2. This Act of Sederunt may be cited as the Act of Sederunt (National Insurance Acts, 1946) 1951 and shall come into operation on 3rd May 1951.

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

T. M. Cooper,
I.P.D.

Edinburgh, 14th March, 1951.

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt, but is intended to indicate its general purport.)

This Act of Sederunt provides the procedural machinery for an appeal to the Court of Session 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 subsection (4) of section 43 of the National Insurance Act, 1946, and for a reference to the Court by the Minister for decision of any such question.

Act of Sederunt (Rules of Court Amendment) 1951

1951 No. 505 (S. 20)

Made - - - -	*9th March,* 1951
Coming into Operation	*3rd May,* 1951

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 as follows:—

1. The Rules of Court(b) are hereby amended as follows:—

(i) Rule 115 (*c*) is hereby repealed, and in lieu thereof it shall be enacted as follows:—

"(*c*) The parties shall forthwith proceed to adjust the pleadings, and the case shall appear before one of the Lords Ordinary in the Adjustment Roll on the earliest available day not earlier than the fourth day after the lodging of the Open Record".

(ii) Rule 116 (*a*) is hereby repealed and in lieu thereof it shall be enacted as follows:—

"(*a*) No continuation of the adjustment after the first shall be allowed except on special cause shewn. 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. In considering the sufficiency of any special cause alleged the Lord Ordinary shall take into consideration any additional time which may have been available for adjustment owing to a vacation having intervened in whole or in part since the lodging of the Open Record. Where no special cause is shewn to the satisfaction of the Lord Ordinary for a further continuation, he shall pro-

(a) 23 & 24 Geo. 5. c. 41. (b) S.I. 1948 (No. 1691) I, p. 3778.

nounce an interlocutor closing the Record, and any alteration of the pleadings thereafter proposed shall only be capable of being effected by amendment".

(iii) Rule 117 is hereby repealed and in lieu thereof it shall be enacted as follows:—

"117. 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 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 substitution 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 to order the record as so amended to be served on such additional or substitute defender along with a notice in terms of Form No. 5 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 added 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, if any, as may be just, and shall hold the party making the amendment liable in the expenses thereby occasioned unless it is made to appear on special cause shewn 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."

(iv) At the end of paragraph (*f*) of Rule 118 there shall be inserted the words :—

"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'".

(v) Paragraph (*c*) of Rule 147 is hereby repealed and in lieu thereof it shall be enacted as follows :—

"(*c*) If within a period of two months after the adjustment of issues (excluding periods during which the Court is in vacation) a pursuer fails to apply for a diet for trial, the case shall be put out By Order and the Court shall dismiss the action unless sufficient cause be shewn for the delay to the satisfaction of the Court."

(vi) In Rule 180 there shall be inserted an additional paragraph as follows :—

"(*e*) In any such action where the parties are agreed as to such custody or aliment 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."

2. Actions which have been dealt with in terms of the Act of Sederunt (Rules of Court Amendment) 1950(a) and which have not already been disposed of shall be restored to the Adjustment Roll at the earliest convenient date.

3. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment) 1951 and shall come into operation on 3rd May 1951.

AND THE LORDS APPOINT this Act of Sederunt to be inserted in the Books of Sederunt.

T. M. Cooper,
I.P.D.

Edinburgh, 9th March, 1951.

(a) S.I. 1950 (No. 1156) II, p. 849.