1963 No. 380 (S. 7)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment) 1963

Made - - - - *26th February* 1963
Coming into Operation *2nd May* 1963

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 the Court of Session(b) shall be amended as follows:—

(1) by adding after Rule 110 the following Rule—

"110A. 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 50 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.

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

(*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 debate 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."

(2) by adding after Form 49 in the Appendix the following new Form—

"FORM 50

Form of Third Party Notice

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 whole or 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 whole or 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.

(Signed)

(Solicitor for the defender).

Dated this day of ".

2. The provisions of this Act of Sederunt shall not apply in the case of any action commenced before the date of the coming into operation hereof.

3. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment) 1963, and shall come into operation on 2nd May 1963.

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

J. L. Clyde,
I.P.D.

Edinburgh,
26th February 1963.

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 for the service of a third party notice on any person against whom the defender in any action claims that he has any right of contribution, relief or indemnity in respect of the subject matter of that action; and for the procedure to follow upon the service of such notice.