STATUTORY INSTRUMENTS

1984 No. 499 (S.53)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 3) (Summary Decree and Other Amendments) 1984

Made - - - -	*29th March* 1984
Coming into Operation	
Paragraph 3	*1st May* 1984
All other paragraphs	*26th April* 1984

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 of all other powers competent to them in that behalf, do hereby enact and declare:—

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 3) (Summary Decree and Other Amendments) 1984.

(2) Paragraph 3 of this Act of Sederunt shall come into operation on 1st May 1984.

(3) This Act of Sederunt, other than paragraph 3, shall come into operation on 26th April 1984.

(4) This Act of Sederunt shall be inserted in the Books of Sederunt.

Amendments to Rules of Court

2.—(1) The Rules of Court (**b**) shall be amended as follows.

(2) In Rule 79—

(a) for the heading, substitute the heading **"Motions for interim orders"**;

(b) after "79" insert "– (1)";

(c) after paragraph (1), insert the following paragraphs—

"(2) Paragraph (1) shall also apply in any cause in which a motion is made for any interim order—

(a) before calling; and

(b) other than a motion for an interim order for which intimation is required under any enactment.

(3) Subject to the provisions of paragraphs (1) and (2), a caveat may be lodged against a motion for any interim order."

(3) After rule 89A, insert the following section—

(**a**) 1933 c.41. (**b**) S.I. 1965/321.

"SECTION 3(B)

SUMMARY DECREE

89B. Summary Decree

(1) This rule applies to any cause commenced by summons other than—

(a) a consistorial action as defined by rule 154;

(b) a commercial cause to which rule 148 applies;

(c) an action of multiplepoinding;

(d) an action of proving the tenor; and

(e) an action under the Presumption of Death (Scotland) Act 1977 (**a**).

(2) Subject to paragraphs (3) to (6) of this rule, in a cause to which this rule applies, the pursuer may, at any time after a defender has lodged defences, apply by motion to the court for summary decree against that defender on the ground that there is no defence to the action or a part of it disclosed in the defences.

(3) In applying for summary decree the pursuer may move the court—

(a) to grant decree in terms of all or any of the conclusions of the summons;

(b) to pronounce an interlocutor sustaining or repelling a plea-in-law; or

(c) to dispose of the whole or a part of the subject matter of the action.

(4) Where a motion is to be made under this rule—

(a) the motion shall be intimated by recorded delivery letter to all other parties to the action on an *induciae* of 14 days;

(b) there shall be lodged at the same time as enrolment—

(i) a copy of each letter of intimation; and

(ii) the Post Office receipt in respect of the posting of each letter of intimation.

(5) At the hearing of a motion under this rule the court may—

(a) if satisfied that there is no defence to the action or to any part of it to which the motion relates, grant the motion for summary decree in whole or in part as the case may be; or

(b) order any party, or a partner, director, officer or office-bearer of, any party—

(i) to produce any document; or

(ii) to lodge an affidavit or affidavits in support of any assertion of fact made in the pleadings or at the bar.

(6) Notwithstanding the granting or refusal of a motion for summary decree, a second or subsequent motion may be made upon cause shown by reason of a change of circumstances.

(7) Where a defender has lodged a counterclaim—

(a) the defender may apply by motion to the court for summary decree against the pursuer on that counterclaim

(**a**) 1977 c.27.

or a part of it on the ground that the pursuer has no defence to the counterclaim;

(b) paragraphs (3) to (6) shall apply to a motion by a defender under this paragraph as they apply to a motion by a pursuer under paragraph (2); and

(c) this paragraph does not apply to a counterclaim which is a claim referred to in paragraph (1).

(8) Notwithstanding the provisions of paragraphs *(a)* and *(b)* of rule 264, an interlocutor pronounced under this rule may be reclaimed against only with leave of the Lord Ordinary or Vacation Judge, and on such conditions, if any, as he thinks fit, not later than 7 days after the day on which the interlocutor was pronounced.".

(4) In rule 170B(6) (intimation to third parties in consistorial actions), after sub-paragraph *(b)* insert the following sub-paragraph—

"*(c)* In an action where the court may make an order mentioned in sub-paragraph *(a)* in respect of the custody of a child and the defender has a conclusion for custody of that child in his defences—

(i) the defender shall enrol a motion for a warrant to intimate to the local authority or third party concerned; and

(ii) rule 160 shall apply to the execution of any such warrant granted by the court."

(5) In rule 236 (interim orders in petitions)—

(a) in paragraph *(b)*, for the word "an" substitute the word "any"; and

(b) after paragraph *(e)*, add the following paragraph—

"*(f)* A caveat may be lodged against a motion for any interim order."

(6) In rule 277*(k)*(i) (delivery of copies of case in certain appeals), for the word "ten" substitute the word "six".

(7) In rule 281(3)*(c)* (delivery of copies of case in revenue appeals), for the word "15" substitute the word "six".

(8) In rule 290*(a)* (form of appeal in certain statutory appeals), for the word "twenty-one" substitute "42".

Amendments to rule 347 of the Rules of Court

3. In rule 347 of the Rules of Court—

(a) after paragraph *(a)* insert the following paragraph—

"*(aa)* This rule shall not apply to fees for which the Secretary of State may make regulations under and by virtue of section 14A of the Legal Aid (Scotland) Act 1967(**a**) .";

(b) in Part IIA of Chapter III—

"(i) in paragraph 1*(a)*, omit the words "1(2)*(a)* (adultery) or"; and

(ii) in paragraph 2*(a)*, after the word "section", insert the words "1(2)*(a)* (adultery),".

(**a**) 1967 c. 43, as amended by the Divorce Jurisdiction, Court Fees and Legal aid (Scotland) Act 1983, (c. 12).

Repeal

4. Section 4 of the Court of Session Act 1825 (a) (no judgment to be pronounced until record closed) is hereby repealed.

Emslie,
Lord President
I.P.D.

Edinburgh,
29th March 1984.

EXPLANATORY NOTE

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

Paragraph 2 of this Act of Sederunt amends the Rules of the Court of Session by *(a)* providing for the lodging of caveats against a motion for any interim order (rules 79 and 236); *(b)* providing a new procedure of summary decree where there is no defence to an action (new rule 89B); *(c)* providing for intimation to third parties by a defender in a consistorial action who has a conclusion in his defences for custody of a child (rule 179B(6)); *(d)* reducing from ten to six the number of copies of a case to be sent to respondents in certain appeals (rules 277 and 281); and *(e)* extends the time within which appeals have to be lodged under statutes which do not specify a time limit. These provisions come into force at the beginning of the Summer session on 26th April 1984.

Paragraph 3 of this Act of Sederunt also amends the Rules of the Court of Session by providing *(a)* that rule 347 does not apply to fees for which the Secretary of State may make regulations under and by virtue of section 14A of the Legal Aid (Scotland) Act 1967 (as amended by section 3 of the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983), the power of the Court of Session to regulate fees or their taxation where legal aid has been granted having been disapplied by section 6(1) of, and paragraph 7 of Schedule 1 to, the Act of 1983; and *(b)* that the fees applicable to an undefended consistorial action (affidavit procedure) involving adultery shall be the fees in Table B of paragraph 2 of Part IIA of Chapter III and not the fees in Table A of paragraph 1. These provisions come into force on 1st May 1984.

Paragraph 4 of this Act of Sederunt repeals section 4 of the Court of Session Act 1825 (judgment not to be pronounced before record closed) in exercise of the power in section 16*(j)* of the Administration of Justice (Scotland) Act 1933 in consequence of the new rule 89B (summary decree). This provision comes into force at the beginning of the Summer session on 26th April 1984.

(a) 1825 c.120.

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