STATUTORY INSTRUMENTS

1976 No. 137 (S. 9)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment) 1976

Made - - -	30*th January* 1976
Coming into Operation	27*th February* 1976

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:

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

(1) In Rule 112, by adding at the end the following sentence:—

"An application by any party by motion under this rule shall be heard in the Single Bills and it shall not be necessary for any documents to be lodged in support of the application unless the Court otherwise directs."

(2) In Rule 114, by substituting for paragraphs (*a*) to (*d*) the following paragraphs:—

"(*a*) In a cause, being a cause appropriate for jury trial, where—

(i) the parties agree at the closing of the record, or at any time thereafter up to and including the appearance of the cause in the By Order Adjustment Roll that the cause be so tried and the Court so allows; or

(ii) the Court, after hearing the parties, or any of them, in Procedure Roll, allows the cause to be so tried, the pursuer shall, within 14 days from the date of an interlocutor allowing issues, lodge in process a proposed issue or proposed issues for the trial, with a copy for the Court, and shall at the same time deliver a copy to the solicitor acting for the other party or parties.

(*b*) Notwithstanding that an interlocutor has been pronounced allowing issues, where a pursuer fails to lodge a proposed issue for the trial and to deliver a copy thereof in accordance with paragraph (*a*) of this Rule, he shall, unless on special cause shown, the Court otherwise determines, be held to have passed from his application for trial of the cause by jury, and any inquiry into the facts of the cause shall be taken by a proof, provided that the other party or parties to the cause on such failure, may if he or they maintain that the cause should be tried by jury, within 7 days after the expiry of the said period of 14 days, enrol a motion to have the cause sent to the Procedure Roll.

(**a**) 1933 c. 41. (**b**) S.I. 1965/321 (1965 I, p. 803).

(*c*) Where a proposed issue has been lodged in pursuance of paragraph (*a*) of this Rule, the other party or parties to the cause may, within 7 days after the day on which such issue is lodged, lodge a proposed counter-issue or proposed counter-issues, and the provisions of paragraph (*a*) of this Rule relating to the lodging and delivery of copies of a proposed issue shall apply to a proposed counter-issue under this paragraph as they apply to a proposed issue under that paragraph.

(*d*) A proposed counter-issue lodged by a party or parties to the cause in pursuance of paragraph (*c*) of this Rule may include any question of fact which is made the subject of specific averment on the record or is relevant to his or their pleas, notwithstanding that it does not in terms meet the proposed issue or issues.

(*e*) The pursuer shall, not later than 7 days after any such proposed counter-issue has been lodged and intimated or, if no proposed counter-issue has been lodged, on the expiry of the period allowed for lodging a proposed counter-issue in paragraph (*c*) of this Rule, enrol a motion for the approval of the proposed issue and on intimation being made to him of that motion, any party who has lodged a proposed counter-issue under paragraph (*c*) of this Rule, shall, within 7 days of such intimation, enrol a motion for the approval of the proposed counter-issue and any such motion may be marked as opposed in accordance with Rule 93.";

and by substituting for the letters (*e*), (*f*) and (*g*) in the remaining paragraphs the letters (*f*), (*g*) and (*h*) respectively.

(3) By substituting for Rule 116 the following Rule:—

"116 (*a*) The Court after hearing parties in Procedure Roll in pursuance of an order made under Rule 91 or Rule 114 shall dispose of the contentions and pleas of parties as shall seem just; and in the event of the cause being found, in whole or in part, relevant for enquiry, the Court may either allow or dispense with issues, or if the Court thinks that such enquiry or any part thereof should not be taken before a jury, the Court may pronounce an interlocutor allowing a proof.

(*b*) In a cause tried by jury with an issue and counter-issue, the presiding judge may, after the evidence has been led, submit to the jury in writing along with the issue and counter-issue such further question or questions as may appear to him to be required by the circumstances of the case, but where he does so the powers exercisable under Rule 128 in relation to a special verdict shall not be exercisable by him."

(4) In Rule 158 by adding at the end the following paragraphs:—

"(*d*) The applicant in an application for an order under section 27(1)(*a*) of the said Act of 1964 reducing or varying any settlement or disposition of property belonging to a defender made by him in favour of any third party within the period mentioned in the said section, shall intimate the minute mentioned in paragraph (*b*) of this Rule to any such third party and to any other person having an interest in the settlement or disposition, and any such third party or other person may lodge answers thereto within such period as the Court may allow.

(*e*) On cause shown, the Court may dispense with intimation under paragraph (*d*) of this Rule."

2. This Act may be cited as the Act of Sederunt (Rules of Court Amendment) 1976 and shall come into operation on 27th February 1976.

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

G. C. Emslie,

I.P.D.

Edinburgh,
30th January 1976.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court (*a*) by expressly providing that an application to the Inner House arising from the retiral of a judge in the course of a case is to be heard as a Single Bill without any documents being required to be lodged; (*b*) by altering the circumstances in and the time limits within which proposed issues and counter-issues are to be lodged; and (*c*) by providing for minutes in divorce actions to have settlements or dispositions reduced to be served on persons having an interest, and for answers by them.

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