for making the same.

(*b*) The Court may direct any intimation, service or advertisement of such application, in addition to or in supplement of any intimation to the contributories in connection with the settlement of the list of contributories, as it thinks fit, or may order the call to be made without further intimation, service or advertisement.

213. Statements under section 342 of the Act

(*a*) In any winding-up (including any voluntary winding-up) to which these Rules apply, if the winding up is not concluded within one year after its commencement, the liquidator shall send to the Registrar of Companies in Scotland statements with respect to the proceedings in and position of the liquidation, as follows:—

(i) The first statement, commencing at the date when the liquidator was first appointed, and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, and the subsequent statements

shall be sent at intervals of six months, each statement being brought down to the end of the half-year for which it is sent; but when the assets of the company have been fully realised and distributed, the final statement shall be sent forthwith, although the six months may not have expired.

(ii) Every statement shall be made on the official printed form shewn in Form 35, and shall contain particulars under the headings therein prescribed, provided that the Registrar of Companies may in his discretion accept a monthly summary in respect of (a) salaries and wages, (b) book debts realised, and (c) petty cash payments.

(*b*) In the event of the liquidator's failure duly to send such statement to the Registrar of Companies, or in the event of the statement of particulars therein not being in the opinion of the said Registrar sufficient or satisfactory, it shall be the duty of the said Registrar in any winding-up by the Court, or under the supervision of the Court, to report the matter to the Court, and the Court shall proceed in the matter as may seem proper.

(*c*) It shall be the duty of the liquidator:—

(i) to send to the creditors an annual statement of his intromissions with the company's assets, and

(ii) to call an annual meeting of the creditors in order to report to them the progress of the winding-up.

214. Appeals against liquidator's deliverance on claims

(*a*) Appeals against any deliverance by a liquidator on claims to vote and rank at the instance of creditors in a winding-up by the Court or in a winding-up subject to the supervision of the Court, and applications to the Court under section 307 of the Act in a voluntary winding-up having for their object to reverse or vary any such deliverance by the liquidator therein, shall be made by note of appeal, and shall be presented:—

(i) In the case of a winding-up by the Court or a winding-up subject to the supervision of the Court which is pending before the Court of Session, to the liquidation judge.

(ii) In the case of a winding-up by the Court or in a winding-up subject to the supervision of the Court which is pending before any Sheriff Court, to such Court.

(iii) In the case of an application under section 307 in a voluntary winding-up, to the liquidation judge; or, if the company is one in the winding-up of which the Sheriff Court of the sheriffdom in which the registered office of the company is situate would have concurrent jurisdiction with the Court of Session, either to the liquidation judge or to the said Sheriff Court.

(*b*) All such appeals and all such applications as aforesaid shall be by written note of appeal; and any such application as aforesaid shall contain the particulars mentioned in heads (i) and (ii) of Rule 202.

(*c*) All such appeals and applications shall, except by leave of the Court, be presented before the expiration of seven days from the date of the liquidator's deliverance.

215. Applications to Court other than those specially herein provided for

(*a*) All applications to the Court (other than those specially provided for in these Rules) under any of the provisions of the Act relative to a winding-up by the Court or to a winding-up subject to the supervision of the Court, shall be made by motion or note in the petition process and shall be made to the liquidation judge, provided that the Court may, on any such application being made, require a note to be lodged before disposing of the application.

(*b*) All applications to the Court (other than those specially provided for in these Rules) under any of the provisions of the Act relative to a voluntary winding-up shall be made by petition, and the regulations contained in Rule 202 shall apply to such petitions.

(*c*) All applications in any winding-up in which an order is sought against any person or persons shall be intimated, served, and, if the Court thinks necessary, advertised, as the Court may direct.

216. Enforcement of Orders

(*a*) Every order of a Court in Scotland having jurisdiction to wind up a company made in the exercise of the powers conferred by the Act or these Rules, may, subject to the provisions of section 276 of the Act, be enforced by such Court, as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

(*b*) With regard to orders made by any Court in England for or in course of winding-up a company:—

(i) On production to the Deputy Principal Clerk of an office copy of any such order, the same shall be registered *in extenso* in a register to be kept for that purpose on payment of a fee of five shillings, and the said register shall be open to the inspection of all concerned on payment of a fee for search in the said register of two shillings and sixpence.

(ii) After registration as aforesaid the Deputy Principal Clerk shall append to such office copy a certificate of the registration thereof in the following terms subscribed by him:— " Registered in terms of the Act, 11 and 12 Geo. IV, cap. 38, and relative Rules of Court, A.B., Deputy Principal Clerk of the office of the Court of Session, Edinburgh (*date*) "; and the same being so registered and certified shall be a sufficient warrant to officers of Court to charge for payment of the sums recoverable under such order, and of the expense of registering the same, and to use any further diligence that may be competent in the same manner as if such order had been a decree originally pronounced in the Court of Session on the date of such registration as aforesaid.

217. Appeals from Sheriff Court

(*a*) Appeals from any order or decision made or given by any Sheriff Court in any proceedings under a petition for winding-up by the Court, or for winding-up subject to supervision by the Court, or in any application in a voluntary winding up under section 307 of the Act, or in any other way, shall be taken within fourteen days of the date of such order or decision.

(*b*) Such appeals may be taken from the Sheriff-Substitute to the Sheriff, or from the Sheriff-Substitute direct to the Inner House of the Court of Session; and if the appeal is taken to the Sheriff a further appeal may be taken to the Inner House of the Court of Session within the like period of fourteen days from the Sheriff's order or decision.

218. Interlocutors sanctioning issue of shares at a discount

Unless, in any particular case, the Court shall otherwise direct, every interlocutor sanctioning the issue of shares at a discount shall contain a direction that a certified copy of such interlocutor shall be delivered to the Registrar of Companies in Scotland for registration within seven days from the date thereof, or within such further or other time as the Court may allow, and that the order shall not take effect till such certified copy has been so delivered.

SECTION 4

Adoption of Children

(ADOPTION ACT 1958)

219. Form of Petition, Consents, Attestation, Productions, Provisional Adoption Order.

All applications for an Adoption Order or for a provisional Adoption Order shall be by Petition at the instance of the proposed adopter, and shall be in accordance with Form 36 with such variation as the circumstances may require:—

(*a*) The petition shall be presented to the Inner House and shall not be intimated on the walls or in the minute book.

(*b*) All consents required under section 4 of the Act shall be in writing and shall be in accordance with Form 37 appended hereto and shall be signed by the consentor whose signature shall be proved or attested in accordance with the provisions of section 6 of the said Act. Such consents shall be lodged in process along with the Petition itself, or, if not obtained until after lodging the Petition, as soon thereafter as may be practicable.

(*c*) For the purposes of sub-section 3 of section 6 of the Act a document executed outside the United Kingdom shall be sufficiently attested if it is attested as follows:—

(i) If the person by whom the document is executed is serving in Her Majesty's Forces, by any officer holding a commission in any of those Forces;

(ii) In any other case by a British Consular Officer or by any person for the time being authorised by the law of the place of execution to administer an oath for any judicial or legal purpose.

(*d*) There shall be lodged in process along with the petition itself:—

(i) An extract of the entry, if any, in the Register of Births relating to the birth of the infant;

(ii) In the case of a Joint Petition by spouses, an Extract in the Register of Marriages relating to their marriage;

(iii) A medical certificate as nearly as may be in terms of Form 39 to the health of the petitioner or of any of the petitioners, except where the petitioner or one of the joint petitioners is a parent of the infant;

(iv) Any other document founded on by the petitioner for the purpose of vouching the particulars stated in the Petition.

(*e*) In every such Petition the petitioner shall state:—

(i) the date upon which the infant was received into his care and possession;

(ii) whether the infant has since that date been continuously in his care and possession;

(iii) the date upon which he notified the Local Authority for the area in which he was then residing of his intention to apply for an Adoption Order in respect of the infant;

(iv) whether he has received or given any reward or payment for or in consideration of the adoption of the infant or for giving consent to the making of the Adoption Order; and

(v) what persons have taken part in the arrangements for placing the infant in his care.

These statements shall be investigated by the curator *ad litem* and the results of his investigation shall be included in his report.

(*f*) In a petition for a provisional Adoption Order the petitioner shall, in addition to complying with the requirements of paragraphs (1) and (2) hereof adduce evidence of the law of adoption in the country in which he is domiciled. The Court may accept as evidence of that law an affidavit sworn by a person who is conversant with it and who practises or has practised as a barrister or advocate in that country or is a duly accredited representative of the government of that country in the United Kingdom.

220. Identity of Petitioner not disclosed

If any person proposing to present a Petition for an Adoption Order desires that his identity shall not be disclosed to any person whose consent to the order is required, he may before presenting such petition apply to the Clerk of Court for a serial number to be assigned to him for the purpose of the proposed petition and such number shall be assigned to him accordingly. The record of such serial numbers and of the persons to whom they apply shall be treated as confidential and shall be open only to the Court.

Where the identity of the person in whose favour the Adoption Order is to be granted is not known to a consenting party, the document signifying such consent for the purposes of section 6 of the Act shall not name such person as petitioner, but shall refer to him as the petitioner to whom such serial number has been assigned and shall specify the year in which and the Court by which such serial number has been assigned.

221. Curator *ad litem:* **Duties: Report**

(*a*) On presentation of the petition or as soon as may be thereafter the Court shall appoint a curator *ad litem* to the infant in terms of sub-section 4 of section 11 of the Act, whose duty shall be to investigate as fully as possible and to report to the Court on all the circumstances of the infant and the petitioner and all other matters relevant to the proposed adoption with a view to safe-guarding the interests of the infant and, in particular, it shall be his duty to include in his investigation, and to report to the Court upon the following questions and matters:—

(i) Whether the statements in the petition are true and *inter alia* whether and if so what steps he has found himself able to take for the purposes of ascertaining that the infant's parent or parents, in giving their consent (if any) to the proposed adoption, understood that the effect of the Adoption Order would be to deprive them permanently of their parental rights;

(ii) Particulars of all members of the petitioner's household and their relationship (if any) to the petitioner;

(iii) Particulars of the accommodation in the petitioner's home and the condition of the home;

(iv) Why, in the case of a petition by one of two spouses, the other spouse does not join in the petition;

(v) Whether the means and status of the petitioner are such as to enable him to maintain and bring up an infant suitably, and what right or interest in property the infant has;

(vi) Whether the petitioner understands the nature and effect of an Adoption Order and, in particular, that the Order, if made, will render him responsible for the maintenance and upbringing of the infant;

(vii) When the mother of the infant ceased to have the care and possession of the infant and to whom the care and possession was transferred;

(viii) Whether any payment or other reward in consideration of the adoption has been received or agreed upon and whether the adoption is consistent with the welfare of the infant;

(ix) What insurance (if any) has been effected on the life of the infant;

(x) Whether it is desirable for the welfare of the infant that the Court should be asked to make an interim order or to impose in making an Adoption Order any particular terms or conditions or to require the petitioner to make any particular provision for the infant and (if so) what provision;

(xi) Whether in his opinion there is any person other than those mentioned in Rule 222 upon whom service of notice in terms of Form 38 should be made;

(xii) If the applicant is not ordinarily resident in Great Britain, whether a report has been obtained on the applicant's home and living conditions from a suitable agency in the country in which he is ordinarily resident.

(*b*) The person to be appointed curator *ad litem* may be either;

(i) if the local authority concerned consents, the children's officer of a local authority or an officer or servant of that authority who assists the children's officer in the exercise of his functions; or

(ii) any other person whom the Court considers to be a fit and proper person for the office.

Provided that no person shall be appointed curator *ad litem* if

(i) he has the rights and powers of a parent of the infant or has taken part in the arrangements for the adoption of the infant; or

(ii) he is a member, officer or servant of a local authority, Adoption Society or other body which has a right and power of a parent of the infant or has taken part in the arrangements for the adoption of the infant.

222. Service of notice of hearing

Upon receipt by the Court of the report of the curator *ad litem* and on a date for the hearing, if any, being fixed the Court may in its discretion ordain the petitioner to serve a notice in terms of Form 38 upon any of the following persons:—

(*a*) Every person not being a petitioner whose consent to the making of the order is required under sub-section 1 of section 4 of the Act;

(*b*) Any person or body having the rights and powers of a parent of the infant by virtue of section 75 of the Children and Young Persons Act 1933 or paragraph 12 (1) of the Fourth Schedule to that Act or section 3 of the Children Act 1948, or section 79 of the Children and Young Persons (Scotland) Act 1937, or paragraph 12 (1) of the Second Schedule to that Act, or sections 5 or 10 of the Matrimonial Proceedings (Children) Act 1958.

(*c*) Any person liable by virtue of any order or agreement to contribute to the maintenance of the infant;

(*d*) The local authority to whom the petitioner has given notice of his intention to apply for an Adoption Order under sub-section 2 of section 3 of the Act;

(*e*) Any local authority or Adoption Society named in the application or in a form of consent as having taken part in the arrangements for the adoption of the infant;

(*f*) Any other person or body who in the opinion of the Court ought to be served with notice of the hearing of the petition.

223. Additional Evidence

If the Court is not satisfied with the verification of the statements in the petition provided by the documents lodged or by the report of the curator *ad litem* or if for any reason the Court thinks it right and proper the Court may refuse to pronounce an Adoption Order, provisional adoption order or interim order without further production of documents or without oral evidence; and the Court may order such production to be made or appoint such evidence to be led accordingly.

224. Personal attendance of petitioner and infant

The Court may also refuse to pronounce an Adoption Order or a provisional Adoption Order or an interim order unless the petitioner and the infant are in

personal attendance and the Court may direct that the petitioner and the infant or either of them shall be interviewed privately by the Court and that any party upon whom notice in terms of Form 38 has been served shall attend and shall be interviewed privately by the Court.

225. Where former application refused

If it appears that the petitioner has made a previous application for an Adoption Order in respect of the same infant and that such application has been refused the Court shall not make an Adoption Order or a provisional Adoption Order or an interim order unless there has been a substantial change in the circumstances.

226. One of joint petitioners' adoptive parent

It shall be competent for two spouses to petition for an Adoption Order in respect of an infant who has already been adopted by one of the spouses.

227. Proceedings *in camera* and confidential

All proceedings before the Court in relation to an Adoption Order, shall, unless the Court otherwise directs, be heard and determined *in camera*; and unless the Court otherwise directs, all documents lodged in process, including the report by the curator *ad litem*, shall be open only to the Court, the curator *ad litem*, and the parties, and shall be treated as confidential by all parties concerned and by the clerk of the Court; and the curator *ad litem* appointed by the Court shall regard all information obtained in the course of his investigations or otherwise as confidential, and shall not divulge any part of it to any person save as, in his judgment, may be necessary for the proper execution of his duty.

228. Remit

The Division before which the petition is pending may, at any stage of the proceedings, remit the petition and whole proceedings to one of its own number, who shall, after having heard and (if he thinks it expedient) interviewed the parties and the child, and taken all the proceedings he thinks necessary for the disposal of the case, report to the Division orally or in writing, and give his own opinion thereon.

229. Vacation or recess

An order for service or an order appointing a curator *ad litem* may be pronounced in vacation or recess by the Vacation Judge.

230. Registration; Extract; Expenses

(*a*) The communication to the Registrar-General for Scotland of any Adoption Order, amendment to an Adoption Order or revocation of an Adoption Order required respectively by sub-section 6 of section 23, sub-section 2 of

section 24 and sub-section 2 of section 26 of the Act to be made by the clerk of court, shall be made by personal delivery to the said Registrar General of a certified copy of the Order in a sealed envelope marked " confidential ".

(*b*) No extract of an Adoption Order shall be issued except by authority of the Inner House obtained by petition setting forth the reasons for which the extract is required.

(*c*) Immediately upon the communication referred to in paragraph (a) of this rule being made, or, (in the event of an extract being issued in terms of paragraph (b) of this rule), immediately upon the issue of such extract the clerk or the Extractor shall put up the whole process in a sealed envelope marked " confidential ", bearing the name or names only of the petitioner or petitioners, the name and surname (as adopted) of the infant to whom the Adoption Order relates, and the date of the Order; and the said envelope shall not be opened by nor made accessible to any person within forty years next after the date of the Adoption Order, except to an adopted child who has attained the age of seventeen years, and to whom such Order refers, or by authority of the Inner House obtained on petition and setting forth the reasons for which access to the process is required.

(*d*) Any application under sub-section 1 of section 24 of the Act for the amendment of an Adoption Order or the revocation of a direction to the Registrar-General for Scotland and any application for the revocation of an Adoption Order under sub-section 1 of section 26 of the Act shall be by petition to the Court which pronounced the Adoption Order. In any such petition the Court may order such intimation as appears necessary, and in the case of a petition for the revocation of an Adoption Order the Court shall not grant such petition unless it is satisfied that the petition has been served on every living parent of the infant.

(*e*) The Court may make such orders with regard to the expenses of the petition or of any of the parties thereto, including the expenses of the curator *ad litem* as it thinks fit, and may modify such expenses or direct them to be taxed on such scale as it may determine.

(*f*) The provisions regarding intimation and confidentiality contained in paragraph (a) of Rule 219 and in Rule 227 shall *mutatis mutandis* apply to the proceedings on petitions presented under paragraph (b), (c) and (d) of this rule.

SECTION 5

Summary Trial

(ADMINISTRATION OF JUSTICE (SCOTLAND) ACT 1933, SECTION 10)

231. Provision for summary trial of certain causes

(*a*) The parties to any dispute or question desiring to proceed under the provisions of section 10 of the Administration of Justice (Scotland) Act 1933, shall proceed by means of petition presented to the Outer House. The petition

shall set forth the dispute or question which has arisen between them, and shall contain a crave that the dispute or question shall be referred to a particular Lord Ordinary for his determination.

(*b*) The petition shall be presented by both the parties to the dispute or question or by all the parties, if more than two, and shall set forth shortly the facts or circumstances on which the dispute or question arises. Where the parties are agreed on the facts, the petition shall set forth concisely the questions which have arisen between them. Where the parties are not agreed on the facts, they shall specify the fact or facts on which they are in dispute and shall set forth or reserve any further questions which may arise when the dispute on fact has been determined.

(*c*) The principal petition shall be signed on behalf of the parties by their respective counsel.

(*d*) The petition shall then be put out in the printed rolls of Court before the Lord Ordinary named in the petition in the " Summary Trial Roll " on the earliest available day, but not later than the seventh day after the date of lodging. Where the seventh day expires in vacation or recess, without the petition having been brought before the Lord Ordinary, the petition shall be put out in the " Summary Trial Roll " of the Lord Ordinary concerned on the first sederunt day of the ensuing session.

(*e*) If, when the petition is first heard before the Lord Ordinary, it appears from the petition that the parties are agreed on the facts, the Lord Ordinary shall direct the cause to be tried before him in the " Summary Trial Roll ", either in Court or in Chambers, on a date not later than six weeks (excluding vacation and recess) from the date of such direction except on cause shewn; and if it appears from the petition that the parties are at variance as to the facts, the Lord Ordinary shall appoint a proof to be taken before him either in Court or in Chambers. Any proof allowed under this paragraph shall be held on a date not later than three months from the date when the cause first appeared in the " Summary Trial Roll " except on cause shewn.

(*f*) Notwithstanding anything in the foregoing paragraphs it shall be competent for the Lord Ordinary to take any hearing or proof in vacation or recess, but this matter shall be entirely in his discretion.

(*g*) Any evidence led at a proof allowed under paragraph (e) of this rule shall not be taken down in shorthand and recorded, unless the parties so agree.

(*h*) If, in the course of the enquiry into a dispute or question, it appears that the determination of the dispute or question may affect the status of any party, the Lord Ordinary shall report the matter to the Lord President, who, if so advised, shall appoint the parties to shew cause, before one or other of the Divisions of the Court, why the petition should proceed under section 10 of the Act; and the Court may, after hearing parties, either direct that the petition shall proceed (subject to such conditions as it may think just), or may dismiss the cause.

(*j*) Except as in this rule provided, the procedure under this rule shall be such as the parties may, with consent of the Lord Ordinary, agree upon; or, failing such agreement, as the Lord Ordinary may order.

(*k*) The Lord Ordinary shall have power to dispose of all questions of

expenses; and he may 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. Any such decision by the Lord Ordinary in any proceedings under this rule shall be in the form of an interlocutor which shall be extractable in common form.

(*l*) Any decree or interlocutor of the Lord Ordinary in any proceedings under this rule shall be final and binding only on the parties thereto, and shall not be subject to review by reclaiming or otherwise.

(*m*) In the event of the unavailability, illness, retirement or death of the Lord Ordinary before a dispute or question has been determined, it shall be competent for the parties to apply by joint minute lodged in the process for the cause to be referred to another Lord Ordinary named in the said joint minute, and the cause shall thereupon be transferred to such Lord Ordinary, who shall take up the procedure at the point which had been reached by his predecessor; provided that the Lord Ordinary to whom the cause is so referred may rehear the evidence of all or any of the witnesses heard by his predecessor.

(*n*) It shall be competent to the parties to any cause in dependence in the Outer House not affecting the status of any person, at any stage prior to the hearing of the cause in procedure roll, or, where there is no such hearing, prior to the diet of proof or trial, to agree that the cause shall be heard, tried or determined by a particular Lord Ordinary in accordance with the provisions of section 10 of the Act. The agreement of parties to this effect shall be signified by a joint minute in the terms set forth in Form 40. Upon such joint minute being lodged in process, the Lord Ordinary shall pronounce an interlocutor directing that the cause shall proceed before the particular Lord Ordinary named in the joint minute as a cause under section 10 of the Act, and thereafter the provisions of paragraphs (d) to (m) of this rule shall apply to further procedure in the cause; provided that in paragraph (d), the date of such interlocutor shall be substituted for the date of lodging of the petition, and the word " petition " in paragraphs (d) and (e) shall mean the record or other document containing the pleadings of the parties.

(*o*) For the purposes of section 10 of the Act and the provisions of this rule a dispute or question affecting status shall include any dispute or question which would be the proper subject of, or might depend on, the decision in

(i) an action of divorce, or of nullity of marriage, or of declarator of marriage, or of separation *a mensa et thoro*, or of adherence, or a Petition for dissolution of marriage;

(ii) an action of putting to silence, or of declarator of legitimacy or bastardy;

(iii) an action of aliment not depending on contractual obligation;

(iv) an action for custody of children;

(v) an action of declarator of domicile; or

(vi) an action which raises questions of the capacity of an individual or corporation to act or contract.

SECTION 6

Petition by Trustees for Directions

(ADMINISTRATION OF JUSTICE (SCOTLAND) ACT 1933, SECTION 17(vi))

232. Scope of application

It shall be competent for the trustees under any trust deed, as defined by the Trusts (Scotland) Act 1921, or for a majority and quorum of them, to make application to the Court for direction on questions relating to the investment, distribution, management, or administration of the trust estate under their charge, or as to the exercise of any power vested in, or as to the performances of any duty imposed on, them, 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 such direction.

233. Form of petition and procedure

(*a*) Such application shall be made by petition signed by counsel and presented to the Inner House and lodged in the Petition Department. The petition, after such narrative as may be necessary, shall set forth clearly and succinctly the question or questions upon which the direction of the Court is asked and may include in an appendix any relevant documents.

(*b*) The Court may order intimation of the petition to creditors, beneficiaries, or other persons interested in the subject matter of the petition; and if any of such parties wish to appear, either in support of, or in opposition to, the petition, they may lodge a minute setting forth their position within such period as the Court may direct.

(*c*) The petition shall be disposed of in the summar roll; but the Court may order such enquiry by proof before a judge of the Inner House, or by remit to a reporter, or by affidavit, as may be considered necessary.

(*d*) The Court shall dispose of all questions of expenses, and any direction pronounced by the Court on the petition shall be in the form of an interlocutor which shall be extractable in common form.

(*e*) The provisions of sections 59 and 60 of the Court of Session Act 1868 shall apply to petitions under this section.

SECTION 7

Petitions for Suspension, Suspension and Interdict, and Suspension and Liberation

234. Form of petition: Lodging of papers

The provisions of Rules 191 and 194 shall apply to all petitions for suspension, suspension and interdict, and suspension and liberation; provided that to the narrative or statement of facts there shall be appended a note of the petitioner's pleas-in-law. It shall not be necessary in any such petition as aforesaid to make offer of caution or consignation.

235. Signature of petition

All petitions as aforesaid shall be signed by the petitioner's Counsel or solicitor, and no further or other signature shall be required.

236. Interim orders and intimation

(*a*) All petitions as aforesaid shall be presented to the Outer House and shall be brought forthwith by the Deputy Principal Clerk or a clerk instructed by him before a Lord Ordinary, sitting either in Court or in Chambers. If any interim order is desired, such clerk shall be accompanied by the petitioner's counsel, or by his solicitor, or by both counsel and solicitor. The Lord Ordinary shall by interlocutor order intimation and answers on such *induciae* as he may fix; and, if moved for, may pronounce such interim order as may be meet and convenient in the circumstances of the cause, either with or without caution, consignation or other condition, as the Lord Ordinary may see fit. Intimation shall be made by serving a full copy of the petition, along with a copy of the interlocutor, on the respondent.

(*b*) In cases in which an interim order is desired and in which a caveat has been lodged for the respondent, the Principal Clerk shall fix a hearing of parties before a Lord Ordinary so soon as is reasonably practicable and shall intimate the date of the hearing to the parties concerned.

(*c*) After hearing parties on the petition and answers (in the event of answers being lodged under the order referred to in paragraph (a) of this rule), or after the hearing, in the event of a caveat having been lodged for the respondent, the Lord Ordinary may make such interim order, or further interim order as may be meet and convenient in the circumstances, either with or without caution, consignation or other condition, or may vary or recall any interim order, as he may see fit.

(*d*) The time allowed for answering a petition shall not begin to run till the date of intimation of the order; and, if the interlocutor ordering intimation shall contain an interim sist of execution, or interim interdict or interim liberation on caution or consignation and caution or consignation shall not have been received by the Deputy Principal Clerk at said date, then the said time shall not begin to run till the date when caution or consignation shall be received; provided that (subject always to the power of the Court to prorogate the time for finding caution or making consignation) the petition may be refused if caution shall not be found or consignation made within fourteen days.

(*e*) The Lord Ordinary may refuse the petition in whole or in part, or may declare any *interim* interdict already granted to be perpetual, or may appoint the cause to the adjustment roll.

237. Petitions for suspension of inferior Court decrees in absence under £50

All petitions for suspension of decrees pronounced by inferior Courts in absence of defenders, in causes under £50 value, shall be remitted by the Lord Ordinary to the inferior Court if it be competent, with any instructions which the Lord Ordinary may consider necessary.

238. Caution: General provisions

(*a*) *Obligations of cautioners.*—All bonds of caution in petitions or motions for suspension, suspension and inderdict, or suspension and liberation and the like, shall oblige the cautioner, his heirs and executors, for payment of the sums or doing of the deeds for which he has become cautioner to the parties to whom he is bound, as validly and in the same manner as the parties for whom he is cautioner, their heirs and successors, are obliged themselves.

(*b*) *Form of bond of caution.*—Every bond of caution, whether in cases of juratory or common caution in the Petition Department, shall be extended by or by direction of the Deputy Principal Clerk in the proper form, and shall contain the necessary clauses adapted to the regulations herein prescribed; and in cases of juratory caution along with the bond the said clerk shall give out a form of the oath to be taken and subscribed by the petitioner and a form of the inventory and enactment thereon.

(*c*) *Sufficiency of Caution.*—It shall be the duty of the Deputy Principal Clerk in the first instance to consider the sufficiency of the caution offered when the Bond of Caution is tendered, and for this purpose to request information if this appears to be called for.

(*d*) *Form of Objections.*—If the party entitled to the benefit of the caution has objections to state, he shall do so in the form of a letter to the Deputy Principal Clerk specifying the objections.

(*e*) *Procedure in Disposal of Objections.*—The Deputy Principal Clerk shall take said objections and any further information which he may have called for into consideration in coming to a decision as to the sufficiency of the caution; alternatively he may in his discretion refer the matter for decision by the Court. Where the Deputy Principal Clerk makes a decision as to the sufficiency of the Bond of Caution, any party aggrieved by his decision may bring the matter before the Court upon a motion.

(*f*) *Where cautioner insolvent.*—In any case in which caution has been or may hereafter be found, it shall be competent to the party entitled to the benefit thereof, in case the cautioner shall have been sequestrated or become notour bankrupt, or have executed a trust disposition for behoof of his creditors, or have called a meeting of his creditors to consider the state of his affairs, or shall have died unrepresented, to present a note, the same being previously intimated in common form, stating the circumstances which have emerged, and praying the Court to order new caution to be found; and the Court shall pronounce such order thereon as the justice of the case shall require.

239. Caution in petitions or motions for suspension of decree or charge, suspension and interdict or suspension and liberation and the like

In petitions or motions for suspension caution shall be taken not only for obedience to the charge, but also for refunding to the charger such expenses as the Court may modify at the discussing of the suspension, suspension and interdict, suspension and liberation and the like.

240. Juratory caution

In cases of petitions for suspension, or for suspension and interdict, or for suspension and liberation and the like being presented on juratory caution, the

Lord Ordinary shall, when he appoints the petition to be answered, name a commissoner to take the petitioner's deposition; and the petitioner shall intimate to the opposite party, or his solicitor, to attend at the time and place fixed by the commissioner in order that they may have an opportunity of cross-interrogating him, if they see fit, whether he have any lands in property or liferent, or bonds, bills or contracts containing sums of money; and, in case he acknowledge the same, he shall condescend thereon, and depone that he has no other lands, bonds, bills or contracts containing sums of money belonging to him; and the petitioner shall also lodge with the Deputy Principal Clerk (i) the bond of caution; (ii) a full inventory of his subjects and effects of every kind; (iii) an enactment subjoined to the inventory, bearing that he will not dilapidate any of his property, and that he will not dispose of the same, or uplift any of the debts due to him, without consent of the respondent or his solicitor, or the authority of the judge (under pain of imprisonment, or being otherwise punished as being guilty of fraud), till the petition be discussed, and till there be an opportunity of doing diligence for any expenses that may ultimately be found due by him: and further, the petitioner shall lodge in the hands of the said clerk the vouchers of any debts due to him, and the title deeds of any heritable subject belonging to him, so far as the same be in his possession or within his power; and the petitioner shall also grant a special disposition to the respondent (if so required) of any heritable subject he may be possessed of, and an assignment of all debts or other rights due to him, for the respondent's further security; the said disposition and assignation to be made out at the expense of the respondent, and by his solicitor, and the same with the said vouchers and title deeds, if so deposited, to remain in the hands of the said clerk, subject to the directions of the Court, till the petition be discussed; and until all lodgment shall be made it shall not be necessary for the opposite part to give in his answers.

241. Intimation of production of writs, and certificate of intimation

When any paper is lodged by a party prior to the pronouncement of an interlocutor appointing the cause to the adjustment roll or refusing the petition, his solicitor shall give notice in writing on the same day to the solicitor for the other party that such paper is in the clerk's hands; and a certificate of such intimation shall be lodged in the Petition Department, otherwise the said paper shall not be laid before the Lord Ordinary who is to advise the petition.

242. Petition for suspension of decree of inferior Court

(*a*) *Production of process.*—In all cases in which the Lord Ordinary shall think it expedient, before appointing the cause to the adjustment roll or refusing a petition to which it is competent to appoint answers to be made, to order production of the proceedings in the inferior Court brought under his review, the petitioner shall, within such time as the Lord Ordinary may direct, produce to the clerk of the inferior Court a certified copy of the interlocutor ordering such production. Should the petitioner fail to do so, the petition shall be refused and expenses be found due. On production to the clerk of any inferior Court of a copy duly certified by or under the direction of the Deputy Principal

Clerk of an interlocutor of the Lord Ordinary ordering the process before such Court to be produced, such clerk shall be bound to transmit the whole steps of process, conform to inventory, to the Deputy Principal Clerk.

(*b*) *Interlocutor refusing suspension after proof in inferior Court.*—The Lord Ordinary, when he refuses a petition for suspension of a judgment of an inferior Court proceeding on a proof, shall, on reviewing such judgment, distinctly specify in his interlocutor the several facts material to the case which he finds to be established by the proof, and express how far his judgment proceeds on the matter of fact as found, or on the matter of law, and the several points of law which he means to decide.

243. When petition refused on failure to find caution, or to comply with conditions

When any petition for suspension, or for suspension and interdict, or for suspension and liberation, shall (during either session or vacation) be refused, in respect that caution has not been found, or consignation made, or upon any ground not on the merits; and likewise when any such petition shall be interlocutor have been appointed to the adjustment roll and a certificate of no caution or consignation, or of other failure to implement any condition of such interlocutor, has been issued, it shall be competent, on payment of previous expenses, to present a second petition, the procedure upon which shall be the same as is provided with regard to petitions for suspension, suspension and interdict, or suspension and liberation, as the case may be.

244. Certificate of refusal of petition

In all petitions for suspension and interdict or for suspension and liberation, when refused, the certificate of refusal shall not be issued till forty-eight hours after the entry of the refusal in the minute book.

245. When interlocutor appointing the cause to the adjustment roll

(*a*) When a petition for suspension, suspension and interdict, or suspension and liberation, is appointed by interlocutor to the adjustment roll in cases in which caution is to be found or consignation to be made, or conditions to be implemented, such interlocutor shall not take effect until caution has been found or consignation made or the conditions implemented.

(*b*) When a petition for suspension, or for suspension and interdict, or for suspension and liberation, has been appointed to the adjustment roll on caution or consignation, or on any condition requiring to be implemented before the interlocutor takes effect, the opposite party shall not be entitled to a certificate of no caution or consignation, or other failure to implement such condition, without intimating to the party that he is to apply to the Deputy Principal Clerk for such certificate; and the Deputy Principal Clerk shall not give out the certificate until the expiry of twenty-four hours after such intimation.

246. Final judgment in certain cases

Where a petition for suspension, suspension and interdict, or suspension and liberation, has been lodged, and no appearance has been entered, and no answers

have been lodged, the Lord Ordinary shall have power to pronounce a final judgment, in whole or in part, granting the prayer of the petition, suspending the charge, sisting execution or declaring the interim interdict to be perpetual, or the interim liberation to be final; and the Lord Ordinary shall have power to award expenses against the respondent and to decern for the taxed amount thereof.

247. Procedure after the cause has been appointed to the adjustment roll

Not later than seven days after the day on which (1) the Lord Ordinary's interlocutor appointing the cause to the adjustment roll has been pronounced and (2) caution or consignation, if ordered, has been found or made, or the conditions defined in such interlocutor have been implemented, the petitioner shall deliver at least six copies of the open record, consisting of the petition and answers, to the solicitor of the respondent or to each of the solicitors of the respondents, if more than one, and shall also lodge two copies in the office of the Petition Department; the case shall then appear in the adjustment roll as provided in paragraph (*c*) of Rule 90, and the proceedings shall thereafter be the same as in an ordinary action.

SECTION 8

Petitions under the Administration of Justice Act 1920, sections 9 and 10, and the Foreign Judgments (Reciprocal Enforcement) Act 1933

248. Petitions under Administration of Justice Act 1920, sections 9 and 10

(*a*) An application to the Court of Session under Section 9 of the above-mentioned Act, for enforcement of judgments obtained in superior Courts in any part of Her Majesty's Dominions outside the United Kingdom, to which Part II of the above-mentioned Act extends, shall be made by petition to the Outer House. The petition shall specify the full name, title, trade or business, and usual or last known place of abode of the judgment creditor and judgment debtor respectively. There shall be produced with the petition the judgment or a certified copy thereof.

(*b*) The Lord Ordinary, on being satisfied by affidavit or otherwise that the application falls within the requirements of the statute, may grant warrant for the registration of the judgment.

(*c*) The warrant for registration shall specify a date before which the judgment debtor is to be entitled to apply to the Lord Ordinary to set aside the registration. In fixing the said date regard shall be had to the place of residence of the judgment debtor.

(*d*) Upon presentation by the petitioner of a certified copy of the warrant for registration to the Keeper of the Registers of Scotland, along with the judgment or certified copy judgment, the Keeper shall immediately register the same in the Register of Deeds in the Books of the Lords of Council and Session. Extract

of the registered judgment shall be superseded until a certificate is granted by the Deputy Principal Clerk in terms of paragraph (f) of this Rule.

(*e*) Notice of the registration shall immediately be intimated by the petitioner to the judgment debtor in the following or similar terms:—

"I hereby give you notice that a judgment (*specifying name*) has been registered in the Register of Deeds in the Books of the Lords of Council and Session, and that if you intend to apply to have the registration set aside you must do so before (*specify date*),"

or in such other terms, and in such manner, as the court may direct.

The execution of such intimation shall be lodged in process.

(*f*) If no application is made within the specified time to have the registration set aside, or if such an application has been made and refused, the Deputy Principal Clerk shall grant a certificate to that effect. Extract of the registered judgment may thereafter be issued. The warrant for diligence shall be in common form, and shall be executed upon a charge of fifteen days, or such other period as the Lord Ordinary may fix.

(*g*) If the application to have the registration set aside is granted, a certificate to that effect by the Deputy Principal Clerk shall be a sufficient warrant to the Keeper of the Registers of Scotland to cancel the registration and return the judgment to the creditor or his solicitor.

(*h*) An application to the Court under section 10 of the Act for a certified copy of a judgment obtained in the Court of Session for enforcement in some part of Her Majesty's Dominions outside the United Kingdom shall be made by petition to the Outer House. There shall be lodged with the petition an extract decree setting forth the judgment. The Court, on being satisfied by affidavit or other proper evidence that the judgment debtor is resident in some part of Her Majesty's Dominions outside the United Kingdom to which Part II of the Act extends, shall pronounce an order ordaining the Deputy Principal Clerk to issue a certified copy of the judgment under the seal of the Court.

The Certificate shall be in the following terms:—

"I certify that the foregoing extract decree is a true copy of a judgment obtained in the Court of Session, and this certificate is issued in accordance with section 10 of the Administration of Justice Act 1920, and in obedience to an order by Lord dated .

(*Signed*) Deputy Principal Clerk of the
Court of Session at Edinburgh."

249. Petitions under the Foreign Judgments (Reciprocal Enforcement) Act 1933

1. An application under section 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (hereinafter called "the Act"), to have a foreign judgment to which Part I of the Act applies registered in the Books of the Lords of Council and Session may be made by petition to the Outer House.

2. (1) An application for registration shall be supported by an affidavit of the facts—

(*a*) exhibiting a certified copy of the judgment issued by the original Court and authenticated by its seal and a translation of the judgment certified by a Notary Public or authenticated by affidavit.

(*b*) stating to the best of the information and belief of the deponent—
(i) that the applicant is entitled to enforce the judgment;
(ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or, if the judgment has been satisfied in part, what the amount is in respect of which it remains unsatisfied;
(iii) that at the date of the application the judgment can be enforced by execution in the country of the original Court;
(iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 4 of the Act.

(*c*) specifying the amount of the interest, if any, which under the law of the country of the original Court has become due under the judgment up to the time of registration;

and shall be accompanied by such other evidence with respect to the matters referred to in sub-paragraph (iii) of paragraph (*b*) or paragraph (*c*) above as may be required having regard to the provisions of the Order in Council extending the Act to the country of the original Court.

(2) Where the sum payable under the judgment is expressed in a currency other than the currency of the United Kingdom, the affidavit shall also state the amount which that sum represents in the currency of the United Kingdom calculated at the rate of exchange prevailing at the date of the judgment.

(3) The affidavit shall also state the full name, title, trade or business and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

(4) Where a judgment is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit shall state the provisions in respect of which it is sought to register the judgment.

3. Save as otherwise provided by any relevant Order in Council, the Court may, in respect to an application for registration, order the judgment creditor to find security for the expenses of the application and of any proceedings which may thereafter be brought to set aside the registration.

4. The affidavit, if any, shall be intituled:—

"In the matter of the Foreign Judgments (Reciprocal Enforcement) Act 1933, and in the matter of a judgment of the (*describing the Court*) obtained in (*describing the cause or matter*) and dated the day of 19."

5. (1) The Court on being satisfied that the application falls within the requirements of the Act may grant warrant for the registration of the judgment.

(2) Every order granting warrant as aforesaid shall state the period within which after service of the notice of registration as aftermentioned an application may be made to set aside the registration.

(3) In fixing the period within which application may be made to set aside the registration, the Court shall have regard in the case of a judgment debtor furth of Scotland to the periods for superseding extract of a decree in absence laid down in paragraph (*b*) of Rule 89.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

6. There shall be kept in the Petition Department of the Court by, or under the direction of, the Deputy Principal Clerk, a register of the judgments ordered to be registered under the Act.

7. Upon presentation by the petitioner of a certified copy of the warrant for registration to the Keeper of the Registers of Scotland, along with the judgment or certified copy judgment, the Keeper shall immediately register the same in the Register of Deeds in the Books of the Lords of Council and Session. Extract of the registered judgment shall be superseded until a certificate is granted by the Deputy Principal Clerk in terms of paragraph 11 of this Rule.

8. (1) Notice in writing of the registration of a judgment must be served by the petitioner on the judgment debtor—

(*a*) if within Scotland by personal service unless some other mode of service is ordered by the Court;

(*b*) if furth of Scotland by edictal citation in accordance with Rule 75.

(2) The notice of registration shall state—

(*a*) full particulars of the judgment registered and the order for registration;

(*b*) the name and address of the judgment creditor or of his solicitor;

(*c*) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside; and

(*d*) in accordance with the terms of the order giving leave to register, within what time from the date of service of the notice an application to set aside may be made:

and subject to these requirements shall be as near as may be in the form laid down in paragraph (*e*) of Rule 248.

A certificate of execution of the notice of registration shall be lodged in process, and if a certificate is not so lodged, the judgment creditor shall not be at liberty to do diligence on the judgment without leave of the Court.

9. (1) An application to set aside the registration of judgment shall be made by Petition to the Outer House in ordinary form supported by affidavit.

(2) On any such application the Court may order such enquiry as may be necessary.

10. (1) A registered judgment shall not be extracted until after the expiration of the period which, in accordance with the provisions of paragraph 5(3) of this Rule, is specified in the order giving leave to register as the period within which an application may be made to set aside the registration or, if an order is made extending the period so specified, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, the judgment shall not be extracted until such application has been disposed of.

11. If no application is made within the specified time to have the registration set aside, or if such an application has been made and refused, the Deputy Principal Clerk shall grant a certificate to that effect. Extract of the registered

judgment may thereafter be issued. The warrant for diligence shall be in common form, and shall be executed upon a charge of fifteen days or such other period as the Lord Ordinary may fix.

12. If any question arises whether a foreign judgment can be enforced by execution in the country of the original Court, or what interest is payable under the foreign judgment under the law of that country, that question shall be determined in accordance with such provisions, if any, in that behalf, as are contained in the Order in Council extending the Act to that country.

13. (1) An application under section 10 of the Act for a certified copy of a judgment obtained in the Court of Session shall be made by petition to the Outer House. There shall be lodged with the Petition an extract decree setting forth the judgment. The Court on being satisfied by affidavit or other evidence, that the requirements of the Act have been satisfied shall pronounce an order ordaining the Deputy Principal Clerk to issue a certified copy of the judgment. The certificate shall be under the seal of the Court and shall be in the following terms:—

"I certify that the foregoing extract decree is a true copy of a judgment obtained in the Court of Session and this certificate is issued in accordance with section 10 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, and in obedience to an order by Lord , dated

"(Signed)

"Deputy Principal Clerk of the Court of Session at Edinburgh."

(2) There shall be issued along with the foregoing certificate the following further certificate also under the seal of the Court and certified by the Deputy Principal Clerk—

A certificate enumerating and identifying and having annexed to it copies of the summons or petition by which the proceedings were instituted, shewing the manner in which the summons or petition was served on the defender or respondent and whether the defender or respondent appeared thereto, and the objections made to the jurisdiction, if any, the pleadings, if any, in the proceedings, a copy of the opinions, if any, of the judge or judges who took part in the judgment, a statement that the time limit for appeal has expired and that no appeal has been taken, or that an appeal was taken but was refused, and such other particulars as it may be necessary to give to the foreign tribunal in which it is sought to obtain execution of the judgment. Copies of the foregoing documents shall be supplied where necessary by the solicitor of the person making the application.

14. These Rules shall, in relation to any judgment, have effect subject to any such provisions contained in the Order in Council extending the Act to the country of the original Court as are declared by the Order in Council to be necessary for giving effect to the agreement made between Her Majesty and that country in relation to matters for which provison is made by these Rules.

SECTION 9

Petitions and other Proceedings under the Patents Act 1949 *and the Registered Designs Act* 1949

250. Definitions

In this section of these Rules:—

" The Comptroller " means " the Comptroller-General of Patents, Designs and Trade Marks."

" The Solicitor " means " the Solicitor to the Board of Trade in London."

251. Petitions under sections 23 to 25 of the Patents Act 1949

In all petitions for extension of patents presented under sections 23 to 25 of the Act, the following provisions shall apply:—

(*a*) Subject to the provisions of this section, all such petitions shall be Outer House petitions, and the procedure prescribed for Outer House petitions in this Chapter of these Rules shall apply *mutatis mutandis.*

(*b*) Any party intending to present such a petition shall advertise his intention to do so twice in each of the *Edinburgh Gazette* and the *London Gazette,* and once in each of the *Scotsman, Glasgow Herald* and the *Times* newspapers.

(*c*) In such advertisements the applicant shall state the object of his petition, and the date on which it is to be presented. He shall also give notice therein that any person desirous of opposing the granting of the order or claiming the inclusion therein of any restrictions, conditions or provisions must within fourteen days after said date lodge in the Petition Department a notice intimating that he intends to lodge answers.

(*d*) A copy of the advertisement prescribed above shall be forwarded to the Solicitor at the same time as the first advertisement is sent to either of the *Gazettes.*

(*e*) On or before the day of lodging the petition, two copies thereof shall be sent to the Solicitor, and along with the petition there shall be lodged a certificate of posting said copies.

(*f*) There shall be lodged along with the petition a certificate by the applicant or his solicitor that advertisements have been published in conformity herewith, and copies of such advertisements certified by the publishers shall be produced.

(*g*) Two printed copies of the specification of the patent shall be produced along with the petition.

(*h*) The petition shall be served on any person who has lodged a notice under paragraph (*c*) of this Rule, and on the Comptroller, and the Court may order such further intimation, advertisement and service as may seem fit.

(*j*) The petitioner shall lodge in process, along with his petition, two copies of the balance-sheet of expenditure and receipts relating to said patent, on which he intends to found, and the Court shall not hear parties in the case until four weeks from the date of lodging shall have expired, unless on special cause shewn.

(*k*) The petitioner shall also at the same time furnish three copies of the above-mentioned specification, and also of the said balance sheet, to the Solicitor, and shall, upon receiving two days' notice, give the Solicitor or any person deputed by him for the purpose reasonable facilities for inspecting and taking extracts from the books of account by reference to which it is proposed to verify said balance-sheet or from which the material for making up the same has been derived.

(*l*) Any person who has lodged answers shall be entitled, at his own expense, to obtain from the petitioner copies of said balance-sheet.

252. Amendment of specification under section 30 of the Patents Act 1949

Where a patentee applies under section 30 of the Act for leave to amend his specification *pendente lite*, the following provisions shall apply:—

(*a*) The application shall be made by motion in the proceedings before the Court, and may be made at any stage of such proceedings, whether in the Outer House or in the Inner House. Notice of such motion, together with a Queen's Printer's copy of the specification showing in red ink the amendment proposed to be made, shall be served on the parties to such proceedings, and in the first instance upon such parties only, and a similar amended copy of the specification shall at the same time be lodged in process.

(*b*) On the hearing of such motion the Court shall decide whether, and on what terms as to expenses or otherwise, the application shall be allowed to proceed.

(*c*) If the application be allowed to proceed, the applicant shall forthwith serve the Comptroller with a copy of the notice of motion together with such copy specification as aforesaid, and also a copy of the order allowing the application to proceed, and also with the name and address of the applicant's solicitor; and the proposed amendment shall be advertised in the " Official Journal (Patents) ", such advertisement stating that any person desiring to oppose the amendment must within fourteen days of the issue of the advertisement give notice in writing of such desire to the applicant's solicitor, whose name and address for that purpose shall be also stated in the advertisement. Any person giving such notice shall be entitled to be heard upon the hearing of the motion.

(*d*) Within seven days after the receipt of any such notice the applicant shall, if the person giving such notice shall have stated therein an address for service within the United Kingdom, serve on such person a copy of the notice of motion together with such copy of the specification as aforesaid, and also a copy of the order allowing the application to proceed. Such service shall be made by registered or recorded delivery letter sent to such person through the post at his address for service.

(*e*) The Court shall then, not later than seven days after such service, appoint a day to hear the applicant and all parties desiring and entitled to be heard, and shall, after such hearing, if the application can be disposed of without evidence, dispose thereof, or if evidence is necessary, allow a proof on a date to be fixed by the Keeper of the Rolls.

(*f*) Where the Court allows a specification to be amended, the applicant shall forthwith lodge with the Comptroller an office copy of the order allowing such amendment, and the Comptroller shall advertise the same once at least in the " Official Journal (Patents) ". The applicant shall also, if required so to do by the Court or by the Comptroller, leave at the Patent Office a new specification and drawings as amended, the same being prepared as far as may be in accordance with the rules of the Patent Office for the time being in force.

253. Application for revocation

The provisions of Rule 84 of these Rules shall apply *mutatis mutandis* in the case of an application by a defender for revocation of a patent under section 61 of the Patents Act 1949.

254. References to the Court under section 48 of the Patents Act 1949 and paragraph 3 of Schedule 1 to the Registered Designs Act 1949

Where a dispute between a Government Department and a patentee or the proprietor of a registered design is referred to the Court under the above section and schedule, the following provisions shall apply:—

(*a*) The application shall proceed as an Outer House petition, and the procedure prescribed for Outer House petitions in this Chapter of these Rules shall apply *mutatis mutandis.*

(*b*) The Court shall appoint service of the petition to be made on the Lord Advocate as representing the Government Department or Departments concerned, or on the patentee or proprietor of the registered design, as the case may be, and shall order such further intimation or service as shall seem proper.

(*c*) It shall be in the power of the Court to remit to a reporter, in such terms as the Court may direct, any question raised by the proceedings, including any disputed issue of fact.

255. Petitions under section 75 of the Patents Act 1949 and section 20 of the Registered Designs Act 1949

(*a*) The provisions of Rule 251 shall apply *mutatis mutandis* to applications under the above sections.

(*b*) Any order made under this Rule shall be served forthwith on the Comptroller.

256. Expenses

In all proceedings under Rules 250 to 255 the expenses of parties, including the Comptroller and the Solicitor, shall be in the discretion of the Court.

257. General power of Court to direct procedure

Notwithstanding the provisions contained in this section of this Chapter, the Court may, on cause shewn and if it thinks fit, give such order or different directions in matters of procedure and practice as may be considered just and expedient in the circumstances.

SECTION 10

Appeals and References under the Telegraph Acts

258. Scope of Petition and Procedure

(*a*) Applications for a re-hearing under section 4 of the Telegraph Act 1878 as amended by section 2 of the Railway and Canal Commission (Abolition) Act, 1949, and References to the Court of Session under section 1 of the Telegraph (Arbitration) Act 1909, as amended by the said section 2 shall be made by petition presented to the Outer House and lodged in the Petition Department. The petition shall set forth shortly the question at issue and the facts which give rise to it and (in the case of a re-hearing) the determination of the sheriff.

(*b*) The petition shall be heard and determined by the judge designated from time to time by the Lord President.

(*c*) The procedure shall be summary and in the discretion of the designated judge, and the decision of the designated judge shall be final and not subject to review.

SECTION 11

Applications formerly dealt with by the Railway and Canal Commission

259. Scope of Petition and Procedure

(*a*) Applications under any enactment which are referred to the Court of Session pursuant to sub-section (1) of section 1 of the Railway and Canal Commission (Abolition) Act 1949 (other than those to which Rule 258 applies) shall be made by petition presented to the Outer House. Such petition shall narrate the facts and crave the relief to which the petitioner claims to be entitled.

(*b*) The petition shall be heard and determined by the judge designated for the purposes of Rule 258, and shall proceed as an Outer House petition subject to the ordinary rules as to reclaiming.

(*c*) Any person liable to make periodical or other payments under any order of the Court of the Railway and Canal Commission extending to Scotland and made before the first day of April, 1949, shall apply by petition under this Rule for directions regulating future payments under the said order.

SECTION 12

Petitions under the Trusts (Scotland) Act 1961

260. Procedure, service and intimation

(*a*) All applications for the variation of trust purposes under section 1 of the Trusts (Scotland) Act 1961, shall be made by Petition presented to the Inner House.

(*b*) The provisions of Rules 191 to 198 shall apply, *mutatis mutandis*, to such petitions.

(*c*) The petition shall be served on the Keeper of the Records of Scotland, or on the Sheriff Clerk of the Sheriffdom in which the Deed is registered.

(*d*) In an application in which the petitioner craves the Court to authorise an arrangement under subsection (4) of section 1 of the Act, it shall not be necessary to set forth in the petition the amount of the income of an alimentary beneficiary from all sources, or the details thereof.

(*e*) Where a truster or settler or any other person who has contributed, or is liable to contribute, to the trust estate is alive at the date of the presentation of a petition for the variation of the trust purposes, then, in addition to such other intimation, service and advertisement as may be necessary having regard to the nature of the petition, the Court may order intimation to be made to such person.

CHAPTER V

Inner House

SECTION 1

Reclaiming

261. Scope of this section

The provisions of this section of this Chapter shall apply with regard to all interlocutors pronounced in the Outer House, or by the Vacation Judge, which it is desired to submit to the Inner House for review.

262. Mode of reclaiming

(*a*) Any party to a cause who is dissatisfied with such an interlocutor may, subject to the provisions herein contained, reclaim against the same by a motion for the review of such interlocutor by the Inner House, such motion to be as nearly as may be in terms of Form 41.

(*b*) All such motions shall be enrolled, made, and intimated, in the same way as is directed in paragraphs (*a*), (*b*), and (*c*), of Rule 93.

(*c*) Every reclaiming motion whether enrolled 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 motion; and after a reclaiming motion has been presented, the reclaimer 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.

(*d*) When in any reclaiming motion or appeal the parties are agreed that on any separate branch of the case the interlocutor reclaimed or appealed against is not to be submitted for review, it shall not be necessary to reproduce the notes of evidence or documents relating to such separate branch.

263. Objections to competency

(*a*) If before one o'clock on the first business day after the day on which the enrolment is made (on Saturdays before twelve o'clock) the motion is not marked with the words " Opposed as incompetent " (which marking, if made, shall bear its date, and shall be signed by the solicitor making the same or by his clerk on his behalf), the motion shall be brought on the earliest available sederunt day before one or other Division of the Inner House in Chambers; and such Division may, without hearing any party, either send the cause to the summar

roll or direct the same to be heard in the single bills, and the cause shall be so heard.

(*b*) If before one o'clock on the day after the day on which the enrolment is made (on Saturdays before twelve o'clock) an objection to the motion shall be marked in manner foresaid, the cause shall be put out in the single bills on the earliest available sederunt day. The Court may hear and dispose of the objections in the single bills or send the cause to the summar roll.

(*c*) When a cause is called in the single bills on account of an objection to the competency of reclaiming, or when a cause is sent to the summar roll on an objection to competency which has been reserved in single bills, and the objection is not maintained, the Court may find the objector liable in any expenses occasioned by the objection.

264. Reclaiming days, and leave to reclaim

(*a*) An interlocutor disposing either by itself, or taken along with a previous interlocutor or interlocutors, of the whole subject matter of the cause, pronounced in any cause initiated in the Outer House either by summons or by petition, may be reclaimed against, without leave, not later than the twenty-first day (whether in session, vacation or recess) after the day on which the said interlocutor is pronounced.

(*b*) An interlocutor disposing of part of the merits of the cause, or allowing or refusing proof or jury trial (but, in case of refusal, without disposing of the whole merits of the cause), or limiting the mode of proof, or adjusting issues for jury trial, or allowing jury trial without issues, or granting or refusing interim interdict or interim liberation, or granting or refusing a sist of execution or procedure, may be reclaimed against, without leave, not later than the fourteenth day after the day on which the said interlocutor is pronounced; provided that when such an interlocutor is pronounced in vacation or recess, or when the fourteenth day after the day on which the interlocutor is pronounced falls in vacation or recess, the reclaiming days shall be extended to twenty-one.

(*c*) An interlocutor allowing or refusing in whole or in part a commission and diligence for the recovery of documents applied for after calling of the summons and any other interlocutor (not being a decree in absence nor a decree by default, nor one of the interlocutors dealt with in the immediately preceding paragraphs of this rule) may be reclaimed against, with leave of the Lord Ordinary who pronounced the same, or (in vacation or recess) with leave of the Vacation Judge, not later than the seventh day (whether in session, vacation or recess) after the day on which the said interlocutor is pronounced; provided that (i) it shall not be competent to ask or obtain leave except during the currency of the reclaiming days; (ii) it shall not be competent to reclaim against the grant or refusal of leave by the Lord Ordinary or the Vacation Judge and (iii) such leave shall not, standing the interlocutor reclaimed against, excuse obedience to or implement of the interlocutor, unless by order of the Lord Ordinary, or one or other Division, or (in vacation) of the Vacation Judge.

(*d*) In any case of mistake or inadvertence, the Court may, in its discretion, allow a motion for review to be received and proceed, though not enrolled

within the reclaiming days defined in the preceding paragraphs of this rule, but only on such conditions as to expenses as the Court may think proper.

(*e*) Notwithstanding the foregoing provisions, it shall be competent to reclaim, without leave, against a decree by default at any time before extract; and where the default has been in failing to lodge a paper the paper must be lodged on or before the enrolment of the motion for review; otherwise, the motion shall be refused. No decree by default shall be recalled except upon such conditions as to expenses or otherwise as the Court may think proper.

(*f*) The deliverance of a Lord Ordinary that the stamp upon any document is sufficient, or that such document does not require a stamp, shall not be subject to review.

(*g*) Paragraphs (*a*), (*b*), and (*c*) of this rule shall not apply to interlocutors pronounced in the winding up of a company and, subject to paragraphs (*d*) and (*e*) of this rule, and to the other rules of this section, section 281 of the Companies Act 1948 shall continue to apply to all such interlocutors.

(*h*) It shall not be competent for any party to a petition for suspension, suspension and interdict, or suspension and liberation, to reclaim against any interlocutor awarding expenses in respect of a certificate of no caution or consignation; and the fact that an interlocutor has been reclaimed against shall not prevent the issue of a certificate of refusal nor hinder the interlocutor submitted to review from being carried into effect unless the Court shall, on cause shewn, stay proceedings.

SECTION 2

Special Cases

265. To be presented and heard in the Inner House

(*a*) All special cases under section 63 of the Court of Session Act 1868, shall be presented to the Inner House, and shall be lodged in the General Department.

(*b*) On being so lodged, any such special case shall, without passing through single bills, be heard in due course in the short roll of one or other Division of the Inner House.

266. Appointment of curator *ad litem* to party *incapax*

(*a*) If any of the parties to a special case, as presented, is *incapax* in respect of non-age, insanity or otherwise, it shall be the duty of the other parties (which duty may be performed by any of them), on presentation of the special case, to enrol a motion for appointment of an advocate as curator *ad litem* to such *incapax*; and it shall be competent for the Court to appoint such curator *ad litem*.

(*b*) Any such curator *ad litem* appointed as aforesaid shall be given all necessary facilities by the other parties; and, if he is satisfied that the special case is fully and accurately stated in reference to the interests of the *incapax*, may sign it (with or without the amendments consented to by him and the other parties) as curator *ad litem*. If he is not given all necessary facilities by the other parties, or is not satisfied that the special case is fully and accurately stated in

reference to the interests of the *incapax*, it shall be his duty to report orally to the Division by whom he was appointed; and such Division may then recall his appointment and dispose of the special case as shall seem just.

(*c*) It shall not be competent to award expenses against such curator *ad litem* in any circumstances, but he shall be entitled to his expenses as may be directed by the Court.

SECTION 3

Appeals from Inferior Courts Generally (Including Lyon Court, Sheriff Courts, Dean of Guild Courts, etc.) and Appeals under the Agricultural Holdings (Scotland) Act 1949, *Section* 75 *and Schedule VI*

267. Scope of section

Subject always to the provisions contained in Rules 276 to 289 the rules contained in this section shall, notwithstanding any provision in any Act of Parliament to the contrary, apply with regard to all appeals from any interlocutor, judgment or determination (including decrees of removing) pronounced by any inferior Court (other than the Land Court) which may competently be submitted for review to the Court of Session, or to a judge thereof.

268. Time and mode of appeal: Transmission: Intimation

(*a*) All appeals shall be taken within such time as may be prescribed by any law or practice regulating appeals from the inferior Court, or, if there is no such law or practice, not later than twenty-one days after the date of the interlocutor, judgment or determination appealed against; and shall be by note of appeal written by the appellant or his solicitor on the interloctur sheet, minute of Court, or other written record containing the interlocutor, judgment or determination appealed against, or on a separate sheet lodged with the clerk of the inferior Court; and such note of appeal shall be as nearly as may be in the following terms:— " The (*pursuer, applicant, claimant, defender, respondent, or other party*) appeals to the Court of Session "; and such note of appeal shall be signed by the appellant or his solicitor, and shall bear the date on which it is signed.

(*b*) Within four days after an appeal shall have been taken in manner foresaid, the clerk of the inferior Court or tribunal shall transmit the process to the Deputy Principal Clerk who, on receipt of the same, shall subjoin to the note of appeal a marking of the date on which it is received; provided that, in an appeal from any tribunal whose proceedings are minuted or recorded in official books, copies of such proceedings certified by the clerk to such tribunal shall be transmitted as aforesaid in lieu of the process above referred to, and shall as so transmitted and received be the equivalent of such process, and shall in all such cases be accompanied by a separate note of appeal in manner provided in paragraph (*a*) of this rule.

(*c*) Within the said four days, the clerk of the inferior Court or tribunal shall send written notice of the appeal to the other party or parties, or to his or their

solicitor or solicitors and certify on the interlocutor sheet that he has done so; provided that failure to give such notice shall not invalidate the appeal, but the Court may give such remedy for any disadvantage or inconvenience thereby occasioned as may in the circumstances be considered proper or necessary.

269. Entering appearance: Lodging: Failure to lodge: Abandonment and Sist

(*a*) Within seven days of the receipt by the Deputy Principal Clerk of the process in appeal, the parties, or the Edinburgh solicitors for the parties shall cause to be written on the interlocutor sheet, minute of Court, or other written record containing the interlocutor, judgment or determination appealed against, or on the separate sheet referred to in paragraph (*a*) of Rule 268, their names and addresses, and (in the case of parties' solicitors) shall specify the parties for whom they respectively act.

(*b*) Within fourteen days of the receipt by the Deputy Principal Clerk of the process in an appeal, the appellant shall (whether in session or in vacation) make up and lodge in the General Department a process as prescribed in Rule 20, which shall include the inferior Court process (detailed in the inventory and duplicate inventory of the Court of Session process): and he shall also lodge therewith a process copy of the record and ten further copies thereof containing any amendments allowed since the closing of the record, or other pleadings in the cause, interlocutors or other orders, and note of appeal, and deliver at least ten copies thereof to the solicitor of the respondent, or to each of the solicitors of the respondents (if more than one); and, if the appellant shall fail within the said period of fourteen days to lodge and deliver the papers required as aforesaid, he shall be held to have abandoned his appeal and shall not be entitled to insist therein except upon being reponed as hereinafter provided; provided however that, within seven days after receipt by the Deputy Principal Clerk of the process in an appeal, the appellant may enrol a motion for a sist of process, and if, on cause shewn, the Court or Vacation Judge grants such sist, the running of the said fourteen days shall be postponed until the sist is recalled. An unopposed motion for the recall of such sist may, in vacation or recess, be disposed of by the Vacation Judge.

(*c*) At the time when the appellant lodges the process and other papers in terms of the immediately preceding paragraph of this rule, he shall enrol and intimate to the respondent a motion for an order for hearing.

270. Objections to competency

(*a*) If, on the day after the day on which the enrolment is made in terms of paragraph (*c*) of the immediately preceding rule, the respondent shall not mark the motion as appearing in the motion sheet, with the words " Opposed as incompetent " (which marking, if made, shall bear its date, and shall be signed by the solicitor making the same, or by his clerk on his behalf) the motion shall, on the earliest available sederunt day, be brought before one or other Division of the Inner House in Chambers; and such Division may, without hearing any party, either send the cause to the summar or short roll, or if the Division thinks proper, direct the same to be heard in single bills.

(*b*) If, on the day after the day on which the enrolment is made an objection to the motion shall be marked in manner aforesaid, the cause shall be put out for hearing in the single bills on the earliest available sederunt day.

271. Reponing

It shall be lawful for the appellant, within seven days after the appeal has been held to be abandoned in accordance with paragraph (*b*) of Rule 269, to enrol a motion to be reponed. Such motion shall then be put out in the single bills before one or other Division of the Inner House, or before the Vacation Judge (as the case may be), and shall only be granted upon cause shewn, and upon such conditions as to payment of expenses to the respondent, or otherwise, as shall seem just.

272. Respondent may proceed with abandoned appeal: Retransmission of abandoned appeal

(*a*) It shall be lawful for the respondent, within seven days after the appeal has been held to be abandoned in accordance with paragraph (*b*) of Rule 269, to lodge a copy of the record and others, as provided in said paragraph (*b*), and thereafter to insist in the appeal as if it had been taken by himself; in which case the appellant shall also be entitled to insist in the appeal; and the provisions regulating appeals by an appellant shall apply equally to appeals insisted in under this section by the respondent.

(*b*) On the expiry of the said period of seven days after the appeal has been held to be abandoned as aforesaid, if the appellant shall not have been reponed and if the respondent does not insist in the appeal, or on receipt by the Deputy Principal Clerk of a letter signed by the solicitors for all parties stating that the appellant has abandoned the appeal, the judgment or judgments complained of shall become final, and shall be treated in all respects as if no appeal had been taken against the same; and the Deputy Principal Clerk shall cause the process to be retransmitted to the clerk of the inferior Court; provided always that before retransmitting the process the Deputy Principal Clerk shall cause to be engrossed upon the interlocutor sheet, minute of Court, or other written record containing the interlocutor, judgment or determination appealed against, or on the separate sheet referred to in paragraph (*a*) of Rule 268, a certificate in these terms:— " (*Date*) Retransmitted in respect of the abandonment of the appeal " —and, in respect of such certificate, the inferior Court shall, on a motion being made to that effect, grant decree for payment to the respondent in the appeal of the sum of £5 5s. of expenses.

273. Appeals against interlocutor applying verdict

(*a*) In appeals against interlocutors applying verdicts of juries in a Sheriff Court, it shall not be necessary to lodge copies of the notes of evidence unless an order appointing the same to be lodged shall be made by the Court.

(*b*) If in any such appeal, the Court shall order a new trial, it shall be the duty of the party wishing to proceed with the cause in the Sheriff Court to furnish the Sheriff Clerk with a certified copy of the interlocutor making such order, and also to borrow the Sheriff Court process and transmit the same to the Sheriff Clerk.

SECTION 4

Causes Remitted from Sheriff Courts

274. Application for remit: Intimation: Remit by sheriff *ex proprio motu*: Remission of process

(*a*) The party desiring the cause to be remitted shall cause to be written on the interlocutor sheet in the Sheriff Court a note in the following terms:— " The pursuer (*or* defender *or other party*) requires the cause to be remitted to the Court of Session "; and the said note shall be signed by the party making the application, or his solicitor, and shall bear the date on which it is signed.

(*b*) The Sheriff Clerk shall, within four days after the date of such application being made, send written notice of such application to the opposite party, or his solicitor, provided that failure to give such notice shall not invalidate the remission, but the Court may give such remedy for any disadvantage or inconvenience thereby occasioned as may in the circumstances be thought proper.

(*c*) Where such application shall have been made, or in cases where the Sheriff has *ex proprio motu* pronounced an interlocutor remitting the cause to the Court of Session, the Sheriff Clerk shall, within four days thereafter, transmit the process to the Deputy Principal Clerk, who shall cause to be written on the interlocutor sheet a note of the day on which it is received.

275. Procedure in remitted causes

(*a*) Upon the process being so transmitted, the provisions of Rules 269 to 272 with regard to appeals from inferior courts shall apply *mutatis mutandis*; provided that:—

(i) The enrolment referred to in paragraph (*c*) of Rule 269 shall be made by the party at whose instance the remission has been made, or, in cases in which the remission is made by the sheriff *ex proprio motu*, by the pursuer in the cause;

(ii) If the remit is for jury trial, the proposed issue or issues (together with five copies of the same for the use of the Court) shall be lodged along with the process, and intimated to the solicitor or solicitors for the other party or parties by delivery of a copy to him or them; and the procedure thereafter shall be as directed in paragraphs (*c*), (*d*), (*e*), and (*f*) of Rule 114, with the substitution of " five copies for the use of the Court " for " a copy for the use of the Court " and of " Division " for " Lord Ordinary ", and " summar roll " for " procedure roll ". If the motion is for trial of the cause by jury without issues, the procedure shall be as directed by Rule 115, with the substitution of the words " If the motion is " for the words " If at the closing of the record any party to the cause applies ". If it appears from any of the motions and the relative markings that the parties are at variance either (1) on the question whether the cause is relevant for enquiry, or (2) on the question whether the cause is suitable for trial by jury, or (3) on the question whether the cause should be tried without issues, or (4) on any other matter concerning the mode of enquiry, the Court shall send the cause to the summar roll; provided that, if the cause is considered by the

Court to be unsuitable for jury trial, the Court may send it back to the Sheriff for proof, or remit the same for proof to a Lord Ordinary or to one of the judges of the Division before which the cause depends, as in the discretion of the Court is thought best.

(iii) The objections referred to in Rule 270 shall include objections to the competency of the remission, and any objections having for their object the retransmission of the cause.

(iv) In the event of an application for remission of the cause being abandoned, or held to be abandoned, the docquet on the interlocutor sheet referred to in Rule 272 shall be in the following terms:— " Retransmitted in respect of the abandonment of the remission ".

(*b*) Should the party desiring the cause to be remitted, or, in the case of a remit by the Sheriff *ex proprio motu*, the pursuer, fail to proceed in manner provided by paragraph (*b*) of Rule 269 (as applied to causes remitted from a Sheriff Court) within fourteen days after the process has been received by the Deputy Principal Clerk and so be held to have abandoned the remit, it shall be competent for any other party to the cause to proceed as provided by Rule 272 within the seven days succeeding; or otherwise, it shall be competent for the party desiring the cause to be remitted, or, in the case of a remit by the Sheriff *ex proprio motu*, the pursuer, to move the Court or the Vacation Judge at any time within the said seven days to be reponed on cause shewn, in the same manner and subject to the same conditions as are directed in Rule 271 in the case of an appeal.

(*c*) On the expiry of the said seven days without reponing, the Deputy Principal Clerk shall cause the process to be retransmitted to the Sheriff Clerk as a cause in which the remission has been abandoned, with a docquet on the interlocutor sheet in the terms of paragraph (*a*) (iv) of this rule; and, in respect of such docquet, the Sheriff shall, on motion made, pronounce such order as may be just, and grant decree for payment to the respondent of the sum of £5 5s. of expenses.

SECTION 5

Appeals by way of Stated Case, Special Case, Submission and Reference under certain Statutes

276. Rules under which regulated

All appeals by way of stated case, special case, case, reference or submission (hereinafter referred to as " the case ") against the decision of any Court, the Secretary of State, a Minister, a Department, statutory tribunal, referee or authority (hereinafter referred to as " the tribunal ") and all statutory proceedings for obtaining the opinion of the Court on a question either prior to the issue of a decision by the tribunal or by way of appeal against a decision by the tribunal, shall, subject to the provisions of the statute allowing such appeal or proceedings (hereinafter referred to as " the statute ") and these Rules be regulated by Rules 277 to 280, provided that " the question " shall in the said Rules be construed as " the question of law " unless the statute allows an appeal on a question other than a question of law.

277. Preparation of the case for presentation to the Court

Where the Court is authorised to make regulations by Act of Sederunt for obtaining, settling, stating and authenticating the case for presentation to the Court, the following provisions shall have effect:

(*a*) Any party desiring to have a case, application for which must be presented prior to the issue of the decision of the tribunal, may at any time prior thereto apply to the clerk of the tribunal for a case for the opinion of the Court of Session on any question, and any party desiring to have a case which may be presented following upon the issue of the decision of the tribunal may, within fourteen days after the issue thereof, similarly apply for such a case. Such applications shall be made by minute, and shall set forth the question on which the case is applied for.

(*b*) The clerk of the tribunal shall forthwith intimate such application and the question of law on which the case is applied for to the other party, who shall be entitled within seven days after the receipt thereof to lodge a minute setting forth any additional question proposed as the subject matter of the case, and the provisions of paragraphs (*c*) and (*d*) of this rule shall apply to any such application and to any such additional question.

(*c*) If the application is presented before the facts have been ascertained by the tribunal, and if the tribunal is of opinion that it is necessary or expedient that the facts should be ascertained before the application is disposed of, it may postpone further consideration of the application until the facts have been ascertained by it.

(*d*) On consideration of any such application, whether after the facts have been ascertained or at an earlier stage (should the tribunal think it necessary or expedient then to consider it), the tribunal may, if it is of opinion that the proposed question does not arise or that a decision upon it is unnecessary for the purpose of the appeal or is frivolous, refuse to state a case on such question; but in that event it shall intimate its decision to the parties and grant a certificate to the applicant, specifying the reason of refusal and bearing the date of the refusal; and if such refusal is made after the facts have been ascertained, such certificate shall be accompanied by a note of the proposed findings in which the facts which have been ascertained, and on which the tribunal proposes to base its decision, shall be set forth, and if such refusal is made before the facts have been ascertained the certificate shall be accompanied by a note of, or sufficient reference to, the averments of the parties in the appeal or their admissions therein on which the refusal is based.

(*e*) If and when the tribunal decides to state a case on any application it shall cause its decision to be intimated to the parties not later than the expiry of 28 days after the date on which the application was made, and within fourteen days after the despatch of such intimation it shall cause the case to be prepared and submitted in draft to the parties: within twenty-one days from the receipt of the draft case, each party shall return it to the clerk of the tribunal with a note of any additions, alterations, or amendments which he may desire to have made thereon.

(*f*) (i) Should the parties fail to agree as to the terms of the case, or should any of them fail to return the draft case, the tribunal shall adjust the terms of the case and in any event the terms of the case shall be subject to the approval of the tribunal.

(ii) When a draft case is being settled by the tribunal, it may add thereto such further or additional findings in fact and such additional questions as it may think necessary for the due disposal of the subject matter of the case.

(*g*) The case shall bear to be stated by the tribunal and shall be authenticated by the clerk thereof, who shall thereupon cause it to be delivered to the party, or the party who first applied for it.

(*h*) The party to whom the case has been so delivered—

(i) shall intimate in writing to the other party whether he intends to proceed with the case, and shall also send to him a copy of the case, within seven days (under the Finance Act 1960 thirty days) after the case has been delivered to him by the clerk of the tribunal.

(ii) if he intends to proceed with the case, he shall also within the said seven days (under the Finance Act 1960 thirty days) lodge the principal case with the Deputy Principal Clerk, together with a certificate under the hand of himself or his solicitor of the notice having been given to the other parties; and, in the event of his failing so to lodge the case, the respondent in the appeal shall be entitled to apply to the tribunal, who, upon a motion made before it to that effect and on being satisfied of such failure, shall dispose of the proceedings, and may, if one party only has applied for a stated case, find him liable in payment to the other party of the sum of £5 5s. of expenses.

(*j*) The party to whom the case has been delivered, if he does not intend to proceed with it, shall immediately after the expiry of seven days from the date of the delivery of the case to him return the case to the clerk of the tribunal, who shall thereupon deliver it to the other party if that party had also applied for a case, and that other party shall thereupon be entitled to proceed in the manner provided in paragraph (*h*) (ii) above.

(*k*) (i) The party to whom the case has been delivered shall within fourteen days after the principal case has been received by the said Deputy Principal Clerk, lodge the same in the General Department along with a process and copies of productions for the use of the Court in terms of Rules 20 and 25 (*b*), and shall at the same time intimate the lodging of the case to the opposite party or his solicitor, and deliver to him at least ten copies of the case, and, if he shall fail within the said period to lodge the case as aforesaid, or to be reponed against his failure to do so by motion made to the Court during session, or to the Vacation Judge during vacation, within the following seven days, he shall be held to have abandoned his appeal.

(ii) If the other party has also applied for a stated case and has had no opportunity of proceeding with his appeal, the party to whom the case was delivered shall forthwith intimate to the other party that he has abandoned his appeal; and the other party shall then be entitled

to proceed in the manner provided in the immediately preceding sub-paragraph; provided that the days shall be reckoned from the intimation of the abandonment; and if such party fails so to proceed he shall in like manner be held to have abandoned his appeal.

(iii) On the abandonment of the appeal by the only party, or by both parties, entitled to proceed, the Deputy Principal Clerk shall engross upon the case, which must be returned to him for that purpose, and sign a certificate in the following or similar terms; (*date*) " Retransmitted in respect of abandonment "—and retransmit the case accordingly; and in respect of said certificate the tribunal shall, upon a motion being made before it to that effect, dispose of the proceedings, and may, if one party only has applied for a stated case, find him liable for payment to the other party in the appeal of the sum of £5 5s. of expenses.

278. Procedure for ordaining the tribunal to state a case

When the tribunal has refused to state and sign a case the party whose application has been refused may, within fourteen days from the date of such refusal, apply by a written note to one of the Divisions of the Inner House lodged in the General Department for an order upon the other party to shew cause why a case should not be stated. Such note shall state shortly the nature of the case, the facts and the question which the applicant desires to raise, and shall be accompanied by the above-mentioned certificate of refusal, and the Division shall, after intimation to the other parties, dispose of it summarily. If an order is pronounced requiring the tribunal to state a case, the case shall be stated as required by the statute or these Rules, and these Rules so far as applicable shall apply to the subsequent procedure. Intimation of the decision or order shall be made to the tribunal by the despatch by registered or recorded delivery letter of a certified copy thereof to the clerk to the tribunal by the applicant.

279. Form of stated case or special case, submission or reference

(*a*) The case shall refer to the statute under which it is presented, and shall state in articulate numbered paragraphs the facts and circumstances out of which the case arises, as the same may be agreed, found, or referred (as the case may be), and shall set out the question for answer by the Court.

(*b*) The form of the case shall, as nearly as may be, be as shewn in Form 43.

280. Procedure in the Court of Session

(*a*) The party to whom a case has been delivered, on lodging a copy thereof in terms of Rule 277 (*k*) (i) shall at the same time enrol and intimate to the opposite party a motion for an order for hearing. The said motion shall be brought before one or other Division of the Inner House in chambers and such Division may, without hearing any party, either send the case to the summar roll, or, if the Division thinks proper, direct the same to be heard in single bills.

(*b*) The Court may, at any time before the final disposal of the case, allow the case to be amended with consent of the parties thereto, and may remit the case for re-statement, or further statement in whole or in part; and if, in order to the disposal of the case, any enquiry into matters of fact is competent and required, the Division before which the case depends may remit to a reporter or to a Lord Ordinary or to one of their own number to take evidence.

281. Stated cases under the Income Tax Act 1952, section 64

(*a*) Immediately after the determination of an appeal by the General Commissioners, or by the Special Commissioners, the appellant or the surveyor, if dissatisfied with the determination as being erroneous in point of law, may declare his dissatisfaction to the Commissioners who heard the appeal.

(*b*) The appellant or surveyor, as the case may be, having declared his dissatisfaction, may, within twenty-one days after the determination, by notice in writing addressed to the clerk to the Commissioners, require the Commissioners to state and sign a case for the opinion of the Court of Session thereon, as the Court of Exchequer in Scotland.

(*c*) The party requiring the case shall pay to the clerk to the Commissioners a fee of twenty shillings for and in respect of the same, before he is entitled to have the case stated.

(*d*) The case shall set forth the facts and the determination of the Commissioners, and the party requiring it shall transmit the case, when stated and signed, to the Deputy Principal Clerk of Session within twenty-one days after receiving the same.

(*e*) At or before the time when he transmits the case to the Deputy Principal Clerk of Session, the party requiring it shall send notice in writing of the fact that the case has been stated on his application, together with a copy of the case, to the other party.

(*f*) At the same time as the party requiring the case notifies the other party in writing of the fact that the case has been stated on his application by sending him a copy thereof, the party requiring the case shall intimate to the other party whether or not he intends to proceed with the case.

(*g*) If the party requiring the case intends to proceed with the case he shall, within 30 days of transmitting it, lodge the principal case in the General Department along with a process and ten copies of the case. He shall also, at the same time, deliver to the other party or his solicitor, such number of copies of the case, not exceeding fifteen, as the other party may require.

(*h*) At the same time as the party requiring the case lodges the principal case in the General Department, as required by paragraph (*g*), he shall enrol a motion for an order for hearing and intimate to the other party that he has lodged the case and enrolled the motion.

(*j*) The motion shall be brought before either Division of the Inner House in Chambers, and the Division may send the case to the summar roll, or, if the Division thinks proper, direct the same to be heard in the single bills.

(*k*) If the party requiring the case fails to observe any of the provisions of this Rule within the time limits prescribed, he shall be held to have abandoned the case and accordingly the determination of the General or Special Commissioners in respect of which he required the Commissioners to state the case shall become final.

282. Appeals under Finance Act 1960, Section 56(6)

(*a*) Where either party to proceedings under Section 56 of the Finance Act 1960 before the General or Special Commissioners for the recovery of any fine or penalty under the Income Tax Acts wishes to appeal against the determination of the General or Special Commissioners awarding or refusing to award such fine or penalty, he shall within 30 days of the determination of the General or Special Commissioners intimate his appeal in writing to those Commissioners, and shall at the same time intimate his appeal to the other party. Where the party appealing is the taxpayer he shall intimate in his appeal whether he intends to appeal on a question of law or against the amount of the fine or penalty awarded or on both of those grounds.

(*b*) The General or Special Commissioners as the case may be on receiving intimation of an Appeal shall state and sign a case for the opinion of the Court. The case shall set forth the facts found by the General or Special Commissioners and their determination thereon.

(*c*) The General or Special Commissioners shall transmit the case stated and signed by them to the party who has intimated his appeal, who shall, if he intends to proceed with the case, within 30 days of receiving it transmit the case to the Deputy Principal Clerk of Session. At the same time the party requiring the case shall intimate to the other side his intention to proceed with the case and send a copy thereof to the other party.

(*d*) The provisions of Rule 281 (*f*) to (*k*) shall regulate the procedure thereafter.

283. Appeals under Finance Act 1960, Section 59(2)

(*a*) Any person wishing to appeal against a penalty awarded summarily by the General or Special Commissioners under Section 59(1) of the Finance Act 1960 shall intimate his appeal in writing to the General or Special Commissioners within 30 days of their determination awarding the penalty and shall, at the same time, intimate his appeal to the other party.

(*b*) The provisions of Rule 282 shall regulate the procedure thereafter.

284. Special cases under the Representation of the People Act 1918, section 14(2)

Special cases under the Representation of the People Act 1918, section 14(2), shall be subject to the following provisions supplementary to the provisions of Rules 277 to 280;

(*a*) Where several persons have lodged minutes with the Sheriff Clerk, and it appears to the Sheriff that such minutes, or any two or more of them, raise the same question of law or questions of law, it shall be competent for the Sheriff to consolidate the appeals in one special case; and, in that event, the Sheriff shall state in the special case the circumstances in which he has consolidated the appeals, and shall moreover name therein such one of the appellants as he may in his discretion select as " the appellant ". Such appellant shall supply copies of the special case as lodged to any other appellants, on their request and at their charges.

(*b*) On the special case being lodged in the General Department as aforesaid, the case shall be put out in the printed rolls of Court for hearing before the Registration Appeal Court on the earliest available day.

(*c*) The Court shall, in its decision, specify every alteration or correction, if any, to be made upon the register in pursuance of such decision; and a copy of such decision shall, within four days, be sent by the Deputy Principal Clerk to the registration officer.

285. Applications for leave to appeal from a Pensions Appeal Tribunal

(1) Applications to the Court of Session for leave to appeal from the decision of a Pensions Appeal Tribunal shall be disposed of by a single judge nominated for that purpose from time to time by the Lord President, and the decision of such judge on any such application shall be final.

(2) Such application shall only be made if leave to appeal has first been refused by the Pensions Appeal Tribunal, and shall be made within twenty-eight days of the date of the decision of the Tribunal refusing such leave.

(3) Such applications shall be made by lodging in the General Department a note as nearly as may be in terms of Form 45. A copy of said note shall at the same time be served upon the opposite party or his solicitor, who shall within fourteen days thereafter intimate in writing to the Deputy Principal Clerk whether he desires to be heard.

(4) On the expiry of the said period of fourteen days, the note shall be brought by the Deputy Principal Clerk before the nominated judge in chambers, and the subsequent procedure shall be summary and such as the said judge in his discretion may direct. Without prejudice to the foresaid generality, it shall be competent for the said judge to grant the application without a hearing, or to dispose of it after a hearing in chambers or in open Court, and at any such hearing to proceed in the absence of a party who has intimated that he does not desire to be heard; or to order written answers; or to remit to the chairman of the Tribunal for a report on any matter.

(5) A certified copy of the interlocutor granting or refusing any such application shall be sent by the Deputy Principal Clerk to the Pensions Appeal Office and to the parties or their solicitors.

(6) The applicant for a pension shall be entitled to the reasonable expenses of successfully applying for leave to appeal, or of opposing, successfully or unsuccessfully, an application for such leave by the Minister of Pensions.

286. Stated cases under the Pensions Appeal Tribunals Act 1943, Section 6

(1) When leave to appeal has been granted by a Pensions Appeal Tribunal or under Rule 285, the chairman shall, within twenty-eight days of the date of the decision granting leave to appeal, prepare a draft stated case and shall within the said period send a copy thereof to the Minister of Pensions and to the claimant for a pension or, if he has so requested, to his solicitor.

(2) Within fourteen days thereafter the Minister and the claimant shall return the draft case to the chairman with any additions or alterations which they or either of them may desire to have made thereon.

(3) Should the parties fail to agree as to the terms of the case, or should either or both fail to return the draft case revised as above provided, the terms of the case shall be adjusted by the chairman, and in any event the terms of the case shall be subject to the approval of the chairman. The case shall then be signed by the chairman and shall be sent forthwith to the appellant, or his solicitor as the case may be, or where both parties are appellants, to the party who first applied for a stated case.

(4) Subject to the provisions of this Rule, the provisions of these Rules relative to appeals by way of stated case shall *mutatis mutandis* apply for the purpose of regulating further procedure; provided (i) that the claimant for a pension shall be entitled to his reasonable expenses in every such appeal irrespective of the result, and (ii) that, if the appellant fails duly to prosecute the appeal, the respondent may bring the matter before the Court by written note to the Inner House lodged in the General Department, and in any such case the Court shall pronounce such order as may seem to them just.

(5) On the final disposal of any appeal the Deputy Principal Clerk shall, in accordance with such directions as the Court may give, transmit to the Pensions Appeal Office a certified copy of the interlocutor or interlocutors of the Court.

(6) If, after application for leave to appeal has been made to the Pensions Appeal Tribunal, the parties agree as to the answers to the questions of law which would require to be stated by the chairman of the Tribunal, it shall be competent for the parties to lodge a joint note signed by counsel for both parties, setting forth the terms of an agreement come to by the parties as to the questions of law and the answers thereto, dispensing with the necessity for the chairman of the Tribunal preparing a draft stated case, and requesting the Court to interpone authority to the terms of the agreement as set forth in said joint note. Any order then pronounced by the Court shall have the same force and effect as an order pronounced under the Rules of Court affecting the disposal of appeals by way of stated cases. The Court in making any such order shall have power to find the claimant (or appellant) entitled to his expenses in connection with the presentation of a joint note and incidental procedure connected therewith.

(7) When under this Rule a document requires to be served on or sent to the Minister of Pensions, it should be delivered or sent to the Solicitor in Scotland for the Minister of Pensions for the time being.

287. Stated cases under section 201 of the Local Government (Scotland) Act 1947

(*a*) An application to the Secretary of State to state a case on any question of law arising on an interim report by the auditor shall be made in writing lodged with the Secretary of State for Scotland, Scottish Home and Health Department, St. Andrew's House, Edinburgh, and shall state the question of law on which the stated case is applied for.

(*b*) If the application is presented before the facts have been fully ascertained by the Secretary of State, and if the Secretary of State is of opinion that it is necessary or expedient that the facts should be ascertained before the application is disposed of, he may postpone further consideration of the application until the said facts have been ascertained by him.

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(*c*) On consideration of any such application, whether after the facts have been fully ascertained or at an earlier stage (should the Secretary of State think it necessary or expedient then to consider it), if the Secretary of State is of opinion that the proposed question of law does not arise, or that a decision upon it is unnecessary for the purposes of the decision of the questions raised by the interim report, or is frivolous, he may refuse to state a case on such question, but in that event he shall cause a certificate to be granted to the applicant specifying the reason of refusal and bearing the date of the refusal; and, if such refusal is made after the facts have been fully ascertained, such certificate shall be accompanied by a note of proposed findings, in which the facts which have been ascertained and on which the Secretary of State proposes to base his final award shall be set forth; and, if such refusal is made before the facts have been fully ascertained, the certificate shall be accompanied by a note of, or sufficient reference to, the statements or admissions made by the auditor or by any of the parties to whom the interim report was intimated in terms of the said section 201, on which the Secretary of State's refusal is based. The person making application, the auditor, and the said parties are hereinafter referred to as the parties concerned.

(*d*) Every person making an application for a stated case shall forthwith intimate such application and the question of law proposed therein to the other parties concerned, and any of the parties to whom such intimation is given shall be entitled within seven days after the receipt thereof to make application in writing lodged with the Secretary of State for a stated case on any additional question or questions of law proposed as the subject-matter of the case, and the provisions of the two immediately preceding paragraphs shall apply to any such application and to the proposed questions of law stated therein.

(*e*) If and when the Secretary of State decides to state a case or cases on any application, he shall cause his decision to be intimated to the parties concerned; and within fourteen days after despatch of such intimation the Secretary of State shall cause the case or cases to be prepared and submitted in draft to the said parties; provided that one draft case, including the questions proposed by all the parties may be prepared if the Secretary of State thinks fit. Within twenty-one days from the receipt of the draft stated case each party shall return the same to the Secretary of State with any additions, alterations or amendments which he may desire to have made therein.

(*f*) Should the parties concerned fail to agree as to the terms of the case, or should any of them fail to return the draft case revised as above provided, the Secretary of State shall adjust the terms of the stated case.

(*g*) Where a draft case is being stated by the Secretary of State he may add thereto any further or additional proposed findings in fact and any additional question or questions of law as he may think necessary for the due disposal of the subject-matter of the case.

(*h*) The case shall bear to be stated by the Secretary of State, and shall be signed by him or on his behalf, and shall thereupon be lodged by him in the General Department which may be done by transmitting the stated case to the Deputy Principal Clerk, together with a note of the parties' names, addresses, and solicitors (if any). At the same time the Secretary of State shall cause

intimation to be made to the parties or their solicitors that the stated case has been so lodged or transmitted.

(*j*) At any hearing upon the stated case the Secretary of State may appear and be heard by counsel.

(*k*) Where the Secretary of State has refused to state and sign a case applied for by any of the parties concerned, the applicant whose case has been refused may, within fourteen days from the date of such refusal, apply by a written note to one of the Divisions of the Inner House, lodged in the General Department, for an order upon the other parties concerned to show cause why a case should not be stated. Such note shall state shortly the nature of the case, the facts and the question of law which the applicant desires to raise and shall be accompanied by the above-mentioned certificate of refusal (if any), together with the note or reference mentioned in paragraph (*c*) of this rule; and the Division shall, after intimation to the other parties concerned, dispose of it summarily, and the decision thereon, and on the question of expenses, of the Division shall be final. If an order is pronounced requiring the Secretary of State to state a case, the case shall be stated as hereinbefore provided, and those regulations shall apply to the subsequent procedure. Intimation of the decision or order shall be made to the Secretary of State by the despatch by registered or recorded delivery letter of a certified copy thereof, by the party interested or his solicitor.

(l) Rules 279 and 280 shall apply to stated cases under this Rule.

288. National Insurance Acts, 1946

(*a*) Notwithstanding the provisions of Rules 277 to 280, any person who is aggrieved by, and is desirous of appealing against a decision of the Minister of National Insurance on such a question of law as is referred to in section 37 of the National Insurance (Industrial Injuries) Act 1946, or in sub-section (4) of section 43 of the National Insurance Act 1946, may—

(i) within twenty-one days of receiving notice of the decision; or

(ii) within twenty-one days of being furnished by the Minister with a Statement of the grounds of the decision in accordance with the Regulations made under either of the said Acts,

by notice in writing addressed to the Minister of National Insurance, 39 Drumsheugh Gardens, Edinburgh, or to the Lord Advocate, Crown Office, Parliament Square, Edinburgh, require the Minister to state a case setting forth the facts on which his decision was based, and his decision thereon, and the Minister shall, as soon as may be, state the case and send it by registered or recorded delivery post to the said appellant.

(*b*) Paragraphs (*d*) and (1) of Rule 287 shall *mutatis mutandis* apply to Stated Cases under this Rule.

Where the Minister of National Insurance refers to the Court for decision any question of law under section 37 of the National Insurance (Industrial Injuries) Act 1946, or under sub-section (4) of section 43 of the National Insurance Act 1946, he shall incorporate the facts and the question of law in a stated case and the procedure shall be in accordance with the provisions of paragraph (*a*) of this Rule.

289. Appeals under the Cinematograph Films Act 1927, section 9

(*a*) Any person aggrieved by the refusal of the Board of Trade to register a film, or to register a film as a British film, or by a decision of the Board of Trade to correct the registration of a film and whose principal place of business is in Scotland, may, within twenty-one days of such refusal or decision, or within such further time as the Court may hold (on consideration of any appeal presented under paragraph (*b*) of this rule) to have been reasonable in the circumstances, give to the Board of Trade notice in writing requiring the matter to be referred to the Court, and the Board of Trade shall, within seven days of the receipt of the notice, (1) refer the matter to the Court by sending the notice duly endorsed as " referred " to the Deputy Principal Clerk, and (2) give written notice to the person aggrieved that this has been done.

(*b*) Within fourteen days of the receipt by such person of the said written notice, or within such further time as the Court may hold (on consideration of any appeal presented under this paragraph) to have been reasonable in the circumstances, the person aggrieved may present an appeal against such refusal or decision of the Board of Trade to the Inner House, and lodge the same in the General Department. The provisions of Rules 279 and 280 shall thereafter apply.

SECTION 6

Other Statutory Appeals

290. Form of appeal

(*a*) Subject to the supplementary provisions contained in Rules 291 to 294, all statutory appeals and applications of the nature of appeals to the Court (other than the appeals and proceedings referred to in Rule 276) against a decision of the Secretary of State, a Minister, a department, statutory tribunal, referee or authority shall be taken within such time as may be prescribed by the particular statute under which the appeal is presented, or, if no time is prescribed, not later than twenty-one days after the date on which the decision, order, scheme, determination, refusal, or other act of the authority or person complained of, was intimated to the appellant; and shall (notwithstanding anything in any Act of Parliament to the contrary) be by written appeal presented to the Inner House and lodged in the General Department. Any such appeal shall refer to the particular statute and section under which the appeal is brought, and shall specify the decision, order, scheme, determination, refusal, or other act complained of as aforesaid, and shall identify the same by the date on which it was made or done and on which it was intimated to the appellant, and by any other necessary particulars.

(*b*) Wherever possible, the decision, order, scheme, determination, refusal, or other act appealed against shall be set forth in the appeal; and if the appeal is against only a part of such decision, order, scheme, determination, refusal, or other act, the part appealed against shall be specified or distinguished.

(*c*) The appeal shall state in brief numbered propositions the grounds of appeal, and shall be accompanied by any documents founded on by the appellant so far as in his possession or within his control.

(*d*) The form of such appeal shall, as nearly as may be, be as shewn in Form 42.

(*e*) All such appeals shall, on the first available day after lodging, appear, without enrolment, in the printed rolls of Court in the single bills for an order for intimation of the appeal to the respondent, and to such other person or persons as the Court may think proper, and appointing him or them to lodge answers, if so advised, within such *induciae* as the Court may fix. In vacation the order for intimation may be made by the Vacation Judge.

(*f*) The intimation shall be made by registered or recorded delivery letter enclosing a copy of the appeal and of the interlocutor of the Court, and a notice that the *induciae* commence to run only on the day after the day on which the said letter was posted.

(*g*) Answers may be lodged not later than the last day of the *induciae* in concise and articulate form, together with any documents founded on therein and the cause shall forthwith be enrolled for further procedure.

(*h*) Rules 270 to 272 shall *mutatis mutandis* apply to such appeals.

291. Special cases under the Tribunals and Inquiries Act 1958, section 9(2)

(1) Special cases under the Tribunals and Inquiries Act 1958, section 9(2) which have been stated upon the application of a party to proceedings depending before a tribunal, shall be subject to the provisions of Rules 277 to 280.

(2) It shall be competent for a Tribunal, of its own motion, to state a case for the opinion of the Court of Session on any question arising in the course of proceedings before it, in which event the following provisions shall have effect:—

(*a*) When the Tribunal decides to state a case it shall cause its decision to be intimated to the parties and within fourteen days after the despatch of such intimation it shall cause the case to be prepared and submitted in draft to the parties; within twenty-one days from the receipt of the draft case each party shall return it to the Clerk of the Tribunal with a note of any additions, alterations or amendments which he may desire to have made thereon and thereafter the Tribunal shall finally adjust the case.

(*b*) The case shall bear to be stated by the Tribunal and shall be authenticated by the Clerk thereof who shall thereupon:—

(i) send a copy of the case to each party to the proceedings, and

(ii) transmit the principal case to the Deputy Principal Clerk of Session together with a certificate under the hand of himself or his solicitor certifying that a copy thereof has been sent to each party to the proceedings.

(*c*) The Clerk to the Tribunal shall within fourteen days after the principal case has been received by the said Deputy Principal Clerk lodge in the General Department a copy of the case along with a Process and copies of productions for the use of the Court in terms of Rules 20 and 26 (*b*) and shall at the same time intimate the lodging of the case to each party to the proceedings and shall deliver to each party five copies of the case.

(*d*) Rules 279 and 280 shall apply to Special Cases under this Rule.

292. Appeals under the Tribunals and Inquiries Act 1958, section 9(1)

(*a*) Where such appeals appear in the printed rolls of Court in the single bills for an order for intimation (in terms of Rule 290 (*e*)) such intimation shall be not only to the persons mentioned in Rule 290 (*e*) but also to any other party to the proceedings before the Tribunal and to the Chairman of the Tribunal.

(*b*) Subject to the foregoing paragraph Rule 290 shall apply to such appeals.

293. Appeals under the Tribunals and Inquiries Act, section 9(5)

(*a*) Where such appeals from a decision of the Minister of Transport and Civil Aviation appear in the printed rolls of Court in the single bills for an order for intimation (in terms of Rule 290 (*e*)) such intimation shall be to the Minister and to every person who had or if aggrieved would have had a right to appeal to the Minister, whether or not he has exercised that right.

(*b*) The Minister shall be entitled to take such part in the proceedings as he may think fit.

(*c*) If the Court is of opinion that the decision of the Minister was erroneous in point of law, it shall not set aside or vary the order of the Minister but may remit the matter to him for determination in accordance with the decision of the Court on the point of law.

(*d*) Subject to the foregoing paragraph Rule 290 shall apply to such appeals.

294. Appeals under the Finance Act 1894, section 10

(*a*) *Preliminary procedure.*—The appellant shall, within one month from the date of the notification to him or his solicitor of the decision or claim of the commissioners, deliver to them a written appeal containing a statement of the grounds of such appeal. The statement shall specify explicitly the several grounds upon which the appellant contends that the decision or claim of the commissioners is erroneous; and, if he contends that the value put upon any property by the commissioners is excessive, he shall therein identify such property, and state the value which he contends should be put upon the same.

(*b*) *Notice by commissioners of withdrawal of decision.*—The commissioners shall, within one month from the delivery to them of the said written appeal notify to the appellant or his solicitor whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same, either in whole or in part.

(*c*) *Methods of Appeal.*—The appellant may, within one month from the date of the notification by the commissioners of their determination to maintain their decision or claim either in whole or in part, or (in the event of an application being made under paragraph (*e*) of this rule) within ten days from the date of the interlocutor disposing of such application, proceed either (i) by lodging his appeal in the General Department for disposal in the Inner House; or (ii) where the value as alleged by the commissioners of the property in respect of which the dispute arises does not exceed £10,000, by presenting a petition in the Sheriff Court for the county within which the appellant resides or the property is situated. The provisions of Rule 290 of this Chapter shall apply in the cases of an appeal to the Court of Session. In the case of a petition in a Sheriff Court,

the Sheriff shall order the petition to be served on the commissioners or on the Solicitor of Inland Revenue for Scotland on their behalf, and may, if he thinks fit, appoint answers to such petition to be lodged, or parties to be heard thereon with or without answers, and may thereafter give decree granting or refusing the prayer of the petition or may take such other course with regard thereto as to him may seem proper.

(*d*) *Statements in appeal or petition.*—The appellant shall not in his appeal as lodged, or in his petition, state any grounds of appeal not specifically set forth in the statement of the grounds of appeal delivered by him, along with the appeal, to the commissioners; provided always, that the Court or Sheriff may at any time, before or at the hearing, allow the appellant to amend his appeal or petition upon such terms as the Court or Sheriff may think right.

(*e*) *Leave to appeal without paying duty.*—Where the appellant desires to apply for leave to bring an appeal without payment, or on part payment only, of the duty (under the provisions of sub-section (4) of section 10 of the Act) he shall, within fourteen days from the date of the notification given by the commissioners, in terms of paragraph (*c*) of this rule, present a note to the Inner House or the Sheriff craving for such leave; and shall specify therein the grounds on which his application is made; on presentation of the Note the appellant shall enrol a motion for an order for intimation thereof to the Lord Advocate who may, if so advised, lodge Answers thereto within fourteen days after receipt of said intimation.

(*f*) *Abandonment of appeal.*—If the appellant shall not proceed with his appeal as provided in paragraph (*c*) of this rule, he shall be held to have abandoned the same, and shall not be entitled to proceed thereafter with it.

(*g*) *Procedure in Court of Session and in any Sheriff Court.*—Except in so far as inconsistent with the provisions of this rule, or of the said Act, the Court of Exchequer (Scotland) Act 1856, shall apply to all such appeals originating in the Court of Session; and the Sheriff Courts (Scotland) Acts, 1907 to 1939, shall apply to all such petitions originating in any Sheriff Court.

SECTION 7

Inner House Interlocutors

295. Adjustment and Signing

(*a*) An interlocutor disposing without the hearing of parties of an unopposed motion under Rule 93 or Rule 263 shall be adjusted and signed by the judge presiding at the time when the motion is brought before the Division.

(*b*) Any other interlocutor shall be adjusted and signed by the judge who presided in the Division when the matter to be dealt with in the interlocutor was determined, or, in the event of the death, absence or disability of such judge, by the senior remaining judge of the Division which determined the matter. Such interlocutors shall be adjusted and signed as soon as reasonably practicable after the matter has been so determined, and after such consultation, if any, with the remaining members or member of that Division as the presiding judge or senior remaining judge may deem necessary.

(*c*) The judge signing an Inner House interlocutor shall be authorised to append the letters I.P.D. to his signature as conclusive evidence that the requirements of the foregoing paragraphs have been complied with.

SECTION 8

Inner House Judgments

296. Vacation or Recess

(*a*) It shall be competent for judgment to be given in vacation or recess disposing in whole or in part, so far as appropriate without a further hearing of counsel, of any cause depending before the Inner House by the issue of an interlocutor adjusted and signed as after mentioned together with the opinions of the judges who determined the matter.

(*b*) Any such interlocutor shall be adjusted and signed by the judge who presided in the Division when the case was heard, after such consultation, if any, with the remaining members of that Division as he may deem necessary, and such judge shall be authorised to append the letters I.P.D. to his signature as conclusive evidence that the requirements of this Rule have been complied with.

CHAPTER VI
Special Courts

SECTION 1
Election Petitions

297. Presentation of petition

(*a*) The presentation of a parliamentary election petition shall be made by lodging it in the Petition Department together with a process and fifteen full copies of the petition.

(*b*) On receipt of said Petition a copy thereof shall be sent by the Deputy Principal Clerk of Session to the returning officer of the constituency to which said petition relates.

298. Form of petition

(*a*) A parliamentary election petition shall be as nearly as possible in the form shewn in Form 46 and shall be signed by the Petitioner, or all the Petitioners if more than one.

(*b*) A parliamentary election petition shall specify the names and designations of the petitioner or petitioners and of the person or persons referred to as, or deemed to be, the respondent or respondents in terms of section 108(2) of the Representation of the People Act 1949, in this section called " the Act ", and shall set forth articulately in numbered paragraphs:—

(i) The right of the petitioners within section 108(1) of the Act:

(ii) The proceedings at and the result of the election; and

(iii) The facts relied on in support of the prayer of the petition.

299. Notice of Solicitor's name and address for notices

(*a*) Along with the petition there shall be lodged in the Petition Department a writing signed by or on behalf of the petitioner giving the name of an enrolled solicitor whom he authorises to act on his behalf, or stating that he acts for himself, as the case may be, and in either case giving an address within three miles of the General Post Office, Edinburgh, at which notices addressed to him may be delivered.

(*b*) The Deputy Principal Clerk shall keep a book at his office, in which he shall enter all addresses and the names of Solicitors given under the preceding paragraph of this Rule.

300. Caution for expenses

In the event of the security to be given by the petitioners in terms of section 119 of the Act being in whole or in part by bond of caution, the bond of caution

as required by the Act shall be as nearly as may be in the form shown in Form 48 and shall, within three days of presentation of the petition, be lodged with the Deputy Principal Clerk.

301. Consignation in security

In the event of the required security being in whole or in part by a consignation of money, such money shall be consigned with one of the joint stock Banks in Scotland in name of the Accountant of Court, and the consignation receipt therefor shall, within three days of presentation of the petition, be lodged in process and shall be retained as a security for the purpose for which security is required by the Act.

302. Sufficiency of caution.

When security is tendered in the form of a bond of caution lodged as aforesaid, the sufficiency thereof shall be attested to the satisfaction of the Deputy Principal Clerk.

303. Service of petition

The petitioner, if he acts for himself, or the solicitor for the petitioner shall within five days of the presentation of the petition serve on the respondent a notice of the presentation of the petition, a notice of the nature of the proposed security, and a copy of the petition and shall within five days thereafter lodge in process a copy of the petition with execution of service thereon in the form as nearly as may be *mutatis mutandis* of the form of execution of service of a summons, and with a copy of the notice of the presentation of the petition and of the nature of the proposed security appended thereto.

304. Objection to security

(*a*) The time within which the respondent may object to any bond of caution in terms of section 119(4) of the Act shall be five days after service of the notice of the proposed security.

(*b*) The objection shall be lodged in the Petition Department, and shall set forth in writing the specific ground or grounds thereof.

(*c*) When the petitioner has named a solicitor or given an address in terms of Rule 299, the respondent shall deliver a copy of the objection to the solicitor or send the same by post to the address given, so that it shall be received by the solicitor or delivered at the address on or before the date of lodging the objection.

305. Diet for hearing on objection to security

As soon as possible after the lodging of the objection, the Deputy Principal Clerk shall fix a diet for the hearing thereof and shall give notice of the time and place of the diet to the parties or their Solicitors.

306. Hearing on objection

(*a*) At the diet for the hearing on the objection the Deputy Principal Clerk shall hear the submissions of any parties who shall be present or represented by counsel or solicitors and shall forthwith allow or disallow the objection.

(*b*) If the objection shall be allowed, the Deputy Principal Clerk shall, in his deliverance to that effect, state the amount of consignation or additional consignation required to make the security sufficient.

(*c*) The time within which the petitioner may remove the objection by a consignation of money shall be five days from the date of the deliverance of the Deputy Principal Clerk; provided that within the said time the petitioner may mark an appeal to one of the judges on the rota for the trial of parliamentary election petitions, or to the vacation judge, in which case the said period shall run from the date of the deliverance of that judge.

307. List of election petitions

(*a*) In preparing the list of parliamentary election petitions in terms of section 121 (1) of the Act, the Deputy Principal Clerk shall insert the names of the solicitors (if any) acting for the petitioners and respondents, and the addresses (if any) to which notices may be sent.

(*b*) The list of parliamentary election petitions may be inspected at the Petition Department at any time during office hours.

308. Time and place of trial

(*a*) The time and place of the trial of a parliamentary election petition shall be fixed by one of the judges on the rota for the trial of parliamentary election petitions or the Vacation Judge, and the Deputy Principal Clerk shall intimate the diet of trial by post to the parties and to the returning officer, at least fifteen days before the day appointed for the trial; and the returning officer shall forthwith publish the same in the county, or burgh or burghs to which it relates.

309. Interlocutory matters

All interlocutory questions and matters, except as otherwise provided in the Act or by these Rules, shall be made upon motion and intimated to the other party or parties.

310. Procedure where seat claimed

(*a*) When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of and the party defending the election or return shall, at least six days before the day appointed for the trial, respectively lodge in process a list of the voters intended to be objected to, and of the objections to each such voter, and shall send a copy of that list to the other party or parties to the petition.

(*b*) No evidence shall be allowed to be given against any vote or in support of any objection which is not specified in the list, except by leave of the election

court or, on motion heard before the date of the trial, of any of the judges, upon such terms as to amendment of the list, postponement of the enquiry, and payment of expenses as may be ordered.

311. Evidence of undue return under section 122(5) of the Act

(*a*) On the trial of a petition complaining of an undue return, and claiming the seat for some person, when a respondent intends to give evidence to prove that the election of such person was undue, under authority of section 122(5) of the Act, such respondent shall, at least six days before the day appointed for the trial, lodge in process a list of the objections to the election upon which he intends to rely, and shall send a copy of that list to the other party or parties to the petition.

(*b*) No evidence shall be allowed to be given by or for a respondent in support of any objection to the election not specified in the list, except by leave of the election court or, on motion heard before the date of the trial, of any of the judges, upon such terms as to amendment of the list, postponement of the enquiry, and payment of expenses, as may be ordered.

312. Postponement of trial

(*a*) It shall be competent for the election court or any of the judges on the rota for the trial of parliamentary election petitions, on special cause shown by a party to the petition or *ex proprio motu*, to postpone the trial of a petition to such day as he may name.

(*b*) Notice of such postponement shall be sent by the Deputy Principal Clerk to the returning officer who shall forthwith publish the same within the constituency.

313. Statement of matters

Any party to the petition may, at least six days before the day appointed for the trial, lodge in process a statement of the matters upon which he intends to lead evidence; provided that a copy of such statement shall first have been sent to the other party or parties to the petition.

314. Evidence at trial

No evidence shall be received at the trial except as to matters contained in the lists referred to in Rules 310 and 311 and the statements referred to in Rule 313, if any, and tending to support or rebut the same, or matters which have already been sufficiently set forth in the petition, except by leave of the Court or one of the judges, and upon such conditions as to postponement of the trial, payment of expenses, and otherwise, as may be ordered; provided that the admissibility of any evidence sought to be led on the above matters shall be within the discretion of the election court.

315. Warrant to cite witnesses

The warrant for the citation of witnesses to the trial of any election petition shall be issued on the motion of any party to the trial, and shall be as nearly as may be, in the form shown in Form 49.

316. Expenses of witnesses

The reasonable expenses of any witness shall be ascertained by the clerk of court, and upon a certificate under his hand allowing the same, the said expenses shall, in the first instance, be paid by the party adducing such witness.

317. Clerk of Court at trial

At any election court held for the trial of a parliamentary election petition an officer to be named by the Principal Clerk of Session with the sanction of the Court shall attend and discharge the duties of clerk of court.

318. Application to state special case

(*a*) An application to state a special case, as provided in section 126(1) of the Act, shall be made by motion to either Division of the Inner House, or to the Vacation Judge.

(*b*) Parties shall be given an opportunity to be heard on the said motion, and the application shall be disposed of either by allowing adjustment of a special case or by refusal of the application.

319. Opinion of Court under section 126(2) of the Act

If it shall appear to the election court to be expedient that the opinion of the Court should be obtained, as provided for by section 126(2) of the Act, the question or questions to be submitted to the Court shall be set forth in a case adjusted by the Election Court.

320. Notice of application for leave to withdraw

(*a*) A notice of intention to withdraw an election petition in terms of section 127 of the Act shall be, as nearly as may be, in the form shown in Form 51.

(*b*) A copy of the notice shall be sent by the petitioner to the repondent, and to the returning officer who shall publish it in the county, or burgh or burghs to which it relates, and the petitioner shall advertise the notice in at least one newspaper circulating in the constituency.

321. Leave to withdraw petition

An application for leave to withdraw a petition shall be, as nearly as may be, in the form shown in Form 50, shall state the ground on which the application for withdrawal is intended to be supported, shall be signed by the person making the application and by the consenters, if any, or by their respective solicitors, and shall be lodged in process.

322. Application to be substituted as petitioner on withdrawal

Any person who might have been petitioner in respect of the election to which the petition relates may, within five days after notice of intention to withdraw is

published by the returning officer, give notice in writing, signed by him or on his behalf, to the Deputy Principal Clerk of his intention to apply at the hearing to be substituted for the petitioner; provided that any informality in such notice shall not defeat such application if in fact made at the hearing, subject to such order as to postponement of the hearing and as to expenses as the Court shall think just.

323. Security of substituted petitioner

(*a*) The time within which security shall be given on behalf of a substituted petitioner before he proceeds with his petition shall be five days after the order of substitution.

(*b*) The substituted petitioner shall lodge the writing referred to in Rule 299(*a*) within five days after the order of substitution.

324. Hearing of application for leave to withdraw

The time and place for hearing the application shall be fixed by one of the judges, or by the Vacation Judge, who shall hear and determine the same, unless he shall deem it expedient that the same shall be heard and determined by one of the Divisions of the Inner House; provided that the time fixed for the hearing shall be not less than a week after any notice of intention to apply shall have been given to the Deputy Principal Clerk in terms of Rule 320, and in the event of such notice having been given the Deputy Principal Clerk shall inform the applicant to be substituted as petitioner, or his solicitor, of the time and place of the hearing.

325. Death of Petitioner

In the event of the death of the petitioner or the surviving petitioner, notice thereof under section 133(3) of the Act shall be given and advertised by the solicitor (if any) formerly acting for the petitioner, or by the respondent or returning officer or other person interested to whose knowledge the death of the petitioner shall come, in like manner *mutatis mutandis* as notice of intention to withdraw a petition, and shall be published in the manner provided in Rule 320.

326. Application to be substituted on death of petitioner

Any application to be substituted as a petitioner in the event of the death of the petitioner or the surviving petitioner shall be made within one calendar month of the notice given in terms of the last foregoing Rule, and shall be made by motion.

327. Notice that respondent does not oppose

A respondent other than a returning officer may give notice that he does not intend to oppose the petition in terms of section 134(1) (*a*) of the Act by lodging in process not less than six days before the day appointed for the trial, a notice thereof signed by that respondent: and upon lodging such notice he shall

forthwith send a copy thereof by post to the petitioner or his solicitor, and to the returning officer, who shall cause the same to be published in the county, or burgh or burghs to which it relates, and the trial of the petition shall thereupon be postponed.

328. Death of respondent

If the respondent dies, or is summoned to Parliament as a peer of Great Britain, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may, under section 134 of the Act, give notice of the fact in the county, or burgh or burghs to which it relates, by causing such notice to be published in at least one newspaper circulating therein, and by sending a copy of such notice, signed by him or on his behalf, to the returning officer and a like copy to the Deputy Principal Clerk.

329. Application to be admitted as respondent

The time within which a person may apply to be admitted as a respondent in terms of section 134 of the Act shall be ten days after notice is given under Rule 328, or such further time as the Court may allow.

330. Expenses in proceedings under the Act

When any expenses are awarded in the course of proceedings under the Act, the award of the same shall be deemed equivalent to a finding of expenses in the Court of Session; and the account thereof, when lodged, shall be taxed by the Auditor of Court and the taxed amount shall be decerned for by the election court or one of the judges.

331. Proceedings not vitiated by objection of form

No proceedings under the Act shall be affected or defeated by any objection of mere form.

SECTION 2

Appeals from the Decisions of Referees under the Finance (1909-10) *Act* 1910 *and the Mining Industry Act* 1926

332. Constitution of Court

The judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts, when they sit to hear appeals under section 33 of the Finance (1909-10) Act 1910, in this section called " the Act ", shall sit with the same powers and under the same rules as if they were appointed to sit as an Extra Division of the Inner House to hear and

dispose of such appeals; provided always, that in appeals from the Sheriff under said Act it shall not be necessary for the Court to specify in any interlocutor any findings of fact or in law upon which the judgment of the Court is founded.

333. Time for appeal

Applications to a referee to state and sign a case under the Act shall be made within twenty-one days after the receipt by the appellant of the referee's determination, and such application shall set forth the questions of law on which the opinion of the said judges is sought.

334. Procedure in appeal

(*a*) Any case stated under the Act shall refer to the particular statute under which it is presented and shall state in articulate numbered paragraphs the facts and circumstances out of which the case arises, as the same may be agreed, found, or referred, and shall set forth the question or questions for answer by the Court. The form of the case shall be, as nearly as may be, as shown in Form 43.

(*b*) The party who has obtained a case shall within seven days after the receipt thereof transmit the same to the Deputy Principal Clerk and at the same time transmit a copy thereof to the opposite party or his solicitor. Within fourteen days after the case has been transmitted, the party obtaining same shall lodge in the General Department the said case, along with a process and copies of productions for the use of the Court in terms of Rules 20 and 26 (*b*), and shall at the same time intimate the lodging of the case to the opposite party or his solicitor and deliver to him at least ten copies thereof.

335. Rolls

All such appeals shall be published in the printed rolls of the Court of Session under the heading " Lands Valuation Appeal Court "; provided always that the single bills of the Court shall be called before one of said judges sitting alone, with power always to him to refer any matter to a sitting of the full Court.

336. Extracts

The Extractor of the Court of Session shall grant extract of the judgments of the Court in common form.

337. Minute-Book

Judgments of the Court shall be read in the minute-book of the Court of Session in common form.

338. Payment of duty

Subject to the provisions of sub-section (4) of section 10 of the Finance Act, 1894, the appellant shall not be entitled to appeal against the decision of the referee except on payment of, or giving security for, the duty claimed by the Commissioners, or such portion of it as is then payable by him.

339. Leave to appeal without payment

Where the appellant desires to apply for leave to bring an appeal without payment, or on part payment only of the duty under the provisions of subsection (4) of section 10 of the Finance Act 1894, he shall, within fourteen days from the date of the decision of the referee, present a note to the Court craving such leave, and shall specify therein the grounds on which his application is made; on presentation of the note the appellant shall enrol a motion for an order for intimation thereof to the Lord Advocate who may, if so advised, lodge answers thereto within fourteen days after receipt of said intimation.

VII., 340

CHAPTER VII

Fee-fund Dues: Table of Fees: Taxation of Accounts

SECTION 1

FEE-FUND DUES

340. Amount of fees chargeable

The Clerks of Court, the Auditor of the Court of Session, the Extractor of the Court of Session, the Deputy Keeper of the Signet, and the Accountant of Court, or any officer acting for any of them, shall be entitled to charge the fees specified in the Table hereto annexed, and no other, until the same shall be altered in terms of law.

341. Fees to be collected by stamps

The said fees shall be collected by means of stamps in the manner prescribed by the Public Offices Fees Act 1879, and any amending Act, and in accordance with any regulations or orders made from time to time by the Treasury, by virtue of the powers conferred on them by the said Act or Acts; and the officers above named shall, each in his own department, be responsible for the observance of these regulations, and the collection of all fees specified in the tables, and the due cancellation of the stamps.

342. Fees not payable by Government Departments

No fee fund dues shall be payable in the first instance by any Department of Government, but when any such Department is found entitled to expenses, fee fund dues shall be included in the Account thereof and, if recovered, shall be paid by the Department.

343. Consistorial causes

In any consistorial cause depending in the Court of Session, in which fees have been paid by both or either of the parties, it shall be competent for the Court, on cause shown, to remit the whole or any portion of such fees, and to order the same to be repaid to both or either of the litigants; and the Queen's and Lord Treasurer's Remembrancer for Scotland, on receiving due intimation of such order of remission and repayment from the clerk to the process, along with a note duly certified by him of the nature and amount of the fees so ordered to be remitted and repaid, shall forthwith issue a certificate to the Inland Revenue, in order that the amount paid may be refunded to such party or parties or to their known solicitors in Edinburgh.

344. Modification or remission of fees in Accountant of Court's department

It shall be competent for a factor, tutor, curator, trustee, or other official in charge of any estate under the supervision of the Accountant of Court, or for

any person beneficially interested therein, to apply by motion, presented in the Petition Department, whether in session or in vacation, praying that any of the fees exigible under the annexed table shall be modified, or entirely remitted, in respect of the poverty of the estate, or other exceptional circumstances; and the Court, after obtaining a report from the Accountant of Court thereon, shall dispose of the application as may be just, and its decision shall be final; and in the event of any modification or remission being granted, the same shall be intimated by the Deputy Principal Clerk to the Queen's and Lord Treasurer's Remembrancer.

In this section and relative table the following words shall have the meanings undermentioned:—

" Party," except in special cases, shall include a set of persons with the same interest, for whom one and the same first paper is or has been lodged. In special cases " party " shall mean a person or persons who appear as one of the separate parties to the case. " Step " shall mean a step of process.

The fees for proof, deposition of party on reference, hearing, and jury trial shall, in the first instance, be payable in equal shares by the parties to the action when there are more than one. Any fraction of sixpence which occurs for the division between the parties shall be charged as sixpence payable by each party.

The Clerk of Court shall note the duration of the proof, deposition, hearing, or jury trial, on a minute of proceedings, and shall collect the fee fund stamps payable in respect thereof, and these stamps shall be affixed to the said minute.

345. Fee-fund account books

The books of account to be kept by the officers of Court other than the Accountant of Court, in each office in which the fees are payable, shall be in the form of the schedule hereto annexed.

FEE-FUND DUES

TABLE OF FEES PAYABLE IN THE COURT OF SESSION AND OFFICES CONNECTED THEREWITH

346. Fees payable in the Court of Session and offices connected therewith regulated by the Lords of Council and Session under the Act 58 and 59 Vict. cap. 14 with the approval of the Lords Commissioners of Her Majesty's Treasury.

A.—GENERAL DEPARTMENT

I.—*Inner House*

	£	s.	d.
1. Appeals, or any other writ or step by which a cause or proceeding is originated,	2	0	0
2. Special cases—			
(*a*) Where two parties only,	3	0	0
(*b*) Each additional party, Subject to a maximum of £5 per case.	1	0	0
3. Answers or other step by which a party first makes appearance in a cause, or proceeding,	1	0	0
4. Minutes or notes and answers thereto,	0	5	0
5. Objections and answers thereto,	0	5	0
6. Reports by accountants, men of business, or other persons of skill, under remits by the Court,	0	10	0

7. Reports by judicial referees,	0	10	0
8. Specifications of documents called for, whether separate or appended to note for commission and diligence,	0	5	0
9. Certified copy interlocutor, each copy,	0	5	0
10. (*a*) Proof, including hearing thereafter, per hour, or part thereof,	0	10	0
(*b*) Report of commission,	0	5	0
11. Deposition of party on reference, the same fee as for proof, viz. per hour, or part thereof,	0	10	0
12. Hearing.—For all discussions other than in single bills, per hour, or part thereof,	0	5	0
13. Interrogatories,	0	10	0
14. Cross-interrogatories,	0	10	0
15. Reclaiming motions with or without appendices,	0	15	0
16. Appendices to reclaiming motions or other papers when lodged separately,	0	5	0
17. Copies of pleadings when certified by Clerk of Court,	0	5	0
18. Inventory of productions, including documents produced during or put in evidence at close of proof or jury trial	0	5	0
NOTE.—All productions made by witnesses during the course of a proof or trial shall be detailed in an inventory prepared by the solicitor of the party in whose interest they are lodged.			
19. Bonds of judicial caution on being lodged,	0	10	0
20. Certified copy of proceedings for appeal to the House of Lords,	2	0	0
21. Captions—			
Marking caption when ordered,	0	5	0
Warrant for caption when issued	0	5	0
22. Jury causes—			
(1) Adjusted issues,	0	5	0
(2) Notices of motion for new trial,	0	15	0
(3) Citation of each jury, to include outlays of sheriff-clerk in citing and countermanding,	1	0	0
NOTE.—The fee stamps to be affixed to precept before transmission to the sheriff-clerk. The precept to be issued not later than ten days previous to date fixed for trial.			
(4) Note of exceptions,	0	15	0
(5) For time occupied by trial of the cause up to commencement of the judge's charge, per hour, or part thereof,	0	10	0
(6) Report of commission,	0	5	0
NOTE.—Other steps will bear the same fees as in ordinary actions and jury causes.			
23. Letters of request to foreign Courts,	0	10	0
24. Note for warrant to cite witnesses furth of Scotland,	0	5	0
25. Judges' opinions per sheet of writing or part thereof—			
(*a*) First copies	0	2	0
(*b*) Second and subsequent copies	0	1	0
26. Every other step or pleading in the Inner House not enumerated in this schedule,	0	10	0

II.—*Outer House*

1. Summons or other writ or step by which a cause or proceeding is originated,	1	0	0
2. Defences, answers, or other writ by which a party first makes appearance in a cause,	1	0	0
3. Closing record, each party,	0	10	0
4. Inventories to satisfy production,	0	5	0
5. Petitions and notes not being first steps of process,	0	5	0
6. Minutes or other incidental steps and answers thereto,	0	5	0
7. Objections and answers thereto, and separate counterclaims and answers thereto,	0	5	0
8. Reports by accountants, men of business, or other persons of skill, under remits by a Lord Ordinary,	0	10	0
9. Reports by judicial referees, or by Mental Welfare Commission	0	10	0
10. Specifications of documents called for,	0	5	0
11. Certified copy interlocutor, each copy,	0	5	0
12. (*a*) Proof, including hearing thereafter, per hour, or part thereof,	0	10	0
(*b*) Report of commission,	0	5	0
13. Deposition of party on reference, the same fee as for proof, viz. per hour, or part thereof,	0	10	0
14. Hearing.—For all discussions other than in the motion roll, per hour, or part thereof,	0	5	0
15. Interrogatories,	0	10	0
16. Cross-interrogatories,	0	10	0
17. Condescendences and claims, and revised condescendences and claims in multiplepoindings, rankings, schemes of division, etc., for each separate claim,	0	5	0
18. Copies of pleadings certified by Clerk of Court,	0	5	0
19. Inventory of productions, including documents produced during, or put in evidence at close of proof or any jury trial—	0	5	0
NOTE.—All productions made by witnesses during the course of a proof or trial shall be detailed in an inventory prepared by the solicitor of the party in whose interest they are lodged.			
20. Bonds of judicial caution on being lodged,	0	10	0
21. Captions—			
Marking caption when ordered,	0	5	0
Warrant for caption when issued,	0	5	0
22. Jury causes—			
(1) Adjusted issues,	0	5	0
(2) Citation of each jury, to include outlays of sheriff-clerk in citing and countermanding,	1	0	0
NOTE.—The fee stamps to be affixed to precept before transmission to the sheriff-clerk. The precept to be issued not later than ten days previous to date fixed for trial.			
(3) For time occupied by trial of the cause up to commencement of the judge's charge, per hour, or part thereof,	0	10	0
23. Letters of request to foreign Courts,	0	10	0

24. Note for warrant to cite witnesses furth of Scotland,	0	5	0
25. Judges' opinions per sheet of writing or part thereof—			
(*a*) First copies	0	2	0
(*b*) Second and subsequent copies	0	1	0
26. Every other step or pleading in the Outer House not here enumerated,	0	10	0

III.—*Exchequer Causes*

1. Petition, Case, Appeal or Answers	0	10	0

(Any other writ or step of procedure the same fees as similar writs or steps under Nos. I and II.)

B.—Petition Department

1. Petitions, petitions and complaints presented to Inner House,	2	0	0
2. Petitions and answers in Inner House, not being first steps,	0	10	0
3. Petitions for sequestration,	1	0	0
4. Answers or objections to No. 1,	1	0	0
5. Certified copies of petitions for sequestration and relative interlocutors, each	0	10	0
6. Minutes or notes to award sequestration or to dismiss petitions for sequestration, and other applications in or connected with sequestrations,	0	5	0
7. Answers or objections to No. 6,	0	5	0
8. Every extract or certified copy of proceedings in or connected with sequestrations other than certified copies under No. 5, per sheet of writing or part thereof,	0	2	0
9. Petitions and notes presented to the Outer House, being first steps of process and answers thereto,	1	0	0
10. Petitions and notes presented to the Outer House, not being first steps of process, and answers thereto,	0	5	0
11. Reports by accountants, men of business, or other persons of skill under remits by the Court,	0	10	0
12. Minutes or other incidental steps and answers thereto,	0	5	0
13. Petitions for suspension, suspension and interdict, or suspension and liberation, and answers thereto,	1	0	0
14. Caveats when lodged or renewed,	0	2	6
15. Fiats,	0	5	0
16. Bills for loosing arrestments or inhibitions, and answers thereto,	0	5	0
17. Registering office copies of orders of English and Irish Courts,	0	10	0
18. And, in addition, for each sheet of writing beyond four sheets,	0	2	6
19. Authentication by judge of act and warrant, in terms of section 70 of the Bankruptcy (Scotland) Act 1913,	0	5	0
20. In proofs—			
(*a*) Proof, including hearing thereafter, per hour, or part thereof,	0	10	0
(*b*) Report of commission,	0	5	0
21. Deposition of party on reference, the same fee as for proof, viz. per hour or part thereof,	0	10	0

22. Hearing.—For all discussions other than in the motion roll, per hour of part thereof,	0	5	0
23. Specification of documents called for,	0	5	0
24. Interrogatories,	0	10	0
25. Cross-interrogatories	0	10	0
26. Certified copy interlocutors, each,	0	5	0
27. Copies of proceedings other than those above specified certified by Clerk of Court,	0	5	0
NOTE.—This and preceding fee cover all charges for writing.			
28. Inventory of productions, including documents produced during, or put in evidence at close of proof—.	0	5	0
NOTE.—All productions made by witnesses during the course of a proof shall be detailed in an inventory prepared by the solicitor of the party in whose interest they are lodged.			
29. Bonds of caution,	0	10	0
30. Extracts of decrees, and of bonds of caution,	0	10	0
31. And in addition for each sheet of writing beyond four sheets,	0	2	6
32. Certified copy of proceedings for appeal to the House of Lords,	2	0	0
33. Captions—			
Marking caption when ordered,	0	5	0
Warrant for caption when issued,	0	5	0
34. Note for warrant to cite witnesses furth of Scotland,	0	5	0
35. Every step or pleading not specified above,	0	5	0

C.—REGISTRATION APPEAL COURT AND VALUATION APPEAL COURT

1. Cases on appeal,	1	0	0
2. Answers,	1	0	0
3. Hearing.—For all discussions other than in single bills per hour, or part thereof,	0	5	0

D.—COURT OF TRIAL OF ELECTION PETITIONS

1. Petitions against return of Members of Parliament,	1	0	0
2. Statement of matters,	0	10	0
3. Any other petitions, applications, answers, or objections submitted to the judges,	0	10	0
4. Notice of application for leave to withdraw petition,	0	10	0
5. Certificate of judgment,	0	15	0
(Any other writ or step of procedure, the same fees as similar or analogous writs or steps.)			

E.—TAXATION OF EXPENSES

For taxing accounts of expenses incurred in judicial proceedings remitted to the Auditor for taxation—

Under £50,	0	10	0
For every additional sum of £50, or part of £50,	0	10	0

NOTE.—These fees to be collected by Clerks of Court.

F.—Extracts

1. Extract of decree in absence—			
(*a*) Pronounced on consideration of summons or petition, without any prior remit, or proof, or other procedure, .	1	0	0
(*b*) Pronounced on consideration of summons or petition after proof, remit or other procedure, ...	1	10	0
(*c*) Pronounced in proceedings under Entail Acts, or in liquidations under Companies Acts, or in application for power to complete title, or borrow money, or sell heritable or moveable estate, or to exercise other special powers	1	10	0
2. Extract of decree *in foro*, ...	1	10	0
NOTE.—The above fees are payable only on the first extract issued. When decree is extracted in duplicate, triplicate, etc., only copying fees under No. 6 of this part of the Table of Fees shall be charged.			
3. Extract of admission as a solicitor, ...	0	10	6
4. Extract of protestation, ...	0	10	6
5. Certificate under Judgments Extension Act 1868, . . .	0	5	0
6. Engrossment of extract, record copy, and certificate, each, per sheet of 250 words, ...	0	2	0
Figured work 1s. extra per sheet.			

G.—Signet Office

1. To signet any writ—			
(*a*) Presented during office hours, viz. from 2.15 to 3.30 daily, except Saturday, on which day, from 10.30 to 11, the office being shut on public holidays, ...	0	5	0
(*b*) Presented out of office hours, viz. on Monday, Tuesday, Wednesday Thursday, and Friday, even though holidays—			
From 10 a.m. to 2.15 p.m., ...	0	10	0
From 7 p.m. to 8 p.m., ...	0	15	0
On Saturday, even though holiday—			
From 2 p.m. to 3 p.m., ...	0	15	0
(NOTE.—The above fees are prescribed by the Court, but the extra hours, during which the officers of the Signet are allowed to signet any writ, are fixed, and may be varied at any time, by the Keeper of the Signet. In the event of such variation, the fees charged shall be as herein prescribed for hours before and after the ordinary office hours respectively.)			

H.—Edictal Citations

1. For access to and liberty to make excerpts or copies of writs, etc., from any record, for each year of record inspected, . .	0	1	0
2. For extracts or copies, per sheet of 250 words, . . .	0	2	0

I.—Accountant of Court's Department

I.—In Factories, Curatories, and Private Trusts

	£	s.	d.
1. For receiving, examining, recording, and delivering up bonds of caution,	0	10	6
2. On lodging inventory, and adjusting same, when the estate			
(*a*) Exceeds £100, but does not exceed £500,	0	10	0
(*b*) Exceeds £500, but does not exceed £1,000,	1	0	0
(*c*) Exceeds £1,000, for the first £1,000,	1	0	0
and for each £1,000, or part of £1,000, thereafter, but not to exceed £10, 10s.	0	10	0
3. For each search of the records of subsisting, exhausted, or new factories, or for any information therein contained,	0	5	0
4. For auditing each account			
(*a*) Where factor's commission is under £1, 1s.,	0	2	6
(*b*) Where factor's commission is under £2, 2s.,	0	5	0
(*c*) Where factor's commission is £2, 2s. and upwards, and in the last-named case, an additional 12½ per cent. on the factor's commission as allowed (or what would have been the factor's full commission if chargeable or fully allowed).	0	10	6
5. For discharges, reports on application for special powers or other special reports £0 10 6 to	10	10	0
6. For reports on schemes of division, and 10s. 6d. extra for each £1,000, or part thereof, divided.	1	1	0
7. For certificates for the Bank of England under section 66 of the Finance Act 1916,	0	5	0

II.—In Bankruptcies

	£	s.	d.
8. On lodging copy act and warrant,	0	10	6
9. For supervising proceedings, examining and issuing acknowledgment of sederunt book, and reporting on trustee's discharge, 1 per cent. on amount divided amongst ordinary creditors, but only when total amount for division is over £100.			
10. For report on bankrupt's petition for discharge,	1	1	0
11. For concurrence in private sales, if £1,000 or under, and 10s. 6d. extra for each additional £1,000, or part thereof.	1	1	0
12. For special reports,	1	1	0
13. For reports regarding trustee commission, and 2 per cent. on the trustee commission as fixed, but not to exceed £10, 10s.	0	10	6
14. For each inspection of sederunt book or search of the records of subsisting, exhausted, or new sequestrations, or for any information therein contained,	0	5	0
15. For auditing the accounts and fixing the commission of trustees under voluntary trust deeds, 10 per cent. on commission allowed to trustee.			

III.—In Consignations

16. For lodging consignations, ... 0 2 6
17. For producing or delivering up, ... 0 2 6
and 1s. for every £100 uplifted, but not to exceed £2, 2s.
18. For examining registers, ... 0 2 0

IV.—Copying Fees

19. For certified copies, each page, ... 0 2 6

SCHEDULE

Date	Cause	Writ	Section of Table under which Fee Charged	Amount

SECTION 2

TABLE OF FEES OF SOLICITORS IN THE COURT OF SESSION

General Regulations as to the Preparation and Taxation of Accounts for Judicial Proceedings

347. This Table of Fees shall regulate the taxation of Accounts in Judicial proceedings (*a*) between Party and Party (*b*) between Solicitor and Client, and (*c*) between husband and wife in consistorial causes, subject to the following distinctions:—

(*a*) In a taxation between Party and Party there shall be one Account in which the whole business chargeable against the opposite party shall be stated continuously by whatever solicitor performed. General charges of limited amount only shall be allowed for items such as "Taking Instructions," "Record Fee," "Instructions for Precognitions," "Preparation for Proof or Trial" and "Session Fee". Only such expenses shall be allowed against the opposite Party as are necessary for conducting the case in a proper manner with due regard to economy, and without any allowance beyond that indicated in the Table for preliminary trouble and investigation: provided that precognitions or reports, so far as relevant and necessary, although taken before the raising of the action or preparation of the defences, and although the case may not proceed to trial or proof, shall be allowed, including a fee for Instruction for Precognitions and expenses of obtaining the same, and copies for Counsel and Solicitors; but, in the event of the action being disposed of prior to an interlocutor being pronounced approving of issues or allowing a proof, the Auditor shall not also

allow any charges for preparation or presentation of a Memorial to Counsel in connection with the case.

(*b*) In the case of accounts falling to be charged on Solicitor and Client scale, the party presenting the account shall substitute for the above limited general fees detailed charges, and shall be allowed all expenses reasonable and necessary in the particular circumstances of each case, the rates of charges being regulated by the Table.

(*c*) In the case of accounts falling to be charged according to the existing practice on the consistorial scale, detailed charges shall be substituted for all the limited general fees except the Record Fee and such accounts shall be taxed on a scale intermediate between Party and Party and Solicitor and Client according to the particular circumstances of each case.

(*d*) Notwithstanding that a party shall be found entitled to expenses generally, yet if, on the taxation of the account, it shall appear that there is any particular part or branch of the litigation in which such party has proved unsuccessful, or that any part of the expense has been occasioned through his own fault, he shall not be allowed the expense of such part or branch of the proceedings.

(*e*) When a remit shall be made by the Court, whether *ex proprio motu* or on the motion of the parties or any of them regarding matters in the record, to an accountant, engineer or other reporter, the solicitors shall not, without special agreement and subject to the orders of the Court, be personally responsible to the reporter for his remuneration, the parties alone being liable.

(*f*) In all cases as between party and party the Court may direct that expenses shall be subject to modification, but otherwise the following rules shall apply: When the pursuer in any action (not being an action for defamation or libel or an action for summary trial or an action which is only competent in the Court of Session) recovers (1) by verdict of a jury, or (2) by decerniture of the Court, any sum under £50, or when in an action for interim aliment only, by one party to a marriage against the other, the aliment awarded does not exceed the sum of £5 per week in respect of the pursuer and the sum of 30 shillings per week in respect of each child (if any) of the marriage, such pursuer shall be entitled to expenses only according to the Sheriff Court Table of Charges including Small Debt, appropriate to the sum decerned for unless the Court shall direct that, owing to the nature and importance of the action, expenses shall be chargeable on a higher scale.

A.—General Business in the Court of Session

Applicable to all cases whether in the General Department or Petition Department of the Outer or Inner House and subject to any current Acts of Sederunt authorising temporary increases in fees.

	£	s.	d
1. Taking Instructions to conduct case of pursuers or defenders and petitioners or respondents and parties to special or stated cases; to include preparation of slip for calling list and interlocutor sheets, inventory and dulpicate inventory of process, motion			

sheet, and attending to all necessary steps of process up to and including the lodging of the writ whereby a party makes his first appearance in a cause, according to the nature of the case	2 to 14	2 to 14	0 to 0

Note.—Outlays for reports, including Police Reports and fees to Counsel and officers' fees for service so far as necessary for the proper conduct of the cause, to be allowed in addition.

2. **Drawing Papers** (the sheet throughout this Table to consist of 250 words or numbers)—

(1) Summonses, Defences, Petitions, Answers, Condescendences, Counter Claims, Commissions and Diligences against witnesses or havers, Minutes, Specifications of Documents, Interrogatories, Precognitions, Memorials, Affidavits, Caveats, Statutory Notices and generally all papers where not drawn by Counsel, per sheet	0	15	0
(2) Bills for letters passing the signet	0	4	0
(3) Figured statements, per sheet	1	0	0
(4) Inventories of Productions, per sheet	0	8	0

Papers shall be confined as closely as possible to statements of fact without argument or quotations from authorities but reference may be made where necessary to proofs, deeds, writings or correspondence produced without the same being quoted at length; and if in any paper produced in a cause quotations of any kind exceeding one page (125 words) each in length shall be made, the same shall be chargeable only at the rate of copying instead of drawing fees. All documents charged for must be produced if required to the Auditor at the taxation of accounts of expenses.

3. **Copying Papers**

Written or typewritten copies—

(1) In English, per sheet	0	4	0
(2) In any other language, per sheet	0	5	0
(3) Figured states and accounts and accounts of expenses, per sheet	0	5	0

(4) For each additional copy thereafter up to five additional copies—

One-half of above charges per sheet.

Note.—(*a*) In accounts as between party and party no charge shall be allowed for a solicitor's copy of a Memorial to Counsel nor for copies of any documents not lodged in process: copies shall be allowed only of such documents as may be necessary for conducting the cause but a copy of all important Interlocutors shall be allowed for the client except as otherwise provided for in this Table.

(*b*) Where more than six copies of Session papers such as Summonses, Records, Petitions, Special or Stated Cases, are necessary these may be reproduced by duplicating process, or printed and the appropriate charges recovered as outlay. If this is not done a charge for six copies only at copying rates shall be allowed. The provisions of the Act of Sederunt of 27th October 1922 shall continue to apply as regards proofs and appendices.

4. Printing and Duplicating [See also C (9)]

(1) Framing title page and index to print	0	8	0
(2) Instructing printer or Duplicating Agency	0	8	0
(3) Where copies not charged for making up sets of papers for printer or agency	1	0	0
(4) Revising Proofs—			
Printing—			
Not exceeding five pages	0	13	4
For every additional five pages or part thereof	0	6	8
Duplicating Process—			
Not exceeding eight pages	0	13	4
For every additional eight pages or part thereof	0	6	8
(5) Agency settling account of printer or Duplicating Agency	0	9	0

Note.—Where solicitor reproduces by duplicating process, the standard current charges to be allowed to him for reproduction shall be the same as if work had been given out to a duplicating agency, but he shall not be allowed to charge for making copies of any documents to be reproduced.

5. Instructing Counsel

(1) Letter or attendance with fee, £1 1s. or £2 2s.	1	0	0
Exceeding £2 2s. and not exceeding £5 5s.	1	6	8
Exceeding £5 5s. and not exceeding £10 10s.	1	10	0
Exceeding £10 10s.	2	10	0
(2) Fixing consultation with one Counsel	0	10	0
Where more than one	0	13	4
(3) Revising papers drawn by Counsel—			
Not exceeding five sheets	0	13	4
Exceeding five sheets and not exceeding ten sheets	1	6	8
For every additional ten sheets or part of ten sheets	0	13	4
Revisal of papers drawn by Counsel to be charged according to their length as finally lodged.			
(4) Fees to Clerks of Counsel—			
(*a*) Where Counsel's fee is £1 1s.	0	2	6
Where £2 2s. to £4 4s.	0	5	0
Where £5 5s. to £10 10s.	0	7	6
Over £10 10s. 5 per cent. on amount.			
(*b*) For all writings, per sheet	0	2	6

6. Instructions to Messengers-at-Arms

Instructing Messenger to serve, execute or intimate Summons, Petition, Citation or Diligence including examination of executions and settlement of his fee—

(1) For the first party on whom service or intimation is made	0	10	0
(2) For each other party	0	2	0

7. Citation of Parties

Citation of a party, substituted party or third party to a cause—

(1) First party, plus postage	0	10	0
(2) For each other party, plus postage	0	6	8
(3) Agency accepting service	0	10	0
(4) Copy deliverance (as per copying charges).			
(5) Edictal Citation—			
(*a*) Where address of party unknown. Charges as above.			
(*b*) Where intimation made to party or parties by letter, charges as above, plus Agency serving on party at Extractor's office.			
For each party	0	6	8
but not to exceed in all	1	0	0

Note.—The above charges to supersede charges noted in Citation Amendment (Scotland) Act 1882, sections 5 and 6 and Schedule.

8. Citation of Witnesses and Havers

(1) Agency citing one witness or haver, plus postage	0	5	0
(2) For every witness after the first for the same diet, plus postage	0	4	0

9. Productions

Agency lodging Productions	0	9	0

10. General Attendances

Each necessary attendance in Procedure Roll, Proof or Jury Trial or examination of parties or havers: or visitation or inspection ordered by the Court: or at a consultation with counsel where a fee is paid with or without a Memorial: or attending the Auditor at the taxation of the Account: or accountant, surveyor, engineer, architect or other person to whom a Remit has been made by the Court: or making Searches of any public Records: or other the like attendances where these are proper or necessary or ordered by the Court.

(*a*) If in Edinburgh or neighbourhood—			
Not exceeding half an hour	1	6	8
Exceeding half an hour but not exceeding one hour	2	0	0
For each half-hour thereafter.	1	0	0
(*b*) If at a distance therefrom but in Scotland for the time occupied in such business and in travelling at a rate not exceeding for a whole day of eight hours	16	0	0

Besides reasonable travelling charges and also an allowance for maintenance, the latter at a rate not exceeding per day	3	3	0
(*c*) If in England, Wales or Ireland, for the time occupied, including travelling, per day of eight hours	16	0	0
Besides reasonable travelling charges and also an allowance for maintenance, the latter at a rate not exceeding per day	3	3	0
If in London the allowance for maintenance to be at a rate not exceeding per day	5	5	0
(*d*) If during absence from Edinburgh the time necessarily occupied in actual business during any day shall exceed eight hours the Solicitor shall be allowed such additional time at the rate for each hour of	2	0	0
(*e*) Where the business can properly be performed by a local Solicitor the Auditor in taxing an Account shall allow such expenses as would have been incurred if it had been done by the nearest local Solicitor, including reasonable fees for instructing and corresponding with him unless he is satisfied that it was in the interests of the client that the Solicitor in charge of the case should attend personally.			
Allowance for time of Clerk necessarily occupied—			
(*a*) If in Edinburgh or neighbourhood, per hour	0	13	4
(*b*) At a distance if in Scotland, per day	4	4	0
(*c*) In England, Wales or Ireland, per day	5	5	0
(*d*) In addition reasonable travelling charges and also an allowance for maintenance, the latter at a rate not exceeding per day	2	2	0
11. Correspondence where not Covered by Inclusive Fee			
(1) Each letter not exceeding one page of 125 words	0	9	0
(2) Exceeding one page and not exceeding two	0	13	4
(3) Each page or part of a page beyond two	0	6	8
(4) Formal letters (such as transmitting papers) to be charged each	0	4	0
(5) Telegrams, including transmission and letter confirming	0	13	4
(6) Telephone conversations, including letter confirming	0	13	4
(7) Framing each circular	0	10	0
Copies as in copying charges.			
(8) Addressing and despatching circulars, not exceeding 20	0	6	0
If more in number, remainder at same rate.			
(9) Ordering advertisements—			
Each paper, including settlement of newspaper accounts	0	10	0
12. Miscellaneous: where not Covered by Inclusive Fee			
(1) Borrowing whole or part of a process of not more than 40 numbers	0	8	0

Above 40 and not exceeding 100	0	12	0
Above 100	0	15	0
Returning whole or part of a process and getting receipts scored— One-half of above fees.			
(2) Ordering caption for return of a process and intimating same to opposite Solicitor	0	13	4
(*a*) If process is not returned after intimation by Clerk of Court procuring caption and instructing messenger to execute	0	13	4
(*b*) When the caption is enforced the above fees to be paid by the party against whom it is directed with the Clerk of Court and messengers' fees, the several fees being marked on the back of the caption.			
(3) Where a paper, document or article is ordered or required to be lodged, enquiring if the same has been done. To be charged once only	0	9	0
(4) Examining papers lodged by opposite party and ascertaining new matter and to what extent additional information may be required— Where no Memorial is prepared in consequence, the same fee as allowed for revising papers drawn by Counsel according to their length. (See A. 5 (3).)			
(5) Lodging Summons, Petition, Defences or original step of Process whereby a party makes first appearance in cause where fee for instructions is not charged	1	6	8
(6) Lodging and intimating each other paper and productions made therewith where charge not specially provided for	0	9	0
(7) Procuring copy of an Interlocutor	0	9	0
(8) Ordering and procuring from Clerk any act or warrant, commission or diligence or decree or authentication of Interlocutor or order of Court where such is necessary	0	9	0
(9) Booking Interlocutor, per sheet	0	4	0
(*a*) Agency making application for and attendance before Lord Ordinary on application for commission before calling	1	6	8
(10) Attendance on a reporter with proceedings, &c., and getting him to accept Remit	0	15	0
(11) Attendance on commissioner fixing diet of proof for examination of havers, intimating same to opposite solicitor or party and writing certificate of intimation	1	5	0
(12) Arranging with opposite solicitor to attend, and attendance getting Diet of Proof or Trial fixed and delivering slip to Clerk of Court	1	0	0

If more than one opposing solicitor, for each after the first, an extra	0	4	0
(13) Attendance on reporter or Commissioner getting up Report with productions, &c., and settling his fee and clerk's fee	0	15	0
(14) Perusing and considering Reports obtained under Remit or productions made by opposite party or recovered under diligence—whether copies made later or not. To be charged according to time occupied at the rate for each hour of £1 6s. 8d.			
(15) Procuring Account of Expenses marked by Clerk, lodging same with Auditor, getting warrant to tax and serving same with copy of Account on opposite solicitor	0	15	0
(16) Framing Account of Expenses, per sheet	0	5	0
(17) Drawing Note to Extractor for Extract, lodging same and transmitting process and procuring and examining Extract	1	5	0
(18) For meetings and correspondence between solicitors for both parties leading to a settlement by Joint Minute such reasonable fee as the circumstances of the case in the opinion of the Auditor may warrant.			
(19) Procuring Jury List	0	9	0
Note: Copies to be allowed for Counsel and solicitors in addition.			
(20) Instructing shorthand writer to attend trial or proof or diet before Commissioner, including settling account	0	10	0
(21) Agency fee funding dues of hearing or proof or other document where no charge specially provided.	0	9	0
(22) Session Fee. At the end of each session in March and July there shall be allowed to the solicitors a fee to be called a " Session Fee " to cover instructions to Counsel to attend callings where no fee is sent; general consultations with them during the progress of the case where no charge is made and the other trouble not allowed in a case according to circumstances, including all communications between solicitor and client.	1	1	0
		to	
	10	10	0

B.—Petition Department
(*Outer House*)

1. Ordinary Business—

(1) Framing and lodging caveat (including fair copy)	1	5	0
(2) Procuring intimation on Walls and in Minute Book and writing certificate	0	10	0
(3) Returning certified copy with execution of service and intimation thereon	0	9	0

(4) In cases where it may be necessary to wait on Deputy Principal Clerk or Lord Ordinary at extra hours to procure sist or interlocutor or at a hearing before Lord Ordinary where such shall be ordered, for the first half-hour	1	0	0
Exceeding half an hour but not exceeding one hour	1	6	8
For each half-hour thereafter	0	13	4
(5) Taking out Bond of Caution, returning when executed to Clerk and intimating lodgment to opposing party	1	6	8
(6) Getting up Bond to be attested, returning when attested to Clerk and intimating	0	13	4
(7) Preparing for discussion where Counsel not employed	1	10	0
(8) Lodging and intimating to opposite party each paper or note to Lord Ordinary	0	9	0
(9) Enquiring as to whether Answers have been lodged; to be charged once only	0	9	0
(10) Procuring copy interlocutor of Lord Ordinary	0	9	0
Booking interlocutor, per sheet	0	4	0
(11) Where caution found through medium of Guarantee Company for trouble in connection therewith	3	3	0
(12) Agency transmitting process	0	9	0
(13) Enquiring as to whether caution has been found and consenting or objecting thereto	1	6	8

All other charges to be the same as for similar or analogous business in General Department.

2. Mercantile Sequestrations—

(1) Taking instructions to apply for sequestration, obtaining deliverance; taking instructions to prove notour bankruptcy, drawing abbreviate of sequestration, drawing advertisement for Gazette and instructing insertion and transmitting to Sheriff Clerk. Inclusive fee	8	8	0
(2) Obtaining deliverance, declaring election of Trustee and Commissioners	0	15	0
(3) Taking out Bond of Caution, getting it signed	1	6	8
Lodging same	0	9	0
(4) Taking out Act and Warrant	1	5	0
(5) Drawing abbreviate of Trustee's confirmation for Register of Adjudications and copying and recording service	1	5	0
(6) Framing Note when first dividend payable and List of Commissions and lodging	1	5	0

All other charges in sequestrations to be at the same rates for similar or analogous business in Petition Department.

3. Summary Trial under Section 10 of Administration of Justice Act 1933—

Charges to be allowed under this Table according to the nature of the case and procedure which takes place.

C.—General Department

(Outer House)

1. Ordinary Business—

(1) Enrolling motion; intimating enrolment to opposite solicitor; marking motion as opposed—			
Where only one	0	10	0
For each other	0	2	0
(2) Attendance at calling in Motion Roll where motion opposed—			
Not exceeding half an hour	1	0	0
Exceeding half an hour but not exceeding one hour	1	6	8
For each half-hour thereafter	0	13	4
There shall be no charge for attendance where cause is not called or where calling proves abortive unless this shall occur without fault or neglect of the solicitor making the charge.			
(3) Attendance and enquiries in vacation as to cause at avizandum: To be charged once only	0	13	4
(4) Putting up each protestation for not calling or insisting in action including framing note and intimating	0	13	4
(5) Attendance producing Summons and obtaining certificate and thereafter on Keeper of Minute Book, getting protestation scored	0	13	4
(6) Copy of unadjusted Record for printer or duplicating agency, per sheet	0	4	0
(7) Lodging copies of Open Record with clerk and opposite solicitor	0	13	4
(8) Revising Open Record (as in Charges for General Business).			
(9) (*a*) In all defended actions in taxations as between party and party and in consistorial cases there shall be allowed as against the party found liable in expenses, to include work in connection with adjustment of pleadings, borrowing and returning process after Defences lodged, and for writing or noting adjustments, making up and copying set of papers to be duplicated or printed, instructing Duplicating Agency or Printers, framing title page and index to and revising proof prints of Open and Closed Records, settling Duplicating Agency or Printers accounts, lodging and intimating prints of Records, copy adjustments for intimation and otherwise, procuring and copying of interlocutors for solicitor and client, all communications and meetings with opposite solicitor and Counsel and client relative to adjustment, fee funding Closed Record, considering pleadings and productions and attendance in Court relative to adjustment and closing of Record	14	14	0

(*b*) When a case is settled after the Open Record is lodged but before the Closed Record is lodged .	10	10	0
(10) Instructing printer or duplicating agency to throw off Record as adjusted	0	10	0
(11) Revising Closed Record: one-half of revisal fees.			
(12) Lodging copies of Closed Record	0	10	0
(13) Procedure Roll—			
Preparing for discussion	1	6	8
Attendance before Lord Ordinary on preliminary pleas or on the merits, as under A. 10 (*a*).			
(14) Attendance at Court on each day case stands in Roll although not called	0	15	0
(15) Attendance lodging with Auditor account of expenses where decree in absence and uplifting account when taxed	0	13	4
(16) Undefended cases—			
In undefended cases where no proof is led, the pursuer's solicitor may in his option elect to charge an inclusive fee to cover all work from taking instructions up to and including obtaining extract decree. Outlays, such as Court dues and Counsel's fees, &c., shall also be allowed to an amount not exceeding £8 8s. in all, with in addition dues of extract. The option shall be exercised by pursuer's solicitor endorsing a Minute to the above effect on the principal Summons or Petition before decree is taken which Minute shall be fee-funded as an account, but taxation shall be unnecessary.			
Inclusive fee	14	14	0

2. Jury Trials and Proofs—

(1) Instructions for Precognitions	2	2	0
(*a*) To include all charges for correspondence, journeys, attendances or correspondence in connection with precognitions. In addition, reasonable travelling and personal expenses shall be allowed as for the nearest local solicitor.		to	
	21	0	0
(*b*) Each solicitor shall be entitled to charge for a copy of the precognitions for his own use.			
(*c*) Charges for the precognitions and attendances of witnesses present at a trial but not examined nor held as concurring with a witness who has been examined may be allowed, provided a motion to this effect is made at the close of the Proof or Trial and the Court grants the same and the witnesses' names are noted.			

(2) Instruction of skilled witnesses	1	1	0
Note.—Where a skilled witness prepares his own precognition or report the solicitor shall be allowed half drawing fees for revising and adjusting it.	to 4	4	0
(3) Preparing for Proof or Trial—			
Fee for perusing Record and productions and precognitions, &c., before Proof or Trial, and preparing for same according to time occupied and nature and importance of the case	2	2	0
	to 10	10	0
Note.—In the event of a party in a trial or proof being represented by one Counsel only allowance may be made to the solicitor should the case warrant it for the attendance of a clerk at one-half the rate chargeable for the solicitor's attendance.			
(4) Plans—			
No allowance shall be made for plans or photographs lodged in process or prepared for use of Counsel except such as are either ordered or subsequently sanctioned by the Court, prepared by mutual arrangement of parties or lodged and proved at the trial or proof.			
(5) Witnesses' Fees—			
(*a*) Professional persons, persons in managerial or like executive positions, and officers in H.M. Services or in the Mercantile Marine, per day,			
Such sum not exceeding £10 10s. as the Auditor may determine.			
(*b*) Witnesses whose attendance entails loss of wages or payment of substitutes, per day,			
Such sum not exceeding 15s. as the Auditor may determine plus loss of wages or cost of a substitute as vouched to the Auditor's satisfaction.			
(*c*) Other witnesses, per day,			
Such sum, not exceeding 15s. per day as the Auditor may determine.			

NOTES

1. In addition to the foregoing, Witnesses shall be allowed (*a*) a travelling allowance, being such sum as the Auditor may determine to have been necessarily incurred by the witness in travelling from and to his residence or place of business and the Court; and (*b*) a subsistence allowance, being such sum as the Auditor may determine to have been reasonably incurred by the witness for the extra cost of subsistence during his absence from his home or place of business for the purpose of giving evidence, and, where the witness is necessarily detained overnight, for the cost of board and lodging. Provided that (i) the amount of such travelling and subsistence allowances shall be fixed on the basis of no more

than reimbursing to the witness any out-of-pocket expenses necessarily incurred by him, and (ii) the subsistence allowance in respect of the period on any one day during which the witness is necessarily absent from his residence or place of business for the purpose of giving evidence shall not exceed,—

(*a*) where the said period is not more than 4 hours five shillings and six pence; and

(*b*) where the said period is more than 4 hours twelve shillings;

and where the said period extends overnight an additional payment not exceeding fifty-three shillings and six pence per night shall be allowed.

2. Receipts and vouchers for all sums stated to have been paid to witnesses shall be produced to the opposite party and to the Auditor if required by him.

3. In the case of maritime witnesses detained ashore to give evidence, no longer than 14 days detention shall be allowed against an opposite party, and then only when notice of intention to detain has been given.

4. Charges for the attendance of witnesses present at a proof or trial but not examined nor held as concurring with another witness may be allowed provided that a motion to this effect is made at the close of the proof or trial and the Court grants the same, and the names of the witnesses are duly noted.

5. In cases where it is necessary to employ skilled persons to make investigations prior to a proof or trial in order to qualify them to give evidence thereat, charges therefor, and for their attendance at such proof or trial, shall be allowed in addition to the ordinary witness fees of such persons at such rate in the discretion of the Auditor as shall be fair and reasonable for each skilled person if the Lord Ordinary shall, on a motion made not later than the application of the verdict in the case of a trial, or within seven days of the issue of the judgment in the case of a proof, or, if the judgment is issued in vacation, within the first seven days of the ensuing session, certify such persons for additional remuneration as skilled witnesses.

6. The fees charged for witnesses examined at a trial or proof shall be stated in the body of the account in a lump sum and the details of the charges shall be entered in a separate schedule appended to the Account as follows:—

Name and Designation	Where from	Days Charged	Rate per day	Travelling and Subsistence Allowance	Total	Taxed off

The fees for witnesses not examined shall be entered in the Schedule separately and included in the lump sum.

D.—Admiralty and Commercial Cases

Admiralty Cases

	£	s.	d.
Framing Preliminary Act	1	1	0

(*a*) Fee to Counsel not exceeding £3 3s. for settling Preliminary Act shall also be allowed.

(*b*) All other charges to be based on this Table according to circumstances, and within the limit authorised by Rules of Court.

Commercial Cases

In commercial causes the charges shall be based on this Table, according to circumstances.

E.—Shorthand Writers

1. Attending trials, proofs and commissions, per hour . .	1	5	0
With a Minimum fee of £3 15s. per day.			
The above fees will be paid by the Treasury.			
No fee will be paid where intimation of postponement or settlement is made by 4 p.m. on the previous day.			
2. Extending Notes, per sheet of 250 words	0	5	0
Note.—An extra allowance will be payable where notes are extended overnight.			

3. Transcripts of Notes of Evidence will only be made on directions from the Court, and the cost thereof in defended cases will in the first instance be payable by the solicitors for the parties in equal shares. Where an undefended case is continued, or where for other reasons the Court considers it necessary that the notes should be extended for the use of the Court and so directs, the cost will be borne by the pursuer's solicitor in the first instance. In any case where the Notes of Evidence have not been extended, but are required for a reclaiming motion, the solicitor for the reclaimer may request the shorthand writer to extend the notes, and the transcript thereof will thereupon be lodged in process, the cost being payable in the first instance by the reclaimer's solicitor.

4. In any case where the Court on a motion enrolled for that purpose certifies that there is reasonable ground for reclaiming and that the reclaimer is unable, for financial reasons, to meet the cost of the necessary transcript from which copies for the use of the Inner House are made, the cost of such transcript will be paid out of public funds.

5. *Carbon Copies.*—Where Notes of Evidence have been directed to be supplied for the use of the Court, carbon copies may be made available to parties at a cost of 1s. 3d. per sheet payable to the shorthand writer by the solicitors for the parties obtaining the said copies.

F.—INNER HOUSE

Petition and General Department

1. Enrolling motion for review and intimating to opposite solicitor and marking motion opposed as incompetent and intimating to opposite solicitor—			
where only one	0	10	0
for each additional one	0	2	0
Attendance at Court at opposed motions as under C. 1 (2).			
2. Entering appearance in Remitted Cause	0	9	0
3. Examining Records in Remitted causes and appendices lodged by opposite solicitor.			
One half charges for revising proofs as under A. 4 (4).			
4. Agency lodging copies of Records, Petitions, Appendices or other documents for use of Judges, &c.	0	10	0
5. Attendance at Court on each day case stands in Summar or Short Roll although not called	0	15	0
6. Preparing for discussion in Summar or Short Roll	1	6	8 to
	4	4	0
7. Attending discussions, if same shall not exceed two hours	4	0	0
If discussion shall exceed two hours, for each additional half-hour	1	0	0
8. Attending advising, as in charges under A. 10 (*a*).			
9. Agency intimating each incidental Petition, Note or Minute requiring intimation by Rules of Court including certificate of intimation	0	13	4
If more than one party, for each additional intimation	0	2	0
10. Procuring intimation on Walls and in Minute Book and writing certificate	0	10	0
11. Lodging Petition, Stated case, special case or document whereby a party makes a first appearance in a cause	1	6	8
Note.—All other charges to be at same rates for similar or analogous business in General Department.			

SECTION 3

Alternative Table of Fees of Solicitors in the Court of Session

In all defended actions in taxations as between party and party and in defended consistorial causes the party in whose favour an award of expenses is made shall have the option of charging his Account against the opposite party in accordance with the following table of fees instead of charging a detailed account as at present. The fees shall be inclusive of all incidental work such as instructing Counsel and shall include copyings where not otherwise stated. All such fees except the session fee, which shall be calculated on the augmented fees, are subject to a percentage increase of 75 per cent. Outlays are chargeable in addition.

TABLE OF FEES OF SOLICITORS VII., 347

	£	s.	d.
1. *Fee on Instructions*			
To cover all fees until lodgment of Defences	10	10	0
For each additional defender called in after the first defender or defenders before lodging of Open Record—to the pursuer and existing defender or defenders	1	1	0
2. *Record Fee*			
To cover all fees in connection with adjustment and closing of Record	9	9	0
Where action is settled or abandoned before Record is closed	7	7	0
(1) An additional fee to the pursuer and existing defender to be allowed for each defender brought in after the Open Record is lodged and prior to the Record being closed	3	13	6
(2) If an additional defender is brought in after closing, an additional fee (to include necessary amendments) to pursuer and existing defender or defenders	5	5	0
3. *Procedure Roll*			
Basic Fee, where discussion does not exceed one hour to include preparation and all incidental work including attending judgment	4	4	0
For every hour or part of an hour thereafter	1	1	0
4. *Adjustment of Issues and Counter-Issues*			
(1) Fee to pursuer to include all work in connection with and incidental to the lodging of an issue and adjustment and approval thereof	4	4	0
(2) If one Counter-Issue, additional fee to pursuer	2	2	0
(3) Where more than one Counter-Issue, additional fee to the pursuer for each additional Counter-Issue	1	1	0
(4) Fee to defender to include all work in connection with lodging a Counter-Issue and adjustment and approval thereof	4	4	0
(5) Fee to defender for considering Issue	2	2	0
(6) Fee to defender for considering Counter-Issue of any other Defender, for each Counter-Issue	1	1	0
5. *Precognitions*			
Fee to cover instructions, instructing certified skilled witnesses, drawing, revising and copying precognitions and Reports so far as relevant to the action and framing index at the rate per sheet of:—			
(*a*) Where the case is disposed of before the pronouncing of an interlocutor approving of issues or allowing a proof	0	17	6
(*b*) Where the case is disposed of after the pronouncing of an interlocutor approving of issues or allowing a proof	1	2	6
6. *Commissions to take Evidence*			
(1) *On Interrogatories*			
Basic Fee to solicitor applying for commission to cover all work up to and including lodging Report of commission with completed interrogatories and cross-interrogatories but excluding attendance at execution of commission	10	10	0
Basic Fee to opposing solicitor if cross-interrogatories are lodged	8	8	0

If no cross-interrogatories lodged	2	2	0
If solicitor attends execution of commission an additional fee at the rate per hour of	1	0	0
(2) *Open Commissions*			
Basic Fee to solicitor applying for commission up to and including lodging Report of Commission but excluding attendance at execution thereof	4	4	0
Basic fee to opposing solicitor	2	2	0
For attendance at execution of commission a fee at the rate per hour of	1	11	6
7. *Specification of Documents*			
Basic Fee to cover drawing, revising and lodging and all incidental procedure to obtain a diligence up to and including obtaining interloctuor	4	4	0
Basic Fee to opposing solicitor	2	2	0
(*a*) If commission executed an additional fee per hour engaged of	1	11	6
(*b*) If alternative procedure adopted a fee per person upon whom Certificate served of	1	1	0
8. *Incidental Procedure*			
Fixing diet, Note on Line of Evidence, citing witnesses, and to include all other charges not specifically mentioned. Not chargeable prior to pronouncing of an interlocutor approving of Issues or allowing a Proof	6	6	0
9. *Amendment of Record*			
(*a*) Amendment of conclusions only	1	11	6
(*b*) Amendment of Pleadings after Record closed			
(i) Where no Answers lodged	2	2	0
(ii) Where Answers lodged	5	5	0
10. *Preparation for Trial or Proof*			
Fee-funding precept, lodging and borrowing process and productions, adjusting Joint Minute of Admissions, considering productions lodged by opponents, and recovered under diligences, arranging and attending consultation, preparing for trial or proof	10	10	0
11. *Copies*			
Productions, Reports of Commissions, Duplicate Inventory, Jury List, List of Witnesses and Lord Ordinary's opinion. At one half of usual copying rates.			
12. *Settlements*			
(*a*) Tender			
Basic Fee for lodging or considering each Tender as the case may be	4	4	0
If accepted an additional fee of	1	11	6
(*b*) Extra judicial Settlement including Joint Minute	5	5	0
13. *Proof or Trial*			
Instructing Counsel and attendance per hour	1	11	6
14. *Framing and lodging Account, attending taxation*	3	13	6
15. *Obtaining Decree and ordering Extract*	1	11	6

16. *Final Procedure*

(1) If case goes to trial or proof, to include all work to close of litigation so far as not otherwise provided for, including in particular settlement of witnesses' fees, procuring and booking verdict 2 2 0

(2) If case disposed of before trial or proof 1 1 0

17. *Session Fee*

5 per cent. on total fees and copyings allowed on taxation.

The Auditor shall have power to apportion the foregoing fees between parties' solicitors in appropriate circumstances or to modify them in the case of a solicitor acting for more than one party in the same litigation or in the case of the same solicitor acting in more than one litigation arising out of the same circumstances or in the event of a litigation being settled or disposed of at a stage when the work covered by any inclusive fee has not been completed.

SECTION 4

Undefended consistorial actions under Legal Aid (Scotland) Act 1949

In undefended consistorial actions in which the pursuer, having a finding for expenses, has been throughout the whole of the proceedings as Assisted Person under the Legal Aid (Scotland) Act 1949, the pursuer's solicitor may in his option either,—

(*a*) elect to charge an inclusive charge to cover all work from taking instructions up to and including obtaining extract decree with in addition a charge for outlays as hereinafter provided. Provided that such inclusive charge shall be—

(i) where only an Edinburgh solicitor is engaged in the case—£40 or

(ii) where the Legal Aid Certificate shows that both an Edinburgh solicitor and a solicitor outside Edinburgh are engaged in the case or where an official on behalf of the Legal Aid Supreme Court Committee of the Law Society so certifies—£52 10s.

In addition to the said inclusive charge a sum of up to £26 5s. shall be allowed as outlays where a Certificate by the Auditor of Court is lodged certifying the outlays which have been incurred, and the Court shall grant decree accordingly. And

if outlays in excess of £26 5s. are claimed an account for the said outlays shall be remitted to the Auditor of Court for taxation.

This option shall be exercised by the pursuer's solicitor enrolling a motion for decree for either the appropriate inclusive charge and for a sum for outlays as shown in the said Certificate not exceeding £26 5s. or a motion for the appropriate inclusive charge and an order remitting the account of outlays to the Auditor of the Court for taxation

or

(*b*) move the Court for a finding for expenses, and for a remit to the Auditor for taxation in common form.

Provided that percentage increases shall not apply to the sum or inclusive charges prescribed in option (*a*) of this paragraph.

SECTION 5
TAXATION OF ACCOUNTS

348. Transmissions to Auditor

When expenses are found due to a party and a remit is made to the Auditor of Court to tax the account thereof, the account, having prefixed thereto a copy of the interlocutor making the remit, shall be lodged in the appropriate department of the Court and transmitted to the Auditor, who shall thereafter fix a diet for the taxation thereof. A copy of the said account, with intimation of the diet fixed by the Auditor, shall be served on the solicitor for the party or parties found liable in expenses. The Solicitor for the party found entitled to expenses shall produce at the diet of taxation the process, or such part thereof as may be necessary for the taxation of the account, together with vouchers and drafts or copies of all documents, papers and plans necessary to vouch his account.

349. Auditor's Report and Objections thereto

All parties to a cause shall be entitled to state objections to the Report of the Auditor on the taxation of an Account of Expenses. The objections shall be by note, shall be stated shortly without entering into argument, and shall be lodged within seven days of the date of the Auditor's Report on the Account. The party on lodging the Note of Objections shall send a copy of the Note to the other parties and to the Auditor and shall at the same time enrol a motion for a remit to the Auditor to state by minute his reasons for disallowing the items referred to in said Note; on receipt of said minute the case shall be put out " By Order ", and the Court may on hearing parties either sustain or repel the objections and may find any of the parties liable in expenses. All such interlocutors of the Court shall be final unless reclaimed against with leave of the Court within seven days. It shall be the duty of the party lodging the Account for taxation to uplift the Account from the Auditor, and return it to process immediately after the taxation, and if no objections are lodged to the Report he may enrol for approval thereof on the lapse of seven days from the date of the Report.

350. Summary Application for Taxation of Solicitors' Accounts

(*a*) It shall be competent to either a client or a solicitor to make application to the Court, by enrolment, to have the account of the solicitor remitted to the Auditor of the Court for taxation, which remit shall, on intimation of the said motion having been made to the opposing party, be forthwith granted; said Account shall be fee-funded in accordance with the scale laid down in the Table of Fees. The Auditor shall thereafter report upon the said account to the Court, and the parties shall be entitled to state objections to the said report in accordance with Rule 349.

(*b*) The procedure referred to in paragraph (*a*) of this Rule may take place either during the dependence of a process in Court or following upon an extracted decree of Court.

(*c*) Notwithstanding paragraphs (*a*) and (*b*) of this Rule, a solicitor or his representatives may sue by summons for payment of an account of expenses due by a client, in which case the Court shall remit the account to the Auditor of Court, and no decree shall be pronounced, either in absence or after hearing parties, without a report having been made by the Auditor.

APPENDIX

Forms

FORM 1

Summons and Backing

N.B. This is the official printed form which, along with the official printed backing (see below), must be used for all summonses.

	(This space will contain the letter and number assigned to the Summons on being lodged for calling).

In the Court of Session

A.B. (*designation and address*) Pursuer;

against

C.D. (*designation and address*) Defender.

Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, To the said C.D.

Whereas by this Summons, the pursuer craves the Lords of our Council and Session to pronounce a decree against you in terms of the conclusions appended hereto, We therefore charge you that, if you have any good reason why such decree should not be pronounced, you cause appearance to be entered on your behalf in the Office of the Court, 2 Parliament Square, Edinburgh, on the calling of the summons in Court, which calling will be not earlier than the (*seventh [or fourteenth]*) day from the date of service upon you of this Summons; and take warning that, if appearance is not so entered on your behalf, the Pursuer may proceed to obtain decree against you in your absence.

This summons is warrant for *arrestment to found jurisdiction, arrestment or inhibition on the dependence, or to dismantle a specified ship, as may be required. (See also Rule 76, paragraphs (b) and (c) of Rule 155, and paragraph (c) of Rule 170).*

Given under our Signet at Edinburgh

(*Signed*) (*Name and address of pursuer's Edinburgh Solicitor.*)

(Here follow the Conclusions in the short form or forms shewn in Form 2, followed by the Condescendence and Note of Pleas-in-Law.)

Backing of Summons

	(This space will contain the letter and number assigned to the Summons on being lodged for calling.)

Summons

A.B. Pursuer;

against

C.D. Defender.

Action of (*Here state nature of action as in the headings of the forms of conclusion shewn in Form 2.*)

(*Name of pursuer's Edinburgh Solicitor.*)

RULES OF COURT

FORM 2

Forms of Conclusion

N.B. A conclusion for interest and expenses is given as an illustration in Example (1). *In other cases where conclusions for interest or expenses are appropriate these will be varied as required.*

(1) *Action for payment.* For payment to the pursuer by the defender (*jointly and severally, or severally, or otherwise as may be appropriate*) of the sum of with interest thereon at the rate of five per centum per annum from the day of , until payment and expenses of the action.

(2) *Action of damages.* For payment to the pursuer by the defender of the sum of .

(3) *Action of reduction.* For production and reduction of (*specify deed to be set aside*).

(4) *Action of declarator.* For declarator (*state declarator asked as in present practice*).

(5) *Action of count, reckoning and payment.* For count and reckoning with the pursuer for the defender's intromissions with (*describe fund or estate*) and for payment to the pursuer by the defender of the balance found due to him, or otherwise of the sum of .

(6) *Action of proving the tenor.* For declarator that (*the lost deed*) was of the tenor following (*set out the terms of the lost deed*), and that the decree to be pronounced herein shall be equivalent to the original deed.

(7) *Action of multiplepoinding and exoneration.* For distribution of (*describe the fund in medio*) among the claimants found entitled thereto, and exoneration (*of the holder of the fund*).

(8) *Action of furthcoming.* For payment to the pursuer by the arrestee of £ or of such sum as may be owing by the arrestee to (*the common debtor*) and arrested in his hands by the pursuer, or at least of so much thereof as shall satisfy the pursuer in (1) the payment of the expenses of and incidental to the sale and (2) the principal sum of £ and interest thereon at the rate of five per cent per annum from the date until payment.
per annum from the date of citation until payment as shall satisfy the pursuer in the principal sum of

or

For delivery to the pursuer or to such person as the Court may appoint of the moveables belonging to or owing by the arrestee to (*the common debtor*) and arrested in his hands by the pursuer; and for warrant for the sale of such moveables under such conditions as may be directed; and for furthcoming and payment to the pursuer of the proceeds thereof, or at least of so much thereof as shall satisfy the pursuer (*as above*).

(9) *Admiralty action in rem.* For declarator that the pursuer has a lien over the .....(*the ship*) for the sum of £ in respect of (*state the basis of the lien, as e.g. the collision—giving date*); and for declarator that the pursuer's said lien to the extent of the said sum of £ with interest thereon at from to is preferable to the right of all others having or pretending to have rights in the said ship; and for warrant to sell the said..... ... (*ship*) on said lien being declared, and to apply the proceeds in satisfaction of the said lien in or towards payment of the said sum of £ and interest.

(10) *Action of Declarator of Marriage.* For declarator that the pursuer and defender were lawfully married to one another by (*here specify mode in which marriage was contracted, as e.g.* (1) *interchange of consent de praesenti* (*time and place*),) *or* (2) *cohabitation habit and repute* (*time and place*), *or* (3) *promise* (*time*) *subsequente copula at* (*time and place*)).

(11) *Action of Declarator of Nullity of Marriage.* For declarator that a pretended marriage between the pursuer and defender at (*place*) on (*date*) is null by reason of (*here specify ground of nullity as e.g.* (1) *the pursuer's or defender's impotency, or* (2) *the parties being within the forbidden degrees or* (3) *the defender being married to or* (4) *non-age of one of the parties or* (5) *insanity of one of the parties at the date of the marriage or* (6) *non-residence in Scotland of both the parties prior to the marriage*).

(12) *Action of Declarator of Legitimacy.* For declarator that (*name and designation*) is (*or was*) the lawful son (*or daughter*) of (*name and designation*).

(13) *Action of Declarator of legitimation per subsequens matrimonium.* For declarator that , who was born on (*date*) is (*or was*) the child of (*name and designation*) and (*name and designation*) and was legitimated by the subsequent marriage of the said and on (*date*). (*Add conclusion for aliment, if appropriate.*)

(14) *Action of Declarator of Bastardy.* For declarator that (*name and designation*) is a bastard and is not the lawful child of (*name and designation*).

(15) *Action of Separation a mensa et thoro.* For separation of the defender from the pursuer *a mensa et thoro* on the ground of (*the defender's cruelty to the pursuer or the defender's adultery*). (Add conclusion for aliment if appropriate),

(16) *Action of Divorce for adultery.* For divorce of the defender from the pursuer on the ground of the defender's adultery (*and where, but only where, there is a conclusion for damages or expenses or both against the person with whom the defender is alleged to have committed adultery, add*) with the co-defender; and where, but only where, there is a conclusion for a capital sum and/or a periodical allowance, add

For payment to the pursuer by the defender of (1) a capital sum of £ with interest thereon at the rate of five *per centum per annum* from the date of the decree to follow hereon until payment; and (2) a periodical allowance of £ per week (month) payable until the remarriage or death of the pursuer.

(17) *Other actions of Divorce.*

(*a*) For divorce of the defender from the pursuer on the ground of the desertion of the pursuer by the defender for a period of three years or more.

(*b*) For divorce of the defender from the pursuer on the ground that the defender is incurably insane.

(*c*) For divorce of the defender from the pursuer on the ground that the defender has been guilty of cruelty towards the pursuer.

(*d*) For divorce of the defender from the pursuer on the ground that the defender has been guilty of sodomy (or bestiality) since the date of the marriage.

(18) *Action of Adherence.* For decree ordaining the defender to adhere to the pursuer and cohabit with her as his wife (*or* with him as her husband).

(19) *Action of Putting to silence.* For decree ordaining the defender to desist from asserting that he (*or* she) is the husband (*or* wife *or* child *or other relative*) of the pursuer, and putting her (*or* him) to silence thereanent.

(20) *Conclusion for custody of children.* For custody of and , the children of the marriage under the age of sixteen years and payment by the defender to the pursuer of (*specify the rate of aliment*) as aliment for each child while in the custody of the pursuer and unable to earn a livelihood; and for leave to either party to apply to the Court thereanent until (*insert the date when youngest child will attain sixteen years of age*).

(21) *Action for salvage.* For payment to the pursuer by the defender of the sum of £ for salvage services performed by the pursuer to the vessel on the day of or for such an amount of salvage as to the Court may seem just or (*in the case of a summons for apportionment*) for payment to the pursuer of an equitable proportion of the above award of £ . (*Here refer to the agreement under which the total amount of the salvage award was fixed.*)

(22) *Action of Implement.* For decree ordaining the defender (*state the order craved and add such alternative conclusions as may be appropriate*).

(23) *Adjudication for debt.* (*a*) *Lands.* For adjudication of the heritable property of the defender after specified, vizt. All and Whole (*describe subjects by reference or otherwise*) from the defender to the pursuer.

(*b*) *Heritable securities.* For adjudication of a bond and disposition in security (*describe the bond*) and of the subjects contained in the said bond, vizt. All and Whole

(*describe the subjects by reference or otherwise*) from the defender to the pursuer for payment of (*describe debts*), during the non-redemption of the said lands and others.

(24) *Adjudication in implement.* For adjudication from the defender of All and Whole (*describe subjects by reference or otherwise*) and all rights of the defender therein and the rents thereof from and after the term of (*date of entry under missives*) in implement of missives of sale (*dated*) between the defender and the pursuer and for declarator that the said lands and others belong to the pursuer and his heirs and assignees; and for decree ordaining the defender to free and relieve the said lands and others of all burdens and incumbrances affecting the same, of all feuduties, cess, minister's stipend, and public and parochial burdens affecting the said lands at and preceding the pursuer's said term of entry, or otherwise for payment of the sum of (*state amount*) or such sum as may be required for that purpose.

(25) *Declarator and division or sale.* For declarator that the pursuer is entitled to insist in an action of division or sale of All and Whole (*describe subjects by reference or otherwise*); and for division of the said subjects between the pursuer and the defender, or if the division of the said subjects is found to be impracticable or inexpedient for declarator that the same should be sold and the proceeds divided between the pursuer and the defender, and for warrant to sell accordingly; and for allocation of the expenses of the sale and of this process between the pursuer and the defender.

(26) *Maills and Duties under Heritable Securities Act* 1894. For declarator that the pursuer has right to the rents, maills, and duties of the subjects and others specified in the bond and disposition in security for , granted by in favour of dated and recorded in the register or at least so much of the said rents, maills, and duties as will satisfy and pay the pursuer the principal sum of , with interest thereon at the rate of per centum per annum from the day of liquidate penalty and termly failures, all as specified and contained in the said bond and disposition in security dated and recorded as aforesaid.

(*Intimation to tenants in form of Schedule B of* 1894 *Act.*)

(27) *Poinding of the Ground.* (a) *Against debtor in possession.* For warrant to poind and distrain all moveable goods and effects poindable or distrainable belonging to the defender which are or shall happen to be upon the ground of the lands and others described and contained in the bond and disposition in security (*or where the action proceeds on a real burden, the disposition or other writ by which it is constituted*) aftermentioned, vizt. All and Whole (*describe subjects by reference or otherwise*): And for payment thereof to the pursuer of the amount of the principal sum of £ liquidate penalty and termly failures, with interest on said principal sum from the term of and in all time coming during the not redemption conform to bond and disposition in security dated and recorded in the Division of the General Register of Sasines applicable to the county of the both days of granted by the defender in favour of the pursuer (*or where the pursuer is not the original bondholder*, in favour of and to which the pursuer has now right in virtue of (*describe title*).

(*b*) *Against debtor and tenants.* For warrant to poind and distrain all moveable goods and effects poindable or distrainable of the defender principal debtor, and of the defenders and his tenants or possessors of the lands and others aftermentioned which are or shall happen to be upon the grounds of the said lands and others described and contained in the bond and disposition in security aftermentioned, vizt. All and Whole (*give description of subjects sufficient to identify them*) but in so far as relates to the said tenants and possessors to the amount only of the respective rents due or that may become due by them and for payment thereof to the pursuer to the amount of the principal sum of £ liquidate penalty and termly failures specified and contained in the bond and disposition in security dated and recorded in the Division of the General Register of Sasines applicable to the county of the both days of granted by the defender A.B. in favour of the pursuer, with interest from the term of and in all time coming during the not redemption.

FORM 3

Form of Citation and Execution when service is by registered or recorded delivery letter

Citation

In Her Majesty's name and authority, the summons of which the foregoing is a full copy is hereby served upon you (*name, designation and address of defender*) by me (*name, designation and Edinburgh address*), solicitor for the pursuer.

The number of days on the expiry of which, in terms of the said summons you are charged to cause notice of appearance to be entered on your behalf is reckoned from twenty-four hours after the date of posting hereof.

Dated this day of .

(*Signed*) (*Solicitor for the pursuer*).

Execution

This summons executed by me (*name, designation and Edinburgh address*), solicitor for the pursuer, against the defender(s) by posting, on (*date*) between the hours of and at the post office, a copy of the same to him or them, with citation subjoined, in a registered or recorded delivery letter addressed as follows (*address*) and the post office receipt for the said letter accompanies this execution.

(*Signed*) (*Solicitor for the pursuer*).

FORM 4

Form of Citation when service is edictal

Citation

In Her Majesty's name and authority, the summons of which the foregoing is a full copy is hereby served edictally upon you the said by me (*name, designation and Edinburgh address*), solicitor for the pursuer.

Dated this day of

(*Signed*) (*Solicitor for the pursuer*).

FORM 5

Form of Intimation to Heritable Creditor of Defender in action relating to heritage

Take notice that an action, a copy of the summons in which is pre-fixed hereto, has been raised against the defender as owner of land over which you are believed to hold a heritable security; and that you may if you so desire apply to the Court for leave to state defences to the action within fourteen days after the expiry of days from the date of service hereof (*or if the warrant is executed contemporaneously with citation of the defender* within fourteen days after the calling of the summons in Court which will not be earlier than days from the date of service hereof).

The date of service hereof is reckoned as commencing on the expiry of twenty-four hours after the date of posting hereof.

Dated this day of

(*Signed*)

(Solicitor for pursuer)

RULES OF COURT

FORM 6

Form of Notice to additional or substituted defender

To (*designation and address*)

Take notice that in the action in which is the pursuer and is the defender, copies of the summons and defences (or the record in which as now amended) are herewith enclosed, your name has, by order of the Court dated , been added (*or substituted*) as a defender to the said action; and the conclusions of the action, originally directed against the said are now (*also*) directed against you. If you desire to defend the said action you are charged to lodge defences thereto in the office of the Court of Session, 2 Parliament Square, Edinburgh, within days from the date of service hereof, under certification that, if you fail to do so, the said may proceed and obtain decree against you in absence.

Dated this day of .

(*Signed*) (*Solicitor for the pursuer*).

FORM 7

Third Party Notice in the cause between

A.B. *Pursuer*
and
C.D. *Defender*
and
E.F. *Third Party*

To E.F.

This Notice is served upon you by the above named C.D. by virtue of an order granted by Lord , in the action in which the above named A.B. is the pursuer and C.D. the defender. In the action the pursuer claims against the defender £ as damages in respect of (*or otherwise as the case may be*) as more fully appears in the copy summons and condescendence (*or* copy record in the action) enclosed herewith.

The defender admits (*or* denies) liability to the pursuer but claims that (if he is liable to the pursuer) you are liable to relieve him wholly (*or* partially) of his liability in respect of (*set forth contract or other right of contribution, relief, or indemnity*) as more fully appears from his defences lodged in the above action and enclosed herewith,

or

The defender denies any liability for the injury said to have been suffered by the pursuer and maintains that the liability, if any, to the pursuer rests solely on you (*or* on you along with) as more fully appears from his defences lodged in the above action and enclosed herewith,

or

The defender denies any liability for the injury said to have been suffered by the pursuer but maintains that if there is any liability he shares that liability with you, as more fully appears from his defences lodged in the above action and enclosed herewith,

or

The defender admits liability in part for the injury suffered by the pursuer but disputes the amount of damages and maintains that his liability falls to be shared with you, as more fully appears from his defences lodged in the above action and enclosed herewith,

or

The defender admits liability in part for the injury suffered by the pursuer and for the damages claimed but maintains that his liability falls to be shared with you, as more fully appears from his defences lodged in the above action and enclosed herewith,

or

(*otherwise as the case may be*)

And take notice that if you wish to appear in the action and resist either the claim of the pursuer against the defender, or the claim of the defender against you, you must lodge answers in the action not later than , otherwise the Court may pronounce such judgment in the matter of the claim by the defender against you as it thinks fit.

Dated this day of .

(*Signed*) (*Solicitor for the defender*).

FORM 8

Example of enrolment in Motion Sheet, and of marking therein.

..... (*Date*).

On behalf of the pursuer—for commission and diligence for recovery of documents conform to specification No. of Process—Intimated to defender—p. W.X. (*pursuer's Counsel*).

(*Signed*) (*Signature of pursuer's solicitor, or of his clerk*).

..... (*Date*).

On behalf of the defender—pursuer's motion opposed—intimated to pursuer—p. (*defender's Counsel*).

(*Signed*) (*Signature of defender's solicitor, or of his clerk*).

FORM 9

Form of Order of Court and Certificate in Optional Procedure for recovery of documents

Order by the Court of Session at Edinburgh.

In the Cause (*year and Serial Number*)

in which

A.B. (*designed*) is Pursuer

and

C.D. (*designed*) is Defender.

To (*name and designation of party or parties or third-party haver, from whom the documents are sought to be recovered*).

Take notice that you are hereby required to produce to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, within seven days of the service upon you of this Order,

(1) This Order itself which must be produced intact;

(2) A Certificate, sworn, in terms of the form appended hereto, and

(3) All documents in your possession falling within the specification enclosed herewith, together with a list or inventory of such documents signed by you as relative to this Order and your Certificate.

Production may be made either by lodging the above at the said office of the Court of Session, or by registered or recorded delivery letter or registered postal packet enclosing the same, and addressed to the said Deputy Principal Clerk at said office.

(*Signature and business address of the solicitor of the party in whose favour Commission and Diligence has been granted.*)

(*Date*)

NOTE. If you claim confidentiality for any of the documents produced by you, such documents must nevertheless be produced, but may be placed in a special sealed enclosure by themselves, marked " Confidential ".

Certificate

....(Date)

I hereby Certify with reference to the order of the Court of Session in the cause (*year and serial number*) and relative specification of documents, served upon me and marked respectively X and Y,

(1) That the documents which are produced and which are enumerated in the inventory signed by me and marked Z, are the whole documents in my possession falling under the Specification

or

that I have no documents in my possession falling within the Specification.

(2) that, to the best of my knowledge and belief, there are in existence other documents falling within the Specification, but not in my possession, namely (*describe them by reference to one or more of the descriptions of documents in the Specification*), which were last seen by me on or about (*date*), at (*place*), in the hands of (*name and address of the person*)

or

that I know of the existence of no documents in the possession of any person, other than myself, which fall within the Specification.

(*Signed*)

FORM 10

Form of Minute for Letters of Request

Minute for A.B., pursuer (*or* defender) *in causa* A.B. against C.D.

Counsel for the pursuer (*or* defender), stated that the following persons, viz. (*state names and designations, including place of residence of proposed witnesses*), are material witnesses for the pursuer (*or* defender), in support of the claim (*or* defence) in this action, and prayed the Court to issue a letter of request addressed to (*state the judge or tribunal within whose jurisdiction the witnesses are resident*) to take the evidence of said witnesses

(*Signed by Counsel.*)

FORM 11

Form of Letter of Request

Whereas an action is now pending in the Court of Session, Supreme Court of Scotland, in which A.B. is pursuer, and C.D. is defender, and whereas it has been represented to the said Court that it is necessary, for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath, that is to say:

E.F., of
G.H., of
and I.J., of

and it appearing that such witnesses are resident within the jurisdiction of your honourable Court:

Now I, the Right Honourable as the President of the Division of said Court (*or* I, the Honourable Lord , one of the Judges of said Court), have the honour to request, and do hereby request, that for the reasons aforesaid, and for the assistance of the said Court, you as the President and judges of the said , or some one or more of you, will be pleased to summon the said witnesses to attend at such time and place as you shall appoint before some one or more of you, or such other person as, according to the procedure of your Court, is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request in the presence of the solicitors, procurators or attorneys of the pursuer and defender, or such of them as shall, on due notice given, attend such examination.

And I have further the honour to request that you will be pleased to cause the answers by the said witnesses to the said interrogatories to be reduced to writing, and all books, letters, papers, and documents produced upon such examination, to be duly marked for identification; and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and

APPENDIX

to return the same through Her Majesty's Secretary of State for Foreign Affairs, for transmission to the said Court of Session.

(*Signed by the Judge.*)

(*Address of Foreign Court.*)

(*Date*)

FORM 12

Notice to be endorsed on the Citation served on a person summoned to serve as a juror

NOTICE

The person on whom this citation is served may apply to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, 1, to be exempted from service under it for medical or other reasons, as soon as possible after receipt of this citation.

FORM 13

Specimen of filling-in of the Official Printed Form of Summons in an Admiralty Action *in rem.*

In the Court of Session,

Admiralty Action *in rem.*

A.B. (*designation and address*) Pursuer;

against

The Owners of the SS. Q.R. Defenders.

Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, to E.F. (*name and address*) only known owner or party interested in SS.. Q.R. of the port of L. and others, the owners and parties interested in the said S.S. Q.R. Defenders *or* to G.H. Master of and representing the owners of the S.S. Q.R. of the port of L. Defender. (*Vary as required if the action is directed against owners of cargo.*)

Whereas etc. (*as in Form* 1)

or

(*Where the Pursuer is not in a position to call as defenders the owners of or parties interested or the master.*)

In the Court of Session.

Admiralty Action *in rem.*

A.B. (*designation and address*) Pursuer;

against

The S.S. Q.R. and the owners thereof and other parties interested therein, Defenders.

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Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, to the owners of the S.S. Q.R. of the port of L. and others interested therein, Defenders. (*Vary as required.*)

Whereas etc. (*as in Form* 1).

FORM 14

Specimen of filling-in of the Official Printed Form of Summons in an Admiralty Action *in personam*



In the Court of Session

Admiralty Action *in personam*

A.B. (*designation and address*) Pursuer;

against

E.F. the Master of the S.S. Q.R., Defender.

Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland, and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, to E.F. (*designation and address*) Master of the S.S. Q.R. of the port of L. presently at M. as representing the owners thereof against whom arrestments have been used *ad fundandam jurisdictionem*, Defender. (*Vary as required if the action is directed against owners of cargo.*)

Whereas etc. (*as in Form* 1).

FORM 15

Form of Preliminary Act in Ship-Collision Cases

In the action in which are Pursuers;

and

are Defenders.

Preliminary Act

for

Pursuer (*or* Defender)

(*a*) The names of the vessels which came into collision, their ports of registry, and the names of their masters.

(*b*) The date and time of the collision.

(*c*) The place of the collision.

(*d*) The direction and force of the wind.

(*e*) The state of the weather.

(*f*) The state, direction and force of the tidal or other current.

(*g*) The magnetic course steered and speed through the water of the vessel when the other vessel was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier.

(*h*) The lights (if any) carried by the vessel.

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(*i*) The distance and bearing of the other vessel if and when her echo was first observed by radar.

(*j*) The distance, bearing and approximate heading of the other vessel when first seen.

(*k*) What light or combination of lights (if any) of the other vessel was first seen.

(*l*) What other lights or combinations of lights (if any) of the other vessel were subsequently seen, before the collision, and when.

(*m*) What alterations (if any) were made to the course and speed of the vessel after the earlier of the two times referred to in Article (*g*) up to the time of the collision, and when, and what measures (if any), other than alterations of course and speed, were taken to avoid the collision, and when.

(*n*) The parts of each vessel which first came into contact and the approximate angle between the two vessels at the moment of contact.

(*o*) What sound signals (if any) were given, and when.

(*p*) What sound signals (if any) were heard from the other vessel and when.

(*Signed by Counsel*)

(*Dated*)

FORM 16

Form of intimation to alleged adulterer (not being a co-defender) in action of divorce or separation

To (*name and address as in warrant*)

Take notice that in an action a copy of the summons in which is prefixed hereto you are alleged to have committed adultery with the defender on the occasions therein specified and that if so advised you may within fourteen days after the expiry of days from the date of service hereof [*or if the warrant is executed contemporaneously with citation of the defender* within fourteen days after the calling of the summons in Court which will not be earlier than days from the date of service hereof] apply to the Court for leave to appear as a party in order to dispute the truth of the averments made against you.

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (*insert date of posting*).

(*Signed*) A.B.,
(Solicitor for the Pursuer).

(Address)

FORM 17

Form of intimation to children and next of kin in consistorial causes (other than insanity)

To (*name and address as in warrant*)

Take notice that an action, a copy of the summons in which is prefixed hereto, has been raised against your (*father, mother, brother, or other relative as the case may be*) and that if you know of his (*or* her) present address you are requested to forward the same to the Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, forthwith; and that in any event you may if you so desire apply to the Court for leave to state defences to the action within fourteen days after the expiry of days from the date of service hereof (*or if the warrant is executed contemporaneously with citation of the defender* within fourteen days after the calling of the summons in Court which will not be earlier than days from the date of service hereof).

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (*insert date of posting*).

(*Signed*) A.B.,
(Solicitor for Pursuer).

(*Address*)

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FORM 18

Form of intimation to children and next of kin in action of divorce on ground of insanity

To (*name and address as in warrant*)

Take notice that an action, a copy of the summons in which is prefixed hereto, has been raised against (*name and designation*) your (*father, mother, brother, sister, or other relative as the case may be*) and that you may if you so desire apply to the Court for leave to state defences to the action within fourteen days after the calling of the summons in Court which will not be earlier than days from the date of service hereof.

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (*insert date of posting*).

(*Address.*)

(*Signed*) A.B.
(Solicitor for Pursuer).

FORM 19

Form of intimation to Person with whom Sodomy is alleged to have been committed

To (*name and address as in warrant*)

Take notice that in an action, a copy of the summons in which is prefixed hereto, the defender is alleged to have committed sodomy with you on the occasions therein specified and that if so advised you may within fourteen days after the expiry of days from the date of service hereof (*or if the warrant is executed contemporaneously with citation of the defender* within fourteen days after the calling of the summons in Court which will not be earlier than days from the date of service hereof) apply to the Court for leave to appear as a party in order to dispute the truth of the averments made against you.

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (*insert date of posting*).

(*Address.*)

(*Signed*) A.B.,
(Solicitor for Pursuer).

FORM 20

Form for Transmission to Medical Officer of Asylum, Institution, or Home

To (*insert name and address*).

In accordance with the Rules of Court a copy of a summons at the instance of (*name and address*) against (*name and address*) is sent herewith and you are requested to deliver it personally to the said and to explain the contents or purport thereof to him (*or her*) unless you are satisfied that such delivery or explanation would be dangerous to his (*or her*) health or mental condition. You are further requested to complete and return to me in the enclosed stamped and addressed envelope the certificate appended hereto, striking out what is not applicable.

(*Address and date.*)

(Solicitor for Pursuer).

FORM 21

Form of Certificate by Medical Officer of Asylum, Institution, or Home

I (*name and designation*) certify on soul and conscience that, having had transmitted to me a copy Summons of divorce at the instance of (*name and designation*) Pursuer,

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against (*name and designation*) Defender, (*a*) I have on the day of personally delivered a copy thereof to the said defender who is under my care at (*address*) and I have explained the contents or purport thereof to him (*or her*).

or

(*b*) I have not delivered a copy thereof to the said defender who is under my care at (*address*) and I have not explained the contents or purport thereof to him (*or her*) and that for the following reasons (*state reasons*).

(*Signature and designation*).

(*Address and date.*)

FORM 22

Form of letter of Request (Consistorial Causes).

The Principal Clerk of Session,
Parliament House,
Edinburgh.

I (We) request that search be made in the records of Court for information as to the granting of a decree of divorce in the action at the instance of (*name, designation and address*) Pursuer against (*name, designation and address*) Defender, granted on (*date or approximate date*).

Should the above decree of divorce be traced I (we) desire a certificate evidencing that it was granted and I (we) enclose fee of seven shillings and sixpence.

(*Signed*) A.B.
(*Address and date.*)

FORM 23

Form of Certificate of Divorce

Court of Session,
Parliament House,
Edinburgh.
(*date*).

To A.B. (*name and address of the writer of the Letter of Request*).

I hereby certify that on the day of 19 the Court of Session in Scotland pronounced a decree of divorce dissolving the marriage of A.B. (*designation and address*) and C.D. (*designation and address*) in an action in which the said A.B. was Pursuer and the said C.D. was Defender.

(*Signed*)
Principal Clerk of Session.

FORM 24

Form of Letter of Request for Certificate of Nullity of Marriage

The Principal Clerk of Session,
Parliament Square,
Edinburgh.

I (We) request that search be made in the Records of Court as to the granting of a decree of nullity of marriage in the action at the instance of (*name, designation and address*) Pursuer against (*name, designation and address*) Defender, granted on (*date or approximate date*).

Should the above decree of nullity be traced I (we) desire a certificate that it was granted and I (we) enclose fee of seven shillings and six pence.

(*Signed*) A.B.
(*Address and date.*)

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FORM 25

Form of Certificate of Nullity of Marriage

Court of Session,
Parliament House,
Edinburgh.
(*date*).

To A.B. (*name and address of the writer of the Letter of Request*).

I hereby certify that on the day of 19 , the Court of Session in Scotland pronounced a decree of nullity of the marriage of A.B. (*designation and address*) and C.D. (*designation and address*) in an action in which the said A.B. was Pursuer and the said C.D. was Defender.

(*Signed*)
Principal Clerk of Session.

FORM 26

Form of Letter of Request for Certificate of Dissolution of Marriage

The Principal Clerk of Session,
Parliament House,
Edinburgh.

I (We) request that search be made in the records of Court for information as to the granting of a decree of dissolution of marriage in the Petition in which (*name, designation and address*) was Petitioner and (*name, designation and address*) was Respondent, granted on (*date or approximate date*).

Should the above decree of dissolution of marriage be traced I (we) desire a certificate evidencing that it was granted and I (we) enclose fee of seven shillings and sixpence.

(Signed) A.B.

(*Address and date.*)

FORM 27

Form of Certificate of Dissolution of Marriage

Court of Session,
Parliament House,
Edinburgh.
(*date*).

To A.B. (*name and address of the writer of the Letter of Request*).

I hereby certify that on the day of 19 , the Court of Session in Scotland pronounced a decree dissolving the marriage of A.B. (*designation and address*) and C.D. (*designation and address*) in a Petition in which the said A.B. was Petitioner and the said C.D. was Respondent.

(*Signed*)
Principal Clerk of Session.

FORM 28

Form of Petition and Backing

(*This space will contain the letter and number assigned to the petition on being lodged.*)

Unto the Right Honourable the Lords of Council and Session,

The Petition of A.B. (*name, designation, and address of petitioner*), Humbly sheweth

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That (*here set forth in numbered paragraphs the facts and circumstances which form the grounds of the petition*)

May it therefore please your Lordships to (*add prayer as in present practice*)

According to Justice, etc.

(*Signature of Counsel*).

Backing of Petition.

(*This space will contain the letter and number assigned to the petition on being lodged.*)

The Petition
of
A.B.
for
(*here describe shortly the nature or object of the petition*).
R.S. (*name of petitioner's solicitor*).

FORM 29

Specimen of Form 29 filled in for petition under section 163 of the Bankruptcy (Scotland) Act 1913.

Unto the Right Honourable the Lords of Council and Session,

The Petition of (*here state the names and designations of the petitioners, and whether they apply in the character of creditors or of persons having interest in the succession of the party deceased*).

Humbly sheweth

1. (*Name and design the party deceased*) died on the day of and left no settlement appointing trustees or other parties to manage his estate, or part thereof (or that the trustees or other parties appointed by him to manage his estate have not accepted or acted).

2. The petitioner (*or* petitioners) (*here state, if creditors, the nature and amount of the debt due to them by the deceased, and how constituted, vouched or established, and referring to the evidence of the existence of the debt, as produced with the petition, or, if persons having an interest in the succession, the nature of their interest in the succession*).

3. The estate of the said deceased , so far as known to the petitioner (*or* petitioners), consists of (*here state the nature of the estate, whether heritable or moveable, stock in trade, interest in a partnership, professional business, or whatever else it may be. State any other facts which may appear to be of importance to the particular case*).

4. The following persons are, to the best of the petitioner's knowledge and belief, the legal representatives of the deceased, or have an interest in his estate (*here state the names and designations of those persons, their degree of relationship, or the nature of their interest in the succession*).

5. The following persons are, to the best of the petitioner's knowledge and belief, all the creditors of the deceased (*name and design them*).

6. The petitioner is (*or* petitioners are) entitled, under section 163 of the Bankruptcy (Scotland) Act 1913, to make the present application for the appointment of a judicial factor on the estate of the said deceased, with the powers therein conferred and respectfully suggest (*name and designation*) as a fit and proper person for the office.

May it therefore please your Lordships to appoint intimation of this petition to be made on the walls and in the minute-book, in common form, and in the *Edinburgh Gazette*, and to be served upon the parties named and designed in the Schedule annexed hereto and to ordain and all parties claiming interest to lodge answers hereto if so advised within fourteen days after such intimation and service; and thereafter, on resuming consideration of the same, to appoint the said or such fit person as to your Lordships shall seem proper to be

judicial factor on the estate of the said deceased , and that with all the powers of the statute, he always finding caution before extract, and to find the petitioner entitled to the expenses of this application and the procedure following thereon out of the factory estate, and to decern; or to do otherwise in the premises as to your Lordships shall seem proper.

According to Justice etc.

(*Signed by Counsel.*)

FORM 30

Form of Citation and Execution of Service

I, , Enrolled Solicitor, by virtue of a Deliverance dated the day of , pronounced by Lord upon the Petition given in and presented for and in name of the therein named and designed do hereby, in Her Majesty's name and authority, and in name and authority of the said Lord , lawfully serve the foregoing copy of said Petition and Deliverance upon you (*name and designation*) that you may not pretend ignorance of the same, and desire and require you to lodge answers to said Petition, if so advised, within days from the date of this my service in terms of said Deliverance.

This I do upon the day of , being the date of the posting of this service and requisition. The period within which you are required to lodge answers, if so advised, is reckoned from 24 hours after posting hereof.

(*Signed*)
(*Address*)

Form of Execution of Service

This Petition with Deliverance annexed executed by me Enrolled Solicitor, upon the within designed by posting on the day of , 19 , between the hours of and o'clock at the Post Office, Edinburgh, a copy of the same, with citation subjoined, to him (or them) in a registered or recorded delivery letter (or letters) addressed to his (*or* their) last known address as follows:—

and also edictally on the said by posting on the said date between the said hours at the said Post Office a copy of the same for him (*or* them) with citation subjoined in a registered or recorded delivery letter (*or* letters) addressed as follows:—The Extractor of the Court of Session, 2 Parliament Square, Edinburgh, and the post office receipts for said letters accompany this execution.

(*Signed*)
(*Address*)

FORM 31

Form of intimation to be inserted in the Edinburgh Gazette under paragraph (b) of Rule 201

To the creditors and other persons interested in the succession of the deceased (*naming and designing him*).

A Petition has been presented to the Court of Session by , a creditor (*or* creditors), to the amount required (or by having an interest in the succession of the said deceased , the said deceased having left no settlement appointing trustees, or other parties having power to manage his estate (*or as the case may be*, the trustees under the deceased's settlement, not accepting or acting), praying, under the Act 3 and 4 George V cap. 20, section 163, for the appointment of a judicial factor on said estate; and which Petition will be again moved in Court, on or after the day of , of all which notice is hereby given.

(*Signature and address of petitioner's solicitor.*)
(*Date*)

APPENDIX

FORM 32

Form of Intimation to be inserted in the Edinburgh Gazette under paragraph (d) of Rule 201

To the creditors and other persons interested in the succession of the deceased (*designing him*).

A.B. (*naming and designing him*), having been appointed by the Court of Session judicial factor on the estate of the said deceased under the Act 3 and 4 George V cap. 20, section 163, requires all the lawful creditors of the said and other persons interested in his estate, to lodge with the judicial factor, within four months after the date of this notice, a statement of their claims as creditors of the deceased, or as otherwise interested in his estate; with such vouchers or other written evidence as they may have to found upon in support of their claims; in order to the same being considered and reported upon by the judicial factor.

(*Signature and address of judicial factor*).
(*Date*)

FORM 33

Form of Intimation to be inserted in the Edinburgh Gazette under paragraph (h) of Rule 201

To the creditors and other persons interested in the succession of the deceased (*designing him*).

A.B., , judicial factor on the estate of the said deceased , hereby intimates that he has prepared and lodged in Court a state of funds and scheme of division of the said estate, to be considered and approved of by the Court, of which all concerned are hereby required to take notice.

(*Signature and address of judicial factor.*)
(*Date*)

FORM 34

Form of Intimation to be inserted in the Edinburgh Gazette under paragraph (p) of Rule 201

To the creditors and other persons interested in the succession of the deceased (*designing him*).

A.B., , judicial factor on the estate of the deceased , has presented a petition to the Court of Session, for his discharge of the office of judicial factor, of which notice is hereby given, and that the petition will be again moved in Court on or after the day of

(*Signature and address of judicial factor.*)
(*Date*)

FORM 35

Form of Statement by Liquidator of a Company under section 342 of the Companies Act 1948

Form No. 92 (*Scot.*)

No. of Company..... ....

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THE COMPANIES ACT 1948

Liquidator's Statement of Account under Section 342 and relative Rules of Court

Name of Company..... .....

.....Limited.

Nature of winding up:—
(*a*) Members' Voluntary
(*b*) Creditors' Voluntary
(*c*) By the Court
(*d*) Under the supervision of the Court.

Date of commencement of winding-up.....

Date to which last statement, if any, made up .....

Date to which this statement is made up ... ...

.....

Name and address of liquidator..... ....

LIQUIDATOR'S STATEMENT OF ACCOUNTS for the period

from .... to.....

NOTES

(1) Where practicable, receipts and payments should be individually listed, but trading and certain other recurring transactions may be suitably grouped or collated if these are numerous.
(2) Contra items such as cash lodged in bank on current account or on deposit receipt or withdrawn therefrom should be excluded from the receipts and payments shown below.
(3) No balance should be shown on this Account. The balance and its analysis should be entered on the back of this form.
(4) Where there have been no receipts or payments since the last Account, the Liquidator shall give a certificate below to that effect.

RECEIPTS				PAYMENTS			
	Amount				*Amount*		
Nature of Receipts	£	s.	d.	*Nature of Payments*	£	s.	d.
Total receipts from last account				Total payments from last account			
Total receipts carried forward				Total payments carried forward			

ANALYSIS OF BALANCE

at....., 19.....

	£	s.	d.
Total Receipts, per Account			
Total Payments, per Account			
Balance			
Made up as follows:—			
1. Cash in hands of Liquidator			
2. Balances at Bank:			
On Current Account			
On Deposit Receipt			
3. Investments made by Liquidator			
Balance as above			

PROGRESS REPORT

		£
A. Amount of the total estimated assets and liabilities at the date of the commencement of the winding up per Statement of Affairs	Assets—	
	less: Secured Creditors	
	Debenture Holders	
	less: Preferential claims & services	
	Available for Unsecured Creditors	
	Unsecured creditors	

B. Total amount of the capital paid up at the commencement of the winding up
C. General description and estimated value of:
(i) any material alterations to the amounts shown in (A) above
(ii) outstanding unrealised assets
D. Causes which delay the termination of the winding up
E. Period within which the Liquidator expects to complete the winding up
F. Date of payment and amount of last premium of Liquidator's bond of caution (state also amount of bond and renewal date)

Signature of Liquidator .....

Date .....

This form should be completed and sent to the Registrar, Companies Registration Office, Exchequer Chambers, 102 George Street, Edinburgh, 2, within thirty days after twelve months from the date of commencement of winding up, and at six-monthly intervals thereafter. The final return should be sent immediately the assets have been fully realised and distributed, notwithstanding that six months may not have elapsed since the last return.

RULES OF COURT

FORM 36

Form of petition for adoption order as filled in on official printed form

Unto the Right Honourable the Lords of Council and Session

PETITION
of

A.B. (*name designation and address*), and (*if wife also petitioner*) C.D. (*name, designation address*)

for
AUTHORITY TO ADOPT

E.F. (*name, as in birth certificate, or name by which infant is ordinarily known, and address*).

HUMBLY SHEWETH,—

1. The petitioner (*or* petitioners) is (*or* are) desirous of adopting the said E.F. under the provisions of the Adoption Act 1958.

2. The petitioner (*or* petitioners) is (*or* are) domiciled in and resides (*or* reside) at

3. The petitioner(s) occupation(s) is (*or* are):—

4. The petitioner(s) is (*or* are) married (*or* unmarried), widow or widower. (*If married, state whether spouse resides with, or apart from, the petitioner*).

5. The petitioner is years of age (*and, if wife also a petitoner, the said C.D. is years of age*).

6. The petitioner (*or* petitioners) has (*or* have) resident with him (*or* them) the following persons namely,

7. The petitioner (*and his wife*) is (*or* are respectively) related to the said E.F. as follows:—
(*or* the petitioner(s) is not (*are not, nor is either of them*) related to the said E.F.).

8. The said E.F. (is)—
(*a*) of the sex,
(*b*) unmarried,
(*c*) a child of and ,
(*d*) of British or nationality,
(*e*) years of age, having been born on day of , 19, at in the County of ,
(*f*) was received into the care and possession of the petitioner on ,
(*g*) has been continuously in his care and possession since ,
(*h*) has the following tutors, curators or guardians (*names and addresses*),
(*i*) entitled to the following property, namely,

9. The petitioner notified the Council on of his intention to petition for an Adoption Order in respect of E.F.

10. of in the County of (*and of in the County of*) is (*are*) liable to contribute to the support of the said E.F.

11. The said E.F. has not been the subject of an Adoption Order or of a Petition for an Adoption Order, save that (*state Order and Petition if any*).

12. The petitioner(s) is (*or* are) prepared to undertake if an Order is made on this petition, to make for the said E.F. the following provision, namely:—

(The petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require.)

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13. Consents to this Petition have been obtained from the following persons, namely:—

(*a*) [E.F. if a minor]

(*b*) [Parents]

(*c*) [Tutor or Curator]

(*d*) [Spouse of petitioner]

14. The petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or agreed to make or give to the petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said E.F. except as follows, viz:—

15. This petition is presented under the provisions of the Adoption Act 1958, and Rules 219 to 230.

May it therefore please your Lordships to dispense with intimation and to order notice of this petition to be served by registered or recorded delivery letter post or otherwise on such person or persons as your Lordships (or the Court) may think proper, and to appoint a curator *ad litem* to ..... the infant sought to be adopted in terms of the said Act and relative Rules of Court and direct him to report and thereafter, on resuming consideration hereof, together with the report by the said curator *ad litem* to pronounce an Order authorizing the petitioner(s) to adopt the said E.F. in terms of the Adoption Act, 1958, on such terms and conditions (if any) as your Lordships may think fit, and to direct the Registrar-General for Scotland to make an entry regarding the said adoption in the Adopted Children Register in the form set out in the Schedule to the said Act, giving the name ..... as the Christian and ..... as the surname of the said E.F. in column 2 of the said Schedule; and, further, upon proof to the satisfaction of your Lordships in the course of the proceedings to follow hereon, to find that the said E.F. was born on the said ..... day of ..... in the year ..... and is identical with the said E.F. to whom an entry numbered ..... and made on the ..... day of ..... in the year ..... in the Register of Births for the Registration District of ..... in the County of ..... relates, and to direct the said Registrar-General to cause such birth entry to be marked with the word " adopted " and (*inserted only where the infant was born in Scotland*) to include the above-mentioned date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act; and to pronounce such other or further orders or directions upon such matters, including the expenses of this Petition, as your Lordships may think fit.

According to Justice etc.

FORM 37

Form of Consent relative to petition for Adoption Order

IN PETITION

A.B. for Adoption Order adopting E.F.

I (*full name, designation and address*), being:—

(*a*) the said E.F., if a minor,

(*b*) the father of the said E.F.,

(*c*) the mother of the said E.F.,

(*d*) tutor, curator or guardian of the said E.F.,

(*e*) the spouse of the petitioner,

hereby state that I understand the nature and effect of the Adoption Order for which application is made and (*in the case of the father and mother*) that I understand that the effect of the order will be permanently to deprive me of my parental rights. I do not desire any further intimation of the petition proceedings nor to be heard in relation thereto. And I hereby consent to the making of an Adoption Order in favour of the petitioner(s) (on condition that the religious persuasion in which the infant is proposed to be brought up is).

Proved and attested in accordance with the provisions of Section 6 of the Adoption Act 1958.

(*Signature*)

Signed in the presence of (*two witnesses, giving names, designations and addresses*).

FORM 38

Form of Notice of Hearing

IN PETITION

A.B. for Adoption Order adopting E.F.

Notice is hereby given that a hearing in this Petition will take place in the Court of Session, Parliament Square, Edinburgh, on the day of , 19 , at o'clock when, if so advised, you may appear and be heard, personally or by counsel.

(*Address and date*) Solicitor for Petitioner.

FORM 39

Certificate as to suitability to adopt

I hereby certify on soul and conscience that I have examined on (state whether he suffers or has suffered from any serious mental or physical illness or from any serious congenital disease). I have formed the opinion that he is physically, mentally and emotionally suitable to adopt an infant.

Signature
Qualifications
Address

Date

FORM 40

Form of Joint Minute consenting to Summary Trial

Parties concur in craving that the cause shall be remitted to Lord for determination by him under section 10 of the Administration of Justice (Scotland) Act, 1933.

(*To be signed by Counsel for all parties.*)

FORM 41

Forms of (a) reclaiming, and (b) objection to competency

(*Date*)

(*a*) On behalf of the defender—for review by the Inner House of the Lord Ordinary's interlocutor of (*Date*)—Intimated to pursuer, p. Y.Z. (*defender's Counsel*).

(*Signed*) O.P. (*Signature of defender's Solicitor, or of his Clerk*).

(*Date*)

(*b*) On behalf of the pursuer—defender's motion opposed as incompetent—Intimated to defender—p. W.X. (*pursuer's Counsel*).

(*Signed*) M.N. (*Signature of pursuer's Solicitor, or of his Clerk*).

APPENDIX

FORM 42

Form of Appeal (or application in the nature of appeal) under particular statutes

(This space will contain the letter and number assigned to the appeal on being lodged.)

Appeal

to

The Court of Session

Under (*quote the particular statute and section thereof*)

By

(*name, designation and address of appellant*)

Against

An (*order, determination, or as the case may be*) of (*name the authority or tribunal*) dated (*give date*), and communicated to the appellant on (*date*), in the following terms:—(*quote the order or determination*).

The appellant appeals against the foregoing (*order, determination, etc*) on the following grounds.

Grounds of Appeal.

(*State the grounds articulately in numbered paragraphs.*)

(*Signed*) M.N. (*Signature of appellant's solicitor*).

(*Date*)

FORM 43

Form of Case (stated, special or referred) under certain statutes

(This space will contain the letter and number assigned to the case on being lodged.)

Case

for

The Court of Session

Under (*quote the particular statute and section thereof*)

(*names, designations, and addresses of parties or party*)

(*Narrate the facts and circumstances out of which the case arises, articulately and in numbered paragraphs, and set out the question(s) for answer by the Court*).

(*Signed*) M.N., (*Signature of person stating or referring case.*)

(*Date*)

FORM 44

Execution of Charge

Upon the day of in the year

I, Messenger-at-Arms (*or other officer of Court entitled to execute diligence*), by virtue of the within Extract and Warrant at the instance of the within named and designed A. against the also within named and designed B., passed,

and in Her Majesty's name and authority lawfully charged the said B. to make payment of the within mentioned sum or sums of money, principal, interest and expenses (*or* to implement and perform the obligations within mentioned, *or both to pay and perform as the Extract and Warrant may require*) (*add* " so far as incumbent upon him " *if there be other debtors or obligants in the Extract*) and that to the said A. within days next after the date of my said charge under the pain of (poinding *or* imprisonment).

This I did by delivery to (*or* leaving for *as the case may be*) the said B. personally a full copy of the within Extract, before and in presence of C. witness to the premises.

(*Officer's signature.*)

(*Witness' signature.*)

FORM 45

Form of Application for Leave to Appeal

Pensions Appeal Tribunals Act 1943

Note

by

A.B. (name and design the applicant) or the Minister of Pensions

for

Leave to Appeal

1. On . . . . . the Pensions Appeal Tribunal refused the applicant's (*or* the Minister's) application for leave to appeal against their decision dated . . . . . refusing a pension to the applicant (*or* finding that the applicant was entitled to a pension on the grounds of attributability, *or as the case may be*).

2. A copy of the Statement of the Case is produced herewith. (*N.B. a copy is obtainable from the Pensions Appeal Office*).

3. The reasons given by the Tribunal for their decision on the merits were as follows;—

(*Quote*)

4. The reasons given by the Tribunal for refusing leave to appeal were as follows:—

(*Quote*)

5. The grounds of this application are—(state briefly in propositional form and without reproducing evidence the point or points of law on which it is maintained that the Tribunal erred).

In respect whereof

FORM 46

Form of Parliamentary Election Petition

Representation of the People Act 1949

Election for (*state place*) held on the day of 19

Petition

of

A. (*name and designation*) or A., B., and C. (*names and designations*) whose name (*or* names are) subscribed hereto,

against

D. (*name and designation*), as the member whose election or return is complained of, (and E. as the returning officer, *as the case may be*), Respondent(s).

Humbly sheweth;—

1. That the first named petitioner voted (*or* had a right to vote, *as the case may be*) as an elector at the above election (*or* claims to have had a right to be elected or returned at the above election, *or* was a candidate at the above election, *as the case may be*). The second named petitioner (*here state in like manner the right of each* petitioner).

APPENDIX

2. That the said election was held on the day of 19 , when A.B. and C.D. (*name them*) were candidates, and the Returning Officer has returned A.B. (*name*) as being duly elected.

3. That (*state the facts on which the petitioners rely*).

May it therefore please the Court to determine that the said A.B. was not duly elected or returned, and that the election was void (*or* that the said C.D. was duly elected, and ought to have been returned *as the case may be*).

According To Justice, etc.

FORM 47

Form of Notice of the presentation of an Election Petition and of the nature of the proposed security

Representation of the People Act 1949

Take notice that under the Representation of the People Act 1949 and the Rules of Court, a Petition has been presented to the Petition Department of the Court of Session touching the election of a member of Parliament for the (*place*), of which Petition the foregoing is a full copy, and that you are named therein as a respondent: and Take notice that the security which has been given in terms of section 119 of the above Act is in the form of a bond of caution to the amount of £1,000 (*or as the case may be*) granted by A. B. and C.D. (*names and designations*) *or* by consignation of £ in the Bank of . If you desire to object to the above bond of caution in terms of section 119(4) of the above Act, you may do so within five days of the date hereof by lodging the objection in writing in the Petition Department of the Court of Session and sending or delivering a full copy of the same to me at the following address (*address within 3 miles of the General Post Office, Edinburgh*) (*Delete the last foregoing sentence if the consignation is wholly of money*).

FORM 48

Form of Bond of Caution in Election Petition

Representation of the People Act 1949

We, A.B. and C.D. (*names and designations*), considering that a Petition has been presented by E.F., complaining of an undue return (*or* undue election *as the case may be*) of G.H. as a member to serve in Parliament for the county of (*or* burgh of) (*or* district of burghs) upon the day of 19 , and that by section 119 of the Representation of the People Act 1949 it is provided that security for the payment of all costs, charges, and expenses that may become payable by the petitioner in terms of the said Act, shall, on presentation of such Petition, be given on behalf of the petitioners to the amount of £,1000; and that by the rules of the Court of Session for the trial of Election Petitions, under the said Act, it is prescribed that the security so to be given on behalf of the petitioners may be by lodging a bond of caution, in terms of the said Act; and seeing that we, the said parties, are willing to grant such bond, therefore we, the said parties, as cautioners, sureties, and full debtors for and with the said E.F., petitioner, do hereby bind and oblige ourselves conjunctly and severally, and our respective heirs, executors, and successors whomsoever, that the said E.F., petitioner shall make payment of all costs, charges, and expenses that may become payable by him to any person or persons, by virtue of any decree to be pronounced in the said Petition; and that to the amount of £1,000 sterling, with one-fifth part more of liquidate penalty in case of failure; and we consent to the registration hereof for execution. In witness whereof, etc.

RULES OF COURT

FORM 49

Form of Warrant to cite witnesses in Election Petition

Representation of the People Act 1949

(*place and date*)

Having considered the motion for the petitioner (or respondent), grants warrant to all officers of the law for citing (*name them*) to attend the Court, for the trial of the Election Petition to be held at within (*name court-house*) on the day of 19 , at o'clock forenoon (or forthwith, *as the case may be*), to be severally examined as witnesses in the manner of the said Petition, and to attend the said Court until their examination shall have been completed.

(Signed)

Judge of the said Court.

FORM 50

Form of Application for leave to withdraw Election Petition

Representation of the People Act 1949

County (*or burgh or district of burghs*) of
Petition of presented on the day of 19 .

The petitioners (or the petitioner A.B. (*name*) with the consent of the petitioners C.D. and E.F. (names) (*or as the case may be*) apply for leave to withdraw their Petition on the following grounds: (*state grounds*), and pray that a day may be appointed for hearing their application.

Dated the day of 19 .

(*To be signed by the applicants and consenters, if any, or their respective Solicitors, who shall each append to their signature a statement of whether they sign as or on behalf of an applicant or a consenter*).

FORM 51

Form of Notice of proposed withdrawal of Election Petition

Representation of the People Act 1949

In the Election Petition for in which is petitioner and is respondent.

Notice is hereby given that the above petitioner has, on the day of 19 , lodged at the office of the Deputy Principal Clerk of Session notice of application to withdraw his Petition, of which the following is a copy:—(Set it out).

And take notice, that by the Act and Rules of Court, any person who might have been a petitioner, in respect of the said election, may, within five days after publication of this Notice give notice in writing, signed by him or on his behalf, to the said Deputy Principal Clerk of Session, 2 Parliament Square, Edinburgh, of his intention to apply at the hearing to be substituted for the petitioner.

Dated the day of 19

(Signed by the Petitioner or his Solicitor)

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