STATUTORY INSTRUMENTS

1978 No. 106 (S. 5)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 1) (Consistorial Causes) 1978

Made - - - *25th January* 1978

Coming into Operation *25th April* 1978

The Lords of Council and Session under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(**a**) and section 29 of the Administration of Justice Act 1977(**b**) and of all other powers competent to them in that behalf, do hereby enact and declare:—

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 1) (Consistorial Causes) 1978 and shall come into operation on 25th April 1978.

(2) The Interpretation Act 1889(**c**) shall apply to this Act of Sederunt as it applies to an Act of Parliament.

Affidavit evidence in consistorial causes

2. In the Rules of Court(**d**), for Rule 168 there is substituted the following rule:—

"168. *Undefended actions*—(1) The provisions of this rule—

(*a*) apply to all actions of divorce and of separation and aliment in which no defences have been lodged;

(*b*) do not apply to any such action where it appears to the Court that the defender is a person who is suffering from mental disorder;

(*c*) may apply to any action of divorce and of separation and aliment which proceeds at any stage as undefended if the Court so directs;

(*d*) may apply to the merits of any such action as is mentioned in sub-paragraph (*c*) if the Court so directs, notwithstanding that the action is defended on an ancillary matter;

and in this rule "action" means any action to which this rule so applies.

(**a**) 1933 c. 41. (**b**) 1977 c. 38. (**c**) 1889 c. 63. (**d**) S.I. 1965/321.

Evidence

(2) In all actions evidence submitted in the form of affidavits shall, subject to the provisions of this rule, be admissible in place of parole evidence.

(3) For the purposes of this rule—

(*a*) "affidavit" includes affirmation and statutory or other declaration;

(*b*) an affidavit shall be treated as admissible if it is duly emitted before a Notary Public, or any other competent authority.

(4) Proof in all actions shall, unless in any particular action the Court otherwise directs, be by way of evidence submitted in the form of affidavits and such evidence shall not be treated as being insufficient for the purposes of proof by reason only that it is not supported by parole evidence.

(5) In all actions in which there are children under 16 for whose custody maintenance and education the Court has jurisdiction to make provision, evidence relative to the welfare of every such child shall, unless the Court thinks fit to direct otherwise, be submitted in the form of affidavits, at least one of which shall be emitted by a person other than either of the parties to the action.

(6) In any action, evidence submitted in the form of a written statement bearing to be that of a duly qualified medical practitioner, which has been signed by him and lodged in process, shall be admissible in place of parole evidence.

Procedure

(7) In any action, if counsel on consideration of the available affidavits and supporting documents is satisfied that a motion for decree may properly be made, he may move the Court by way of written minute in the process signed by him, to grant decree in terms of the conclusions of the summons or in such restricted terms as may be appropriate.

(8) The minute referred to in paragraph (7) shall be in the following terms:—

"AB for the pursuer having considered the evidence contained in the affidavits and the other documents all as specified in the Schedule hereto and being satisfied that upon this evidence a motion for decree [in terms of the conclusions of the summons] or [in such restricted terms as may be appropriate] may properly be made, moves the Court accordingly.

In respect whereof,

(Signature)

Schedule

(No. and specify documents)".

(9) The solicitor for the pursuer shall lodge—

(*a*) in process—

(i) the minute signed by counsel;

(ii) the productions specified in the Schedule to the minute;

(*b*) in the general office of the Court, the official form of application for the grant of decree duly completed by him.

(10) The Court may at any time after those documents have been duly lodged, without requiring the appearance of counsel in Court—

(*a*) grant decree in terms of the motion for decree contained in the minute; or

(*b*) put the case out by order for such further procedure, including proof by parole evidence, as the Court thinks appropriate.

(11) Notice shall be given in the Rolls of Court of all actions where decree has been granted without requiring the appearance of counsel in Court, and in all such actions the Extractor of Court may, not sooner than 21 days thereafter, issue to both parties extract and copy extract decrees."

Transitional

3. Rule 168 of the Rules of Court as substituted by paragraph 2 shall have effect—

(*a*) in relation to all actions of divorce and of separation and aliment commenced on and after the date on which this Act of Sederunt comes into operation;

(*b*) in relation to all such actions commenced before that date, being actions in which no diet of proof has been fixed or, if it has been fixed, the date of the diet is subsequent to the period of one month after the date on which this Act of Sederunt comes into operation.

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

Edinburgh
25th January 1978

G. C. Emslie,
I.P.D.

EXPLANATORY NOTE

(*This Note is not part of the Act of Sederunt.*)

This Act of Sederunt makes provision to enable decree to be granted in certain undefended actions of divorce and separation and aliment by means of written evidence.

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