1953 No. 1924 (S. 129)

Act of Sederunt (Registration Appeal Court), 1953

Made - - - - 15*th December*, 1953
Coming into Operation 1*st January*, 1954

The Lords of Council and Session, under and by virtue of the powers conferred upon them by subsection (9) of section 45 of the Representation of the People Act, 1949(a), and of all other powers competent to them in that behalf, do hereby enact as follows:—

1. The appellate jurisdiction conferred by paragraph (*b*) of subsection (8) of the said section 45 shall be exercised by the Registration Appeal Court consisting of Lord Patrick, Lord Sorn and Lord Hill Watson.

2. The procedure in appeals to the Registration Appeal Court shall, subject to any directions which may be given by that Court, be regulated *mutatis mutandis* by Rule 290 and the Rules therein incorporated of the Rules of the Court of Session(b).

3. This Act of Sederunt may be cited as the Act of Sederunt (Registration Appeal Court), 1953, and shall come into operation on the first day of January, 1954.

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

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

Edinburgh.
15th December, 1953.

1953 No. 523 (S. 45)

Act of Sederunt (Rules of Court Amendment), 1953

Made - - - - 20*th March*, 1953
Coming into Operation 30*th April*, 1953

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(c) and of all other powers competent to them in that behalf do hereby enact as follows:—

1. The Rules of the Court of Session(b) shall be amended as follows:—

(i) For Rule 116 there shall be substituted the following:—

"116. (*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

(a) 12, 13 & 14 Geo. 6. c. 68. (b) S.I. 1948/1691; 1948 I, p. 3778.
(c) 23 & 24 Geo. 5. c. 41.

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 pronounce an interlocutor 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 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 134.

(*c*) In any other case, subject always to the discretion of the Lord Ordinary 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 Lord Ordinary shall so appoint.

(ii) If the parties renounce probation or are agreed that the substantial merits may be disposed of by debate without enquiry into the facts, the Lord Ordinary shall send the cause to the Debate Roll.

(iii) If the parties do not renounce probation and are not then agreed that the substantial merits can be disposed of by debate, the Lord Ordinary shall close the record and continue the cause to a date not earlier than the date for lodging the prints of the closed record. Unless in the interval an unopposed motion has been enrolled for the further disposal of the cause, the parties shall appear on said date and state what course they respectively propose, but no additional fees shall be allowable for such appearance. If it then appears to the Lord Ordinary that there is a matter in dispute relating only to insufficiency of specification, or the exclusion from probation of part of the averments, or the method of enquiry, or a limitation in the method of proof, or other minor question not exhausting the substantial merits of the cause, he shall send the cause to Procedure Roll. If the matter in dispute relates to the relevancy of the action or defences or otherwise affects the substantial merits, he shall send the cause to the Debate Roll.

(*d*) It shall be competent for the Lord Ordinary 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 two 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 absolvitor by default, which decree the Court shall grant unless the pursuer shall show good cause to the contrary."

(ii) After Rule 119 there shall be inserted the following new Rule:—

"119A. *Debate Roll.*

All causes sent to Debate Roll shall be put by the Keeper of the Rolls on a list of causes to be heard in said Roll, and shall be put out for hearing at such times as the exigencies of business, the nature of the cause and the probable duration of the debate may permit; provided that, except of consent of parties, no such cause shall be called earlier than the second day after the day on which it appears on the printed rolls."

(iii) In Rule 134 there shall be substituted for paragraph (*f*) the following:—

"(*f*) If the motion for approval of the issues or counter-issues is marked "opposed", such motion shall be starred, and the parties shall be required by the Lord Ordinary to state (*a*) whether the point in dispute relates only to the form of the issues or counter-issues, or to some other minor matter not exhausting the substantial merits, in which event the Lord Ordinary shall send the cause to the Procedure Roll, unless the exigencies of business admit of the matter being immediately disposed of; or (*b*) whether the point in dispute relates to the relevancy of the action or defences or otherwise affects the substantial merits, in which event the Lord Ordinary shall send the cause to the Debate Roll."

(iv) In Rule 136 paragraph (*a*) shall be repealed, and in paragraph (*b*) there shall be substituted for the opening clause the following:—

"Notwithstanding that a cause has been sent to Procedure Roll or Debate Roll in terms of Rules 116 or 134."

2. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment) 1953 and shall come into operation on 30th April, 1953.

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

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

Edinburgh.
20th March, 1953.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court by making provision in the interests of efficiency and expedition of a Debate Roll separate from the Procedure Roll.