SCHEDULE

Age of officer at date of transfer	*Amount per £100 of remuneration in respect of each completed year of service*	*Age of officer at date of transfer*	*Amount per £100 of remuneration in respect of each completed year of service*
	£ s. d.		£ s. d.
18	4 6 0	39	9 7 0
19	4 10 0	40	9 12 0
20	4 14 0	41	9 18 0
21	4 18 0	42	10 4 0
22	5 2 0	43	10 10 0
23	5 7 0	44	10 17 0
24	5 12 0	45	11 4 0
25	5 17 0	46	11 11 0
26	6 2 0	47	11 19 0
27	6 7 0	48	12 7 0
28	6 12 0	49	12 16 0
29	6 17 0	50	13 5 0
30	7 2 0	51	13 15 0
31	7 7 0	52	14 5 0
32	7 12 0	53	14 15 0
33	7 17 0	54	15 5 0
34	8 2 0	55	15 16 0
35	8 7 0	56	16 7 0
36	8 12 0	57	16 19 0
37	8 17 0	58	17 12 0
38	9 2 0	59	18 5 0

SESSION, COURT OF, SCOTLAND

1. *Procedure.*
2. *Claims for Solatium*, p. 3985.
3. *Sessions of Court*, 1949, p. 3985.

1. PROCEDURE

(1) *Rules of Court.*
(2) *Exchange Control Act*, 1947, *Rules*, p. 3982.
(3) *Procedure under the Companies Act*, 1948, p. 3983.

(1) RULES OF COURT

Act of Sederunt (Rules of Court, consolidation and amendment) 1948

1948 No. 1691 (S. 149)

Made - - - - 1st *July*, 1948
Coming into Operation 12th *October*, 1948

THE LORDS OF COUNCIL AND SESSION, under and by virtue of the provisions of the Administration of Justice (Scotland) Act, 1933, considering that the Rules of Court enacted by the Act of Sederunt of 18th March, 1936

23 & 24 Geo. 5. c. 41.

have been amended by subsequent Acts of Sederunt, and that it is desirable to make further amendments and to consolidate the Rules as so amended, do hereby ENACT AND DECLARE that the Rules attached hereto and embodied herein are approved as the Rules of the Court of Session in place of the Rules enacted and amended as aforesaid, and shall come into force on 12th October, 1948.

And the Lords do further ENACT AND DECLARE as follows :—

(1) The provisions of any Act of Parliament or Act of Sederunt relating to any of the matters regulated or prescribed by these Rules are hereby repealed, in so far as inconsistent with the provisions of these Rules, as from 12th October, 1948 :

(2) Where any induciae or other period of time appointed or allowed by order of court or by pre-existing law and practice for taking any step of procedure is still current on 12th October, 1948, such induciae or other period of time shall continue to be in force notwithstanding the provisions of these Rules ;

(3) If in any cause in dependence on 12th October, 1948, it is shown to the Court that the enforcement in any particular of the provisions of these Rules would be productive of hardship or injustice to any of the parties, the Court may grant such relief as may be necessary to prevent such hardship or injustice :

(4) From and after 12th October, 1948, the Court may in its discretion relieve any party from the consequences of any failure to comply with the provisions of these Rules which is shown to be due to mistake, oversight or other cause, not being wilful non-observance of the same, on such terms and conditions as shall appear to be just ; and in any such case the Court may make such order as may be just by way of extension of time, lodging or amendment of papers or otherwise so as to enable the cause to proceed as if such failure had not happened.

This Act may be cited as the Act of Sederunt (Rules of Court, consolidation and amendment) 1948.

And the LORDS appoint this Act to be inserted in the Books of Sederunt and to be printed and published in common form.

T. M. COOPER,

I.P.D.

Edinburgh, 1st July, 1948.

RULES OF THE COURT OF SESSION

ENACTED BY ACT OF SEDERUNT OF THE LORDS OF COUNCIL AND SESSION DATED 1st JULY, 1948

PREFACE

The Rules of Court were last issued in 1936. Since then numerous additions and amendments have been effected by Act of Sederunt, and a complete revision was initiated by Lord Normand in 1945, and has now been carried to completion. Finality is of course unattainable in view of the steady stream of new legislation.

To a very large extent the changes now made are attributable to (*a*) the incorporation of Acts of Sederunt passed since 1936, and (*b*) drafting and consequential amendments to give effect to recent legislation and administrative changes. The substance of the existing code of practice has been preserved unaltered. The present re-issue is thus in the main directed to consolidation, with amendments confined to matters of detail.

The principal matters to which attention is directed are these :—

(1) Chapter V in so far as dealing with appeals from inferior courts and various statutory tribunals by stated case and otherwise, has had to be re-written in order to bring matters more into line with later legislation and to obviate the need for devising a special procedure on the enactment of each new statute providing for such appeals.

(2) Provision has been made to enable Interim Interdict to be obtained in any process without the necessity for a separate petition (Rule 106A).

(3) Provision has been made to enable questions of custody and aliment to be disposed of at the instance of a defender to a consistorial cause (Rule 180).

(4) The rules dealing with Scales of Taxation have been re-formulated on modern lines and certain fees have been increased.

(5) The Rules have been numbered consecutively from 1 to 360 to facilitate reference.

The Rules as now printed incorporate most statutory provisions and Acts of Sederunt down to 25th March, 1948, but numerous measures are now passing through Parliament, or are about to become operative, to which effect cannot yet be given.

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SECTION 1

JUDGES

1. Installation

On his nomination, a Senator of the College of Justice shall be received at a sitting of the whole Court, and shall present the Royal Letter to the presiding judge: he shall then take the oaths, sign the rolls, and be invited by the presiding judge to take his seat upon the bench by his judicial title.

2. Vacation Judge

(*a*) Subject to the provisions contained in these Rules, it shall be competent for the Vacation Judge, whenever necessary or convenient during vacation or recess, to deal with:—

(i) any matter which, according to the practice formerly in use, might competently be disposed of from day to day by the Lord Ordinary on the Bills or by a judge at a Vacation Court;

(ii) any motion in a cause initiated by summons and depending in the Outer House;

(iii) any application in a cause depending in the Outer House which might, in accordance with these Rules, competently be disposed of during session by a Lord Ordinary sitting in chambers;

(iv) any motion in a cause depending before the Inner House, provided that the motion does not affect the merits of the cause;

(v) any motion for approval of a Report by the Auditor of Court (including objections, if any, thereto), as well in causes depending before the Inner House, as in causes depending before the Outer House; and

(vi) the taking of evidence under Rule 124.

(*b*) The Vacation Judge shall not be bound to dispose of any motion, application, or other matter, if in his opinion such motion, application, or other matter can more conveniently be postponed until the meeting of the Court after the vacation or recess.

SECTION 2

ADVOCATES

3. Admission

(*a*) When any person shall apply to be entered as advocate, the Lords shall remit to the Dean and Faculty of Advocates to make trial of his qualifications in manner used and wont, and to report.

(*b*) Each intrant advocate shall pay to the use and order of the Faculty such sum as may, by the authority of the Court, be prescribed.

(*c*) The intrant shall, upon his admission to the office of advocate, take and subscribe the declaration of allegiance before a Lord Ordinary in the Outer House.

SECTION 3

SOLICITORS AND NOTARIES PUBLIC

4. Admission

(*a*) Where a petition is presented under section 14 of the Solicitors (Scotland) Act, 1933 (in this Section referred to as "the Act"), by an applicant qualified under section 9 of the Act, and there is not produced therewith a certificate granted to the applicant in terms of section 11 of the Act, but there is produced a duly stamped commission under the hands of the Lord Clerk Register and Keeper of His Majesty's Signet for Scotland nominating and presenting the applicant to the office of Writer to His Majesty's Signet, the Court may, without further enquiry, admit the applicant as a solicitor and cause his name to be enrolled as such.

(*b*) Where a petition for admission as a law agent has been presented to the Court prior to the first day of March 1934, and the examiners of law agents have signed a report to the Court thereon to the effect that the applicant has complied with the requirements for admission and is duly qualified to be admitted as a law agent in terms of the Law Agents (Scotland) Act, 1873, and relative amending Acts, the Court may, without a further petition being presented, admit the applicant as a solicitor and cause his name to be enrolled as such in terms of section 15 of the Act: provided that, where a period of seven or more years has elapsed since the date of the report of the examiners, the applicant shall lodge with the clerk to the examiners appointed by the General Council of Solicitors in Scotland an affidavit setting forth his occupation since the date of the report, and shall also furnish any further particulars which the General Council may require, and the General Council may make such further or additional report to the Court on the said petition as they may consider proper.

(*c*) All petitions under sections 14 and 15 of the Act shall be presented to the Court by the clerk to the examiners; and there shall be payable to the said clerk by any applicant the following fees:—

(i) For the preparation of and carrying through the petition under section 14 of the Act, including obtaining the interlocutor of admission, extract thereof, and certificate of enrolment where the applicant holds the certificate of the General Council or the commission as a Writer to the Signet, £3 13s. 6d.

(ii) For obtaining the interlocutor of admission of an applicant, under section 15 of the Act, including extract thereof and certificate of enrolment, £2 2s. 0d.

5. Registration and enrolment of solicitors

Separate registers shall be kept by the Registrar of Solicitors under the Act for the entry of indentures and assignations thereof intimated to him in terms of section 9 (2) of the Act, and for the registration and enrolment of persons admitted as solicitors under the Act; and there shall be payable to the said Registrar the following fees:—

(i) For entering in the register of indentures the particulars of an apprentice's indenture, or any assignation thereof, or second indenture, and granting certificate of intimation, £1 1s. 0d.

(ii) For each enrolment in the register of solicitors and granting certificate of such enrolment, £2 2s. 0d.

6. Admission of solicitors as notaries public

(*a*) All petitions to be admitted a notary public shall be framed and presented by the Clerk to the Admission of Notaries Public who shall obtain the Royal Authority for the petitioner's admission by a presentation; and the said Clerk shall administer the oath of office, keep the roll of notaries, and prepare and issue all commissions as notary public.

(*b*) On presentation of any such petition the fee payable to the said Clerk shall be £6 6s.; and, in addition, intrants shall make payment of the fee fund dues, and dues of presentation.

(*c*) The said Clerk shall supply each notary public on his admission with a duly certified and docqueted protocol book of ninety-one folios.

7. Applications under section 26 (1) (a) of the Act

(*a*) Applications under section 26 (1) (*a*) of the Act shall be by petition to the Inner House. The petition shall contain an articulate statement of the facts, in numbered paragraphs, relevant to the complaint against the solicitor, and shall be lodged in the Petition Department.

(*b*) On the petition being so lodged, it shall be brought before one or other Division in chambers, and the Division may, without hearing parties, order service of the petition on the solicitor complained against, and intimation in the Minute Book and allow him to lodge answers thereto within seven days after service, or (if the Division shall think proper) may direct the petition to be heard in the single bills.

(*c*) The Court shall thereafter proceed in the petition summarily in such manner as shall be necessary and proper, provided that if answers are lodged by the solicitor, the Court shall give parties an opportunity of being heard on the said petition and answers.

8. Reports under sections 26 (1) (b) and 27 (6) of the Act

(*a*) Reports under sections 26 (1) (*b*) and 27 (1) of the Act shall take the form of a report to the Inner House, which shall be lodged in the Petition Department. On the report being so lodged, paragraph (*b*) of Rule 7 shall apply.

(*b*) Such report shall contain an articulate *statement or report, in* numbered paragraphs, of the facts relevant to the complaint against the solicitor. Answers thereto may be lodged by the solicitor within seven days after service.

(*c*) The Court shall thereafter proceed to deal with the report summarily in such manner as may be necessary and proper; provided that, if answers are lodged by the solicitor, the Solicitors' Discipline (Scotland) Committee

(referred to in this Section of this Chapter as "the Discipline Committee") shall, within seven days thereafter, lodge as an appendix to their report the documents (if any) lodged by either party, and the evidence adduced before and heard by them, and the Court shall give parties an opportunity of being heard on the report and answers. The notes taken by the chairman of the Discipline Committee of any evidence heard by them shall be a sufficient record of such evidence.

9. Appeals under sections 26 (1) (c) and 28 (1) (i) of the Act

(*a*) Appeals under sections 26 (1) (*c*) and 28 (1) (i) of the Act by persons aggrieved by the decision of the Discipline Committee shall be by petition to the Inner House.

(*b*) Any such petition shall be lodged in the Petition Department not later than twenty-one days from the date when the finding of the Discipline Committee shall have been intimated to the petitioner; and shall set forth the decision appealed against, and state the date on which it was intimated to the petitioner; and shall contain an articulate statement, in numbered paragraphs, of the facts relevant to the disposal of the petition. On the petition being so lodged, paragraph (*b*) of Rule 7 shall apply, provided that no service will be ordered except against the Discipline Committee, unless specially craved and on cause shown.

(*c*) Where a petition has been presented to the Court in terms of this rule the Discipline Committee shall within the period of the *induciae* lodge a report embodying the reasons for their finding, and such report shall contain as an appendix the documents (if any) lodged by either party, and the evidence adduced before and heard by the Discipline Committee. The notes taken by the chairman of the Discipline Committee of any evidence heard by them shall be a sufficient record of such evidence.

(*d*) The Court shall thereafter proceed in the petition summarily in such manner as may be necessary and proper.

(*e*) Where the petitioner in an appeal against a finding of the Discipline Committee is the person, or one of the persons, who complained of the solicitor's alleged professional misconduct, the Court may order him to give security for expenses as a condition of proceeding with the petition.

(*f*) Any petitioner may, at any time after lodging the petition, abandon the same by giving notice of abandonment to all persons upon whom the petition may have been served, and the petition shall thereupon be dismissed with expenses.

10. Remit for further enquiry

In any proceedings under any of the preceding rules of this Section, the Court may, if it thinks necessary or expedient in the interests of justice, remit to any person to make further inquiry into the facts, or to take further evidence and to report to the Court.

11. Variation of penalty

The Court may substitute any other punishment for that inflicted by a finding appealed against, or make any order in relation thereto it may think fit.

12. Reports under section 26 (2) of the Act

(*a*) Paragraph (*a*) of Rule 8 shall apply to reports under section 26 (2) of the Act.

(*b*) Any such report shall contain a statement showing the grounds of conviction or sentence pronounced against the solicitor; and the Court, with or without further enquiry (as it may think just), shall proceed in such manner as may be necessary and proper.

13. Petitions under section 31 of the Act

(*a*) Petitions under section 31 of the Act shall be presented in the Inner House and lodged in the Petition Department, and shall contain an articulate statements of the facts necessary to show cause why the applicant's name should be restored to the roll of solicitors; and, on any such petition being lodged, paragraph (*b*) of Rule 7 shall apply, the Discipline Committee being deemed to be the respondent in the petition.

(*b*) The Court shall thereafter proceed in the petition summarily in such manner as shall be necessary and proper.

14. Deprivation of office of notary public

Where an order has been made by the Court causing a solicitor who is also a notary public to be struck off the roll of solicitors, or suspending him from practice, the Court may also deprive him of his office of notary public, or suspend him from discharging his said office, as the case may be and, in the event of a person who has been struck off the roll of solicitors, and has been deprived of his office of notary public in terms of this rule, having his name restored to the roll of solicitors under section 31 of the Act, the Court may grant warrant to the Keeper of the Roll or Register of Notaries Public to restore his name to the said roll or register as a notary public.

SECTION 4

OFFICES OF COURT

15. The central and other offices of the Court

(*a*) The Central Office of the Court (generally referred to in these Rules as " the Office of Court ") shall combine and comprise:—

(i) the offices previously attached to the two Divisions of the Inner House;

(ii) the offices previously attached to the respective Lords Ordinary;

(iii) the office previously attached to the Bill Chamber;

(iv) the office previously attached to the Principal Extractor; and

(v) The Teind Office;

but shall not include the offices of the Accountant of Court or the Auditor of Court, which shall continue as separate offices under their respective heads in accordance with present law and practice.

(*b*) The Central Office shall contain four departments to be known as the General Department, the Petition Department, the Extracts Department and the Teind Office. The General Department and the Petition Department shall be under the charge of a Deputy Principal Clerk; the Extracts Department shall be under the charge of a Depute Clerk of Session (who shall be known as the Extractor of the Court of Session), and the Teind Office shall be under the charge of a Depute Clerk of Session (who shall be known as the Teind Clerk), all acting under the directions of the Principal Clerk of Session in consultation with the Lord President.

(*c*) Any reference to the Principal Extractor or to his office in any Act of Parliament, or in any Order made pursuant to an Act of Parliament or in any Act of Sederunt shall be construed as a reference to the Extractor or to his Department.

16. Distribution of business

(*a*) To the General Department there shall belong all processes in:—

(i) causes originating in the Court of Session and initiated by summons;

(ii) special cases under section 63 of the Court of Session Act, 1868;

(iii) appeals from inferior courts, remits from sheriff courts, appeals under particular statutes, and stated (or special) cases (including references and submissions) under particular statutes; and

(iv) causes transmitted from any inferior court to the Court of Session ob contingentiam.

(*b*) To the Petition Department there shall belong all processes in causes originating in the Court of Session and initiated by petition; and, subject to the provisions of these Rules, all the powers and duties formerly belonging to, or incumbent on, the Bill Chamber or the Clerk of the Bills shall belong to, and be incumbent on, the Petition Department, or the Deputy Principal Clerk thereof, as the case may be.

(*c*) To the Teind Office there shall belong all processes which by statute or practice have been dealt with by the Teind Court and the Lord Ordinary on Teinds, and, subject to the provisions of these Rules, all the powers and duties formerly belonging to or incumbent on the Teind Clerk shall belong to and be incumbent on, the Teind Office, or the Depute Clerk in charge thereof, as the case may be.

(*d*) All bonds of caution and consignation receipts in any process shall be lodged with or transmitted to the Accountant of Court.

Section 5

The Rolls

17. Keeper of the Rolls

The rolls of Court shall be kept by the Principal Clerk of Session as Keeper of the Rolls with the assistance of the Deputy Principal Clerk of the General and Petition Departments and in consultation with the Lord President, the Lord Justice-Clerk and the senior Lord Ordinary in the Outer House.

18. Classification of causes in the General Department

In the records kept in the Office of Court, all causes belonging to the General Department shall be classified as (i) ordinary causes, (ii) admiralty and commercial causes, and (iii) consistorial causes.

19. Putting out causes for hearing or trial

(*a*) Subject to the provisions contained in these Rules, it shall be the duty of the Keeper of the Rolls to cause lists to be prepared of all causes sent to procedure roll in the Outer House, and of all causes sent to the summar and short rolls in the Inner House, and also of all causes in which proofs, jury trials, or special hearings have been fixed in terms of the immediately succeeding rule, and to put out such causes for hearing or trial before such Lord Ordinary, or before such Division (as the case may be), as may be

convenient; provided always that any continued adjustment of record or pleadings, and any continued motion, in either the Outer or the Inner House, shall, if possible, be put out before the Division or Lord Ordinary by whom the continuation was granted; and that if the merits of a cause have once been discussed in whole or in part before a particular Division or a particular Lord Ordinary, the cause shall, if possible, be put out for any further hearing, or for proof, or jury trial, before the same Division or Lord Ordinary, as the case may be.

(b) Causes put out in the printed rolls of Court for hearing in any roll or at any diet shall be so put out in the printed rolls issued not later than the second day before the day on which the cause is to be heard.

20. Fixing diets for proofs, jury trials, and special hearings in the Outer House

When enquiry by proof or jury trial is allowed, or an issue or issues approved for jury trial, or when a cause is appointed to be heard at a special diet, the Court shall not itself proceed to fix a diet for the proof, jury trial, or special hearing, but shall leave the date of such diet blank in the interlocutor appointing such proof, jury trial, or special hearing, and, within seven days of the date of such interlocutor, the pursuer in the cause shall deliver to the Keeper of the Rolls a copy of the closed record and of the issue or issues (if any), and the Keeper of the Rolls shall thereupon, in consultation with the parties (as far as possible), assign a day or days for the proof, jury trial, or special hearing, and shall cause the blank in the interlocutor to be filled in accordingly and to be initialed by the clerk in charge of the process; provided that, if the pursuer fails to deliver a copy of the closed record and of the issue or issues (if any) to the Keeper of the Rolls within the foresaid period of seven days, the defender may deliver the said copies and call upon the Keeper of the Rolls to assign a day or days for the proof, jury trial, or special hearing, which it shall be his duty to do.

21. Printing and publishing of Rolls

(*a*) The daily rolls, the minute-book, the teind minute-book, and the record of edictal citations shall be published, and delivered to subscribers, under directions made from time to time by the Lord President.

Section 6

The Process

22. Form, size, &c., of papers forming the process

(*a*) In all causes originating in the Court of Session, and initiated by summons or petition, the principal summons or petition, shall be on the official printed forms, and may be filled in in writing, typescript, or print, and shall be backed with the official printed backing (which may be filled in in like manner).

(*b*) All special cases originating in the Court of Session, all written appeals, all stated or special cases, and generally all writs whereby any cause first comes to depend before the Inner House, may be in writing, typescript or print, and shall (if in writing) be written on process paper, or (if in typescript or print) be typed or printed on paper of a texture not less durable than process paper, and of a like size.

(*c*) All steps of process lodged in any cause depending before the Court of Session, whether originating there or appealed or remitted to that Court from any inferior court, may be in writing, typescript, or print; and shall (if

in writing) be written on process paper, or (if in typescript or print) be typed or printed on paper of a texture not less durable than process paper, and of a like size.

(*d*) All the writs and documents mentioned in the three immediately preceding paragraphs of this rule shall be folded and backed up lengthwise, and shall bear on the first page and on the backing a delimited square space for the serial letter and number assigned to the principal writ on lodging, and the backings of all the writs and documents mentioned in the two immediately preceding paragraphs of this rule shall be of cartridge paper or paper of similar durability.

23. Steps of process

A process shall (in addition to the principal writ) consist of a copy thereof certified by the solicitor lodging the same, an interlocutor sheet, an inventory of process, a duplicate inventory of process, a minute of proceedings, and a motion sheet. Each of these steps of process (other than the principal writ and the certified copy thereof) shall consist of at least four pages of process paper. If productions are lodged at the same time, there shall also be lodged an inventory of such productions. No minute of proceedings need be lodged in any petition unless and until answers have been lodged.

24. Intimation of lodging documents

The solicitor lodging a step of process (other than an open or closed record, or the original writ, or defences, or answers), shall give written intimation of such lodgings to the solicitor of the other party; and the clerks shall not mark any step as received until a certificate of intimation has been endorsed thereon.

25. Writs on which interlocutor has to be signed

Every petition, note, principal copy issues, or counter issues, and the like, on which any interlocutor, order, verdict, or authentication falls to be written for signature, shall have annexed a sheet of process paper on which such interlocutor, order, verdict or authentication may be written and signed.

26. Lost Summonses, etc.

Where a summons, petition, interlocutor sheet, or other original writ or pleading is lost or destroyed, a copy thereof, proved in the cause to the satisfaction of the Court, and authenticated in such manner as the Court shall require, may be substituted, and shall be held equivalent to the original for the purposes of the action, including the use of diligence.

27. Duplicate inventory of process

The duplicate inventory of process shall be written up by the solicitor lodging the steps of process or productions at the time of lodging. The process number of each production in the process shall be marked opposite its number in the inventory of productions by the solicitor when he lodges the same.

28. Productions

Each production consisting of more than one sheet shall be securely fastened together and backed up by the solicitor lodging the same, and each production shall be marked at lodging with the serial letter and number assigned to the principal writ

29. Copies and reproductions of documents and notes of evidence

(i) All records, petitions, answers, proofs, or other documents which require to be copied for the use of the Court, may be either printed or typewritten or reproduced by any other process approved by the Court. Standard forms for the reproduction of such documents approved from time to time by the Court shall be exhibited in each department of the Office of Court, and the clerks shall refuse to accept any reproduction which does not conform to the standard in size, spacing, lettering, legibility, quality of paper, or otherwise, and any party tendering a document which is so refused by the clerks of Court shall have the right to appeal in writing to the Principal Clerk of Session; provided that, where such appeal is refused, the Principal Clerk of Session may extend the time for lodging; and the decision of the said Principal Clerk sustaining or refusing such appeal, or granting or refusing an extension of time, shall be final.

(ii) In all causes initiated in the Inner House, and in all causes reclaimed or appealed (in whatever form) to the Inner House, at least five copies or reproductions of the record, petition and answers (if any), appeal, stated or special case, as the case may be, and also (in the case of motions for review by the Inner House) of the interlocutor or interlocutors reclaimed against shall be lodged in the appropriate Department at the same time as the cause is submitted to the Inner House; and a like number of copies or reproductions of any documents or notes of evidence or opinions which it is desired (at any stage of the cause) to submit for the consideration of the Court, shall be lodged in the General or Petition Department (as the case may be) as soon as possible thereafter; and, at the same time, five similar copies or reproductions shall be lodged with the clerk in charge of the process, two for the use of the Law Reporters, and one for each of the libraries of the Faculty of Advocates, the Writers to His Majesty's Signet, and the Solicitors before the Supreme Courts of Scotland. The party lodging any of the documents referred to in this paragraph shall at the same time deliver to the solicitor for the opposite party (unless otherwise agreed between the parties) ten copies thereof. It shall not, however, be necessary to supply copies of the closed Record with the interlocutor or interlocutors appealed against in the case of motions for review by the Inner House.

30. Interlocutors ordering or allowing papers to be given in

(*a*) In all interlocutors ordering or allowing papers from both or either of the parties a time shall be fixed for giving in the same, which time may be prorogated, provided that before the elapse thereof application shall be made for such prorogation; and no prorogation shall be granted in any instance, except on cause shown.

(*b*) Every paper produced in process, in terms of an interlocutor ordering or allowing the same to be given in, shall have prefixed thereto a full copy of the interlocutor ordering or allowing such paper and a copy of any interlocutor prorogating the time originally allowed.

31. Signature of papers

Except as otherwise provided in these Rules, petitions to the Court and all defences, answers, notes, minutes and other papers in causes depending before the Court shall be signed by an advocate, who shall be looked upon as the drawer thereof and shall be answerable for what they contain.

32. Papers not to be received after due date

Before marking any paper as lodged the clerks shall examine the copy interlocutor or interlocutors ordered to be prefixed, and shall not in any

instance receive and mark any paper after the lapse of the day on which it is receivable. The clerks of court shall mark the true date of lodgment on every paper (not being a production) given into process.

33. Amendment of interlocutors

The Lord Ordinary who has pronounced an interlocutor may, with consent of parties, correct or alter such interlocutor at any time before extract.

34. Certain writs not borrowable

(*a*) The summons, petition, complaint, special case, appeal, stated case, or other principal writ, by which a process is commenced in the Court of Session, together with any execution of service or citation thereon, shall remain constantly in the office of Court, subject to inspection by any party interested, and shall on no account be lent out; provided always that:—

(i) this rule shall not apply to the copy of such writ, certified as provided in Rule 23, which may be lent out when required;

(ii) this rule is without prejudice to the general right of a defender or respondent to borrow the process upon entering appearance, in terms of Rules 111 and 112; the writings being in that case returnable in accordance with the provisions of said rules.

(iii) each party may, after the record is closed, borrow his own principal writ for the purpose of writing on it and authenticating such amendments as may have been made, and similarly when any amendment has been allowed by the Court;

(iv) this rule shall not apply in the case of a party intending to do diligence on the dependence of the action.

(*b*) The principal copy of issues or of counter issues, after authentication, shall not be borrowable.

35. Borrowing and returning process

(*a*) The clerks of Court shall, except as after-mentioned, receive back no process or part of a process without at once either comparing it with the principal inventory and receipt in presence of the solicitor or his clerk and scoring the receipt; or, in the case of a partial return, marking on the principal inventory the numbers so returned; or otherwise, if the whole numbers borrowed be not then returned, or if the process be bulky so that it cannot at the time be conveniently examined, the clerks of Court shall not receive back such process or part of a process without a separate slip or note accompanying the same, dated and signed or initialed by the solicitor or his clerk, specifying the numbers so returned; and it shall be the duty of the clerks of Court in all cases where they receive back a process or part of a process without at once scoring the receipt or making a marking on the inventory as aforesaid, to examine the same before the close of the following business day at latest, and to give notice to the solicitor of any inaccuracy in the slip or note aforesaid; and if no notice to the solicitor be delivered or put into the post office in the course of such following day, stating that such slip or note is inaccurate, the accuracy thereof shall be presumed, and the solicitor shall be equally exonered as if the receipt had been scored, or a marking made as aforesaid.

(*b*) The solicitor returning the whole or any part of a process shall see that the numbers so returned are previously arranged in their regular order according to the inventory, and the clerks of Court may refuse to receive any process or part of a process the numbers of which are not so arranged.

36. Transmission to the department of the Keeper of the Registers and Records of Scotland

(*a*) Every unextracted process shall be transmissible to the department of the Keeper of the Registers and Records of Scotland on the expiration of one year from the date of the last interlocutor pronounced in the cause (not being an interlocutor sisting the cause, or continuing the cause with leave to apply), or from the date of calling, if no interlocutor shall have been pronounced; provided that the process in petitions for appointment of judicial factors, curators bonis, factors loco tutoris and loco absentis, and in company liquidations, shall not be transmissible until after final discharge of the factor, curator, or liquidator is granted by the Court.

(*b*) The clerks, at least once in each year, at such time or times in the spring or autumn vacation as may be found most convenient, shall transmit to the said department the whole processes which shall have become transmissible in terms of the immediately preceding paragraph, taking a receipt therefor in a transmission book, which shall contain an entry as to each process, stating the date of transmission, the title of the process, and whether the whole or only part of the process and, if so, what part is so transmitted.

(*c*) Before any process is transmitted as an unextracted process in terms of the immediately preceding section, it shall be the duty of the clerks of Court to call for the return of all borrowed numbers of process (except productions), and any failure to return such borrowed numbers of process shall be reported to the Court, which may, on cause shown, dispense with the return of any documents, or make such order as it thinks fit.

(*d*) If any productions are unborrowed in a process which falls to be transmitted to the department of the Keeper of the Registers and Records as an unextracted process, the clerks shall send by letter to the parties to the cause, or their known solicitors, an intimation in the terms of Form 32; and if the productions or any of them are not borrowed up within the time specified in such intimation, they shall be destroyed or otherwise disposed of as may be directed by the Principal Clerk of Session, and a note that this has been done shall be put upon the inventory of process by the clerk prior to its transmission as aforesaid.

37. Index of unextracted processes

(*a*) All unextracted processes so transmitted shall be arranged and indexed in the department of the Keeper of Registers and Records according to the mode and order of arrangement formerly adopted.

(*b*) All persons having interest shall be entitled after such transmission to have access to the index of unextracted processes and also to exhibition of any unextracted process on payment of fees to be charged at the rates after specified.

38. Retransmission of unextracted process to Office of Court

(*a*) Where a person having interest shall require any unextracted process which has been transmitted as aforesaid to be retransmitted to the Office of Court, in either Department, it shall be retransmitted accordingly, and an entry shall be made in a book to be kept in the department of the Keeper of the Registers and Records, recording the transmission, which shall be signed by the clerk who receives the process.

(*b*) No process, or part of a process, shall be allowed to be borrowed by any person while the process remains in the custody of the Keeper of the Registers and Records; provided that when any person having interest desires to borrow

any process, or part of a process, in such custody, he shall be entitled to have the process retransmitted to the Office of Court in terms of the immediately preceding section.

(*c*) The fee for retransmission of a process shall be £1 1s.

39. Certified copy interlocutors and steps of process

The Keeper of the Registers and Records may allow inspection of the indexes, and may issue to any person desiring the same certified or " plain " copies of any interlocutors or steps of process on payment of the fees hereinafter provided, namely:—

	£	s.	d.
For inspection of the indexes of a single office	0	2	0
For inspection of the indexes of the whole offices	0	5	0
For inspection of a process	0	7	6

Certified Official Copies

For each sheet of 250 words or part thereof of every typed or written certified official copies ... ... This fee is exclusive of fees of writing.	0	3	0
For each page or part thereof reproduced by photography ...	0	2	0

Excerpts or " Plain " Copies

For typed or written excerpts or copies whether complete or partial per sheet of 250 words or part thereof	0	2	0
For photographed excerpts or copies whether complete or partial per page or part thereof	0	2	0
For excerpts or copies made by the public in addition to the fee for inspection each sheet of 250 words or part thereof ...	0	0	6

SECTION 7

MINORS' AND PUPILS' DAMAGES

40. Factors for administration of sums of damages recovered by minors and pupils

(*a*) In any action of reparation in which decree is granted for payment of a sum of damages to any

(i) pupil child, acting with the concurrence of a curator ad litem; or

(ii) minor pubes acting with or without the concurrence of his or her father or of a curator ad litem; or

(iii) parent acting on behalf of his or her pupil child,

it shall be competent for the Court or the Lord Ordinary granting such decree, if it appears that there is no person available to give a full and valid discharge for the sum of damages, or if the Court or Lord Ordinary is satisfied that the administration of the sum in the decree for the benefit of such minor or pupil cannot otherwise be reasonably secured, to appoint de plano some responsible person as factor in accordance with the provisions hereinafter contained.

(*b*) Every appointment of a factor under this rule shall be limited to take effect in so far only as regards the specified sum or specified sums of damages decerned for in the action.

(*c*) In appointing any such factor, the Court or Lord Ordinary may give him such powers of disbursing both the capital and the income of the said specified sum to or for behoof of the minor or pupil, and such other powers as may be thought necessary or expedient in the interest of such minor or pupil, and may direct that the specified sum (both capital and income) shall be paid to or for behoof of the minor or pupil in such amounts and at such times as the Court or Lord Ordinary may fix.

(*d*) Such factor shall be bound to find caution for his intromissions and shall be under the superintendence of the Accountant of Court by virtue of the Pupils Protection (Scotland) Act, 1849, and the Judicial Factors (Scotland) Act, 1889.

41. Procedure in application for factor

(*a*) Application for the appointment of a factor under this section may be at the instance of any party to the action, and shall be made by motion enrolled in the motion sheet, relative to a minute lodged in process, at any time before extract; and the Court may order such intimation (if any) of the minute as the circumstances of the case may require.

(*b*) The party lodging the minute shall at the same time furnish a copy thereof to the Accountant of Court, and shall certify on the principal minute that such copy has been furnished.

(*c*) The minute may be incorporated in a minute of a judicial tender or acceptance thereof or in a joint minute for the parties, or may be in the form of a separate paper, and in any case shall set forth (i) the kind of factor to be appointed and the name of the person or persons for whom he is to be appointed, (ii) the amount of the sum to be under his administration, and (iii) the name and designation of the person proposed as factor.

42. Extracts

Where a factor has been appointed, the process shall forthwith be transmitted to the Accountant of Court in like manner as if the appointment had been made upon a separate petition; and upon the interlocutor sheet being marked to the effect that caution has been received, such marking shall be an authority for extract of the appointment; and the factor may obtain extract of the decree for payment of the sum or sums to which his appointment relates in his own name as factor either in gremio of the extract of his appointment or in a separate and subsequent extract.

43. Discharge, Death or Resignation of Factor

(*a*) Any factor appointed under this section may apply for discharge by letter addressed to the Principal Clerk of Session, who, with the concurrence of the Accountant of Court, may bring the application before a Lord Ordinary sitting in chambers; and such Lord Ordinary may grant the discharge and order delivery of the bond of caution.

(*b*) In the event of the death or resignation of a factor appointed under this section, any person interested, or the Accountant of Court, may apply for a new appointment by letter addressed to the Principal Clerk of Session, who may bring the application before a Lord Ordinary sitting in chambers, and such Lord Ordinary may make the appointment.

SECTION 8

TAXES UPON FUNDS IN MANIBUS CURIAE

44. Certificate by officer of Inland Revenue

(1) No decree, warrant or order for payment to any person of any money consigned in name of the Accountant of Court in terms of the Court of Session Consignations (Scotland) Act, 1895, or any part thereof, (2) no decree, warrant or order for payment of any consigned money or for transfer or conveyance to any person of any stocks, shares, or other property, heritable or moveable, in any process for the distribution of the estate of any deceased, pending in the Court of Session, and (3) unless where appropriate procedure has been taken for the continued administration of any lapsed trust, intestate estate, partnership estate, or other estate, moveable or heritable, no decree for exoneration and discharge of any judicial factor appointed by the said Court for the purpose of administering and distributing such trust or other estates, shall issue until there is lodged with the clerk of Court a certificate by the proper officer in the Department of Inland Revenue that all income tax, estate duty, legacy duty, succession duty, and any other duty payable thereon to the Commissioners of Inland Revenue have been paid and satisfied to the Department.

45. Clerks to enforce above provision

The clerks of Court shall not present for the signature of the Lord Ordinary, or the Court, any such decree, warrant or order as aforesaid, without the provisions of the above section having been first complied with.

SECTION 9

ASSESSORS

46. Nautical assessors and assessors in an action for the infringement of a patent

In any cause of the nature specified in the Nautical Assessors (Scotland) Act, 1894, and in any action for the infringement of a patent the Court, if it shall think fit, may, and on the application of any party to the cause shall, summon to its assistance at the trial, or proof, or at any hearing in the cause, whether in the Outer or Inner House, a specially qualified assessor to sit with the Court and act as assessor at such trial, proof, or hearing, but where it is proposed to summon any person as an assessor, objection to him, either personally or in respect of his qualification, may be stated by any party to the cause and shall be disposed of by the Court.

47. Assessors in other causes

In any cause other than those to which the immediately foregoing rule applies, the Court may, on the joint motion of parties, summon to its assistance at the trial or proof or at any hearing, whether in the Outer or Inner House, a specially qualified assessor, who shall be selected either by the parties (and named in the said joint motion), or by the Court if the parties shall (in the said motion) leave the selection of the assessor to the Court, to sit with the Court and act as assessor at such trial, proof, or hearing.

48. Application for assessor to be summoned

In any cause, whether falling under Rule 46 or Rule 47, an application for an assessor at the instance of the parties to the cause or any one or more of the parties shall be made by motion, enrolled in the motion sheet; provided that:—

(*a*) All such motions shall be enrolled in the motion sheet at least fourteen days before the date of the trial, proof or hearing, at which the presence of such assessor is desired.

(*b*) Where the application is at the instance of the parties jointly, the motion shall be signed on behalf of all the parties and shall be disposed of as a motion which is not marked "opposed" by any of the parties.

(*c*) The party or parties enrolling the motion shall at the time of such enrolment lodge in process for the use of the assessor a copy of the closed record or other papers setting forth the pleadings in the cause: and where an assessor is to be summoned ex proprio motu of the Court, such copy of the closed record or other pleadings shall be lodged in process by the pursuer or petitioner as the case may be, unless the Court shall otherwise direct.

49. Where the Court decides to summon an assessor ex proprio motu

In any cause to which Rule 46 applies, if the Court shall think that the cause is one in which the presence of an assessor is desirable although none of the parties may have moved to that effect, the Court shall hear parties before summoning the assessor.

50. Interlocutor ordering assessor to be summoned

Upon a motion for an assessor selected and named by the parties being granted, or upon the Court deciding ex proprio motu to summon an assessor, or upon a motion for an assessor to be selected by the Court being granted, the Court by interlocutor shall order the assessor to be summoned to attend the trial, proof, or hearing, as the case may be, and shall remit to the Principal Clerk of Session to arrange for the attendance of such assessor.

51. Expert evidence when assessor summoned

It shall not be competent, at any trial or proof in a cause in which an assessor is summoned to sit, to lead evidence by more than one witness for each side of expert opinion on any matter within the special qualifications of the assessor; and in the event of any question arising at the trial or proof with regard to the application of this rule, the decision of the judge presiding at the trial or proof shall be final; provided that the Court may, on the motion of either party enrolled in the motion-sheet not later than fourteen days before the date of the trial or proof, on special cause shewn, allow the examination of a greater number of witnesses to expert opinion. The provisions of this rule are without prejudice to the special provisions of Rule 162.

52. Number of assessors

For any trial, proof, or hearing in the Outer House one assessor only shall be summoned; for any trial or proof before one of the Judges of the Inner House, or for any hearing in the Inner House whether on reclaiming motion, appeal, or otherwise, the number of assessors to be summoned shall be one, or more than one, as the Court shall think fit.

53. Remuneration of assessors

(*a*) The remuneration of an assessor other than a nautical assessor shall be such fees and expenses as the Court shall in each cause determine.

(*b*) The remuneration to be paid to an assessor, whether nautical or otherwise, shall, unless the Court otherwise directs, be treated as expenses in the cause.

(*c*) A motion for an assessor to be summoned shall only be granted on condition that the party or parties making the motion shall consign with the Principal Clerk of Session such sum to meet the fees and expenses of the assessor as the Court may determine: and, when an assessor is to be summoned ex proprio motu of the Court, such consignation shall be made by the pursuer or petitioner as the case may be, unless the Court shall otherwise direct.

54. Note to be made of questions submitted to assessor

In every cause the judge who presides at the trial, proof, or hearing at which an assessor attends shall make a note of the questions submitted to such assessor and of the answer or answers thereto, and shall cause the same to be lodged in process.

55. Special provisions applicable to nautical assessors

In any cause of the nature specified in the Nautical Assessors (Scotland) Act, 1894, the following provisions shall apply:—

(*a*) Nautical assessors shall be selected from a list of persons approved for the purpose by the Lord President. Such list shall be kept by the Principal Clerk of Session and shall be published as the Lord President shall direct and shall be in force for three years only; but persons entered in any such list may be again approved in any subsequent list.

(*b*) The remuneration of every person attending as a nautical assessor shall be four guineas a day for each day on which he so attends and also for any Sunday over which he is necessarily detained at the seat of the Court, besides subsistence and travelling expenses. In the case of an assessor resident out of Scotland he shall be entitled to charge for a day for coming and a day for returning at the above rate; but other assessors shall not be entitled to a fee for travelling days unless owing to the distance of their ordinary residence from the seat of the Court, it is impossible with reasonable convenience to travel on the day or days on which they are required to sit in Court.

SECTION 10

MESSENGERS-AT-ARMS

56. Dues for change of address

In the event of any messenger-at-arms changing his address, he shall forthwith give notice of the same in writing to the Lyon Clerk, which notification shall be accompanied by the statutory fee of 2s. 6d., and shall be recorded by the Lyon Clerk; and each messenger failing to give notice as aforesaid shall be liable in a penalty of £3 sterling upon each transgression.

As greater dues are payable at the admission of messengers to practise in the county of Edinburgh than elsewhere, each messenger already admitted to practise out of the county of Edinburgh shall, before being admitted to practise in the said county, pay the difference of these dues.

57. Messenger bound to serve the lieges

No messenger shall refuse to serve any of the lieges in the way of his office, upon their reasonable expenses, either from respect of persons or other frivolous excuses, as he shall be answerable in any court competent.

58. Transmission of diligence

When diligence of any kind is transmitted from one place to another to any messenger in order to be executed, such messenger shall be obliged, within twenty-four hours at farthest after receiving such diligence, to acknowledge to his employer the receipt thereof; and any messenger neglecting to acknowledge the receipt of diligence so transmitted and received by him, and failing or delaying at the same time to execute such diligence, shall, upon conviction, be fined the sum of £2 sterling for each offence toties quoties.

59. No sum other than fees to be exacted

No messenger in executing diligence of any kind shall exact, take, or receive on his own account from the person against whom such diligence is executed or meant to be executed any sum whatever, under any name or pretence whatsoever, other than his recognised fees as he shall be answerable to any court competent.

60. No messenger to purchase goods sold under diligence

No messenger by himself or others commissioned by him for his use and behoof in whole or in part shall, upon execution of any poinding and the goods poinded exposed for sale by the creditor to whom they have been adjudged, become the purchaser thereof under the pain of deprivation.

61. No messenger to be private servant

No messenger shall be a servant to any particular master during the time he continues in office, under the pain of deprivation.

62. Affixed copy of execution not to be defaced

In every execution, when a messenger is bound by law to affix a copy, he shall be nowise aiding or assisting or otherwise accessory to the taking down or otherwise defacing the copy so affixed, as he shall be answerable in any court competent.

63. Annual declaration as to cautioner

Each messenger shall be obliged annually, twenty days at least before the 6th day of May, to transmit by post to the Lyon Clerk at Edinburgh a declaration stating whether his cautioner is dead or alive, and the address of his cautioner, which declaration shall be recorded by the Lyon Clerk gratis; and any messenger failing to transmit annually such declaration shall be liable to a penalty of £2 sterling for each transgression.

64. Death or bankruptcy of cautioner

In the event of the death or bankruptcy of a cautioner bound for any messenger, such messenger shall be bound within twenty-one days to send notice of the same to the Lyon Clerk, and shall be obliged forthwith to find another responsible cautioner and renew his bond of cautionry, paying therefor the statutory fee of £2 10s. besides the stamp duty; and in case of failure or neglect to lodge such new bond of cautionry within twenty-one days

after the death or bankruptcy of the former cautioner, it shall be competent for the Lyon Court to suspend the messenger guilty of such failure or neglect from the exercise of his office as a messenger; and if, from the date of the order of suspension until he is replaced in his office by order of the Lyon Court, he shall take upon himself to officiate in any branch of the duties of a messenger-at-arms, he shall for every such offence forfeit the sum of £10 sterling.

65. Suspension or deprivation

When the Lord Lyon King of Arms is of opinion that the conduct of any messenger-at-arms is such as to render it expedient that he should be suspended from or deprived of his office, the Lyon Clerk shall send notice to the messenger by registered post-letter that unless he shows cause to the contrary within fourteen days from the date of the said notice, sentence of suspension or deprivation will be pronounced by the Lyon Court; and if the messenger intimates his desire to be heard, he shall be cited to a diet of the Lyon Court, and shall have reasonable opportunity of showing cause why he should not be suspended or deprived of his office.

66. Sentence of suspension or deprivation

When sentence of suspension or deprivation shall be pronounced by the Lyon Court against any messenger, the same shall be placarded or intimated upon the walls of the Court of Session, and also upon the walls of the sheriff court of the county in which such messenger resides, and from and after the time appointed for such sentence to take effect the messenger so suspended or deprived shall not act as a messenger in any respect under a penalty of £10 sterling for each transgression.

67. Bond of caution for messenger

All future bonds of cautionry for messengers shall be prepared by the Lyon Clerk in such form as may be necessary to bring them into accordance with the present regulations, with the addition that the cautioner shall become bound (1) in the sum of £1 sterling for the safe return of the messenger's wand and badge of office in the event of his death, suspension from or deprivation of office, and (2) to the observance of these regulations under the respective penalties mentioned therein.

68. Dues payable by messengers

Previous to the 6th day of May in each year there shall be paid to the Lyon Clerk, for behoof of His Majesty's Exchequer, the sum of 17s. sterling by each messenger practising in the county of Edinburgh, and the sum of 17s. 6d. sterling by each messenger practising out of the county of Edinburgh; and in case of failure or neglect to make regular and punctual payment of said sums they shall, besides payment of said sums, be liable in full costs of process, all which shall be recoverable in any court competent by the Procurator-Fiscal of the Lyon Court for behoof of His Majesty's Exchequer.

69. Jurisdiction of courts competent

Messengers shall continue to be answerable in any court competent for all offences or breaches of duty besides those specially provided against by the preceding regulations; and nothing contained in the preceding regulations shall prejudice the jurisdiction of any court competent to take cognisance of such offences.

70. Right of appeal

All existing rights of appeal against any order, deliverance, or sentence of the Lord Lyon King of Arms or the Lyon Court are hereby reserved.

71. Messengers to receive copy regulations

The Lord Lyon King of Arms shall cause these regulations to be printed, and each messenger on his admission shall receive a copy of the same.

SECTION II

POOR'S ROLL

72. Appointment of counsel and solicitors for the poor and of reporters on probabilis causa

(*a*) The Faculty of Advocates shall, at each anniversary meeting, appoint six of their number to be counsel for the poor; and the Society of Writers to the Signet and the Society of Solicitors before the Supreme Courts shall each, in the month of December annually, appoint not less than four of their number to be solicitors for the poor, of whom two shall act in the High Court of Justiciary.

(*b*) The foresaid bodies shall also, at the same time, respectively appoint two Advocates, one Writer to the Signet and one Solicitor before the Supreme Courts to act as reporters on the probabilis causa and circumstances of applicants for the benefit of the Poor's Roll.

(*c*) Lists of the counsel and solicitors for the poor and reporters on probabilis causa so appointed shall forthwith be furnished to the Principal Clerk of Session and to the Clerk of Justiciary, and also to the Extractor, to be by him printed and published in the Minute Book in January of each year.

(*d*) One of the clerks of Court to be nominated by the Principal Clerk of Session shall act as clerk in charge of the Poor's Roll and clerk to the reporters on probabilis causa.

73. Affidavit as to circumstances of applicant

No person shall be entitled to the benefit of the Poor's Roll unless he shall produce an affidavit setting forth his circumstances as shown in Form 33. Such affidavit shall be sworn before any commissioner competent to administer oaths in Scotland. Such commissioner shall not be entitled to charge any fee in respect of such affidavits. Where the affidavit is to be sworn at any place furth of Scotland the applicant shall, by letter addressed to the Clerk of the Poor's Roll, apply for the appointment of a commissioner, and shall submit the name of a suitable person. On receipt of such letter the Clerk shall submit the same to either Division of the Court in Chambers or to the Vacation Judge, who shall appoint the person suggested or such other person as the Court may think fit.

74. Application and affidavit to be lodged in Court

The said affidavit shall be transmitted to one of the solicitors for conducting the causes of the poor in the Court of Session for the time, who shall forthwith lodge the same with the clerk in charge of the Poor's Roll in the General Department, along with an application to the Court (in the form shown in Form 34) for the benefit of the Poor's Roll in name of the applicant. The said application shall be on the official form, which will be supplied to the solicitor free of charge at the Office of Court.

75. Application to be transmitted to solicitor for the poor

If the affidavit and application shall appear to the clerk in charge of the Poor's Roll to be in proper form, he shall transmit the same to one of the solicitors for conducting the causes of the poor, whose name shall be taken from the lists supplied under paragraph (*c*) of Rule 72 in such a way as to distribute the applications equally among the said solicitors as far as possible. The name of the solicitor to whom the application is transmitted in terms of this rule, and the date on which the application was so transmitted, shall be recorded by the said clerk on the application, and the said solicitor shall act as solicitor of the applicant in all further proceedings under the application.

76. Remit to reporters on probabilis causa

Upon the application being transmitted to a solicitor for the poor in terms of the immediately preceding rule, it shall be deemed without further procedure to have been remitted by the Court to the reporters on probabilis causa.

77. Procedure prior to diet before the reporters

The solicitor shall thereafter procure from the applicant or his former solicitor information as to the circumstances of the case, and shall prepare a memorandum thereof for submission to the reporters. The solicitor shall, as soon as practicable, and in any event not later than two months after the date on which the application was transmitted to him under Rule 75, lodge the application with the clerk to the reporters along with the affidavit and memorandum and such precognitions and productions as it is proposed to found on. The solicitor of the applicant shall also ascertain from the clerk to the reporters the place, day, and hour of the meeting of the reporters at which the application is to be dealt with, and shall intimate the same to the adverse party or his solicitor and at the same time transmit to him a copy of the memorandum ten days before the time fixed for the said meeting of the reporters. The solicitor shall endorse on the application a certificate under his hand that intimation as required by this rule has been made, which certificate shall state the date upon which the intimation was made; provided that, if such intimation cannot be made by reason of the fact that the address of the adverse party is unknown and he has no known solicitor, the solicitor of the applicant shall endorse on the application a certificate to that effect. The adverse party or his solicitor may see the memorandum and the affidavit, but shall not see the precognitions or productions unless with the written consent of the applicant or his solicitor, or by order of the reporters in the exercise of their discretion.

78. Procedure before the reporters

(*a*) The reporters shall meet and deal with remits to them at intervals of not more than four weeks during session.

(*b*) At the meeting of which intimation has been given to the adverse party as aforesaid, the reporters shall consider the applicant's case and shall hear all objections thereto; provided that the reporters may continue the consideration of the application and of the objections (if any) to a subsequent meeting, the date of which shall be specified. Where any such continuation is made, the application shall be dealt with by the reporters at the meeting specified, and shall then be disposed of by them unless cause be shown that a further continuation is necessary, and any further continuation shall in like manner be to a specified meeting of the reporters. If further evidence or explanations appear to the reporters to be necessary as to either the poverty of the applicant or the circumstances of the case, the solicitor shall obtain the

same so far as practicable, and shall amend the memorandum where necessary; provided that where the memorandum is amended, such amendment shall be intimated to the adverse party or his solicitor together with intimation of the meeting of the reporters at which such amended memorandum is to be considered. The reporters may call for a new affidavit as to the circumstances of the applicant at any stage of the proceedings, if it shall appear to them to be expedient to do so. The solicitor of the applicant shall attend all meetings of the reporters at which the application is to be considered.

(*c*) After having considered the application and objections (if any), the reporters shall report whether the applicant has a probabilis causa litigandi, and whether the said applicant otherwise merits the benefit of the Poor's Roll. The report shall be endorsed on the form of application and shall be signed by the reporter who presided at the meeting at which the application was finally dealt with by the reporters. If the report be not a unanimous report, the decision of each of the reporters who considered the application shall be stated in the report.

(*d*) It shall be the duty of the solicitor of the applicant and of the adverse party or his solicitor to ascertain the terms of the report, and it shall not be necessary for the reporters or their clerk to give any intimation thereof.

79. Disposal of the application by the Court

(*a*) After the report of the reporters on probabilis causa has been signed, the clerk to the reporters shall transmit the application to the General Department, together with all papers and productions which have been lodged therewith.

(*b*) Thereafter the application shall be disposed of by one or other of the Divisions of the Inner House, or by the Vacation Judge in vacation, upon the motion of the applicant or of the adverse party; and the provisions of Rule 118 shall apply to all such motions, except that such motions shall be enrolled on the form of application instead of on a motion sheet, and it shall not be necessary to intimate such motions to the adverse party or his solicitor unless objections to the application shall have been stated on his behalf before the reporters on probabilis causa: provided that, if no motion is enrolled within fourteen days after the date when the report is signed as aforesaid, the application shall ipso facto be held as abandoned, without prejudice to the applicant presenting a new application on production of a new affidavit as to his or her circumstances.

(*c*) When the application has been disposed of by the Court, or when no motion for the disposal thereof has been enrolled within the fourteen days above specified, the solicitor of the applicant shall forthwith uplift the application from the General Department together with all the relative papers and productions. Where the applicant has been admitted to the benefit of the Poor's Roll, the application, the affidavit and the memorandum shall be lodged in process in the cause.

80. Cause marked to counsel and solicitor for the poor

If the Court shall find the applicant entitled to the benefit of the Poor's Roll, the application together with the cause of the party to which it relates shall be remitted by the Court to an advocate and solicitor for the poor whose names shall be taken from the lists furnished under paragraph (*c*) of Rule 72.

81. Counsel and solicitor to act until conclusion of cause

The counsel and solicitor to whom the cause is remitted under the immediately preceding rule shall conduct the cause of the poor litigant in the Court of Session until the cause be brought to a conclusion, or as long as the said litigant remains on the Poor's Roll notwithstanding the expiry of the year of duty for which such counsel and solicitor were appointed.

82. Names of counsel and solicitor and word " poor " to be marked on papers

The names of the counsel and solicitor to whom a cause has been remitted under Rule 80 shall be marked on the backing of every step of process lodged for the poor litigant in the cause; and no enrolment shall be made except by the solicitor detailed as above, nor in the name of any counsel except the counsel detailed; and the word " poor " shall be prefixed to the name of the said litigant on every step of process in the cause.

83. Poor's counsel and solicitor alone to act in poor causes

No junior counsel or solicitor other than those to whom the cause is remitted under Rule 80 shall be employed or allow his name to be used at any stage of the cause, unless, on application to the Court or Lord Ordinary before whom the cause depends, the assistance of one of the other counsel or solicitors for the poor shall be specially authorised; in which case those originally detailed and those so added shall thereafter act conjunctly in the cause.

84. Change in circumstances of poor litigants

(*a*) All warrants for admission to the benefit of the Poor's Roll shall remain in force during the dependence of the cause unless the opposite party shall allege that a change in the poor litigant's circumstances has taken place since the date of his admission, and that his or her present circumstances would not then entitle him or her to the benefit of the Poor's Roll; and on such allegation being made by motion entered in the motion sheet in process, the cause shall be sisted until a new affidavit shall be obtained and lodged in process, on considering which the Court or Lord Ordinary before whom the cause depends shall find therein as shall seem just.

(*b*) If such allegation as aforesaid shall appear to have been made without any probable ground, the party making it shall de plano be decerned to pay such a sum of modified expenses as may seem reasonable in the circumstances; and such decerniture shall not be subject to review.

(*c*) Provided always, that, when a party (pursuer) shall be found entitled to the benefit of the Poor's Roll before having served the action, it shall be incumbent on him to do so at latest within three calendar months after the date of his being found entitled to the benefit of the Poor's Roll, otherwise the interlocutor finding him so entitled shall be held as recalled.

85. Where Judge in cause considers there is not probabilis causa

If at any stage during the dependence of a Poor's Roll cause, circumstances shall emerge (whether from the judicial statements, pleas, or productions of parties or otherwise) which, in the opinion of the Court or Lord Ordinary show that the poor litigant has not a probabilis causa, it shall be competent to the Court or Lord Ordinary to remit to the reporters on probabilis causa for their opinion; and if the reporters shall be of the opinion that the poor litigant has no probabilis causa, he shall thereupon be found by the Court or Lord Ordinary to have forfeited all right to exemption from payment of professional charges and dues of Court in the future proceedings

in the cause, and may be ordained to find caution within a limited time for payment of such expenses as the opposite party may be found entitled to on the decision of the cause.

86. Counsel and solicitors craving relief from acting

It shall be competent for any counsel or solicitor for the time acting in a cause remitted to him under Rule 80 to report to the Court in the Inner House any matter concerning the conduct of the poor litigant represented by him such as may concern the withholding of information, or obstruction or hindrance to such counsel or solicitor in acting on such litigant's behalf, or to report to the Court any other matter concerning the conduct of the litigant represented which such counsel or solicitor may consider necessary, and, on cause shown, the Court may relieve the counsel or solicitor from further acting for the poor litigant and may either remit to another counsel or solicitor for the poor to act for the litigant, or may find that such litigant is no longer entitled to the benefit of the Poor's Roll.

87. Breach of rules

In case of neglect or failure in any of the particulars above specified, the Lord Ordinary or the Inner House in either Division thereof, as the case may be, shall on the application of the adverse party, apply such remedy as the circumstances of the case may require.

88. Entry in the minute book

The Extractor shall cause to be published in the printed minute book once in each month a list of applicants found entitled during the preceding month to the benefit of the Poor's Roll with the names of the respective solicitors; and such entries shall be indexed separately from the general index under the heading "Poor's Roll".

89. Expenses of obtaining benefit of Poor's Roll

(*a*) The expense of the application and procedure thereon for obtaining the benefit of the Poor's Roll shall at no future period form any charge at the instance of the solicitor against the applicant except to the extent of the actual outlay of the solicitor.

(*b*) The expenses of obtaining the benefit of the Poor's Roll shall form no part of the expenses of process which may afterwards be found due against the adverse party in the cause: provided that the Court or Lord Ordinary, if there shall appear to have been unreasonable or vexatious opposition to the applicant's application for the benefit of the Poor's Roll, may dispose of the matter of expenses thereby occasioned, as shall seem proper to the Court or Lord Ordinary.

90. Fee fund dues etc. in Poor Causes

Persons pursuing or defending in forma pauperis shall, in the first instance, be exempted from the payment of fees and professional charges to counsel and solicitors and of Court dues; but, where such persons are found entitled to expenses, such fees and professional charges and Court dues, including dues of extract issued or to be issued, shall be included in the account of expenses and decerned for; and on the said expenses being recovered, the amount thereof shall be accounted for to the several parties interested.

91. Solicitor's account of expenses

The solicitor, in making out his account of expenses, shall make an abstract at the end thereof, stating the amounts:—

(1) of his own professional charges,

(2) of fees to counsel and clerks,

(3) of fee fund dues,
(4) of reproduction of writs and documents and other outlay.

The Auditor, on such account being presented for taxation, shall require the solicitor to furnish him with a copy of said abstract; and, after taxation, the Auditor shall send said copy, marked as taxed, to the Deputy Principal Clerk in Charge of the General and Petition Department, and it shall be the duty of such Clerk to take steps to obtain payment of the Court dues, so far as these have been recovered by or on behalf of the poor litigant from the opposite party.

SECTION 12

EXTRACTS

92. (*a*) Until otherwise directed, the form of the extract of a decree of the Court shall continue to be in the form required by the law and practice as hitherto existing and the formalities of making and authentication of extracts shall be as provided for by Section 2 of the Court of Session (Extracts) Act, 1916; and the insertion in an interlocutor of the word " decern " shall no longer be necessary in order to warrant the issue of an extract.

(*b*) It shall be competent to submit to the review of the Inner House any interlocutor of the Outer House notwithstanding that extract has been issued before the expiry of the reclaiming days.

(*c*) Where the Court awards a lump sum by way of modified expenses, the interlocutor shall be construed as allowing in addition to such sum the dues of any extract required to enforce the award, and the extractor shall include in the extract the amount of the said dues.

93. In every Extract of a decree pronounced or to be pronounced by the Court of Session on which execution may competently proceed there shall be included a warrant for execution in the following terms, viz.:—' and the said Lords grant warrant for all lawful execution hereon.'

94. The following provisions shall apply to the short form of warrant for execution added to said Extracts:—It shall be lawful by virtue of said warrant to arrest the readiest goods gear debts and sums of money of the debtor or obligant mentioned in said Extract in payment and satisfaction of the sum or sums of money or obligation or obligations therein specified; as also to charge the debtor or obligant therein mentioned to pay the sum or sums of money or to perform the obligation or obligations therein specified within the appropriate days of charge under pain of poinding (and also under the pain of imprisonment where the debt or obligation is of such a nature as the payment or implement thereof may be enforced by imprisonment), the terms of payment or implement being first come and bygone; and if a debtor fail to obey the said charge then so far as competent to apprise, poind and distrain all his readiest goods gear and other effects in payment and satisfaction of the said sum or sums or obligation or obligations; and if necessary for effecting the said poinding to open shut and lockfast places.

95. Where interest is included in or exigible under a decree or extract, it shall be deemed to be at the rate of five per centum per annum unless otherwise stated.

96. Execution on said extracts shall be carried out by Messengers-at-Arms or other officers entitled to execute diligence thereon.

97. The Officer's execution of charge shall be as nearly as the circumstances permit in the terms shown in Form 42.

CHAPTER II

ORDINARY ACTIONS

Section 1.—Summons, citation, calling ... ... Rules 98–107
Section 2.—Appearance, defences, and counterclaims ... ... Rules 108–113
Section 3.—Decree in absence and reponing ... ... Rule 114
Section 4.—Making up and closing records: amendment ... Rules 115–117
Section 5.—Motions ... ... Rule 118
Section 6.—Procedure roll ... ... Rule 119
Section 7.—Commissions for recovery of documents, examination of witnesses, etc. ... ... Rules 120–128
Section 8.—Proofs ... ... Rules 129–133
Section 9.—Trial by jury ... ... Rules 134–150

SECTION 1

SUMMONS, CITATION, CALLING

98. Initiation of proceedings

Save as hereinafter provided, all causes originating in the Court of Session shall be commenced in the Outer House either by summons or by petition.

99. Form of summons

All summonses shall be on the official printed form (Form 1), which, along with the official printed backing thereon, shall be filled in and completed either in manuscript, typescript or print; provided that:—

(*a*) The conclusions shall be stated (in manuscript, typescript or print) in one or more of the short forms exemplified in Form 2, or in such similar short form as the circumstances may require; and any form of interlocutor or decree may be pronounced under or in respect of the conclusions so stated as might competently be pronounced under or in respect of the longer forms of conclusion formerly in use.

(*b*) There shall be annexed to every summons a statement, which may also be in manuscript, typescript or print, in the form of an articulate numbered condescendence of the averments of fact which form the grounds of the pursuer's claim, and there shall also be annexed to every summons a note of the pursuer's pleas-in-law.

100. Designation of defender furth of Scotland

In any summons against a party not therein designed as resident or carrying on business within Scotland, the pursuer shall either state the defender's known residence or place of business, or set forth expressly that the defender's residence and place of business are unknown to the pursuer.

101. Induciae in summons

In all summonses the induciae shall be seven days after the date of the execution of service if the defender is on the mainland of Scotland, and fourteen days if the defender is in Orkney or Shetland or in any of the islands of Scotland, or if he is furth of Scotland; provided that:—

(*a*) In the case of service anywhere in Scotland by registered letter the induciae shall be reckoned from twenty-four hours after the time of posting;

(*b*) It shall be competent for the pursuer in any summons, at any time after signeting and before service, to apply by letter addressed to the Deputy Principal Clerk of the General Department craving that the induciae should be shortened or extended by the Court; and any such application shall be brought forthwith before a Lord Ordinary in chambers by the said Deputy Principal Clerk or by one of the clerks in his department instructed by him. The applicant's solicitor shall attend the Lord Ordinary along with the clerk, and shall produce to the Lord Ordinary the principal summons bearing the signet; and the Lord Ordinary may, on cause shown, shorten or extend the induciae as he may think proper and expedient in the circumstances; and the interlocutor so shortening or extending the induciae shall be written by the clerk on the said principal summons and signed by the Lord Ordinary, and shall be final.

102. Signature of summons and letters

(*a*) All summonses shall be signed by the pursuer's solicitor, being a solicitor entitled to practise before the Court of Session, and to his signature there shall be appended his business address in Edinburgh; and no further or other signature shall be required.

(*b*) All letters passing the signet and all applications to the Petition Department for warrants under the Debtors (Scotland) Act, 1838, or otherwise shall be signed by a solicitor entitled to practise before the Court of Session and no further or other signature shall be required.

103. Signeting; service; diligence to found jurisdiction, and on dependence

All summonses shall pass the signet; and, when signeted, the summons shall not only be warrant for service on the defender or defenders (including edictal citation of any defender furth of Scotland), but shall also be warrant (i) for arrestment to found jurisdiction, (ii) for any competent form of diligence by way of inhibition on the dependence or of arrestment on the dependence, or in rem, or to dismantle a ship, or (iii), in consistorial causes, for any of the intimations referred to in Rule 171; provided that application be made therefor before the summons is signeted by filling in the blank in the official printed form of summons after the words " warrant for ".

(*a*) In the case of the service of a summons or other writ by registered letter, the citation and execution thereof shall, as nearly as may be, be in the forms shown in Form 3.

(*b*) In the event of the defender or his known solicitor, being a solicitor entitled to practise before the Court of Session, accepting service and dispensing with the induciae, the induciae shall be deemed to expire on the day on which the pursuer receives intimation of such acceptance and dispensation.

(*c*) When both warrant for arrestment to found jurisdiction and warrant for arrestment or inhibition on the dependence are contained in the summons as signeted (under the provisions of this rule), it shall not be necessary for the messenger-at-arms to serve separate schedules; but it shall be competent to combine in one schedule the arrestments to found jurisdiction and the arrestments on the dependence.

(*d*) Where warrant for diligence on the dependence of the action is not obtained when the summons is signeted, it shall be competent for the pursuer to apply for such warrant at any stage of the proceedings by

motion to the Lord Ordinary. The interlocutor granting warrant for diligence on the dependence shall be sufficient authority for service of the appropriate schedules.

(*e*) The warrant for inhibition contained in the summons in terms of this rule shall have the like force and effect as the warrant presently in use under section 18 of the Court of Session Act, 1868, and the summons, containing such warrant and the execution thereof, may be registered in accordance with the terms of said section. Notice of said summons may also be registered in terms of section 155 of the Titles to Land Consolidation (Scotland) Act, 1868, and Schedule (PP) thereof, and the registration thereof shall have the like force and effect as registration of a notice under said last mentioned section and schedule.

104. Edictal citation

(*a*) All citations against persons furth of Scotland shall be made at the office of the Extractor of the Court of Session on an induciae of fourteen days. The citation shall, as nearly as may be, be in the form shown in Form 4.

(*b*) In all cases in which one and the same writ is to be executed at one and the same time against two or more persons as furth of Scotland, such execution may be made by delivery at the office of the Extractor of one copy only, provided that such copy bears upon its face that it is delivered for each and all of such persons.

(*c*) Edictal citation shall not be sustained as sufficient citation against any defender who has a known residence or place of business in England or Northern Ireland or elsewhere furth of Scotland, unless (in addition to such edictal citation) the solicitor for the pursuer shall post in Edinburgh a registered letter addressed, either to the defender's known solicitor in Scotland (if he any have), or to the defender himself at his residence or place of business within England or Northern Ireland or elsewhere furth of Scotland, enclosing a full copy of the summons or other writ with citation.

(*d*) The provisions of this rule are without prejudice to the special provisions regarding the citation of defenders and co-defenders in consistorial causes contained in Rule 174.

(*e*) No notice given under this rule to any defender not resident in Scotland, even though given to such defender personally, shall be deemed to be personal service of a summons under section 24 of the Court of Sessions Act, 1868.

105. Certificates of execution

All certificates of execution or intimation of a summons or other writ shall be written thereon, or. where necessary, on additional sheets similar to that on which such summons or writ is written, typed or printed and shall be securely attached thereto.

106. Calling of summons

(*a*) In order that a summons may be called during session, it shall be lodged for calling in the General Department on the day before that on which it is to be called, provided always that the induciae of such summons expire on or before the day on which it is to be so called.

(*b*) In order that a summons may be called during vacation, it shall be lodged for calling as aforesaid not later than the second day preceding any

calling-day (of which notice will be given in the printed rolls prior to the commencement of each vacation), provided always that the induciae of such summons expire on or before such calling-day.

(*c*) As lodged, every summons shall be accompanied by a slip containing the instance. Such slip shall not specify any Lord Ordinary or Division as the Lord Ordinary or Division to which the cause shall belong. No partibus shall be written on the summons. If there are more than two pursuers, the slip shall contain only the name and designation of the pursuer first named with the words " and others "; and, if the defenders are more than three, it shall contain the name and designation of the defender first named with the words " and others as per roll ", referring to a separate roll of all the defenders, which roll shall be lodged along with the summons itself. In naming and designing a pursuer or defender who is a body of persons, such as a trust or partnership, whether individual members are also parties or not, it shall be sufficient to use the collective name of such body, e.g. the testamentary trustees of the late A.B., the firm or partnership of A.B. and Company or A.B. and Son, as the case may be.

(*d*) Each step of the process, lodged along with the summons, shall be marked on the backing thereof with the same letter and number as shall be given (on lodging) to the summons itself; and along with the summons and process the pursuer shall also produce and lodge (per inventory) any deeds or writings founded on in the summons, or in the conclusions thereof, or in the condescendence annexed thereto, so far as in his possession or within his control; and the Court may attach such conditions as to expenses or otherwise as may seem fit to the receiving of such documents if tendered at a later date.

(*e*) The calling of any summons shall be published on the walls and in the printed rolls of court on the day on which the summons is called.

106A. Interim Interdict (Administration of Justice (Scotland) Act, 1933, s. 6 (7)).

If in any cause initiated by a summons which includes a conclusion for interim interdict, the pursuer desires to move therefor before the calling of the summons or after the calling of the summons but before lodging of defences, it shall not be necessary to present a separate petition for suspension and interdict, but the summons when signeted may forthwith be lodged in the General Department and a motion enrolled craving interim interdict in terms of the conclusions of the summons. The same procedure shall then be followed mutatis mutandis as is prescribed with regard to interim orders in petitions by Rule 249, provided (1) that the Deputy Principal Clerk or the clerk instructed by him shall report to the Lord Ordinary before any order is made whether a caveat has been lodged for any of the defenders, and (2) that, if the Lord Ordinary so determines, the induciae for service of the summons may be shortened in terms of Rule 101 (*b*).

107. Protestation for not calling summons

(*a*) If a pursuer shall not lodge his summons for calling on the day on which induciae expire, or on one of the two sederunt days next ensuing (if in session), or (if in vacation), on the first ensuing calling-day, or (failing a calling day) on the first sederunt day after vacation, the defender may proceed by way of protestation in the same form and to the same effect as under present practice.

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(*b*) When protestation is put up in the minute-book for not calling any summons, the Extractor of the Court of Session shall be bound to score the same on production to him of a certificate from the Deputy Principal Clerk of the General Department that the summons has been duly lodgd for calling; and, after the granting of such certificate, the procedure will be regularly and immediately followed out in calling the same.

Section 2

Appearance, defences and counter-claims

108. Appearance

Appearance may be entered by the defender's solicitor marking on the margin of the printed calling-list in the General Department the name of the defender's counsel and the name of his solicitor not later than the day after the day on which the summons is called, whether in session, vacation or recess.

109. Defences

(*a*) Defences may be lodged on any day after the day on which the summons is called, but not later than the seventh day after the day on which the summons is called, or, if such seventh day is in vacation or recess, on the first calling-day or sederunt-day, whichever is earlier; provided that, if defences are lodged earlier than the said seventh day or first calling-day or sederunt-day (as the case may be), notice in writing shall be given to the pursuer on the day of lodging that such defences have been lodged.

(*b*) Defences shall be in the form of articulate numbered answers (in manuscript, typescript or print) to the condescendence annexed to the summons, and (if necessary for the purpose of stating a substantive defence) of a separate and articulate numbered statement of facts (also in manuscript, typescript or print) and there shall be annexed to such defences a note of the defender's pleas-in-law.

(*c*) Along with the defences, the defender shall lodge per inventory any deeds or writings founded on in the defences, so far as in his possession or within his control; and the Court may attach such conditions as to expenses or otherwise as may seem fit to the receiving of such documents if tendered at a later date.

110. Counter-claim

(*a*) It shall be competent for a defender, either in his defences as lodged, or at adjustment, or (subject to such conditions, if any, as to expenses or otherwise as the Court may think just) by way of amendment at any later stage of the case at which amendment is competent, to counter-claim against the pursuer in respect of any matter forming part of, or arising out of the grounds of, the pursuer's action, or the decision of which is necessary for the determination of the question in controversy between the parties, or which, if the pursuer had been a person not otherwise subject to the jurisdiction of the Court, might competently have formed the subject of an action against such pursuer in which jurisdiction would have arisen ex reconventione; provided that, in any case, the counter-claim is such as might have formed matter of a separate action, and that, if such separate action had been raised, it would not have been necessary to call as defender thereto any person other than the pursuer.

(*b*) Any such counter-claim shall be headed "Counter-claim for the Defender," and shall be preceded by the conclusion or conclusions (in the like short form or forms as exemplified with regard to the conclusions of a

summons in Form 2 in the Appendix) which, if the counter-claim had been enforced by a separate action, would have been appropriately used in the summons in such separate action. The counter-claim shall also contain an articulate numbered statement of facts setting forth the facts on which the counter-claim is founded. Such statement of facts may incorporate by reference any matter contained in the defences or in any statement of facts forming part thereof. The note of pleas-in-law for the defender shall include any pleas which may be necessary to support the counter-claim.

(*c*) On lodging defences containing a counter-claim, or on a counter-claim being included in the defences at adjustment, or on a counter-claim being incorporated in a closed record by way of amendment, it shall be competent for the defender to apply for warrant to use any form of diligence by way of arrestment or inhibition which might have been competent on the dependence of a separate action brought to enforce the matter of the counter-claim. Such application shall be made by appending to the conclusion or conclusions which precede the counter-claim the words " Warrant for (*arrestment or inhibition on the dependence or both, or arrestment in rem or to dismantle a ship, as the case may be*) applied for ", and shall be granted by the clerk who receives the defences when lodged, or who receives the record as closed or as closed of new after amendment, adding the words " Warrant granted as craved," and adhibiting his signature, together with the date, below those words. Such warrant shall be equivalent to the like warrant in a signeted summons. The registration of the warrant of inhibition and execution thereof or notice thereof, as the case may be, shall be made in accordance with the provisions of paragraph (*e*) of Rule 103 and shall then have the force and effect as therein mentioned.

(*d*) The right of a pursuer to abandon his action shall not be affected on account of a counter-claim by the defender; but any expenses payable by the pursuer as a condition of, or in consequence of, such abandonment shall be exclusive of the expenses of the counter-claim.

(*e*) It shall be competent for a defender who has counter-claimed in manner aforesaid to abandon his counter-claim on condition of paying any expenses occasioned to the pursuer by the counter-claim.

(*f*) Notwithstanding abandonment by the pursuer, the defender may insist on his counter-claim, and the proceedings therein shall continue in dependence as if the counter-claim were a separate action.

(*g*) A counter-claim may be heard and tried along with, or before, or after, the claim in the pursuer's summons, as the Court may consider just and expedient in the circumstances; and, if evidence is led with regard to either claim separately from the other, such evidence shall, so far as competent and relevant, be evidence with regard to the other claim.

(*h*) Any interlocutor or decree, which would have been competent in a separate action brought to enforce the conclusions stated in the counter-claim, may competently be pronounced on the counter-claim.

(*j*) Procedure by way of counter-claim shall not be applicable to cross-actions in consistorial causes, but shall apply in the case of counter-claims concluding for declarator, or for production and reduction of any writ founded on by the pursuer.

(*k*) Answers to a counter-claim may be lodged by the pursuer not later than the seventh day after the day on which the counter-claim is lodged.

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111. Borrowing process

Upon entering appearance, the defender shall have right to borrow the process; and he shall be bound to return the same not later than the last day on which defences may be lodged, or along with the defences if these are lodged earlier.

112. Borrowing process where several defenders

(*a*) If appearance is separately entered by two or more defenders, they shall have right to borrow the process in the order in which they have entered appearance; and such order shall be recorded in the Office of Court, and as so recorded shall be final and conclusive.

(*b*) Subject to agreement among all the defenders who enter appearance, the defender who is first in order shall not be entitled to retain the process beyond the fourth day (if there are two defenders and not more), or the third day (if there are three defenders and not more), after the day on which he entered appearance: and the defender who is next in order shall not be entitled to retain the process beyond the seventh day (if there are two defenders and not more), or the fifth day (if there are three defenders and not more), after the day on which he entered appearance: provided that in no case shall the process be retained by any defender beyond the seventh day after entering appearance, and that, if there are more than three defenders, any of them who has not been permitted to borrow the process before his defences were due may apply by motion enrolled in the motion sheet to be allowed to borrow the same and to lodge defences within such time as the Court may fix; provided that, where two or more defenders have entered appearance through the same solicitor, they shall be deemed for the purposes of this paragraph to be one defender.

113. Caption on failure of defender to return process

If a defender shall fail to return the process on or before any of the days above provided respectively, the clerk in charge of the process shall, if required, issue a caption for the same in common form.

SECTION 3

DECREE IN ABSENCE

114. Decree in absence and recall thereof

(*a*) If, in any cause other than a cause in which it is incompetent to decern without proof, a defender fails to enter appearance in terms of Rule 108, or if, having duly entered appearance, he fails to lodge defences in terms of paragraph (*a*) of Rule 109, the pursuer may enrol the cause in the motion sheet as an undefended cause for decree in absence; and the cause will then appear in the printed rolls, in the roll of undefended causes, on the first available day thereafter, whether in session or vacation. The cause shall then (but without prejudice to any special procedure required in undefended actions of adjudication for debt or for division and sale) proceed according to present law and practice.

(*b*) In all undefended causes, where a defender is designed in the summons or other writ as resident or carrying on business in some particular place

within England or Northern Ireland or elsewhere furth of Scotland, the Court, before pronouncing decree in absence against such defender, shall require proof of compliance with the provisions of paragraph (*c*) of Rule 104; and the Court shall not pronounce decree in absence against such defender until the Court is satisfied that the said provisions have been duly complied with; and the interlocutor of the Court shall expressly bear that the Court has been satisfied by proper evidence that the provisions of the said paragraph (*c*) of Rule 104 have been duly obtempered. The post office receipt for the registered letter, together with a certificate by the pursuer's solicitor, shall be sufficient proof of compliance with the said provisions.

(*c*) Nothing contained in the said interlocutor shall operate to prevent such defender from showing, in a reduction of the said decree in absence, or in any other subsequent proceeding, that the said provisions were not in fact duly obtempered.

(*d*) *When defender furth of Scotland, England, and Northern Ireland, and without known solicitor in Scotland.*—In any undefended cause in which the defender is described as resident or carrying on business furth of Scotland and elsewhere than in England or Northern Ireland, and has no known solicitor in Scotland, the Court shall, in the interlocutor granting decree in absence, supersede extract of such decree for a period which shall be ascertained by adding together ten days and such further days (if any) as may be found by the Court to be approximately equivalent to the excess, beyond four, of the number of days required, in the ordinary course of post, for the transmission of a letter from Edinburgh to the defender's residence or place of business and the like transmission of an answer from such residence or place of business to Edinburgh. Intimation thereof shall be made to the defender by the pursuer or his solicitors by registered letter containing a copy of the said interlocutor. The defender may, at any time not later than the last day of the period so ascertained, enrol a motion in the motion sheet for recall of such decree and for allowing defences to be received; and, on such enrolment, the Court shall recall the decree and allow the defences to be received without any award of expenses against the defender; and the cause shall thereupon proceed as if the defences had been lodged in due time.

(*e*) *When defender resident or carrying on business in England or Northern Ireland, and without known solicitor in Scotland.*—In any undefended cause in which decree is pronounced against a defender who is described as resident or carrying on business in England or Northern Ireland and has no known solicitor in Scotland, such defender may, at any time not later than the tenth day after the day on which such decree was pronounced, enrol a motion in the motion sheet for recall of such decree and for allowing defences to be received; and the Court shall recall the decree and allow defences to be received without any award of expenses against the defender; and the cause shall thereupon be treated as if defences had been lodged in due time.

(*f*) Without prejudice to the other rules of this section, the defender may, at any time within ten days from the date of a decree in absence, enrol a motion in the motion sheet for the recall of such decree and for allowing defences to be received, and on such enrolment, and on the defender paying £2 2s. to the pursuer, the Court shall recall the decree in absence and allow the defences to be received, and the cause shall thereafter proceed as if the defences had been lodged in due time.

SECTION 4

MAKING UP AND CLOSING RECORD: AMENDMENT

115. Making up record

(*a*) The pursuer shall, not later than the seventh day after the day on which the time for lodging defences expired, or on which the defences were lodged and intimation made to the pursuer in terms of paragraph (*a*) of Rule 109, whichever is the earlier, deliver at least six copies of the Open Record made up in the same way as in present practice (which may be in manuscript, typescript or print) 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 two copies in the General Department. Provided that if a Statement of Facts is lodged along with the defences, the pursuer may, if so advised, lodge Answers thereto within seven days of the lodging thereof, and the lodging and delivery of the copies of the Open Record shall not require to be made till the seventh day after the said answers are due to be lodged.

(*b*) The case shall then appear before one of the Lords Ordinary in the adjustment roll on the earliest available day, being not earlier than the seventh day after the day on which the copies of the open record have been delivered and lodged in terms of the immediately preceding paragraph.

(*c*) 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 or dismissal by default, as the case may be, which decree the Lord Ordinary shall grant unless the pursuer shall show good cause to the contrary.

116. Closing record

(*a*) No continuation of adjustment shall be allowed except on cause shown; and, if no special cause be shown, the Court shall pronounce an interlocutor closing the record.

(*b*) If, at the closing of the record, the parties shall renounce probation, the Lord Ordinary shall appoint the cause to be debated in the procedure roll.

(*c*) If the parties, or any of them, shall not renounce probation, the Court shall require them to state what proof they propose; and, if parties are agreed that proof is necessary, and as to what proof ought to be allowed, then (except in the case in which one or more of the parties apply for jury trial) the Court, if satisfied of the propriety of the proof proposed, shall appoint the same to be taken and shall proceed as provided in Rule 20.

(*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*) If the parties are at variance as to whether there shall be proof, or as to what proof ought to be allowed, or if they or any of them shall maintain that one or more of the pleas stated on the record should be disposed of before determining the matter of proof, the Court shall appoint the cause to be debated in the procedure roll; and, after hearing the parties in the said roll, the Court shall pronounce such interlocutor as shall seem just; and may either appoint proof to be taken, or dispose of such pleas on the record as the Court thinks ought to be disposed of at that stage.

(*f*) The pursuer shall, within seven 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

(*g*) 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.

117. Amendment—Powers of Court

(*a*) In defended causes the following provisions shall apply:—

(i) *Sisting new pursuer.*—Where an action has been commenced in the name of the wrong person as pursuer, or where it has been commenced without a person whose conjuction may be deemed necessary to make a good instance, or where it is doubtful whether it has been commenced in the name of the right person, the Court, if satisfied that it is necessary for the determination of the matter in dispute so to do, may allow any other person to be sisted as pursuer in substitution for, or in addition to, the original party, on such terms as to expenses as to the Court shall seem proper.

(ii) *Party suing or sued in wrong capacity.*—Where a party sues or is sued in a representative capacity, but it appears that he ought to have sued or been sued in his own right, or in a different representative capacity, the Court may, on the motion of either party, on such terms as to expenses as to the Court shall seem proper, amend the summons or other writ accordingly; and thereupon the action shall proceed in all respects as if the proper description of the party had been given in the summons or other writ.

(iii) *Representative capacity.*—Where a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative capacity, the Court may, on the motion of either party, on such terms as to expenses as to the Court shall seem proper, amend the record accordingly: and thereupon the action shall proceed in all respects as if the proper description of the party had been given in the summons or other writ.

(iv) *Insufficient or incorrect designation.*—Where the name or description of a pursuer or defender in the summons or other writ is insufficient or incorrect, it may be amended, on the motion of either party, by order of the Court, on such terms as to expenses as to the Court shall seem proper; and thereupon the action shall proceed in all respects as if the name or description had been originally such as it appears after the amendment has been made.

(v) *Procedure in lieu of supplementary or new action.*—Where in the course of an action it appears that all the parties who have an interest have not been called, or that the action has been directed against the wrong person as defender, it shall not be necessary for the pursuer to bring a supplementary or new action, but it shall be competent for the Court, on the motion of the pursuer, to allow the record to be amended by inserting in the summons or other writ the name of such additional or substituted defender, and to have the record as amended served on him, along with a notice in the terms of Form 5 specifying the day upon which he must lodge defences or answers as the case may be; and thereafter the action shall proceed as if such added defender had originally been made a party to the cause; and in the event of no defences or answers being lodged by such added defender, after being

duly served as aforesaid, the pursuer shall be entitled to take decree in absence against him. In the event of defences being lodged, the pursuer shall lodge copies of the record incorporating such defences; and the action shall thereafter proceed in ordinary form: provided always that the pursuer shall be liable for any expenses occasioned to the original defender by his failure to cause such added or substituted defender in the first instance, unless cause be shown to the contrary; and the Court shall make it a condition of such amendment being allowed that said expenses shall first be paid.

(vi) *Amending conclusions.*—It shall be competent for the pursuer, at any time before final judgment, to amend the conclusions of the summons to the effect of increasing the sum for which he sues, or subjecting any other additional funds or property to the adjudication of the Court on such terms as to expenses as to the Court shall seem proper; and such amendment shall be allowed in all cases where, according to the existing practice, it would have been competent to raise a supplementary action, but in all other cases shall only be allowed in the discretion of the Court.

(vii) *Amendment not limited by remedy concluded for.*—It shall be competent for the Court to allow any amendment of the summons or other writ which may be necessary for the purpose of determining, in the existing action or proceeding, the real question in controversy between the parties, notwithstanding that, in consequence of such amendment, a larger or different remedy than that originally concluded for is thereby sought; but such amendment shall only be allowed on such terms as to expenses as to the Court shall seem proper.

(*b*) In undefended causes the summons or other pleading whereby the cause is commenced in the Court of Session may be amended to the same extent as is provided for in paragraph (*a*) of this rule, if the Court shall think that such amendment should be allowed; and such amendment shall be made in writing either upon the summons or pleading or in a separate paper, and shall be authenticated by the signature of counsel or solicitor; and the Court may, if it shall think fit, order the amended summons or pleading to be served upon the absent defender or defenders with liberty to him or them to enter appearance within such time as shall seem proper; provided that the expenses occasioned by such amendment shall not be chargeable against the defender or defenders unless, upon cause shown, the Court shall so direct.

(*c*) Any amendment allowed under paragraph (*a*) or paragraph (*b*) of 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 defending 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 using of such diligence.

Section 5

Motions

118. Motions

(*a*) Motions on behalf of any party to a cause, other than motions made at the bar during any hearing of the cause, shall be enrolled and made by entry in the motion sheet.

(*b*) The entry shall specify the terms of the motion, and shall bear the date of the enrolment and a certificate that the motion has been intimated to the other party, and shall be signed by the solicitor making the enrolment or by his clerk on his behalf, who shall also hand to the clerk of court a slip containing the names of the parties and the counsel in the cause.

(*c*) All such enrolments shall be made at the Office of Court, and may be made at any time before one o'clock (on Saturday before twelve o'clock), provided that written intimation of intention to make such enrolment, and of the terms of the motion, shall have been given to the solicitor or solicitors of the other party or parties to the cause so as to reach the said solicitor or solicitors at his or their office or offices not later than one o'clock (on Saturday twelve o'clock) on the day of enrolment.

(*d*) All such motions so enrolled shall appear (if in session) in the issue of the printed rolls issued on the day after the day of enrolment, as for hearing in the motion roll or single bills on the second day after the enrolment.

(*e*) If, on the day after the day on which the enrolment is made as aforesaid, the solicitor or solicitors of the other party or parties or any of them or their clerks shall not before one o'clock (on Saturday before twelve o'clock) mark the motion as appearing in the motion sheet with the word " Opposed " (which marking, if made, shall bear its date, and shall be signed by the solicitor or solicitors making the same, or by his or their clerk or clerks on his or their behalf) the motion shall be brought, not later than the second day after enrolment, by the clerk in charge of the process before a Lord Ordinary or Division in chambers (if in session) or before the Vacation Judge (if in vacation or recess), who, without hearing any party, may either grant the motion, or, if in his or their discretion he or the Division thinks proper, continue the motion to be heard by counsel in Court quam primum in the motion roll or single bills.

(*f*) If on the day after the day on which the enrolment is made as aforesaid, the solicitor or solicitors for the other party or parties or any of them or their clerks shall mark the motion as appearing in the motion sheet with the word " Opposed ", the motion shall be heard in the motion roll or single bills on the second day after the day of enrolment (if in session): and, in that case, the cause shall be starred or otherwise distinguished in the issue of the printed rolls issued on the day after the day of enrolment as to be heard by counsel.

(*g*) When a cause is called for hearing in the motion roll or single bills and is dropped without any motion being made, the Auditor shall, in taxing any expenses found due (either as between party and party or as between solicitor and client) to the party on whose behalf the enrolment in the motion sheet was made, disallow the expenses occasioned by the said enrolment, unless he is satisfied that the cause was properly enrolled and properly dropped.

(*h*) (i) Subject as provided in paragraph (*a*) of Rule 177, in any undefended cause in which it is incompetent to grant decree without proof or further procedure, only the provisions of paragraphs (*a*), (*b*), (*c*) and (*d*) of this rule shall apply, and all motions, other than motions made at the bar during any hearing of the cause, shall be disposed of in Court in the motion-roll or single bills, as the case may be.

(*j*) Examples of the enrolment of a motion in the motion sheet, and of the marking of the same with the word " Opposed ", will be found in Form 6.

Section 6

Procedure roll

119. Procedure roll

(*a*) All causes sent to the procedure roll shall forthwith be put by the Keeper of the Rolls on a list of causes to be heard in said roll.

(*b*) There shall be available (so far as possible and necessary) on each sederunt day in each week during session at least one judge for the hearing of causes in the procedure roll; and the causes shall be put out (as far as possible in their order) in the printed rolls, to be heard before such judge or judges.

(*c*) The number of causes so put out each week for hearing before such judge or judges on any day or days of such week shall be such as to secure, as far as may be, that the causes so put out will be disposed of during the week in which they appear in the printed rolls.

(*d*) Additional causes may be put out for hearing in the course of any week; provided that no such additional cause shall, except of consent of parties, be called earlier than the second day after the day on which it is so put out in the printed rolls.

(*e*) The calling of any cause put out for hearing in the procedure roll in terms of paragraphs (*c*) and (*d*) of this rule shall be peremptory in the same way as the calling of a cause in the summar or short roll of the Inner House.

(*f*) If no counsel attends on either side, the judge may pronounce an interlocutor dismissing the action, and finding neither party entitled to expenses, and the said interlocutor shall not be recalled by the judge of consent, but may be recalled only on being reclaimed to the Inner House, upon such conditions as to expenses or otherwise as may be imposed by the Court.

(*g*) When on such calling of a cause counsel shall appear on one side only, the judge, if the pursuer's counsel fails to attend, may pronounce an interlocutor dismissing the action, finding the pursuer liable in expenses; if the defender's counsel fails to attend, the judge may grant decree by default with expenses; and the said interlocutor shall not be recalled by the judge of consent, but may be recalled only in the like manner and on the like conditions as are mentioned in the immediately preceding paragraph of this rule.

(*h*) It shall always be competent for parties having a cause standing in the procedure roll, in regard to which they have come to be agreed that it should be disposed of by a proof, or by a trial by jury, or otherwise, to enrol the cause in the motion sheet, in order that the matter may be brought before a Lord Ordinary, who may allow a proof or jury trial, or may pronounce such other interlocutor as may be just and proper in the circumstances.

(*j*) In the event of any amendment of record being proposed or allowed in the course of a hearing in procedure roll and the cause being in consequence adjourned, or in the event of the judge finding it necessary for any other reason which seems to him sufficient, to adjourn the hearing of the cause, he may direct that the hearing shall be resumed before himself on such early date as the Keeper of the Rolls may fix.

SECTION 7

COMMISSIONS FOR RECOVERY OF DOCUMENTS, FOR EXAMINATION OF WITNESSES &C.

120. Application for commission and diligence for recovery of documents

(*a*) Any application for commission and diligence for the recovery of documents made in a cause before calling shall be made by letter addressed to the Deputy Principal Clerk of the General Department craving that the Court should grant such commission and diligence and enclosing a copy of the specification. The letter shall at the same time be intimated (along with a copy of the specification) to the other party; and the Deputy Principal Clerk, or one of the clerks of said department instructed by him, shall forthwith bring the application before a Lord Ordinary in chambers, making intimation to the parties of place and hour. The applicant's solicitor shall attend along with the said clerk, and shall produce to the Lord Ordinary the principal summons bearing the signet; and the solicitor of the other party, if he desires to oppose the application, shall also appear. After hearing parties' explanations, the Lord Ordinary may either grant or refuse the commission in whole or in part, or as amended by or before him. If the Lord Ordinary grants the application, he shall authenticate and sign the specification, and the interlocutor shall be written by the said clerk on the said specification, which shall be securely attached to the principal summons inside the backing thereof. The Lord Ordinary's interlocutor shall be final.

(*b*) Any application for commission and diligence for the recovery of documents made after calling shall be made by motion enrolled in the motion sheet in the Outer or Inner House according as the cause depends before the one or the other, or (in vacation or recess) before the Vacation Judge. A detailed and articulate specification of the documents sought to be recovered shall be lodged in the General Department at the time of enrolling such motion as aforesaid, and a copy or copies of such specification shall be sent to the solicitor or solicitors of the other party or parties along with the intimation of the enrolment.

121. Optional procedure before executing commission and diligence

(*a*) Any party who has obtained a commission and diligence for the recovery of documents may, at any time before executing the same against another party or other parties to the cause, or against any third-party haver, serve upon such party, or parties, or haver, an order on the printed official form shewn in Form 7.

(*b*) Such order shall be served by registered letter, and may be addressed to the care of the known solicitor or solicitors for the party or parties, or for the third-party haver, from whom the documents are sought to be recovered.

(*c*) Such order shall be obtempered by such party, or parties, or by such third-party haver, in the manner and within the time specified therein.

(*d*) Not later than the day after the day on which the order, affidavit in terms of Form 7, and inventoried productions (if any) are received by the Deputy Principal Clerk, official intimation shall be sent by him to the solicitors of the parties to the cause that the order has been served and obtempered; and it shall not be competent for any party, other than the party who served the order, to borrow any of the productions until after the expiry of seven days from the date of such official intimation.

(*e*) If the party who served the order is not satisfied that full production has been made under the specification, or that adequate reasons for non-production have been given, he may execute the commission and diligence as provided in Rule 122, notwithstanding his adoption in the first instance of the foregoing procedure by order.

(*f*) In the event of the production under such order as aforesaid of extracts from books (whether such extracts are certified or not), the court may, on motion enrolled in the motion sheet, order that the party who served the order shall be at liberty to inspect and take copies of any entries in any books falling under the specification, subject (in the event of any question of confidentiality arising) to the inspection being made, and the copies being taken, at the sight of the commissioner appointed in the interlocutor granting the commission and diligence; and the Court may, on cause shown, order the production of any books (not being bankers' books or books of public record) falling under a specification, notwithstanding the production of certified extracts therefrom.

122. Execution of commission and diligence for recovery of documents

(*a*) In any case in which a commission and diligence is to be executed within the City of Edinburgh or the vicinity, the commissioner appointed may be such clerk of Court as the Deputy Principal Clerk may (under remit by the Court granting such commission and diligence) nominate, and such clerk shall perform the duties of the commissioner as part of his official duty.

(*b*) The report of the execution of any commission and diligence, together with any documents recovered (and inventory thereof), shall be lodged by the commissioner in the hands of the Deputy Principal Clerk; and the report as so lodged shall have endorsed thereon a note of all fees and outlays incurred to or by the commissioner and his clerk.

(*c*) Not later than the day after the day on which the report with the relative documents (if any) and inventory are lodged as aforesaid, official intimation thereof shall be sent by the said Deputy Principal Clerk to the solicitors of the parties to the cause.

(*d*) The intimation so sent to the solicitor of the party who obtained the commission and diligence shall include a note of the fees and outlays of the commissioner and his clerk as endorsed on the report; and, upon delivery by the said solicitor to the said Deputy Principal Clerk of a written discharge of the amount of said fees and outlays (but not sooner or otherwise) such solicitor may lodge in process any of the productions he may wish so to lodge.

(*e*) If the solicitor for the party who obtained the commission and diligence shall fail to deliver a written discharge as provided in the immediately preceding paragraph of this rule within three days of the date of the official intimation referred to in paragraph (*c*) of this rule, the solicitor for the other party may, within four days thereafter, deliver such discharge, and may lodge in process any of the productions he may wish so to lodge.

(*f*) It shall not be competent for any party, other than the party whose solicitor delivers the aforesaid discharge to the said Deputy Principal Clerk, to borrow any of the productions until after the expiry of seven days from the date of such delivery.

123. Confidentiality

In any case in which, either under the optional procedure provided in Rule 121, or in the execution of a commission and diligence in manner provided by Rule 122, confidentiality is claimed for any of the documents produced, such documents shall be enclosed in a separate sealed packet, which shall not be opened or put in process except by authority of the Court obtained on the motion of the party serving the order, or executing the commission and diligence, after opportunity to the party, parties, or third-party haver, making production, to be heard.

124. Commission for examination of witnesses

(*a*) Any application for a commission to examine a witness in a cause before calling shall be made in the same manner as an application for commission and diligence for recovery of documents before calling, with the substitution of a note of the names and addresses of the witnesses for the specification; and the provisions of paragraph (*a*) of Rule 120 shall, mutatis mutandis, apply.

(*b*) Any application for a commission to examine a witness in a cause made after calling shall be made by motion enrolled in the motion sheet in the Outer or Inner House (according as the case depends before the one or the other), or (in vacation or recess) before the Vacation Judge.

(*c*) Where a commission is granted by the Court for the examination of a witness, the Court may, on the motion of any party to the cause, dispense with interrogatories in all cases where the commission falls to be executed within the United Kingdom, and may also dispense with interrogatories where the commission is to be executed abroad, on being satisfied that such a course is expedient in the interests of the parties to the cause and conducive to the administration of justice.

(*d*) The provisions of paragraphs (*b*), (*c*), (*d*), (*e*) and (*f*), of Rule 122 shall apply mutatis mutandis to the report of a commission for examination of witnesses.

125. Demand for Admissions

Either party may by letter call upon the other party to admit without prejudice the date, signature, transmission, or receipt, of any relevant document, or the verbal accuracy of a copy thereof, within such time as the Court may appoint; and, in case of refusal or delay to admit any such matter within the time appointed, the expense of any proof rendered necessary by such refusal or delay shall be paid by the party refusing or delaying, whatever the result of the cause may be, unless the Court shall certify that the refusal or delay was reasonable; and no expense of proving any document shall be allowed unless the procedure authorised by this paragraph has been followed forth.

125A. Evidence liable to be lost

Where there is reason to believe that the evidence of seafaring or other witnesses may be lost or delay and inconvenience occasioned in obtaining the evidence of such witnesses at a proof, it shall be competent at any time after service of the summons to apply to the Court to have the evidence of such witnesses taken by a Lord Ordinary or by a commissioner appointed by the Court: if the application is made before calling, it shall be made as directed in Rule 124 (*a*); if after calling, it shall be made by motion enrolled

in the motion-sheet: provided that, in ship-collision cases, such application shall only be granted on condition that the applicant shall, at least twenty-four hours before the evidence is taken before the Lord Ordinary or the commissioner, lodge in the General Department a preliminary act, which the Lord Ordinary or commissioner shall be entitled to open before the witness or witnesses are examined.

126. Letters of request.

(*a*) Where the evidence of any witness resident outwith His Majesty's dominions is material for the determination of a cause depending before the Court of Session, the party desiring to obtain such evidence may apply in the Inner or Outer House, according as the cause depends before the one or the other, or to the Vacation Judge during vacation or recess, by minute in terms of Form 8 for a letter of request addressed to the judge or judges of the foreign tribunal within whose jurisdiction the witness is residing.

(*b*) On consideration of such minute, and after hearing any objections thereto, the application may be granted and a letter of request authorised to be issued, which letter of request shall be in the terms of Form 9, and shall be signed by the President of the Division, or the Lord Ordinary, or Vacation Judge, granting the same. The said letter of request shall be prepared by the party moving for the same, and shall be lodged in the Office of Court along with the minute mentioned in the preceding paragraph.

(*c*) It shall be a condition of granting any such letter of request that the solicitor for the party applying therefor shall, before the letter of request is issued, become personally liable for the whole expenses which may become due and payable in respect thereof to the Court before which the evidence is to be taken, as well as to the witnesses examined, and make consignation of such sum to meet said expenses as the Division, or Lord Ordinary, or Vacation Judge, shall determine.

(*d*) There shall be lodged by the party obtaining a letter of request a translation, into the language of the court to which the letter is directed, of the letter and of the relative interrogatories.

(*e*) The letter of request, when issued and signed as aforesaid, shall, along with interrogatories adjusted according to the present practice and the relative translations, be forthwith forwarded by the Deputy Principal Clerk to His Majesty's Secretary of State for Foreign Affairs, requesting that the evidence taken under the same shall, when received, be forwarded to him, under seal, to abide the orders of Court.

127. Warrant for production of original documents from public records

(*a*) Where any party to a cause desires to obtain from the keeper of any public record production of the originals of any register or deed under his custody, he shall apply by motion enrolled in the motion sheet to the Court (or to the Vacation Judge during vacation or recess), after two days' notice of such application given in writing to the keeper in charge of the originals.

(*b*) If it shall appear to the Court or the said Vacation Judge that it is necessary for the ends of justice that such application should be granted, authority shall be given to such keeper on production of a certified copy of the interlocutor to exhibit the original registers or deeds to the Court or the jury before which the cause is to be tried, and that in the hands of an officer to be selected by the said keeper.

(*c*) The expense attending the transmission and exhibition of such original registers or deeds shall be defrayed, in the first instance, by the party or parties on whose application they are exhibited.

(*d*) Where production or exhibition of such original registers or deeds is desired in any Court outwith Scotland, the application for such production or exhibition shall be made by petition to the Inner House and two days' notice in writing of the presentation of the petition shall be given to the Keeper. The provisions of paragraphs (*a*), (*b*) and (*c*) of this rule shall apply to such applications.

128. Warrant for transmission of process from another Court

When it is deemed necessary by any of the parties to a cause that any extracted or unextracted process in the custody of the Keeper of the Registers and Records of Scotland or of the Extractor, or any process depending, or that may have depended, in any inferior Court in Scotland, should be lodged in process, it shall be competent for the party to apply to the Court, or in vacation or recess to the Vacation Judge, by motion enrolled in the motion sheet, for a warrant to authorise and direct the Keeper of the Registers and Records of Scotland and his deputes, or the Extractor and his deputes, or the clerk of any inferior court before which such process is depending, or may have depended, on production of a certified copy of the interlocutor to deliver up the same to the Deputy Principal Clerk, in order that the same may be lodged in process, upon delivery of the warrant, and a proper receipt and obligation for re-delivery after the disposal of the cause; and, provided that such application has been intimated to the opposite party or to his solicitor, and also to the Keeper of the Registers and Records of Scotland or his deputes, the Extractor or his deputes or such other custodier, two days before such application is made, it shall be competent to the Court, if it shall see cause, to grant such warrant, in such terms and under such conditions as may be deemed necessary.

Section 8

Proofs

129. Lodging and returning productions for proofs

In all causes in which a proof shall be allowed, all documents, plans, maps, models, and other productions which are intended to be used or put in evidence at the proof, shall be lodged according to inventory in the Office of Court on or before the seventh day prior to the day appointed for the proof, and notice of the lodging thereof shall at the same time be sent to the solicitor of the opposite party; and no other production shall be used or put in evidence at the proof, unless by consent of parties or by permission of the judge presiding thereat, on cause shown to his satisfaction, and on such terms, as to expenses or otherwise, as to him shall seem proper. All steps of process and productions borrowed shall be returned to process before noon on the day preceding the date of the proof.

130. Separate parts of proof

Without prejudice to the existing law and practice with respect to preliminary proofs, in any action with pecuniary conclusions the Court may separate the proof on the merits from proof on the question of the amount for which decree should be pronounced.

131. Rules as to witnesses at proofs

(*a*) It shall be the duty of solicitors to see that all witnesses are enclosed under the charge of the macers of Court in one of the witness-rooms provided for that purpose.

(*b*) Each solicitor, before the examination of his witnesses commences, shall give to the macer a numbered list of his witnesses in the order in which it is proposed to call them.

(*c*) No witness shall leave the witness-room except with the permission of the Clerk of Court until called by the macer to be in readiness for being examined. Witnesses shall not walk about the passages or enter any of the Court-rooms (except when called) until after examination, or until dismissed by the macer by order of the Court.

(*d*) After a witness has been enclosed by the macer, no person other than the solicitor of the party citing the witness shall have access to him, nor shall any person interfere with the macers in regard to such witness.

(*e*) The macers shall enforce the provisions of the foregoing paragraphs of this rule, and report to the Court if any person, solicitor or other, shall transgress the same.

132. Death or Disability of Judge

In the event of the death or disability of a Lord Ordinary before whom a proof has been taken in whole or in part, it shall be competent for the Court on an application by any party made by motion in the Inner House to direct:—(*a*) that the cause shall be continued before, and shall be disposed of by, another Lord Ordinary, and (*b*) that the notes of evidence already taken, as certified by the shorthand writer, shall be evidence in the cause, and (*c*) that the original Lord Ordinary's notes shall be made available to the Lord Ordinary before whom the cause continues.

Recording of Evidence in Proofs

133. (*a*) Unless otherwise provided in these Rules, evidence in all actions depending before the Court of Session whether taken in Court or on Commission shall be recorded by a shorthand-writer, to whom the oath *de fideli administratione* in connection with Court of Session service generally shall have been administered. Notes of evidence provided for the use of the Court shall be certified by the shorthand-writer (or if they are the notes of more than one shorthand-writer by all such shorthand-writers) as a faithful record of the evidence. The Court may make such alterations on the notes of evidence as appear to be necessary, and where such alterations are made shall authenticate the notes as the notes used by the Court as the record of evidence.

(*b*) Transcripts of Notes of Evidence will only be made on directions from the Court, and the cost thereof in defended cases will in the first instance be payable by the litigants in equal shares. Where an undefended case is continued, or where for other reasons the Court considers it necessary that the notes should be extended for the use of the Court and so directs, the cost (except as hereinafter provided for in Poors' cases) will be borne by the pursuer in the first instance. In any case where the Notes of Evidence have not been extended, but are required for a reclaiming motion, the solicitor for the reclaimer may request the shorthand writer to extend the notes, and the transcript thereof will thereupon be lodged in process, the cost being payable in the first instance by the reclaimer.

(*c*) *Poors' cases.* In any case where one or both of the parties have been admitted to the benefit of the Poors' Roll, the cost of any transcripts required for the use of the Court, in so far as it would have been payable by the party or parties on the Poors' Roll, will be paid out of public funds. Where the Court on a motion enrolled for that purpose by a party on the Poors' Roll certifies that there is reasonable ground for such party reclaiming, the cost of the transcript from which copies for the use of the Inner House are made will be paid out of public funds.

(*d*) In any case where the Court on a motion enrolled for that purpose certifies that there is reasonable ground for reclaiming and that the reclaimer is unable, for financial reasons, to meet the cost of the necessary transcript from which copies for the use of the Inner House are made, the cost of such transcript will be paid out of public funds.

(*e*) *Carbon Copies.* Where Notes of Evidence have been directed to be supplied for the use of the Court, carbon copies may be made available to litigants at a cost of 1s. per sheet payable to the shorthand writer by the litigants obtaining the said copies. If parties agree, no application to the Court for such carbon copies need be made, but if any party objects to carbon copies being made available, then an application to the Court, by motion enrolled in the Motion Sheet or made at the Bar during the progress of the proof or trial, must be made, and the Lord Ordinary's decision will be final.

SECTION 9

TRIAL BY JURY

134. Application for trial of the cause by jury on issues

(*a*) If, at the closing of the record, any party to the cause, being a cause which, according to the present law and practice, is appropriate for jury trial, applies for trial of the cause by jury on issues, the party so applying shall, at the time when copies of the closed record are delivered and lodged in terms of paragraph (*f*) of Rule 116, also lodge in process such issue or issues as may be proposed for the trial of the cause, together with a copy of the same for the use of the Court, and intimate the same to the solicitor or solicitors for the other party or parties by delivery of a copy thereof to him or them.

(*b*) In the event of the party who applies for trial of the cause by jury on issues failing to lodge and intimate in terms of the immediately preceding paragraph, 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 enquiry into the facts of the cause shall be taken by a proof before the Court: provided that the other party or parties to the cause, on such failure to lodge and intimate issues as aforesaid, may, if he or they maintain that the cause should be tried by jury, within seven days after the lodging of the Closed Record, enrol a motion in the motion sheet to have the cause sent to the Procedure Roll.

(*c*) Not later than the third day after the day on which such issue or issues are lodged and intimated as aforesaid, the other party or parties to the cause may lodge in process such counter-issue or counter-issues as he or they may propose, together with a copy of the same for the use of the Court. Such counter-issue or counter-issues shall be intimated to the solicitor or solicitors for the other party or parties by delivery of a copy

to him or them: provided that it shall be competent for such other party or parties to propose in the form of a counter-issue any question of fact which is made the subject of specific averment on the record and is relevant to his or their pleas, notwithstanding that it does not in terms meet the issue or issues proposed by the party applying for jury trial, and notwithstanding any practice heretofore to the contrary, and where a counter-issue is allowed it shall be competent for the presiding judge after the evidence has been led, instead of adopting the procedure authorised by Rule 148, to 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.

(*d*) On the seventh day after such issue or issues have been lodged and intimated in terms of paragraph (*a*) of this rule, the respective parties shall enrol a motion in the motion sheet for the approval of the issue or issues or counter-issue or counter-issues, and such motion or motions may be marked as " opposed " in accordance with Rule 118.

(*e*) If the said motion or motions (as the case may be) shall not have been marked as " opposed ", the Lord Ordinary in chambers, without hearing any party, may either grant the said motion or motions, and authenticate by his signature the issue or issues and counter-issue or counter-issues (if any) as adjusted; or, if in his discretion he thinks proper, he may send the cause to procedure roll.

(*f*) If the motion for approval of the issue or issues, or the motion for the approval of the counter-issue or counter-issues be marked " opposed ", the cause shall be brought before a Lord Ordinary in chambers, who shall send the cause to procedure roll.

(*g*) The enrolments and markings referred to in this rule shall be made and intimated in the same manner as the enrolments and marking referred to in Rule 118.

135. Application for trial of the cause by jury without issues, when unopposed

If at the closing of the record, any party to the cause applies for trial of the cause by jury without issues, and if such application is not opposed by any of the other parties, the Court may, in its discretion, either order the cause to be so tried, or may order issues for the trial of the cause; and, in the latter event, Rule 134 shall apply, and the procedure therein provided shall be followed forth.

136. Application for trial of the cause by jury, when parties at variance

(*a*) If, at the closing of the record, any party to the cause applies for trial of the cause by jury and the parties are at variance either (1) on the question whether the cause is relevant for enquiry, or (2) on the question whether the cause is suitable for trial by jury, or (3) on the question whether the cause should be tried without issues, or (4) on any other matter concerning the mode of enquiry, the Court shall send the cause to procedure roll.

(*b*) Notwithstanding that a cause has been sent to procedure roll in terms of the immediately preceding paragraph, the provisions of paragraphs (*a*), (*b*), and (*c*), of Rule 134, with regard to the lodging and intimation of issues and counter-issues, shall apply in the same way as in the case of an unopposed application for trial of the cause by jury on issues; provided

always that such lodging and intimation shall be without prejudice to the whole contentions and pleas of the parties so lodging and intimating, which contentions and pleas shall be deemed to be reserved entire for disposal in procedure roll.

(*c*) After hearing parties in the procedure roll, the Court shall dispose of the contentions and pleas of parties as shall be just; and, in the event of the cause being found (in whole or in part) relevant for enquiry, the Court may either adjust or dispense with issues and appoint the cause to be tried by jury, 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.

137. Objections to issues as adjusted

(*a*) In any cause in which issues are adjusted in the Outer House for trial by jury, and in which any of the parties objects to the issue or issues (or any of them) so adjusted, or desires to obtain a variation of such issues, or to have another issue or issues added to, or substituted for, those which have been so adjusted, such party may, subject to the provisions of paragraph (*b*) of Rule 273, reclaim to the Inner House against the interlocutor adjusting such issues in manner directed in Rule 271; and generally the provisions of all the rules of Chapter V shall apply.

(*b*) Any party so reclaiming shall, at the same time as he enrols his motion for review in the motion sheet, lodge in process the issue or issues, counter-issue or counter-issues (if any) proposed by him (shewing the deletion, variation, addition or substitution he desires), together with copies thereof for the use of the Court; and he shall also at the same time deliver to the other party or parties copies of the said issue or issues, counter-issue or counter-issues. The intimation of the enrolment shall state briefly the ground on which review is moved.

138. Procedure under the Sex Disqualification (Removal) Act, 1919, with reference to jury trials

(*a*) Any application by the parties or any of them under section 1 (*b*) of the Sex Disqualification (Removal) Act, 1919, shall, in the case of an action tried by jury, be made by motion enrolled in the motion-sheet at the time when a date is appointed for the trial, or, if a new trial is ordered, at the time when a date is appointed for such new trial.

(*b*) In all cases in which a precept is issued, according to the existing law and practice, for the preparation of a list of jurors, the precept shall state (in the event of any order having been made under section 1 (*b*) of the said Act, either on the motion of any of the parties or in the discretion of the judge) that the list is to be composed of men only or of women only, as the case may be. In all such cases the sheriff clerk shall make up a panel or list so that the same is composed of men only, or of women only, as the case may be.

(*c*) Where no order has been made under section 1 (*b*) of the said Act, the list of jurors prepared in pursuance of such precept shall be composed, as nearly as possible, of equal numbers of men and women jurors; and the proportion of men and women respectively included in such panel or list as special jurors shall, as nearly as possible, be equal.

(*d*) The names of all the persons appearing on such list or panel shall be placed in the appropriate box or glass, according as they are special or common jurors, but irrespective of whether they are men or women; and the ballot shall be carried through according to the method heretofore in use.

(*e*) Any woman summoned to serve on a jury shall be entitled to apply to be exempted from service on the ground that she is for medical reasons unfit to attend, subject to the following conditions:—

(i) Application for exemption shall be made by her to the Principal Clerk of Session, as soon as may be after receipt of the citation, and (unless on special cause shown) not later than the third day before the date appointed for such trial or enquiry, and the same shall be supported by evidence (by medical certificate or otherwise) vouching to the satisfaction of the Principal Clerk that the applicant is, or will be, for medical reasons, unfit to attend and serve as a juror at the trial;

(ii) Applications duly made as herein provided for shall be disposed of by the Principal Clerk of Session, who shall have power to consult a judge competent to try the cause as he may think necessary; and intimation of the granting or refusing of such application shall be made to the applicant by the Principal Clerk;

(iii) Every citation upon a woman to attend as a juror shall contain a notification as nearly as may be in the terms shown in Form 10 in the Appendix.

(iv) Nothing herein shall prejudice the right of the judge presiding at the trial at any time before the jury is empanelled to grant exemption in his discretion to a woman from serving as a juror in any case in respect of any of the reasons provided for in the Act, nor the power presently exercised by the clerk of court or by the judge presiding at such trial to excuse at any time any person summoned to attend as a juror from attendance.

139. Special jury

(*a*) Any party intending to apply for a special jury shall, not later than the seventh day after the day on which the diet for the trial has been fixed by the Keeper of the Rolls, enrol a motion in the motion sheet for a special jury.

(*b*) If a special jury is ordered, the Deputy Principal Clerk shall sign and issue a precept to the sheriff-clerk of the county or counties from which the special jury is to come, requiring him forthwith to return the names, designations and addresses of thirty-six persons qualified to be special jurors.

(*c*) The Deputy Principal Clerk, as soon as he shall have received the return of the thirty-six names out of which twenty special jurors are to be selected, shall give notice to parties' solicitors to attend him, on a day not earlier than the third day after the day on which such notice is given, at a specified place and hour, to reduce the jury; and, after the jury is thus reduced to twenty, a precept shall be issued for summoning the same; the name of each juror shall be written on a paper which shall be folded up and put into the ballot-box; and the jury shall consist of the twelve jurors whose names are first drawn from the ballot-box at the trial.

140. View

Any party intending to apply for a view, shall, not later than the fourteenth day before the day fixed for the trial, enrol a motion in the motion sheet for a view.

141. Lodging and returning productions

Rule 129 shall apply, mutatis mutandis, in all causes appointed to be tried before a jury, and all processes and productions borrowed shall be returned two days before the trial.

142. Admissions by parties

(*a*) When the parties are agreed in admitting any facts alleged on record, or any matter of fact whether alleged therein or not, or to admit the authenticity of writings or the sufficiency of copies or extracts as equivalent to the originals, a minute of the admissions shall be made in writing, and shall be signed by counsel for the party or parties making such admissions, and shall be lodged in process.

(*b*) All admissions so made may be read and used in evidence at the trial, if otherwise competent.

(*c*) In taxing any account of expenses, the Auditor shall disallow the expense of any evidence led on matters covered by such admissions, unless special cause is shown to him to the contrary.

143. Rulings by the presiding judge on matters of evidence

If, in the course of the trial, any of the parties is dissatisfied with a ruling by the presiding judge admitting or rejecting any evidence or line of evidence, such party may request that the judge's ruling and such party's objection (which he shall state at the time) be immediately recorded in the notes of evidence, and they shall be so recorded under the direction of the presiding judge.

144. Exceptions to the judge's charge

(*a*) If any of the parties desires to except to any direction by the judge in his charge to the jury on a point of law, or desires the judge to give a direction differing from or supplementary to the directions in the charge, he shall, immediately on the conclusion of the charge, intimate his desire to the presiding judge, who shall thereupon either direct the jury to retire and hear counsel for the parties in Court, or direct the jury to remain in Court and hear counsel in chambers.

(*b*) At such hearing, counsel for the party dissatisfied with the charge shall formulate in writing the particular exception taken by him, or the particular direction desired by him; and the exception or direction, together with the judge's determination thereon, shall be recorded in a note of exceptions under the direction of the judge and shall be certified by him.

(*c*) Thereafter the judge may give such further or other directions (if any) to the jury in open court as the circumstances may seem to him to require, before the jury are enclosed to consider their verdict.

145. Applying the verdict

(*a*) After a verdict has been returned by the jury, it shall be engrossed on the issue (if any), or on the closed record if the cause is tried without issues,

and shall in either case be dated and signed by the clerk of court who attends the trial.

(*b*) It shall be competent for the party in whose favour the verdict has been pronounced, at any time after the expiry of seven days after the day on which the verdict was engrossed and signed, to enrol in the motion sheet a motion for application of the verdict, entering up of judgment and awarding of expenses, and such motion shall be disposed of by the Court in the same way as other motions so enrolled.

146. Motion for new trial

(*a*) If any of the parties is dissatisfied with the verdict, either on the ground that it is contrary to evidence, or on the ground of misdirection by the judge, or on the ground of the undue admission or rejection of evidence, or on the ground of excess or inadequacy of damages, or of res noviter veniens ad notitiam, or for any other cause which is essential to the justice of the cause, he may, not later than one o'clock (12 o'clock on Saturday) on the seventh day after the day on which the verdict was engrossed and signed, enrol in the motion sheet a motion for the granting by the Inner House of a new trial, specifying the ground or grounds of such motion: provided that when a special verdict has been returned and applied under Rule 148 any of the parties may enrol in the motion sheet a motion for a new trial upon any of the grounds above specified not later than the twenty-first day after the day on which the special verdict was applied, and provided that it shall not be competent to move for a new trial on the ground of undue admission or rejection of evidence, or on the ground of misdirection by the judge, unless the admission or rejection of such evidence was objected to at the trial and recorded in the notes under direction of the judge, or (in the case of misdirection) unless the procedure prescribed in Rules 143 and 144 has been complied with.

(*b*) The provisions of Rules 271 and 272 shall apply to all such motions, and the procedure laid down therein shall be followed forth.

(*c*) All such motions shall be heard and disposed of by one or other Division of the Inner House (or by such Division sitting along with the judge who presided at the trial, as the case may be) subject to the same procedure (including production of the notes of evidence and other papers, if any, and of any exception together with the presiding judge's determination thereon) as would apply in the case of a motion for review of an interlocutor pronounced in the Outer House enrolled and made by a party reclaiming against such interlocutor: provided that section 2 of the Jury Trials Amendment (Scotland) Act, 1910, shall be deemed to apply to motions under this rule.

147. Abandonment of cause by failure to proceed or appear

(*a*) If it shall be made to appear to the Court that any of the parties has abandoned his suit, the Court shall proceed therein as in cases in which parties are held as confessed, unless sufficient cause be shown for the delay to the satisfaction of the Court.

(*b*) If either party shall not appear at the trial of the cause, then, if the party appearing is the pursuer in the issue or the party on whom the burden of proof lies, he shall be entitled to lead evidence, and go to the jury for a verdict; and, if the party appearing is the defender in the issue or the

party on whom the burden of proof does not lie, he shall be entitled to obtain a verdict in his favour without leading evidence; but if the party appearing shall decline to proceed in this manner, the judge shall proceed as in cases in which parties are held as confessed, unless it be shown to his satisfaction that the failure of the party to appear at the trial was occasioned by some sufficient cause.

(*c*) No cause shall fall asleep after the issue or issues shall have been finally adjusted and signed, though no step shall have been taken therein within year and day.

148. Special verdict

(*a*) Where, in any case set down for trial by jury, it appears to the presiding judge that it is expedient that the jury should return a special verdict in the form hereinafter set forth, the presiding judge may so direct the jury.

(*b*) Such special verdict shall be returned in the form of answers to specific questions, which shall include a question relative to the amount at which the jury assesses damages, if any damages are awarded.

(*c*) Such specific questions shall be settled by the presiding judge who may hear the parties before finally settling the same. The presiding judge may so hear parties either in Court or in chambers, and, in the former case, either outwith or in the presence of the jury.

(*d*) Where a special verdict has been so returned the answers to the specific questions shall be read over to the jury and upon their assent thereto shall be recorded and signed by the clerk who officiated at the trial, and the jury shall thereupon be discharged but said answers shall not be held to constitute a verdict until their effect has been determined by the Court. Thereafter, the presiding judge either at the same or at a subsequent diet, shall hear parties and apply the verdict.

149. Reclaiming against Application of Special Verdict

(*a*) If any of the parties is dissatisfied with the application of the verdict by the presiding judge, he may bring the interlocutor applying the verdict under review by a reclaiming motion in the mode prescribed by Rule 271, within the days prescribed by Rule 273.

(*b*) At the hearing of said reclaiming motion, whether alone, or along with a motion for a new trial under Rule 146, the Court shall not enter the verdict against any party in whose favour it has been applied by the presiding judge, without giving such party an opportunity of moving for a new trial, upon any ground or grounds upon which he might have desired to move for a new trial under Rule 146 if the verdict had not been applied in his favour by the presiding judge.

150. Recording Evidence and Judge's Charge in Jury Trials

The provisions of Rule 133 relating to the recording of evidence in proofs shall apply mutatis mutandis to the recording of the evidence and judge's charge in jury trials.

CHAPTER III

SPECIAL ACTIONS

Section 1.—Admiralty Causes ... ... Rules 151–163
Section 2.—Commercial Causes ... ... Rules 164–169
Section 3.—Consistorial Causes ... ... Rules 170–181A
Section 4.—Reductions ... ... Rules 182–185
Section 5.—Multiplepoindings ... ... Rules 186–196
Section 6.—Proving of the Tenor ... ... Rules 197–199
Section 7.—Cognition of the Insane ... ... Rules 200–206

SECTION I

ADMIRALTY CAUSES

151. Definition of Admiralty Causes

Admiralty causes include causes arising out of:—

(i) Claims for possession of a ship, or the earnings of a ship, or the protection of the interests of one or more co-owners as against the others to enable a ship to be employed, the examination of accounts between the co-owners, or the apportionment of the earnings of a ship after such examination;

(ii) Claims or disputes in regard to mortgages of ships or shares in a ship;

(iii) Contracts of bottomry and respondentia;

(iv) Claims under contracts of affreightment, charter parties and bills of lading;

(v) (*a*) Loss of life or personal injury and (*b*) loss of or damage to property arising out of collisions at sea;

(vi) Claims by owners of cargo for damage occurring to cargo;

(vii) Claims for limitation of liability;

(viii) Pilotage;

(ix) Civil salvage;

(x) Claims for necessaries;

(xi) Towage;

(xii) Masters' and seamen's wages and disbursements;

(xiii) General average;

(xiv) Forfeiture of ships to the Crown;

(xv) Marine insurance;

(xvi) Maritime liens.

All such causes shall be initiated in the Outer House by summons on the official printed form, and shall conform to the provisions of Rule 99, except as otherwise provided by any of the Rules of this Chapter.

152. Forms of action

(*a*) Action against the owners or parties interested in a ship or cargo may be brought (i) in rem, or (ii) in personam, or (iii) both in rem and in personam, according as the conclusions appended to the summons are directed (i) to recovery in respect of a lien against the ship or cargo or the proceeds thereof as sold under order of Court, or (ii) to a decree in common form against the defenders, or (iii) to both (i) and (ii).

(*b*) The nature of the cause, as being (i) in rem, or (ii) in personam, or (iii) both in rem and in personam, shall be distinguished on the official printed form of summons, and on the official backing thereof, by inserting immediately below the space for the letter and number of the cause the words " Admiralty Action in rem ", or " Admiralty Action in personam ", or " Admiralty Action in rem and in personam ".

153. Actions in Rem

In proceedings by action in rem directed against a ship or cargo the ship or cargo shall be arrested under an arrestment hereinafter referred to as an arrestment in rem. Such arrestment may be effected upon a warrant to arrest contained in the summons.

(*a*) If the owners of and parties interested in, the ship or cargo, are known to the pursuer they shall be called by name; but if the names of the owners of the ship or cargo are unknown, it shall be competent to call those whose names are unknown as the " owners of, or parties interested in, the ship" (*name her and her port of registry, if known, and call the master if known as representing the owners thereof or of the cargo*). Specimens of the filling in of the official printed form of summons for the purposes of an action in rem are shown in Form 11, and of a suitable conclusion in Form 2.

(*b*) Any person who is an owner of, or a party interested in, the res may enter appearance at any time before final judgment in the cause, notwithstanding that the time for entering appearance has expired, and may enrol a motion in the motion sheet for leave to lodge defences, or to take such steps in the process as he may be advised.

154. Actions in personam

In an action in personam directed against the owners of a ship or cargo, such owners shall (so far as their names are known to the pursuer) be called by name. In the case of a vessel not being a British ship, where the names of the owners of the ship or cargo are unknown to the pursuer, the master of the ship may be called as defender representing the owners of the ship or cargo. In such a case the warrant to arrest to found jurisdiction must be used against the master in his representative capacity. A specimen of the filling in of the official printed form of summons for the purposes of an action in personam directed against the master as representing the owners is shown in Form 12.

155. Actions both in rem and in personam

In an action in rem and in personam, the form of summons will be a suitable combination and adaptation of Forms 11 and 12.

156. Execution of arrestments and intimation and advertisement of actions in rem

(*a*) When the summons as signeted bears warrant for arrestment in rem (as provided for in Rule 103) the arrestment shall be executed according to existing law and practice by a messenger-at-arms affixing a schedule of

arrestment to the mainmast or single mast of the vessel, or, where there is no mast, in some prominent part. At the time of executing any such arrestment as aforesaid, the messenger-at-arms shall deliver to the master of the ship or other person on board and in charge thereof, or of the cargo, as representing the owners and parties interested, a copy of the schedule and execution. If no such person is on board, the execution of arrestment shall so state and the pursuer may then serve the arrestment on the Customs Officer at the port where the ship lies or apply by motion to the Court for a direction. The Court may order such other intimation or advertisement of the dependence of an action in rem as it may deem necessary.

(*b*) If any cargo has been landed or transhipped, or is in course of being landed or transhipped, the arrestment of the cargo (but only in so far as it has not been delivered to the owner thereof, or to his agents) shall be effected by the messenger-at-arms placing the schedule of arrestment in the hands of the custodier for the time being of the cargo, or, when such cargo has been landed on to the quay, or into the shed of any port or harbour authority, by the messenger-at-arms delivering to the harbour-master a schedule of arrestment of the cargo.

(*c*) It shall not be necessary for the messenger-at-arms to serve separate schedules of arrestment to found jurisdiction on the dependence or in rem, but it shall be competent to combine all or any of such arrestments in one schedule of arrestment.

(*d*) Where a res has been arrested under warrant contained in an action in rem, or where the pursuer has used arrestment on the dependence, and the defender or other person showing an interest desires to have such arrestment recalled before the calling of the summons, it shall be competent for him to apply to the Court (by letter addressed to the Deputy Principal Clerk of the General Department) for recall of the arrestment; and the said Clerk shall, so soon thereafter as is practicable, intimate to the parties when and where the application will be disposed of by a Lord Ordinary in chambers, or in vacation or recess by the Vacation Judge. The solicitors of the parties shall (with or without Counsel) attend the Lord Ordinary or Vacation Judge along with the Clerk. The pursuer's solicitor shall produce to the Lord Ordinary (or Vacation Judge as the case may be) the principal summons and the certificate of the execution of the arrestment; and the Lord Ordinary or Vacation Judge may, on cause shown, and on such terms (if any) as may be proper and expedient in the circumstances, recall the arrestment; and the interlocutor recalling the arrestment shall be written on, or securely attached to, the principal summons, and shall be signed by the Lord Ordinary or Vacation Judge.

(*e*) A commission fee paid to a person finding security for release of a ship from arrestment, whether in an action in rem or otherwise in security, may be recovered on taxation in a judicial account to an amount not exceeding one pound per cent. of the amount secured.

157. Induciae on summons

In all summonses in Admiralty causes, the induciae shall be determined in accordance with the provisions of Rule 101.

158. Service on master and decree in personam

In all causes in personam in which the summons is served on the master of the ship as representing the owners or parties interested, it shall be competent to pronounce decree against the master in his representative capacity;

provided that in any cause in personam or in any combined action in rem and in personam it shall be competent to pronounce a decree in personam against an owner or party interested only when such owner or party interested has been called or added as a defender.

159. Order for sale of ship or other arrested property

In an Admiralty action in which a finding is made by the Court that the pursuer has a claim which falls to be satisfied out of the arrested res, it shall be competent for the pursuer to apply to the Court by motion enrolled in the motion sheet, to order the sale of the ship or other arrested property at such upset price as the Court may fix. Where the sale of the ship or other arrested property is ordered by the Court, the entire conduct of the sale (including advertisement) shall be under the direction of the Deputy Principal Clerk. The interlocutor directing the sale, if the res is a ship or a share therein, shall contain a declaration vesting in the Deputy Principal Clerk the right to transfer the ship or share, and the Deputy Principal Clerk shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof. The price received shall be consigned in Court under deduction of all dues payable (up to the date when the Court adjudges the ship or other arrested property to belong to the purchaser) to His Majesty's Customs or to the dock or harbour authority within whose undertaking the said ship or other arrested property is then lying and in respect of which such dock or harbour authority has a statutory power to detain the ship or other arrested property. Upon such consignation being made, the interlocutor adjudging the ship or other arrested property shall declare the same to belong to the purchaser thereof, freed and disburdened of all bonds, mortgages, liens, rights of retention and other incumbrances affecting the same and shall order the said ship or other arrested property to be delivered to the purchaser on presentation of a certified copy of the said interlocutor; and the Court shall order such advertisement and intimation for claims on the consigned fund as it shall think fit. The Court shall authorise the Accountant of Court to pay primo loco the expenses and outlays of the Deputy Principal Clerk, and shall, after such enquiry and hearing as it may consider necessary, deal with all other questions of expenses and rank and prefer the other claimants in their order of preference to the balance of the said fund, or make such other order as may be just.

160. Ship Collisions: Preliminary Acts: Procedure

The provisions of this rule shall apply, subject to Rule 161, to all actions of damages arising out of collisions between vessels at sea.

(*a*) The summons shall be in a form as shown in Forms 11 and 12 or a suitable combination and adaptation thereof, with the appropriate conclusion or conclusions and such warrants to arrest as may be considered necessary appended thereto. The summons shall not have annexed to it any condescendence or note of pleas-in-law.

(*b*) Within seven days after the day on which the summons is called the pursuer shall lodge in the General Department a sealed envelope containing (i) a document to be called the Preliminary Act for the Pursuer in the form shown in Form 13 with the particulars required duly filled in, and (ii) a short condescendence and Note of pleas-in-law.

Intimation of the lodging of the said envelope shall be given to the defenders or their solicitors. Except as provided in (*d*) below the sealed envelope shall only be opened on an order by the Court.

(*c*) The defender shall lodge in the General Department not later than seven days after the day on which the preliminary Act for the pursuer is lodged a sealed envelope containing a Preliminary Act for the defender in the form shown in Form 13 with the particulars required duly filled in.

(*d*) When the Preliminary Act for the defender is lodged the sealed envelopes for the pursuer and the defender shall be opened by the Clerk in the General Department who received the defender's preliminary Act and the contents shall be marked as numbers of process. The solicitors for the parties shall exchange copies of the documents contained in their respective envelopes.

(*e*) Not later that seven days after the day upon which the said envelopes are opened the defender if so advised may lodge defences with a Note of pleas-in-law and any counter claim upon which he proposes to found with the appropriate conclusion or conclusions and with an articulate numbered statement of facts and note of pleas-in-law. If the defender lodges a counter claim the pursuer may lodge answers thereto within seven days.

(*f*) Not later than seven days after the day on which defences are lodged or after the day on which the pursuer lodges answers to a counter claim the pursuer's solicitor shall make up and deliver to the solicitor for the defender six copies of the open record in ordinary form with copies of the preliminary acts for the pursuer and the defender appended thereto. He shall also lodge two copies of the said record in the General Department.

(*g*) No amendment, adjustment or alteration may be made upon a Preliminary Act after it has been lodged except by order of the Court. If it appears to the Court that the statements required by the Preliminary Act are not fully set out the Court may order the party concerned to make the necessary additions thereto. Statements made in a Preliminary Act shall have effect as formal admissions of fact.

(*h*) Save as provided in (*g*) above, parties may adjust the open record. When the record has been closed the case shall thereafter proceed as in an ordinary action.

(*j*) The Court may on cause shewn extend or abridge the time for carrying out any of the foresaid steps of process.

161. Application to dispense with Preliminary Acts

(*a*) Any party may, within seven days, after the day on which the summons is called, apply to the Court by written Note for an order dispensing with procedure by way of Preliminary Acts.

(*b*) The Note shall be intimated to the other party or parties who may, if so advised, lodge answers thereto within such time as the Court may direct.

(*c*) The Court, after hearing the party or parties, may if satisfied that procedure by way of Preliminary Act is not appropriate to the circumstances of the case, order that they may be dispensed with.

(*d*) If the Court orders that Preliminary Acts shall be dispensed with the pursuer shall lodge a condescendence and note of pleas-in-law within such time as the Court shall direct and the case shall thereafter proceed as in an ordinary action.

(*e*) If the Court refuses the said Note the pursuer shall, if he has not already done so, lodge a Preliminary Act and condescendence and Note of pleas-in-law in terms of Rule 160 within such time as the Court shall direct and the case shall thereafter proceed in accordance with the provisions of said Rule.

(*f*) It shall not be competent to reclaim against an interlocutor of the Lord Ordinary dispensing or refusing to dispense with Preliminary Acts.

162. Nautical Assessors

In causes arising out of collisions at sea, where the Court is assisted by a nautical assessor at the proof, it shall not be competent for any of the parties to lead expert evidence of nautical matters.

163. Lodging productions for proofs in ship-collision and salvage causes

Without prejudice to the provisions of Rule 129, the parties shall, in all ship-collision and salvage causes, within four days of an interlocutor allowing proof, or within four days before the taking of evidence on commission, or on or before such other date as the Court, on special cause shown, shall fix, lodge in process (i) the ship's log-books (including scrap log-books) of the ships concerned, (ii) all de recenti written reports in connection with the collision or salvage by the masters or mates of the vessels concerned to their owners, and (iii) any report of any survey of the vessel in respect of which damages or salvage is claimed.

SECTION 2

COMMERCIAL CAUSES

164. The commercial list

(*a*) If, at closing of the record, the parties are agreed that any cause, being a cause arising out of the ordinary transactions of merchants and traders, or (without prejudice to the foregoing generality) relating to the construction of mercantile documents, export or import of merchandise, contracts of affreightment, charter parties, bills of lading, insurance, banking, mercantile agency mercantile usages, or customs of trade, should be put in the list of commercial causes, the Lord Ordinary shall so direct.

(*b*) In any cause arising or relating as aforesaid, where the dispute between the parties depends on the construction of documents, it shall be competent for the pursuer to serve a summons the conclusions whereof shall specify the document or documents the construction of which is in dispute, and shall conclude for the construction thereof contended for by the pursuer; and it shall not be necessary for the pursuer to annex to such summons any condescendence or note of pleas-in-law. If, at any time during the currency of the induciae, the defender shall intimate to the pursuer in writing his consent to the summons being treated as a summons under this paragraph, such written intimation shall be lodged by the pursuer along with the summons when lodged for calling; and the cause shall be put on the list of commercial causes. Within seven days after calling, the parties shall lodge in the General Department (1) a joint minute signed by counsel setting forth concisely in numbered paragraphs the nature of the dispute between the parties, and (2) the original documents (or copies certified as correct by the parties' solicitors) the construction of which is in dispute. The cause shall thereafter be put out for hearing by the Lord Ordinary.

(*c*) If, in any cause in which a summons is served in terms of the immediately preceding paragraph of this Rule, the defender shall not intimate to the pursuer in writing his consent to the summons being treated as a summons under the said paragraph, the pursuer will within seven days after the day on which the summons is called lodge a condescendence and note of pleas-in-law, and the cause shall thereafter proceed as if the summons had been called on the day on which such condescendence and note of pleas-in-law are lodged.

165. Commercial causes of small value

In all causes in the commercial list in which the sum in dispute does not exceed £500 sterling, the fees of one counsel only shall be allowed on taxation between party and party, unless the parties agree that the fees of two counsel on each side shall be allowed or the Court certifies that the cause is a fit and proper case for the employment of two counsel.

166. Summary procedure

In any cause in the commercial list the Court may, at any time after the closing of the record (or, in any cause in which the procedure prescribed in paragraph (*b*) of Rule 164 is followed, after lodging of the joint minute therein referred to), make such order as the Court thinks fit for the speedy determination of the question in dispute between the parties.

167. Customs of trade

(*a*) In any cause in the commercial list, where a custom of trade or any commercial usage is pleaded, the Court may, if no objection is taken by the party against whom the custom or usage is pleaded to the legality or validity of such custom or usage, remit to any person or persons engaged in the particular trade whose custom or usage is invoked to report as to (i) the existence of the custom or usage pleaded and (ii) its scope. The said report shall be conclusive in regard to the existence and scope of the said custom or usage. The report shall be transmitted by the reporter or reporters to the Deputy Principal Clerk, who shall intimate (i) to the parties the receipt by him of the report, and (ii) to the party alleging the custom or usage the fees of the reporter or reporters. On production by the said party of a discharge of the said fees (for which such party shall be liable in the first instance) the report will be lodged in process. In any case in which custom or usage is pleaded, and its existence or scope requires to be established, the Court may, if it thinks fit, allow a proof instead of making a remit.

(*b*) Where objection is taken to the legality or validity of the custom or usage, the party so objecting shall, prior to the cause appearing for hearing, enrol a motion in the motion-sheet for a hearing on such objection, and the Lord Ordinary shall hear counsel on the legality or validity of the alleged custom or usage. If the objection is not sustained, the Lord Ordinary may either repel it or reserve it, and (in either event) may make a remit in terms of the preceding paragraph of this Rule; and, in any case in which disputed facts require to be ascertained for determining the legality of an alleged custom or usage, he may either include the determination of such disputed facts in the remit or allow proof thereof.

PROVISIONS COMMON TO ADMIRALTY AND COMMERCIAL CAUSES

168. Evidence and admissions

In any admiralty or commercial cause the Court may accept as evidence affidavits. Where, in the opinion of the Court, any affidavit produced is insufficient to enable the question at issue to be disposed of, the party lodging the same may be called upon to lodge a supplementary affidavit, or (where the circumstances reasonably permit) to prove the relevant facts by the ordinary rules of evidence.

169. Applicability of other Rules to admiralty and commercial causes

So far as not inconsistent with the rules in this section the rules dealing with ordinary actions shall apply mutatis mutandis to admiralty and commercial causes.

SECTION 3

CONSISTORIAL CAUSES

170. Actions of aliment between husband and wife

(*a*) Actions of aliment only between husband and wife shall, notwithstanding the terms of sections 10, 15 and 19 of the Conjugal Rights (Scotland) Amendment Act, 1861, be served and proceed as ordinary actions.

(*b*) All other consistorial actions within the meaning of the said Act shall be subject to the following special rules, in addition to the statutory provisions thereanent so far as not altered or modified thereby. So far as applicable to consistorial causes, and in so far as not inconsistent with the rules in this section of this Chapter, the rules in the other Chapters of these Rules shall apply mutatis mutandis to consistorial causes.

171. Official form of summons

(*a*) Where a co-defender is convened under paragraph (*b*) of Rule 172 of this Chapter, the official printed form of summons (shown in Form 1) shall be filled up so as to show which party is defender and which party is co-defender. It shall not be competent in any other case to convene a party as co-defender.

(*b*) Where it is desired to intimate the action to any person with whom the defender is alleged to have committed adultery (other than a co-defender), the said official printed form shall be filled up so as to contain a warrant for such intimation in the following terms as nearly as may be:—" Warrant to intimate to (*name and address*) as a person with whom the defender is alleged to have committed adultery "; provided that such warrant may be executed contemporaneously with, or after, the citation of the defender, by any messenger at arms, or by the pursuer's solicitor (being a solicitor entitled to practise in the Court of Session), by serving personally or by posting a registered letter addressed to such person and containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 14.

(*c*) Where it is desired to intimate the action to the children of the marriage who are above the age of puberty, or to any next of kin of the defender who are above the age of puberty, the official printed form of summons shall be filled up so as to contain a warrant for such intimation in the following terms as nearly as may be:—" Warrant to intimate to (*names and addresses*) as children of the marriage and (*name and address*) brother (*or as the case may be*) and one of the next of kin of defender "; provided that such warrant may be executed contemporaneously with, or after, the edictal citation of the defender by any messenger at arms or by the pursuer's solicitor (being a solicitor entitled to practise in the Court of Session), by serving personally or by posting of a registered letter addressed to each of such persons, containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 15.

(*d*) Execution of the warrants for intimations under paragraphs (*b*) and (*c*) of this rule shall be certified by attaching to the summons copies of the said intimations with certificates of execution thereof.

(*e*) Notwithstanding anything contained in section 40 of the Court of Session Act, 1830, the summons shall pass the signet. The signature of the Principal Clerk of Session or of any solicitor entitled to practise in the Court

of Session shall be a warrant for the summons passing the signet. The summons when signeted shall be a warrant for citing any defender or co-defender named in it.

172. Conclusions of summons

(*a*) The conclusions of the summons shall be such as are exemplified in Form 2.

(*b*) In any action of divorce or separation on the ground of adultery, it shall not be competent to call as a co-defender or to name in the conclusions of the summons any person with whom the defender is alleged to have committed adultery, except where the summons contains a conclusion for damages, or expenses, or both, against such person in respect of the adultery; in which case, such person shall be convened as a co-defender in the action, and the conclusion founded on adultery shall be to the effect that such adultery was committed with the co-defender.

(*c*) Every conclusion for custody, maintenance or education of a pupil child of the marriage shall be accompanied by a request for a direction reserving leave to apply to the Court thereanent until the date when the child last to attain the age of puberty would in ordinary course attain that age. 172A 19 9/118

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173. Induciae

(1) The induciae for the citation of all defenders and co-defenders shall be as follows, viz.:—

(*a*) Where any defender or co-defender is resident in a country outside Europe, six weeks, if the citation is personal; twelve weeks if the citation is postal.

(*b*) Where resident beyond the mainland of Scotland but within Europe, fourteen days.

(*c*) Where resident on the mainland of Scotland seven days or at an address unknown to the pursuer, fourteen days.

(*d*) Where the citation is postal, the induciae shall be reckoned from twenty-four hours after the date of posting.

(*e*) Where, under heads (*a*), (*b*) and (*c*) of this rule, different periods are applicable to the defender and co-defender called in any action, the induciae for all shall be the longest period applicable to any of them.

(2) Any intimation of an action made to any person with whom the defender is alleged to have committed adultery, or to any child of the marriage or next of kin of the defender in virtue of paragraphs (*b*) and (*c*) of Rule 171 shall be made upon the same induciae as would have been required had such person, child, or next of kin been called as a defender in the action.

174. Citation of defenders and co-defenders

(*a*) Defenders resident within Scotland shall be cited as in ordinary actions. In all cases where the defender's address is unknown the citation shall be edictal. Where the citation is edictal, it shall not be necessary to serve the summons on the children of the marriage or any next of kin of the defender as required by section 10 of the Conjugal Rights (Scotland) Amendment Act, 1861, but the summons shall be intimated to such children, if any, as are above the age of puberty, and also to one or more of the next

of kin of the defender, where the said children or next of kin are known, wherever such children or next of kin may be resident, and such children and next of kin may appear and state defences to the action.

(*b*) Notwithstanding the provisions of section 10 of the said Act, it shall not be necessary to serve the summons upon any defender personally where the address of such defender is known; and where any defender is resident at a known address furth of Scotland, it shall not be competent to execute the citation edictally, but the same may be lawfully executed in either of the following ways, vizt.:—(i) personally, according to the existing practice under said section 10 as amended by section 100 of the Court of Session Act, 1868, or (ii) postally, by any messenger-at-arms or solicitor entitled to practise in the Court of Session, by posting to the address of the defender a registered letter containing a copy of the summons with citation (in the form shown in Form 3; and such posting shall constitute a legal and valid citation, unless the defender shall prove that such letter was not tendered or left at his address. On the face of the registered letter, besides the address, there shall be written or printed a notice in the same or similar terms to that which is required in the case of ordinary service by registered letter, by sub-section (4) of section 4 of the Citation Amendment (Scotland) Act, 1882; and the execution to be returned by the messenger at arms or solicitor shall be accompanied by the Post Office receipt for the registered letter, and may be in the terms shown in Form 3.

(*c*) Every co-defender shall be cited by one or other of the methods of citation in use in ordinary actions.

175. Sisting of alleged paramour, child of the marriage or next of kin

(*a*) The person who is alleged to have committed the adultery founded on by way of action or of defence may apply to the Court to be sisted as a party. Such application shall be made by a minute craving leave to be sisted and setting forth articulate numbered answers to the averment of adultery made against him or her in the condescendence annexed to the summons. Thereafter such person may be sisted as a party minuter in the action.

(*b*) Any child of the marriage or next of kin of the defender may apply to the Court to be sisted as a party. Such application shall be made by a minute craving leave to be sisted, and setting forth answers to the condescendence annexed to the summons. Where the action is undefended such child or next of kin so applying shall be sisted as a party defender in the action.

(*c*) It shall be competent for the Court at any stage to appoint intimation of the action to be made to any person with whom a party to the action is alleged to have committed adultery founded on by way of action or of defence.

176. Procedure before Proof allowed

(*a*) The Lord Ordinary may in any undefended action appoint intimation of the action to be made to such of the children of the marriage (if any) as are above the age of puberty, and to one or more of the next of kin of the defender who are above the age of puberty (wherever such children or next of kin may be resident); and such children and next of kin, whether the action has been intimated to them or not, may appear and state defences to the action.

(*b*) Where, in any action of divorce on the ground of adultery, the pursuer avers that the defender committed adultery with a person named in the condescendence annexed to the summons but not convened as a co-defender, the Lord Ordinary shall not, except upon cause shown, allow a proof before answer until he is satisfied that due intimation of the action has been made to such person. Where the Lord Ordinary is informed that such person's address is unknown and that he or she cannot be found, he may dispense with intimation of the action to him or her, provided that the interlocutor allowing proof before answer shall bear to be pronounced in respect of such information; and if at the proof the name and address of such person or of any person with whom the defender is alleged to have committed adultery shall appear, the Lord Ordinary shall not grant decree on the ground of adultery committed by the defender with him or her unless and until the action shall have been intimated to him or her at such address.

177. Undefended actions, where no appearance entered

(*a*) Subject as hereinbefore provided, where no appearance shall have been entered, the pursuer may at once enrol a motion in the motion sheet to allow a proof before answer; and such motion shall be brought, not later than the second day after enrolment, by the clerk in charge of the process before a Lord Ordinary in chambers (if in session) or before the Vacation Judge (if in vacation or recess) who may either grant the motion de plano or, if in his discretion he thinks proper, continue the motion to be heard quam primum in Court by counsel in the motion roll; provided that the date of the diet shall not be earlier than the day after the last day for lodging defences if appearance had been entered.

(*b*) It shall be in the discretion of the Court, upon such conditions as shall seem proper—

(i) to allow a defender to appear and be heard at the diet of proof although he may not have lodged defences, provided that such defender shall not be allowed to lead evidence at such diet unless the pursuer consents;

(ii) to allow a defender to reclaim within the reclaiming days, although not present or represented at the proof; and

(iii) to allow a defender to lodge defences and to lead evidence in support thereof at any time before judgment shall have been given by the Court, provided that the pursuer shall in that case be entitled to lead further evidence notwithstanding that he may have closed his proof, and that any witnesses already examined may be recalled for further examination.

(*c*) In every undefended action, where in the final decree the Court makes provision with respect to the custody, maintenance or education of any pupil child of the marriage, there shall be inserted in the interlocutor a direction granting leave to apply for variation of such provision.

(*d*) It shall not be competent for the defender to bring a suspension of any decree of divorce pronounced in an undefended action.

178. Defended actions

In every defended action, where in the final decree the Court makes provision with respect to the custody, maintenance or education of any pupil child of the marriage, the Court shall insert in the interlocutor a direction reserving leave to apply for variation of such provision until the date mentioned in the conclusion, or until some other date as the Court shall determine.

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179. Effect of direction reserving leave to apply for variation

(*a*) A direction reserving leave to apply to the Court anent the custody, maintenance or education of any pupil child of the marriage shall not prevent the interlocutor in which it is inserted from being a final decree for the purposes of reclaiming.

(*b*) Where a final decree containing such reservation is not reclaimed against, or where (a final decree being reclaimed against) any reservation shall ultimately be affirmed or shall ultimately be made, the process shall continue to be in dependence until the date stated in the reservation, to the effect that either party may, without the necessity of wakening the cause, apply to the Court anent the custody, maintenance or education of any child continuing to be in pupilarity.

(*c*) No process continuing to be in dependence by virtue of the immediately preceding paragraph shall be transmissible to the Department of the Keeper of the Registers and Records of Scotland until the date specified in the reservation; and every such process shall, until that date, remain in the office of the General Department.

(*d*) The final decree in every process continuing to be in dependence as aforesaid shall be capable only of interim extract.

180. Custody and aliment claimed by defender

(*a*) In any action for separation *a mensa et thoro* or for divorce where the summons does not include conclusions with respect to the custody and aliment of any children of the marriage to which such action relates it shall be competent at any time before judgment shall have been given by the Court for the defender, whether he has lodged defences or not, to claim the custody of and aliment for such children.

(*b*) Where a defender claims the custody of and aliment for such children he shall lodge a minute which shall contain conclusions in the form exemplified in Form 2 in the Appendix, an articulate numbered statement of facts setting forth the facts on which the claim is founded, and a note of any pleas-in-law in support thereof. Such statement of facts may incorporate by reference any matter contained in the defences to the pursuer's summons. On such minute being lodged the pursuer may lodge answers thereto within such period as the Court may allow.

(*c*) The said claim may be heard and tried along with or after the claim in the pursuer's summons as the Court may consider just and expedient in the circumstances; and if evidence is led with regard to either claim separately from the other, such evidence shall, so far as competent and relevant, be evidence with regard to the other claim.

(*d*) In the final decree in any such action the Court shall insert in the interlocutor a direction reserving leave to apply for variation of any provisions made therein as to the custody, maintenance or education of any such children until the date mentioned in the conclusion of the minute or until some other date as the Court shall determine.

181. Decrees of divorce

(*a*) A record shall be kept in the General Department of every process in which a decree of divorce shall have been pronounced, recording (i) the names and designations of the parties; (ii) the date of the decree of divorce; (iii) the date when such decree was reclaimed against or appealed from, or the fact that the reclaiming days or the time within which appeal might be

taken expired without the decree being reclaimed against or appealed from; and (iv), if the decree is reclaimed against or appealed from, the decision ultimately pronounced. A record shall also be kept in the Petition Department of every petition in which a decree of dissolution of marriage has been granted under Section 5 of the Divorce (Scotland) Act, 1938, recording the same particulars as are provided for in this Rule with regard to decrees of divorce in the General Department.

(*b*) Yearly indices of said record shall be made showing in alphabetical order the names of the parties to the processes recorded.

(*c*) The Principal Clerk of Session shall, on a written letter of request, which may be in the terms of Form 16 or Form 47, as the case may be, and on payment of a fee of ~~five shillings~~ (which shall be paid by stamp), issue to the person or persons making the request a certificate (in the form shown in Form 17 or Form 48 as the case may be), certifying that any decree of divorce or decree of dissolution of marriage so recorded and allowed to become final was pronounced, and such certificate shall be prima facie evidence that the decree so certified was pronounced on the date stated in the certificate. No such certificate shall be issued until at least twenty-one days after the date of the decree.

181A. Divorce (Scotland) Act, 1938

(*a*) *Service of Summons on Insane Defender.*—A summons concluding for divorce on the ground of incurable insanity under section 1 (*b*) of the Act shall be served by transmitting a copy of the summons by registered letter addressed to the medical officer in charge of the asylum, institution or home in which the defender is confined, along with a request that he deliver it personally to the defender and explain to him or her the contents or purport thereof, unless the person to whom the copy summons has been transmitted is satisfied and certifies on soul and conscience that such delivery or explanation would be dangerous to the health or mental condition of the defender. The request shall be as nearly as possible in the form shown in Form 43. There shall also be sent to the person to whom a copy summons is transmitted a form of certificate stating whether or not it has been delivered to the defender or whether the contents or purport have been explained to him or her, and, if not, giving the particular reasons. The certificate shall be as nearly as possible in the form shown in Form 44. The certificate by the said medical officer shall be lodged in process by the pursuer's solicitor when he lodges the summons for calling. Where the said certificate bears that no delivery of the summons was made to the defender, it shall be competent for the Court at any stage in the proceedings before decree to order such further medical enquiry and such further service as it may think fit or to dispense with such service.

(*b*) *Intimation to Children and Next-of-Kin.*—In every action on the ground of incurable insanity under section 1 (*b*) of the Act, the summons shall be intimated to such children of the marriage, if any, as are above the age of puberty, and also to one or more of the next-of-kin of the defender who are above the age of puberty, where the said children or next-of-kin are known and wherever they may be resident. The children or next-of-kin may appear and state defences to the action. In such action the printed form of summons shall be filled up so as to contain a warrant for intimation to the children of the marriage who are above the age of puberty and to one or more of the next-of-kin of the defender who are above the age of puberty, as nearly as may be in the following terms:—"Warrant to intimate to (*names and addresses*) as children of the marriage and (*name and address*)

brother (*or as the case may be*) and one of the next-of-kin of defender "; and such warrant shall be executed contemporaneously with the service of the summons as provided by the immediately preceding Rule by any messenger at arms or by the pursuer's solicitor (being a solicitor entitled to practise in the Court of Session) by posting a registered letter addressed to each of such persons, containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 45. Any intimation of an action made to any child or next-of-kin of the defender under this Rule shall be made upon the same induciae as would have been required had such child or next-of-kin been called as a defender in the action.

(*c*) *Curator ad Litem.*—In every action of divorce on the ground of insanity, on the day following the expiry of the time for lodging defences as provided by Rule 109 (*a*), the process shall be laid before a Lord Ordinary who shall, without motion enrolled, appoint a curator ad litem to the defender and at the same time make an order calling upon the ~~General Board of Control~~ for Scotland to furnish a report in terms of section 3 of the Act; and it shall be the duty of the pursuer's solicitor not later than the following day to furnish the curator ad litem with the principal summons containing the execution of service and any defences that may have been lodged. The principal summons may be borrowed from process for this purpose. The said curator ad litem may within fourteen days after the ~~Board of Control~~ have furnished their report, lodge either defences to the action, or a minute adopting defences already lodged, or a minute stating that he does not intend to lodge defences. The pursuer's solicitor may at any time thereafter, if no defences have been lodged, enrol a motion in the motion roll to allow a proof before answer in accordance with Rule 177, and if the action is defended, the pursuer's solicitor shall proceed as provided for by Rules 115 and 116. Notwithstanding that he had not lodged defences within the time above stated, the curator ad litem may appear at any stage of the case to protect the interests of the defender.

(*d*) *Sodomy.*—Where, in any action of divorce on the ground of sodomy, the pursuer avers that the defender committed sodomy with a person named in the condescendence annexed to the summons, the Lord Ordinary shall not, except upon cause shown, allow a proof before answer until he is satisfied that due intimation of the action has been made to such person. Where the Lord Ordinary is informed that such person's address is unknown and that he cannot be found, he may dispense with intimation of the action to him, provided that the interlocutor allowing proof before answer shall narrate that the Lord Ordinary has been so informed; and the Lord Ordinary shall have power in his discretion to order the deletion from the pleadings of the name of the person with whom the defender is alleged to have committed sodomy, and if at the proof the name and address of such person or of any person with whom the defender is alleged to have committed sodomy shall appear, the Lord Ordinary shall not grant decree of divorce on the ground of sodomy committed by the defender with him unless and until the action shall have been intimated to him at such address. The official printed form of summons shall be filled up so as to contain a warrant for such intimation in the following terms as nearly as may be:—" Warrant to intimate to (*name and address*) as a person with whom the defender is alleged to have committed sodomy "; provided that such warrant shall be executed contemporaneously with, or after, the citation of the defender, by any messenger at arms, or by the pursuer's solicitor (being a solicitor entitled to practise in the Court of Session), by posting a registered letter addressed to such person and containing a copy of the summons with intimation subjoined in the terms as nearly as may be of Form 46.

(*e*) *Presumption of Death, etc.*—In every petition for dissolution of marriage under section 5 of the Act, the Court shall order such advertisement as it thinks fit.

(*f*) *Service on Children and Next-of-kin.*—Every petition for dissolution of marriage under section 5 of the Act shall be served upon such children of the marriage, if any, as are above the age of puberty, and also upon one or more of the next-of-kin of the defender who are above the age of puberty, where the said children or next-of-kin are known and wherever they may be resident.

(*g*) Execution of service under Rule 181A (*a*) shall be certified by annexing to the summons the certificate by the said medical officer, and intimations made under Rule 181A (*b*) and 181A (*d*) shall be certified by attaching to the summons, which may be borrowed for this purpose, copies of said intimations with certificates of execution thereof.

SECTION 4

REDUCTIONS

182. Defences

It shall not be competent for a defender who objects on any ground to satisfy the production to lodge only preliminary defences; but if he intends to defend the action, he shall lodge his defences on the merits along with his preliminary defences.

183. Where no objection to satisfying production

Where the defender does not state any objection against satisfying production, he shall, along with his defences, produce the writs or documents sought to be reduced so far as the same are in his possession or within his control.

184. Where production objected to

If in his defences (so far as preliminary) the defender objects to production on the ground that the action is incompetent, or irrelevant, or otherwise, and in the event of his defences (so far as preliminary) being repelled by the Court, the defender shall satisfy production by lodging in process the writs or documents sought to be reduced, so far as in his possession or within his control, within seven days after the day on which the interlocutor repelling his defences (so far as preliminary) was pronounced; and, if he shall fail so to do, the pursuer may enrol the cause for decree by default; provided that, with consent of parties, the Court may hold production satisfied by copies of the writs or documents sought to be reduced.

185. Challenge of deed or writing ope exceptionis

Where, in any cause, a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception without the necessity of bringing a reduction thereof, unless the Court shall consider that the matter would be more conveniently tried in a separate action of reduction.

SECTION 5

MULTIPLEPOINDINGS

186. Service on nominal raiser

When a multiplepoinding is raised in the name of a holder of a fund by one of the claimants, it shall be served on him in the same manner, and on the same induciae, as if he were one of the defenders; and an execution of such service shall be returned along with the executions of citation.

187. Condescendence of the fund

(*a*) If the pursuer (and real raiser) is the person possessed of the fund in medio, he shall condescend on the said fund, either in the condescendence annexed to the summons, or in a separate paper lodged along with the summons at calling.

(*b*) If the nominal raiser is the person possessed of the fund in medio, then, not later than the seventh day after the day on which the summons is called, he shall either lodge a precise and articulate condescendence of the funds in his hands (stating any claim or lien which he may profess to have upon those funds), or, if he objects to the action on the ground of incompetency or otherwise, he may lodge defences to the action not later than said seventh day.

188. Defences: record on summons and defences

(*a*) If any of the parties to the action (other than the pursuer who is also real raiser) objects to the action on the ground of incompetency or otherwise, he or they may lodge defences not later than the seventh day after the day on which the summons is called.

(*b*) If defences are lodged either in terms of paragraph (*b*) of Rule 187, or in terms of paragraph (*a*) of this Rule, a record shall be made up and closed, and the cause shall proceed for the purpose of determining the objections stated in the defences, all as in the case of an ordinary action.

189. Advertisement for absent parties

If no defences are lodged, or if (even when defences are lodged) it is for any reason considered advisable to intimate the dependence of the action by advertisment, the real raiser may enrol a motion in the motion-sheet (not earlier in any case than the day after the last day for lodging defences) for an order for the advertisement of the dependence of the action in such newspapers, and for such number of insertions, as he may desire, in order that any party not otherwise cited may enter appearance on or before a date named; provided always that it shall be competent for the Court at any time to order such advertisement, or to order intimation of the dependence of the action to any person not called as a defender to the action, ex proprio motu; and a copy of the advertisement or advertisements (if ordered) together with a certificate (signed by the solicitor of the party who obtained the order or on whom the order was made) that the advertisements have been duly made, and a return of the execution of any intimation so ordered, shall be lodged in process by such solicitor.

190. Once and single payment: order and advertisement for claims

When no advertisement for absent parties is moved for or ordered in terms of the immediately preceding Rule, or (if considered expedient) at the same time as such advertisement is ordered, the real raiser may (not earlier than the day after the last day for lodging defences) enrol a motion in the motion-sheet for a finding that he is liable only in once and single payment, and (if

desired) that the condescendence annexed to the summons shall be held as a condescendence of the fund in medio, and for an order for claims by a specified date, and for advertisement of such order; provided always that it shall be competent for the Court at any time to make an order, or renewed order, for claims, and to appoint advertisement thereof, and to order intimation thereof to any person not called as a defender to the action, ex proprio motu; and a copy of the advertisement or advertisements, together with the solicitor's certificate, and a return of the execution of any intimation so ordered, shall be lodged in process as required by the concluding provision of the immediately preceding paragraph of this Rule.

191. Form of claims

The claimants shall state their respective claims in the form of condescendences, claims, and pleas-in-law, and shall produce per inventory therewith their grounds of debt and other writings for instructing their claims.

192. Claims not timeously lodged

A claimant who fails to lodge his claim on or before the date specified in the order for claims may enrol a motion in the motion-sheet to have his claim received at a later date; and the Court may grant such motion, and allow the claim to be received on such terms as to expenses as to the Court shall seem proper.

193. Record on condescendence of the fund and objections thereto

(*a*) If a condescendence of the fund in medio shall have been lodged in terms of paragraph (*a*) or paragraph (*b*) of Rule 187, or if such a condescendence shall have been lodged at any time before the expiry of the period fixed for lodging claims, and if any of the parties desires to object to such condescendence, it shall be competent for him, or them, not earlier than the day after the expiry of the period for lodging claims, to enrol a motion in the motion-sheet for an order appointing objections to be lodged by a certain date.

(*b*) If no condescendence of the fund in medio shall have been lodged before the expiry of the period for lodging claims, it shall be competent for any of the parties to the cause to enrol a motion in the motion-sheet for an order on the party or claimant who is possessed of the funds to lodge such a condescendence, and appointing any objections thereto to be lodged by a certain date.

(*c*) A record may be made up on such condescendence and objections, and the cause shall proceed for the purpose of determining such objections as in the case of an ordinary action.

(*d*) Unless the Court in any particular case finds it (in its discretion) impossible or inexpedient, any objections to the condescendence of the fund in medio shall be determined before discussing parties' claims.

194. Where no competition: ranking for aught yet seen

If no objections shall have been lodged to the condescendence of the fund in medio, or (if objections shall have been lodged) after the condescendence shall have been approved by the Court, and if it shall appear that there is no competition, the party or parties who have lodged claims may enrol a motion in the motion sheet to be ranked for aught yet seen in terms of their claims, and (in the event of the fund in medio not having been consigned) for decree for payment out of the fund in medio of the sums in respect of which they have been respectively ranked, or for warrant to the bank to pay to them the sums for which they have been so ranked, and for warrant to the

Accountant of Court to exhibit and deliver the consignation receipt to the bank in order that said payments may be made, either on an extract or on a certified copy of the interlocutor, as may be desired.

195. Reclaiming by belated claimant against a ranking for aught yet seen

It shall be competent for a claimant who has failed to lodge a claim before such ranking for aught yet seen, to reclaim against the interlocutor making such ranking at any time while the action is still in dependence by enrolling in the motion sheet a motion for review; and, on consideration of such motion, the Division before which it is brought may recall the interlocutor, and remit the cause to the Outer House to receive the claim on such terms as to expenses as may be just and proper.

196. Where there is competition: record on condescendence and claims

Where there is competition, a record shall be made up on the condescendence and claims as in an ordinary action, any of the claimants being allowed, at adjustment, to state at the close of his condescendence his objections to any other claim or claims, in the form of answers to a condescendence with a note of pleas-in-law; and the cause shall proceed as in the case of an ordinary action.

SECTION 6

PROVING OF THE TENOR

197. Parties

In any action of proving of the tenor, all parties interested in the deed shall be called as defenders and, if the pursuer alone has an interest, it shall not be necessary to call the lieges as defenders.

198. Lodging of adminicles

All adminicles of the tenor of the deed to be proved, such as drafts, copies, letters, bills, and the like, so far as in the possession of the pursuer or within his control, shall be lodged along with the summons at calling.

199. Procedure

The cause shall proceed in all respects as in the case of an ordinary action; provided that, where no appearance has been entered or no defences lodged, the Lord Ordinary shall appoint a proof to be led, and dispose of the cause as accords.

SECTION 7

COGNITION OF THE INSANE

200. Presentation and lodging of brieve

When a brieve under the provisions of section 101 of the Court of Session (Scotland) Act, 1868, has been obtained, it shall be presented to the Lord President by lodging the same in the General Department, together with a process consisting of (i) certified copy application for the brieve, (ii) the principal brieve, (iii) interlocutor sheet, (iv) motion sheet, (v) inventory and duplicate inventory of process, together with (vi) any productions (per inventory) which the person presenting the brieve may found on. The court clerk of the First Division, or any other court clerk appointed by the Lord President to act in his place, shall be clerk of the process.

201. Service and advertisement

On presentation of the brieve, the Lord President shall issue a deliverance appointing a copy (1) of the application for the brieve, (2) of the brieve, and (3) of the said deliverance, to be served upon the person sought to be

cognosced, and to be intimated in the minute book, and to be advertised (at least twice) in a newspaper or newspapers published or circulating in the county where the person sought to be cognosced resides, or, if the person by absent from his usual residence, in the county where he had his last known usual residence; and further appointing the person claiming the office of curator to intimate to the person sought to be cognosced and to any others concerned his claim to the said office, within seven days of the date of said deliverance; and allowing the person sought to be cognosced, or those acting on his or her behalf and all others concerned, if so advised, to lodge answers to the said claim, and objections to the issue of a precept for the trial of the brieve, in the General Department within fourteen days after such service, intimation and advertisement as aforesaid.

202. Curator's claim and answers: precept for trial; advertisement of trial

The claim of the person seeking to be curator, and the answers thereto, shall be in the form of a condescendence and answers thereto, and shall state all the facts necessary to be disclosed in order to prevent surprise at the trial; and the Lord President shall appoint parties to be heard upon the claim and answers (if any); and thereafter, if no valid objection be stated to the brieve, or to the claim of the party seeking to be curator, or to the regularity of the procedure, and if the circumstances so require, the Lord President shall issue a precept directed to messengers-at-arms (or to sheriff officers in any county in which messengers-at-arms are not conveniently available) commanding them to summon, warn and charge the person sought to be cognosced to compear at a time (not in any case earlier than fourteen days after service, intimation and advertisement foresaid), and at a place specified, to hear and see the matter of the said brieve duly cognosced and determined by jury before one of the judges of the Court appointed by the Lord President. The Lord President shall at the same time order the person suing the brieve to publish the said precept once in the *Edinburgh Gazette*, and by advertisement once in a newspaper or newspapers published or circulating in the county where the person sought to be cognosced resides, or, if absent from his usual residence, where he had his last known usual residence; and to lodge in process, not later than ten days before the trial, the execution of service of said precept and a certificate of the advertisements having been made.

203. Trial by special jury

(*a*) The precept issued by the Lord President appointing the trial of the brieve, or a certified copy thereof, shall be sufficient warrant and authority to the sheriff of the county within which the trial is appointed to take place to summon a special jury of twenty in common form, which jury, having been duly summoned to attend at any convenient place, may be then balloted in order to select twelve of their number to proceed to trial of the brieve at the place appointed by the precept fixing the trial; and the person sought to be cognosced, or those acting on his or her behalf, shall be given notice to attend at the said balloting; and the calling and balloting of the special jury, whether before or at the trial, shall be conducted according to the ordinary rules in the trial of civil causes in the Court of Session, except that no challenge of any juror shall be competent, except on special cause assigned, which must be intimated to the clerk of the process before the jurors are summoned for balloting; for which purpose the sheriff who is to summon the jurors shall supply to the said clerk a list of the jurors to be

summoned, for inspection by the parties to the proceedings so as to enable them to state any ground of challenge they may have: provided always that, in the event of any of the twelve jurors balloted to sit at the trial being for any good and sufficient reason unable to attend, the judge who is to preside at the trial shall fill the place of such juror by calling on the sheriff to summon of new any of the other jurors originally summoned. The twelve jurors empanelled to try the brieve shall return their verdict, either unanimously, or by such majority, and under such conditions, as are provided in the case of verdicts returned by juries in the trial of civil causes in the Court of Session. The Lord President shall give such directions as may be necessary for securing that the person sought to be cognosced shall be in attendance at the trial, or shall otherwise be seen and examined by, or in presence of, the jury or some of them.

(*b*) The judge to whom the brieve may be remitted shall proceed to the trial of the brieve at the time and place appointed, unless the said judge shall postpone the same on cause shown, which it shall be competent for him to do, on such conditions regarding expenses as may seem to him just.

(*c*) When the jury return their verdict the clerk shall receive it in common form, engross it on the interlocutor sheet, read it over, and subscribe it in the presence of the jury, who shall thereafter be discharged. Thereafter the clerk shall make out and subscribe a formal writing embodying the verdict and answering the several heads of the brieve, and also setting forth whether the claim (if any) of the party suing the brieve is sustained or dismissed; which writing shall, as hereinafter provided, be either retoured or entered in the minute book, according as the verdict shall be for or against cognition.

204. Exceptions and motions for new trial

In case of any exception to the presiding judge's directions to the jury, or of a motion for new trial, the procedure shall be the same as in a jury trial in the Court of Session.

205. Retour of cognition

If no notice of motion for a new trial is given within the time prescribed by the Rules with regard to ordinary civil causes, the party suing the brieve, if the verdict has been returned in his favour, shall apply to the judge who tried the cause, by motion enrolled in the motion sheet, for authority to the clerk to the proceedings to transmit the retour prepared in terms of paragraph (*c*) of Rule 203; and the said judge shall authorise the clerk accordingly, and shall himself authenticate the retour by his subscription, as being the retour applicable to the said brieve. And in like manner, after any motion for a new trial has been refused, the same procedure shall be adopted by the party suing the brieve, if the verdict has been returned in his favour. And in the like events, should the verdict be against cognition, the party opposing the brieve may apply to the said judge by motion enrolled in the motion sheet for an order that the formal writing prepared as aforesaid be entered in the minute book.

206. Expenses

It shall be competent to either party to move the judge who tried the cause to find him entitled to the expenses of the proceedings and trial, or any part thereof: provided that the said judge may before deciding the question of such expenses report verbally to the First Division of the Court.

CHAPTER IV

PETITIONS

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SECTION 1

PETITIONS

Petitions other than for Suspension, Interdict, and Liberation

207. Outer House petitions

(*a*) Save as hereinafter provided, all petitions initiated in the Court of Session and not invoking the nobile officium, including (notwithstanding the generality of sub-head (*g*) of sub-section (3) of section 6 of the Administration of Justice (Scotland) Act, 1933) the following:—

(i) Petitions for the appointment of judicial factors, factors loco tutoris or loco absentis, factors pending litigation, or curators bonis to a minor or incapax;

(ii) Petitions (whether at common law or under statute) for the appointment of factors on the estates of partnerships or joint adventures;

(iii) Petitions (whether at common law or under statute) relating to the administration of trusts, or to the office of trustee, in trusts not being charitable trusts or educational endowments;

(iv) Petitions for the appointment or removal of trustees in trusts not being charitable trusts;

(v) Petitions under the Companies Acts in a voluntary winding up or for winding up by the Court or for winding up subject to the supervision of the Court;

(vi) Petitions under the Entail Acts;

(vii) Petitions under the Bankruptcy (Scotland) Act, 1913;

(viii) Petitions under the Conveyancing (Scotland) Act, 1874;

(ix) Petitions under the Presumption of Life Limitation Acts;

(x) Petitions under the Registration of Business Names Act, 1916;

(xi) Petitions under the Lands Clauses Consolidation (Scotland) Act, 1845;

(xii) Petitions for summary trial under section 10 of the Administration of Justice (Scotland) Act, 1933;

(xiii) Petitions for appointment of curators under section 12 of the Administration of Justice (Scotland) Act, 1933;

(xiv) Petitions under the Judgments Extension Act, 1868, section 9 of the Administration of Justice Act, 1920, and the Foreign Judgments (Reciprocal Enforcement) Act, 1933;

(xv) Petitions for recall of arrestments and inhibitions which have been granted on a Bill or a Bill for Letters;

(xvi) Petitions for Suspension, Suspension and Interdict, and Suspension and Liberation;

(xvii) Petitions under the Patents and Designs Acts, 1907 to 1932;

(xviii) Petitions under section 5 of the Divorce (Scotland) Act, 1938, and

(xix) Any other petitions which, according to former practice, were presented in the Bill Chamber, or to the Junior Lord Ordinary, or to a Lord Ordinary.

shall be presented to the Outer House, and shall be lodged in the Petition Department.

(*b*) All bills, minutes and applications for fiats previously presented to the Clerk of the Bills in the Bill Chamber shall be presented to the Outer House and lodged in the Petition Department and disposed of by the Deputy Principal Clerk or an assistant authorised by him.

208. Inner House petitions

Save as provided in the immediately foregoing rule, all petitions initiated in the Court of Session and falling within any of the classes following:—

(i) Petitions and Complaints;

(ii) Petitions under section 91 of the Court of Session Act, 1868;

(iii) Petitions in respect of failure to perform any public or official duty, which would according to the law and practice existing immediately prior to the commencement of the Administration of Justice (Scotland) Act, 1933, be presented to the Inner House;

(iv) Petitions under the Acts relating to solicitors or notaries public (other than petitions for admission as a solicitor);

(v) Petitions incidental to a cause already before the Inner House;

(vi) Petitions under the Evidence by Commission Act, 1843, or under the Foreign Tribunals Evidence Act, 1856, or under the Evidence by Commission Act, 1859, or under the British Law Ascertainment Act, 1859, or under any similar enactments;

(vii) Petitions to the Court invoking the nobile officium;

(viii) Petitions under the Adoption of Children (Scotland) Act, 1930;

(ix) Petitions for the custody of children;

(x) Petitions by trustees for directions;

(xi) Petitions under the Companies Acts other than Petitions in a voluntary winding up or for winding up by the Court or for winding up subject to the supervision of the Court.

shall be presented to the Inner House, marked "Inner House" on the backing thereof and shall be lodged in the Petition Department; provided that petitions incidental to a cause already before the Inner House shall be lodged either in the General Department, or in the Petition Department, according as the cause itself belongs to the one or the other of said departments.

209. Form of petition

All petitions shall be on the printed official form, which, with the official printed backing thereon (Form 18), shall be filled in and completed either in manuscript, typescript or print; provided that:—

(*a*) A narrative or statement of facts in articulate numbered paragraphs setting forth the facts and circumstances which form the grounds of the petition shall in all cases precede the prayer; and in all petitions presented under any statute or statutes authorising the petition or regulating the proceedings therein, the narrative shall expressly refer to the relevant section or sections of such statute or statutes.

(*b*) The prayer shall specially crave warrant for such intimation, service and advertisement (if any) as may be necessary, having regard to the nature of the petition, or as the petitioner may desire; and the names, designations and addresses of all persons on whom the petition is to be served (distinguishing any upon whom the petition is to be served edictally) shall be set forth, either in the narrative or in the prayer.

(*c*) If any dispensation with intimation or service is desired, it must be specially craved in the prayer, and the grounds of dispensation must be set forth in the narrative; and in petitions for appointment of a curator bonis to an incapax, if dispensation of service on the incapax is craved, two medical certificates stating reasons for such dispensation, in respect of the dangerous effects of service on the incapax or otherwise, shall be lodged along with the petition.

(*d*) The prayer may be in any of the forms at present in use which are appropriate to the nature of the petition.

210. Induciae in petitions

In all petitions in which service is required or appointed the induciae shall (unless shortened or extended by the Court in the circumstances of any particular case) be seven days after the date of service if the person to be served is on the mainland of Scotland, and fourteen if such person is in Orkney or Shetland or in any of the islands of Scotland, or if he is furth of Scotland.

211. Signature of petitions

All petitions except petitions for suspension, suspension and interdict and suspension and liberation shall be signed by counsel and no further or other signature shall be required; provided that petitions under the Bankruptcy (Scotland) Act, 1913, except petitions under section 163 thereof, may be signed by the petitioner's solicitor, and a petitioner for sequestration of his own estates may sign the petition himself.

212. Papers to be lodged along with petition

Each step of the process lodged along with the petition shall be marked on the backing thereof with the same letter and number as shall be given (on lodging) to the petition itself; and, along with the petition and process the petitioner shall also produce and lodge (per inventory) any deeds or writings founded on in the petition so far as in his possession or within his control; and in an opposed petition the Court may attach such conditions as to expenses or otherwise, as it may think fit, to the receiving of such documents if tendered at a later date.

213. Intimation and service including edictal service

(*a*) All petitions shall, without any enrolment in the motion-sheet, appear, if in session, in the printed rolls of Court for the first available day after lodging, in the motion-roll of the Outer House or in the single bills of the Inner House, as the case may be, for an order for such intimation, advertisement and service as may be necessary; and, if in vacation or recess, all such petitions shall, without any enrolment in the motion-sheet, be brought forthwith before the Vacation Judge for a like order; provided that, in the case of proceedings under the Bankruptcy (Scotland) Act, 1913, petitions for warrant to cite and petitions for award of sequestration may, on being lodged, be brought forthwith by the Deputy Principal Clerk of the Petition Department, or by a clerk instructed by him, before a Lord Ordinary in court or in chambers, who, notwithstanding that the petition has not appeared in the motion-roll, may grant warrant, or award sequestration, as the case may be.

(*b*) The following rules shall apply mutatis mutandis to the service of petitions, namely:—

(i) Paragraph (*a*) of Rule 101, anent the reckoning of the induciae in the case of service anywhere in Scotland by registered letter;

(ii) Rule 104, anent edictal citation but subject to the provisions of paragraph (*c*) hereof;

(*c*) The citation and execution of service shall be as nearly as may be in the terms set forth in Form 20.

(*d*) All certificates of execution or intimation of a Petition or Note may be written upon an additional copy of the Petition or Note lodged in process.

214. Answers

(*a*) Answers may be lodged at any time within the induciae, whether such induciae expire in session, vacation or recess; provided that the Court may, on cause shewn, prorogate the time for lodging answers and allow the same to be received though not lodged within the induciae.

(*b*) All answers shall be in the form of articulate numbered answers to the narrative or statement of facts in the petition.

(*c*) The Court may, at any time, before disposal of the petition, allow the parties to adjust their pleadings and replies and duplies shall not be lodged except by order of the Court.

215. Unopposed petitions

After the period of intimation and service (if any) in a petition has expired without answers being lodged, the petition shall be enrolled in the motion-sheet for further procedure (if in session) on the first available day in the motion-roll of the Outer House before a Lord Ordinary or in the single bills of the Inner House before one of the Divisions thereof, as the case may be; and (if in vacation or recess, and if the petition is an Outer House petition) it shall be brought forthwith before the Vacation Judge for further procedure: and thereafter the petition shall, after such enquiry into, or verification of, the grounds of the petition (whether by evidence, remit, affidavit or otherwise) as may be necessary, and subject to the provisions of Rule 216, be disposed of as accords; provided that:—

(*a*) If the petition has been edictally served (in manner provided in reference to ordinary actions in Rule 104) on any person who is resident or carries on business furth of Scotland, and elsewhere than in England or Northern

Ireland, and has no known solicitor in Scotland; and if the interlocutor granting the crave of the prayer in the petition is pronounced before the expiry of a period (reckoned from the date of execution of the edictal service) of fourteen days, added to such further days (if any) as may be found by the Court to be approximately equivalent to the excess beyond four of the number of days required, in the ordinary course of post, for the transmission of a letter from Edinburgh to the defender's residence or place of business and the like transmission of an answer from such residence or place of business to Edinburgh, the Court shall (if and when necessary in order to prevent the transmission of the proceedings to the Keeper of the Registers and Records of Scotland) direct in such interlocutor that the said interlocutor (even though extracted) shall not be transmitted to the Keeper of the Registers and Records of Scotland until after the expiry of the said period.

(*b*) In any petition to which the foregoing paragraph applies, the person who has been edictally served may, at any time before the expiry of the aforesaid period, enrol a motion in the motion-sheet for allowing answers to be received, and for recall of the interlocutor (if already pronounced) granting the whole or any part of the prayer of the petition; but any recall (if granted) shall be without prejudice to the validity of anything already done or transacted, or of any contract made or obligation incurred, under and in virtue of such interlocutor, or of any appointment made or power granted therein or thereby.

(*c*) The provisions of this rule are without prejudice to the power of the Court to make interim appointments or orders at any stage of the cause.

216. Motions in opposed and unopposed petitions

Save as herein otherwise provided, all motions, other than motions made at the bar during any hearing of the cause, shall be enrolled and made by entry in the motion-sheet; and the provisions of Rule 118 shall apply mutatis mutandis to all petitions.

Section 2

Judicial Factors

[Pupils Protection (Scotland) Act, 1849; Judicial Factors (Scotland) Act, 1889; Bankruptcy (Scotland) Act, 1913.]

217. Definition of judicial factor

The expression " judicial factor " includes curator bonis, factor loco tutoris, factor loco absentis, and factor on trust or other estates, and also includes guardians where caution is required.

218. Accountant of Court: caution, penal interest, etc.

(a) *Copies of proceedings for Accountant of Court.*—Copies of all petitions, answers, and other papers, relative to the appointment of any judicial factor, or to any judicial factory, shall, at the same time as they are lodged in the Petition Department, be supplied to the Accountant of Court by the party or parties lodging the principal document and copies of all interlocutors granting or refusing applications for special powers shall be supplied, within two days of issue, to the Accountant by the solicitor.

(b) *Transmission of process to Accountant of Court.*—The Clerks of the Petition Department are authorised and directed to transmit to the Accountant

of Court at all times (on his requisition) the proceedings (or such part thereof as he may require) in all processes of judicial factory, or other processes relative thereto, depending in the Court, in so far as such proceedings may not at the time be required for the use of the Court.

(c) *Time for finding caution.*—When not otherwise expressed in the interlocutor appointing a judicial factor, the time for finding caution shall be limited to one calendar month from the date of the interlocutor; provided that at any time before the expiry of that period the Court may, on application made and on cause shown, prorogate the time for finding caution.

(d) *Bonds of caution received by Accountant of Court.*—The Accountant of Court shall receive bonds of caution offered for judicial factors.

(e) *Procedure in finding caution.*—On a judicial factor being appointed subject to caution being found, the process shall be forthwith transmitted to the Accountant of Court, in order that the matter of caution may be dealt with; and:—

(i) The Accountant of Court shall, on the bond of caution being delivered to him, and on being satisfied as to its form and due execution, and as to the sufficiency of the cautioner, make a marking on the margin of the interlocutor sheet to the effect that caution has been received (stating the amount for which caution has been found) and adding his signature and the date; and such marking shall be an authority for extract of the appointment;

(ii) Where it is proposed that the caution be limited as authorised by section 27 of the Pupils Protection (Scotland) Act, 1849, caution to the extent of not less than two thirds of the value of the moveable and other easily realisable estate shall be found to the satisfaction of the Accountant of Court, who shall not report thereon to the Court except in the event of his requiring larger caution than aforesaid and then only if the factor in writing shall require him so to report; and the Court, in considering the said report, shall instruct the amount of caution to be found, being for not less than two-thirds of the value of the said moveable and other easily realisable estate.

(iii) During the subsistence of a factory, the Accountant of Court may at any time require the factor to increase the amount of the existing cautionary bond, or to find new or additional caution, or to procure a company bond in substitution for, or in addition to, that of an existing cautioner; and may also at any time authorise the factor to decrease the amount of the existing caution by a certain sum; and, on the caution being increased or decreased in amount in terms of these provisions, the Accountant of Court shall mark the margin of the interlocutor sheet as directed in head (i) of this paragraph: provided always that, if the Accountant of Court should require caution to be found (or increased) to cover more than two-thirds of the value of the moveable and other easily realisable estate, the factor may require him in writing to report the matter to the Court; and the Court, on considering such report, shall instruct the amount of caution to be found as hereinbefore provided.

(iv) The Accountant of Court shall, in January yearly, prepare and submit a list of approved guarantee companies for the consideration and approval of the Lord President. In the event of a company not on the list being proposed as cautioner for a factor, the Accountant of Court may at

any time submit the name of such company for the consideration of the Lord President, and such company, if approved by him, shall be included in the said list.

(f) *Premiums to guarantee companies and expenses of bond of caution.*—The Accountant of Court shall allow as a charge against the factory estate (1) the premium paid by the factor where a company bond of caution has been accepted, or such part thereof as he deems proper, and (2) the expense of the necessary procedure in obtaining the approval of a bond of caution or the limitation, increase, or reduction of the amount.

(g) *Penal interest.*—When the Accountant of Court is satisfied that the circumstances under which penal interest has been incurred under section 5 of the Pupils' Protection (Scotland) Act, 1849, are such as to justify remission or modification of the penalty, he may, in his sole discretion, remit or modify it.

219. Factors under the Bankruptcy (Scotland) Act, 1913

In addition to the regulations in the foregoing Rules of this Chapter, the following shall apply to factories under section 163 of the Bankruptcy (Scotland) Act, 1913:—

(a) *Form of petition.*—In the case of any petition presented to the Court under section 163 of the said statute for appointment of a judicial factor on the estate of a person deceased, the official printed form of petition shall be filled in and completed as nearly as may be in the terms set forth in Form 19.

(b) *Intimation and service.*—Besides intimation on the walls and in the minute book in common form, of which certificates shall be produced, intimation shall be made in the *Edinburgh Gazette*, in the terms as nearly as may be of Form 21; and a full copy of the petition shall be served on such of the persons named in the petition as representatives of the deceased, as are not parties thereto; and a copy of the *Edinburgh Gazette* containing the intimation and an execution of service of the petition shall be produced before the petition is disposed of. The citation and the execution of service shall be as nearly as may be in the terms set forth in Form 20.

(c) *Appointment of judicial factor.*—The Court shall not make the appointment of the judicial factor until the lapse of fourteen days, or such other time as the Court may fix, after the publication of the foresaid notice in the *Edinburgh Gazette* and after the date of service (when such service is required) of the petition on the representatives of the deceased: provided always that the Court, if in any case it shall see cause to do so, may make an interim appointment of such factor at any earlier date.

(d) *Notice calling for claims.*—In order to ascertain the claims upon the estate, the factor shall, within seven days of extracting his appointment, cause to be inserted in the *Edinburgh Gazette* a notice in the form, as nearly as may be, set forth in Form 22, and shall lodge in process a copy of the *Edinburgh Gazette* containing the said notice; and he shall also insert a similar notice in such newspapers as may appear to him to be proper.

(e) *Claims.*—The factor shall examine the claims of the creditors, in order to ascertain whether the debts are justly due from the estate of the deceased, and may call for further evidence in support of the claims,

and may, if he sees fit, require the creditors to constitute the same by decree in a competent court in an action to which the factor shall be called as a defender. For the purpose of ranking and payment of creditors, the date of the factor's appointment shall be the date equivalent to the date of sequestration.

(f) *Inventory of estate.*—The factor shall, within six months at latest from the date on which his appointment shall have been extracted, lodge with the Accountant of Court a full inventory of the estate of the deceased, and shall produce therewith or exhibit all such writs and documents of importance belonging to the estate as may have been obtained by him, and shall, at the same time, or at such later time as the Accountant of Court may sanction, report a state of the debts appearing to be due by the deceased, distinguishing those for which claims have been lodged by creditors and the evidence upon which the same rest, and the claims made and lodged with him by persons interested in the succession of the deceased and the grounds thereof; and the said inventory, when adjusted and signed as after mentioned, with the state of debts shall remain in the possession of the Accountant of Court; and all creditors and persons interested in the succession of the deceased, or their solicitors, shall have access to the same in the hands of the Accountant of Court, at his office.

(g) *State of funds and scheme of division.*—The judicial factor shall prepare a state of funds and scheme of division amongst the creditors, and shall lay the same before the Accountant of Court, along with all writings and documents upon which it proceeds, and shall afford to the Accountant of Court all explanations thereon which may be required by him; and the Accountant of Court shall make a report in writing on the said state of funds and scheme of division, containing such observations thereon as he shall think fit and proper to be submitted to the Court. Should there be no funds available for division after payment of the debts specified in paragraph (m) of this rule, the factor shall prepare and lay before the Accountant of Court a state of funds only, and the Accountant of Court shall report thereon.

(h) *Notice of scheme of division to creditors.*—Immediately on the Accountant of Court's report being made, the factor shall lodge the same in Court, and shall transmit to each person who has lodged with him a claim on the estate of the deceased a notice by post intimating that the state of funds and scheme of division (or state of funds only, as the case may be), and report thereon, have been lodged in Court, and stating the amount for which the creditor has been ranked, and whether his claim is to be paid in full, or by a dividend, and the amount thereof, and in case of claims rejected, or for payment of which no funds are available, stating that fact; and a notice as nearly as may be in the terms of Form 23 shall also be inserted in the *Edinburgh Gazette*; and if any persons, other than those who have lodged claims with the factor, shall be stated in the petition to the Court, or in the books, deed of settlement, or other papers of the deceased, to be creditors of the estate or interested therein, or if the factor shall otherwise have reason to believe that other persons are either creditors of the estate or interested therein, he shall give notice by letter, through the post office, to such persons, that no dividend is allotted to them in the scheme of division.

(j) *Objections to scheme of division.*—All creditors, and other persons interested in the succession of the deceased, shall be entitled to examine

the state of funds and scheme of division lodged in Court, and also the claims and the vouchers or evidence thereof lodged with the factor; and any creditor, or other person dissatisfied either with the state of funds or with the scheme of division, may lodge a note of objections thereto, signed by counsel, in the Petition Department, within three weeks from the last date of such notices; and till the lapse of said period of three weeks the Court shall not approve of the state of funds or scheme of division.

(k) *Objections to be disposed of by the Court.*—If objections are lodged to the state of funds or scheme of division, the Court shall dispose of the same, after hearing counsel for the objectors and for the judicial factor, and making all necessary investigation in regard to the same. If the objections be sustained to any extent, the necessary alterations shall be made on the said state or scheme.

(l) *Adjusted scheme of division.*—When the scheme of division is adjusted it shall be approved of by the Court; and the factor shall pay, deliver, or convey to the parties therein set forth the sums or receipts allocated to them respectively in the said scheme of division.

(m) *Partial dividends on first scheme of division.*—Where a partial division of funds among the creditors who have claimed may be made with safety to the interests of all concerned, the judicial factor may, with the approval of the Accountant of Court, prepare a state of the funds and first scheme of division as soon as may be after the time notified for lodging the claims of creditors; and, the same having been submitted to the Accountant of Court and reported on by him to the Court, and notice having been given in terms of paragraph (h) of this Rule to each creditor of such state of funds and first scheme of division having been lodged, the Court may, on considering the same (but not earlier than six months after the death of the deceased), approve of that scheme of division, and the factor shall pay, deliver, or convey, in terms thereof: provided always that dividends corresponding to the amount of the claims of creditors whose debts have not at that period been admitted by the judicial factor, or whose debts are future or contingent, and also the full amount of such debts as are claimed as preferable but the priority of which is not admitted by the factor, shall be retained and deposited in bank to meet such claims, if ultimately sustained, or when the same shall become payable or prestable.

(n) *Deathbed and funeral expenses &c. of deceased.*—Out of the first funds realised by him the factor shall reserve sufficient to defray the estimated cost of his administration (including the expenses connected with his appointment and of all necessary intimations to creditors): thereafter he shall be entitled, out of the said funds, and without waiting for the expiry of six months from the death of the deceased, to pay the deathbed and funeral expenses of the deceased, rent, taxes, and such servants' wages as are privileged debts, and interest becoming due or past due, to creditors having preferences over the estate.

(o) *Disposal of surplus of estate.*—In the event of there being a residue after payment of the creditors, the judicial factor shall submit to the Accountant of Court a statement of the amount of the residue, the parties claiming the same, and their respective grounds of claim; and shall pay over the said residue to the party or parties found entitled thereto by the Court on report by the Accountant of Court. Should it

appear to the Court that it is desirable that the factor should continue to administer the surplus estate, the Court may direct accordingly. The factor shall report the surplus under this paragraph notwithstanding that there may remain unpaid debts to secured creditors who do not desire immediate payment of their loans or debts, or whose securities cannot be realised owing to their immaturity or owing to statutory restrictions applicable to them.

(p) *Discharge of factor.*—When applying to the Court for his discharge, the factor shall serve the petition on the representatives of the deceased and also upon the cautioner for the judicial factor, and insert a notice thereof in the *Edinburgh Gazette* in terms of Form 24, and the petition shall not be disposed of until fourteen days after such service and notice, and until a copy of the *Edinburgh Gazette* containing such notice, and an execution or acceptance of service of the petition and a certificate of intimation on the walls and in the minute book shall be lodged in process.

SECTION 3

COMPANIES

(COMPANIES ACT, 1929.)

220. Petitions for winding-up by Court of Session and under supervision

(*a*) All petitions for winding-up by the Court of Session and for winding-up subject to the supervision of the Court of Session shall be presented to the Outer House, and shall be dealt with by a liquidation judge to be appointed by the Lord President. Such petitions shall contain at least:—

(i) the full name, designation and address of the petitioner, if other than the company itself;

(ii) the full name of the company (whether petitioner or not); the full address of the company's registered office (together with a note of any change in the address of the said office which has to the knowledge of the petitioner taken place in the preceding six months); a statement of the nature and objects of the company, of the amount of its capital, nominal and issued, and showing what part thereof is called up, paid up, and credited as paid up, and of the amount of the assets of the company so far as known to the petitioner;

(iii) a narrative of the facts on which the petitioner relies, together with any particulars (referred to in section 170 of the Act or otherwise) required to instruct the petitioner's title to present the petition, and

(iv) a prayer setting out the particular order or orders applied for, including any intimation, service and advertisement of the petition and any appointment of liquidator or liquidators.

(*b*) All such petitions shall be accompanied, on lodging, with any documents instructing the petitioner's title, or founded on, or instructing the facts relied on, by the petitioner.

(*c*) All such petitions, unless summarily dismissed by the Court, shall be intimated, served and advertised as the Court shall direct; provided that it shall be competent for any company, debenture holder or shareholder who is apprehensive that such a petition will be presented and is desirous of being heard before any order for intimation, service and advertisement is pronounced, may lodge a caveat with the Deputy Principal Clerk of the Petition Department, which caveat shall be in the same terms mutatis mutandis as a caveat against an apprehended suspension and interdict; and, in that

event, no such order shall be pronounced except after hearing parties. Any such caveat shall endure for one month, but may be renewed by the presenter dating it anew.

(*d*) The advertisements shall be inserted once in the *Edinburgh Gazette* and, as the Court may direct, in one or more newspapers circulating in the district where the company's registered office is situate; and the said advertisement shall state (i) the day on which the petition was presented, (ii) the name, designation and address of the petitioner and of the solicitor acting for such petitioner, (iii) the precise order applied for, and (iv) the induciae within which answers may be lodged by any person who intends to oppose, or otherwise to appear in, the petition.

(*e*) The Court may on presentation of any such petition, or at any time in the course of the proceedings following thereupon, appoint a provisional liquidator or liquidators.

221. Remits under section 166 of the Act

Without prejudice to the general powers of the Court under section 166 of the Act:—

(*a*) In any petition for winding up by the Court of Session, or for winding up subject to the supervision of the Court, application for a remit of such petition under sub-head (*a*) of sub-section (3) of said section 166, may be made by note by the liquidator, or by any creditor or contributory, at any stage of the proceedings subsequent to intimation, service and advertisement, and to the expiry of the induciae. Any such note shall be presented to the Inner House, and shall be lodged in the Petition Department, and shall be disposed of by one or other Division.

(*b*) In any petition for winding up by the court, or for winding up subject to the supervision of the court, pending before any sheriff court, application to the sheriff for transmission of the process to the Court of Session, with a view to a remit of the petition under sub-heads (*a*) or (*b*) of sub-section (3) of section 166 of the Act, may be made by note by the liquidator, or by any creditor or contributory, at any stage of the proceedings subsequent to intimation, service and advertisement, and to the expiry of the induciae. On presentation in any sheriff court of any such note, it shall be the duty of the Sheriff clerk forthwith to transmit the process in the petition (including the note, together with any report thereon which the sheriff to whom such note was presented may think it proper to make) to the Petition Department; and the note shall be disposed of by one or other Division of the Inner House, who may order the process to be transmitted before deciding the matter.

(*c*) All such notes in the Court of Session or in any sheriff court shall be in writing, and shall contain a statement of the grounds on which remit is applied for; and if the remit applied for under sub-head (*a*) of sub-section (3) of section 166, the note shall also contain a statement of the assets of the company.

(*d*) In any petition for winding up by the court, or for winding up subject to the supervision of the court, pending before any sheriff court, if the sheriff for any reason considers that the petition should be remitted to the Court of Session, or to a different sheriff court, he may at any stage of the proceedings subsequent to intimation service and advertisement, and to the expiry of the induciae of such service (if any), and after such hearing as he thinks proper order the process to be transmitted to the

Petition Department, together with a report stating the reasons for remit. The report shall then be brought before one of the Divisions of the Inner House, which shall do in the matter as seems proper.

222. Substitution of creditor or contributory for withdrawing petitioner

When a petitioner in a petition for winding-up by the court, or for winding-up subject to the supervision of the court, is found not entitled to present such petition, or when (whether found so disentitled or not) he either (i) fails to make intimation, service and advertisement as directed by the court, or (ii) consents to withdraw his petition or to allow it to be dismissed or refused, or (iii) fails to appear in support of his petition when it is called for hearing, or (iv), if appearing, does not apply for an order in terms of the crave of the said petition, the court may, upon such terms as it thinks just, sist as petitioner in room and place of the original petitioner (to the effect of enabling the sisted petitioner to insist in the petition) any creditor or contributory who at any time prior to the withdrawal, dismissal or refusal of the petition applies by note to be so sisted, provided that such creditor or contributory has, in the opinion of the court, a title to present a petition.

223. Intimation of Winding-up Orders to the Registrar of Companies

All orders for winding-up by the court, and all orders for winding-up under supervision of the court, and all orders of the court appointing a liquidator in any winding-up (including appointments or nominations made under sections 239, 249, and 259 of the Act) shall forthwith (i) be intimated to the Registrar of Companies in Scotland, by delivery to him, or by forwarding to him by registered letter a certified copy of the order, not later than the fourteenth day after the date of the order, and (ii) be advertised once in the *Edinburgh Gazette*, not later than in the next publication of the said *Gazette* after the expiry of seven days from the date of the order, by the petitioner or applicant at whose instance such order or orders were made.

(*a*) Evidence of such delivery or of the posting of such registered letter and a copy of the *Edinburgh Gazette* containing such advertisement shall forthwith be lodged by the petitioner or applicant in the proceedings in which the order or orders were made.

(*b*) Any finding of expenses in favour of the petitioner or applicant in connexion with the obtaining of such order or orders shall be deemed to be conditional on compliance with these rules, and, in the event of non-compliance therewith, the court may refuse to decern for the said expenses, or to allow them to be recovered.

224. Caution by liquidators in winding-up by court

(*a*) All liquidators appointed in any winding-up by the court shall, on their appointment, find caution of such nature and amount as the court may direct; provided that, where it is proposed that the caution be limited to a specified amount, either on appointment, or on application by the liquidator (which shall be made by written note) at any subsequent stage of the proceedings in the winding-up, the court may, after such inquiry as may be requisite, approve or vary the proposed limitation.

(*b*) The cautioner may be either a private person or (if the Court approves) a guarantee company, provided that such company is on the list hereinafter mentioned.

(*c*) The Accountant of Court shall in January yearly prepare and submit a list of approved guarantee companies for the consideration and sanction of the Lord President. A list of approved guarantee companies shall be kept in the Petition Department.

(*d*) When a bond of caution has been marked as received by a clerk of court (if the appointment of the liquidator has been made in the Court of Session), or by a sheriff clerk (if the appointment has been made in any sheriff court), the bond shall be transmitted by him to the Accountant of Court, who shall be the custodier of all bonds granted under these Rules.

(*e*) In all bonds by guarantee companies, the guarantee company shall be taken bound to intimate to the Accountant of Court any default in payment of the annual premium, and that within four days from the date when such annual premium falls due. On receiving such intimation it shall be the duty of the Accountant of Court forthwith to transmit the same to the clerk by whom the bond was originally marked as " received "; and it shall be the duty of such clerk to bring such intimation to the notice of the court before whom the liquidation depends; and the said court may thereupon pronounce an order or orders to enforce payment of such premium, and in default may treat such default as cause shown within the meaning of section 188 of the Act, and remove the liquidator and appoint another liquidator in his place, or do otherwise as shall seem proper.

(*f*) When not otherwise expressed in the order appointing the liquidator, the time for finding caution shall be limited to fourteen days from the date of the order: provided that on cause shown before the expiry of that period the court may, on the motion of the liquidator, prorogate the time for finding caution. In the event of the liquidator failing to find caution within the time limited or prorogated, it shall be the duty of the clerk of court to bring such failure to the notice of the court, and the court may treat such failure as cause shown within the meaning of section 188 of the Act, and may remove him and appoint another liquidator in his place, or do otherwise as shall seem proper.

225. Removal of liquidators in any winding-up

Applications for removal of a liquidator shall, in a winding-up by the court, or in a winding-up under supervision of the court, be made by note in the winding-up process; and in all other cases by petition to be dealt with by the Liquidation Judge.

226. Meetings of creditors and contributories for appointment of committee of inspection in winding-up by court

In a winding-up by the court the meetings of creditors and contributories respectively, directed to be held under section 198 of the Act, shall be held not later than one calendar month after the date of the advertisement in the *Edinburgh Gazette* of the liquidator's appointment (unless the court otherwise directs) at a convenient place or places and at a specified hour or hours on a specified day or days to be fixed by the liquidator.

(*a*) The liquidator shall summon the said meetings by giving not less than seven days' notice of the time and place thereof in the *Edinburgh Gazette*, and in one or more newspapers circulating in the district where the registered office of the company is situated, and shall, not less than seven days before the day appointed for the meeting, send by post to every person appearing by the company's books or otherwise to be a contributory of the company notice of the meeting of contributors.

(*b*) The notice to each creditor shall be sent to the address given in his claim, or (if he has not yet claimed) to such other address as may be known to the liquidator; and the notice to each contributory shall be sent to the address mentioned in the company's books as the address of the contributory, or to such other address as may be known to the liquidator.

(*c*) A certificate by the liquidator, lodged in the winding-up petition, that the notice of any such meeting has been duly posted shall be prima facie evidence of such notice having been duly sent to the person to whom the same was addressed; and the proceedings and resolutions at the meeting shall (unless the court otherwise orders) be valid notwithstanding that some creditors or contributories may not have received notice.

(*d*) The liquidator or some person nominated by him shall be preses of the said meetings.

(*e*) At a meeting of contributories a resolution shall be deemed to be passed when a majority in value of the contributories present personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on such contributories by the regulations of the company.

(*f*) The preses may, with the consent of the meeting, adjourn it from time to time and from place to place; but any adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified, or unless the court otherwise orders.

(*g*) A meeting may not act for any purpose (except the production and marking of creditors' oaths and productions, and the adjournment of the meeting) unless there are present or duly represented by mandataries or proxies at least three creditors entitled to vote, or three contributories (as the case may be), or all the creditors entitled to vote, or all the contributories, if the number of creditors entitled to vote, or the contributories (as the case may be), shall not exceed three; and, if within half an hour from the time appointed for the meeting a quorum of creditors or contributories (as the case may be) is not present or represented, the meeting shall be adjourned to such other day or time or place as the preses may appoint, but so that the day appointed shall be not less than seven nor more than twenty-one days from the day from which the meeting was adjourned.

(*h*) At an adjourned meeting the creditors or contributories (as the case may be) present or duly represented shall form a quorum.

227. Powers and duties of committee of inspection

Without prejudice to any other powers and duties given by the Act to the committee of inspection or herein contained:—

(*a*) The committee of inspection shall at all times have right of access to the liquidator's whole books and accounts relative to the liquidation.

(*b*) The committee or any member thereof may make reports to any meeting of creditors or contributories, and may apply at any time to the court by note for an order on the liquidator to summon a meeting of creditors or contributories or both.

(*c*) The committee shall act with the liquidator and give their advice and assistance to him relative to the management of the company's estate and affairs and the conduct of the liquidation.

228. General meetings of creditors and contributories

Subject to the provisions of the Act, to any order of the court, and to the Rules of this Chapter so far as regards companies:—

The regulations in paragraphs (*a*) to (*h*), inclusive, of Rule 226, relative to the meetings of creditors and contributories respectively directed to be held under section 198 of the Act, shall apply to all general meetings of creditors or contributories in any winding-up; provided always that:—

(i) The expense of summoning a meeting of creditors or of contributories at the instance of any person other than the liquidator shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned deposit with the liquidator security for the payment of the said expense, which expense (including all disbursements for printing, stationery, postage, and hire of room) shall be calculated at the rate of two shillings per creditor or contributory to whom notice is required to be sent for the first twenty creditors or contributories, one shilling per creditor or contributory for the next thirty creditors or contributories, and sixpence per creditor or contributory after the first fifty; provided that the said expense shall be repaid out of the assets of the company if the court shall by order, or if the creditors or contributories (as the case may be) shall by resolution, so direct.

(ii) Paragraph (*d*) of Rule 226 shall not apply to any meeting or meetings summoned at the instance of any person other than the liquidator; and the preses at such meeting or meetings shall be such person as the meeting by resolution shall appoint.

(iii) In the case of meetings under section 242 of the Act, the continuing liquidator, or (if there is no continuing liquidator) any creditor, may summon the meeting; and the expenses of summoning the meeting by a creditor (including the hire of room) shall be paid out of the assets of the company.

(iv) The regulations contained in Rule 226 (*a*) (*b*) and (*c*) shall not apply to a meeting under section 238 or under section 245 of the Act; and those contained in head (i) of this Rule shall not apply to a meeting under section 238 of the Act.

229. In winding-up by court or in winding-up subject to the supervision of the court: settlement of list of contributories

(*a*) In a winding-up by the court, or in a winding-up subject to the supervision of the court, unless the court shall dispense in whole or in part with the settlement of a list of contributories (either because the shares appear to be fully paid and it appears that there is no likelihood of there being a surplus available for the contributories, or for any other reason), the liquidator shall, after his appointment, forthwith make up a list of contributories of the company for settlement by the court. The list shall contain a statement of the name and address of, and the number of shares and extent of interest to be attributed to, each contributory, the amount called up, and the amount paid up, in respect of such shares or interest, and shall distinguish the

several classes of contributories. The liquidator shall, so far as practicable, observe the requirements of sub-section (2) of section 203 of the Act with respect to representative contributories.

(*b*) On completion of the list in whole or in part, the liquidator shall apply to the court by note for settlement thereof. The note shall have appended to it the list so far as completed by the liquidator. The court shall, unless it sees fit to do further or otherwise, order the liquidator to intimate the note by registered letter to each person whose name is entered in the list, and shall allow answers or objections to be lodged within seven days from the date of such intimation. The intimation shall contain a copy of the note, and of the list, or at least of the particulars stated therein relative to each person to whom intimation is made, and also a copy of the order of the court.

(*c*) Evidence of the posting of the registered letters shall be lodged in process, and the said seven days must have expired, before any order for calls is made by the court.

230. In winding-up by court or in winding-up subject to the supervision of the court: note by liquidator for calls

(*a*) In a winding-up by the court, or in a winding-up subject to the supervision of the court, an application to the court for leave to make any call on the contributories of the company settled on the list or any of them shall be made by note stating the proposed amount of the call and the reasons for making the same.

(*b*) The court may direct any intimation, service or advertisement of such application (in addition to or in supplement of any intimation to the contributories in connexion with the settlement of the list of contributories) as it thinks fit, or may order the call to be made without further intimation, service or advertisement.

231. Statements under section 284 of the Act

(*a*) In any winding-up (including any voluntary winding-up) to which these Rules apply, if the winding-up is not concluded within one year after its commencement, the liquidator shall send to the Registrar of Companies in Scotland statements with respect to the proceedings in and position of the liquidation, as follows:—

(i) The first statement, commencing at the date when the liquidator was first appointed, and brought down to the end of twelve months from the commencement of the winding-up, shall be sent within 30 days from the expiration of such twelve months, and the subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent; but when the assets of the company have been fully realised and distributed, the final statement shall be sent forthwith, although the six months may not have expired.

(ii) Every statement shall be made on the official printed form shown in Form 25, and shall contain particulars under the headings therein prescribed, provided that the Registrar of Companies may in his discretion accept a monthly summary in respect of (*a*) salaries and wages, (*b*) book debts realised, and (*c*) petty cash payments.

(iii) The fee payable under sub-section (2) of section 284 of the Companies Act, 1929, for inspection of any such statement shall be one shilling for each hour or part of an hour occupied by such inspection, and in addition a fee at the rate of four pence per folio of seventy-two words for any copy or extract from such statement, such fees to be paid by means of adhesive companies' stamps.

(*b*) In the event of the liquidator's failure duly to send such statement to the Registrar of Companies, or in the event of the statement of particulars therein not being in the opinion of the said Registrar sufficient or satisfactory, it shall be the duty of the said Registrar (in any winding-up by the court or under the supervision of the court) to report the matter to the court, and the court shall proceed in the matter as may seem proper.

232. Appeals against liquidator's deliverances on claims

(*a*) Appeals against any deliverance by a liquidator on claims to vote and rank at the instance of creditors in a winding-up by the court or in a winding-up subject to the supervision of the court, and applications to the court under section 252 of the Act in a voluntary winding-up having for their object to reverse or vary any such deliverance by the liquidator therein, shall be made by written note of appeal, and shall be presented:—

(i) In the case of a winding-up by the court or a winding-up subject to the supervision of the court which is pending before the Court of Session, to the Liquidation Judge.

(ii) In the case of a winding-up by the court or in a winding-up subject to the supervision of the court which is pending before any sheriff court, to such court.

(iii) In the case of an application under section 252 in a voluntary liquidation, to the Liquidation Judge; or, if the company is one in the winding-up of which the sheriff court of the sheriffdom in which the registered office of the company is situate would have concurrent jurisdiction with the Court of Session, either to the Liquidation Judge or to the said sheriff court.

(*b*) All such appeals and all such applications as aforesaid shall be by written note of appeal; and any such application as aforesaid shall contain the particulars mentioned in heads (i) and (ii) of Rule 220.

(*c*) All such appeals and applications shall, except by leave of the court, be presented before the expiration of seven days from the date of the liquidator's deliverance.

233. Applications to court other than those specially herein provided for

(*a*) All applications to the court (other than those specially provided for in these Rules) under any of the provisions of the Act relative to a winding-up by the court or to a winding-up subject to the supervision of the court, shall be made by motion or written note in the petition process and shall be made to the Liquidation Judge; provided that the court may, on any such application being made, require a written note to be lodged before disposing of the application.

(*b*) All applications to the court (other than those specially provided for in these Rules) under any of the provisions of the Act relative to a voluntary winding-up shall be made by petition, and the regulations contained in Rule 220 shall apply to such petitions.

(*c*) All applications in any winding-up in which an order is sought against any person or persons shall be intimated, served, and (if the court thinks necessary) advertised as the court may direct.

234. Enforcement of orders

(*a*) Every order of a court in Scotland having jurisdiction to wind up a company made in the exercise of the powers conferred by the Act or these Rules, may, subject to the provisions of section 223 of the Act, be enforced by such court, as if it were a judgment or order of the court made in the exercise of its ordinary jurisdiction.

(*b*) With regard to orders made by any court in England for or in course of winding-up a company:—

(i) On production to the Deputy Principal Clerk of the Petition Department of an office copy of any such order, the same shall be registered in extenso in a register to be kept for that purpose in the office of the said clerk on payment of a fee of five shillings, and the said register shall be open to the inspection of all concerned on payment of a fee for search in the said register of two shillings and sixpence.

(ii) After registration as aforesaid the Deputy Principal Clerk of the Petition Department shall append to such office copy a certificate of the registration thereof in the following terms subscribed by him:— "Registered in terms of the Act 19 and 20 Geo. V, cap. 23, and relative Rules of Court, *A.B.*, Deputy Principal Clerk of the Petition Department of the office of the Court of Session, Edinburgh (*date*)"; and the same being so registered and certified shall be a sufficient warrant to officers of court to charge for payment of the sums recoverable under such order, and of the expense of registering the same, and to use any further diligence that may be competent in the same manner as if such order had been a decree originally pronounced in the Court of Session on the date of such registration as aforesaid.

235. Appeals from Sheriff Courts

(*a*) Appeals from any order or decision made or given by any sheriff court in any proceedings under a petition for winding-up by the court, or for winding-up subject to supervision by the court, or in any application in a voluntary winding-up under section 252 of the Act, or in any other way, shall be taken within fourteen days of the date of such order or decision.

(*b*) Such appeals may be taken from the sheriff-substitute to the sheriff, or from the sheriff-substitute direct to the Inner House of the Court of Session; and if the appeal is taken to the sheriff a further appeal may be taken to the Inner House of the Court of Session within the like period of fourteen days from the sheriff's order or decision.

236. Interlocutors sanctioning issue of shares at a discount

Unless, in any particular case, the court shall otherwise direct, every interlocutor sanctioning the issue of shares at a discount shall contain a direction that a certified copy of such interlocutor shall be delivered to the Registrar of Companies in Scotland for registration within seven days from the date thereof, or within such further or other time as the Court may allow, and that the order shall not take effect till such certified copy has been so delivered.

SECTION 4

ADOPTION OF CHILDREN

(ADOPTION OF CHILDREN (SCOTLAND) ACT, 1930.)

237. Form of petition and papers to be lodged

All applications for an adoption order shall be by petition at the instance of the proposed adopter, and shall be in accordance with Form 26 with such variations as the circumstances may require:—

(*a*) The petition shall be presented to the Inner House and shall be intimated in the minute book as may be directed (provided that the names only of the parties shall be entered therein). The petition shall not be intimated on the walls.

(*b*) All consents required under sub-sections (3) and (4) of section 2 of the Act shall be in writing and shall be in accordance with Form 27, and shall be signed by the consenter, whose signature shall be attested by two witnesses.

(*c*) All such consents and all certificates, extracts (including an extract of the entry, if any, in the Register of Births, relating to the birth of the child) and other documents founded on by the petitioner for the purpose of vouching the particulars stated in the petition shall be lodged in process along with the petition itself.

238. Curator ad litem: evidence: attendance

(*a*) On presentation of the petition, or as soon as may be thereafter, the court shall appoint a curator ad litem to the child in terms of sub-section (3) of section 8 of the Act, whose duty shall be to investigate as fully as possible and report to the court on all the circumstances of the child and the petitioner and all other matters relevant to the proposed adoption with a view to safeguarding the interests of the child, and, in particular, it shall be his duty to include in his investigation, and to report to the court upon, the following questions:—

(i) Whether the statements in the petition are true; and, inter alia what steps (if any) he has found himself able to take for the purpose of ascertaining that the child's parent or parents, if they have given their consent to the proposed adoption, understood that the effect of the adoption order would be to deprive them permanently of their parental rights;

(ii) Whether any payment or other reward in consideration of the adoption has been received or agreed upon, and whether the adoption is consistent with the welfare of the child;

(iii) Whether the means and status of the petitioner are such as to enable him to maintain and bring up the child suitably, and what right to or interest in property the child has;

(iv) What insurance, if any, has been effected on the life of the child;

(v) Whether it is desirable for the welfare of the child that the court should be asked to make an interim order or to impose in making an adoption order any particular terms or conditions, or to require the petitioner to make any particular provision for the child and (if so) what provision.

(*b*) If the court is not satisfied with the verification of the statements in the petition provided by the documents lodged or by the report of the curator ad litem, or if for any reason the court thinks it right and proper, the court

may refuse to pronounce an adoption order or an interim order except upon further production of documents, or on such oral evidence as the court may think necessary; and the court may order such production to be made, or appoint such evidence to be led accordingly.

(*c*) The court may also refuse to pronounce an adoption order or an interim order unless all or some of the parties, and (if required) the child, are in personal attendance; and the court may direct that any of the parties shall attend separately and apart from the others, or that any party, or the child, shall be interviewed privately by the court.

239. Proceedings in camera and confidential

All proceedings before the court in relation to an adoption order shall, unless the court otherwise directs, be heard and determined in camera; and unless the court otherwise directs, all documents lodged in process, including the report by the curator ad litem, shall be open only to the court, the curator ad litem, and the parties, and shall be treated as confidential by all parties concerned and by the clerk of the Court; and the curator ad litem appointed by the court shall regard all information obtained in the course of his investigations or otherwise as confidential, and shall not divulge any part of it to any persons save as, in his judgment, may be necessary for the proper execution of his duty.

240. Remit

The Division before which the petition is pending may, at any stage of the proceedings, remit the petition and whole proceedings to one of its own number, who shall, after having heard and (if he thinks it expedient) interviewed the parties and the child, and taken all the proceedings he thinks necessary for the disposal of the case, report to the Division orally or in writing, and give his own opinion thereon.

241. Vacation or Recess

An order for service or an order appointing a curator ad litem, may be pronounced in vacation or recess by the Vacation Judge.

242. Where former application refused

If it appears that the petitioner has made a previous application under the Act in respect of the same child, and that such application has been refused, the court shall not make an adoption order, or an interim order, unless there has been a substantial change in the circumstances.

243. Registration: Minute Book: Extract: Expenses

(*a*) The communication to the Registrar General for Scotland or any adoption order, required by section 11 (5) of the Act to be made by the clerk, shall be made by sending to the said Registrar General a certified copy of the order in a registered postal envelope marked " confidential ", or by personal delivery by the said clerk to the said Registrar General of such certified copy in a sealed envelope so marked.

(*b*) The record of an adoption order in the minute book shall contain only the name or names of the petitioner or petitioners, the name and surname (as adopted) of the child to whom the adoption order relates, and the date of the adoption order.

(*c*) No extract of an adoption order shall be issued except by authority of the Inner House obtained by petition setting forth the reasons for which the extract is required.

(*d*) Immediately upon the communication referred to in paragraph (*a*) of this rule being made, or (in the event of an extract being issued in terms of paragraph (*c*) of this rule) immediately upon the issue of such extract, the clerk or the Extractor (as the case may be) shall send to the Keeper of the Registers and Records of Scotland the petition and whole process in a sealed envelope marked " confidential ", bearing the name or names only of the petitioner or petitioners, the name and surname (as adopted) of the child to whom the adoption order relates, and the date of the order; and the said envelope shall not be opened or made accessible to any person within the twenty years next after the date of the adoption order, except to an adopted child who has attained the age of seventeen years and to whom such order refers, or by authority of the Inner House, obtained on petition, and setting forth the reasons for which access to the process is required.

(*e*) The court may make such orders with regard to the expenses of the petition or of any of the parties thereto, including the expenses of the curator ad litem, as it thinks fit, and may modify such expenses, or direct them to be taxed on such scale as it may determine.

(*f*) The provisions regarding intimation and confidentiality contained in paragraph (*a*) of Rule 237 and in Rule 239, shall mutatis mutandis apply to the proceedings on petitions presented under paragraphs (*c*) and (*d*) of this rule.

Section 5

Petitions for Summary Trial

(Administration of Justice (Scotland) Act, 1933, Section 10.)

244. Provision for summary trial of certain causes

(*a*) The parties to any dispute or question desiring to proceed under the provisions of section 10 of the Administration of Justice (Scotland) Act, 1933, shall proceed by means of a petition presented to the Outer House, and lodged in the Petition Department. The petition shall set forth the dispute or question which has arisen between them, and shall contain a crave that the dispute or question shall be referred to a particular Lord Ordinary for his determination.

(*b*) The petition shall be presented by both the parties to the dispute or question or by all the parties, if more than two, and shall set forth shortly the facts or circumstances on which the dispute or question arises. Where the parties are agreed on the facts, the petition shall set forth concisely the question or questions which have arisen between them. Where the parties are not agreed on the facts, they shall specify the fact or facts on which they are in dispute and shall set forth or reserve any further questions which may arise when the dispute on fact has been determined.

(*c*) The principal petition (which may be either in manuscript, typescript or print) shall be signed on behalf of the parties by their respective counsel.

(*d*) The petition shall then be put out in the printed rolls of Court before the Lord Ordinary named in the petition in the " Summary Trial Roll " on the earliest available day, but not later than the seventh day after the date of lodging. Where the seventh day expires in vacation or recess, without the petition having been brought before the Lord Ordinary, the petition shall be put out in the " Summary Trial Roll " of the Lord Ordinary concerned on the first sederunt day of the ensuing session.

(*e*) If, when the petition is first heard before the Lord Ordinary it appears from the petition that the parties are agreed on the facts, the Lord Ordinary shall direct the cause to be tried before him in the "Summary Trial Roll", either in court or in chambers, on a date not later than six weeks (excluding vacation and recess) from the date of such direction except on cause shewn; and if it appears from the petition that the parties are at variance as to the facts, the Lord Ordinary shall appoint a proof to be taken before him either in court or in chambers. Any proof allowed under this paragraph shall be held on a date not later than three months from the date when the cause first appeared in the "Summary Trial Roll" unless on cause shewn.

(*f*) Notwithstanding anything in the foregoing paragraphs it shall be competent for the Lord Ordinary to take any hearing or proof in vacation or recess, but this matter shall be entirely in his discretion.

(*g*) Any evidence led at a proof allowed under paragraph (*e*) of this rule shall not be taken down in shorthand and recorded, unless the parties so agree.

(*h*) If, in the course of the enquiry into a dispute or question, it appears that the determination of the dispute or question may affect the status of any party, the Lord Ordinary shall report the matter to the Lord President, who, if so advised, shall appoint the parties to shew cause, before one or other of the Divisions of the Court, why the petition should proceed under section 10 of the Act; and the Court may, after hearing parties, either direct that the petition shall proceed (subject to such conditions as it may think just), or may dismiss the cause.

(*j*) Except as in this rule provided, the procedure under this rule shall be such as the parties may, with consent of the Lord Ordinary, agree upon; or, failing such agreement, as the Lord Ordinary may order.

(*k*) The Lord Ordinary shall have power to dispose of all questions of expenses; and he may pronounce any decree which he may deem necessary to enable his decision of a dispute or question under this section be carried into effect. Any such decision by the Lord Ordinary in any proceedings under this rule shall be in the form of an interlocutor which shall be extractable in common form.

(*l*) Any decree or interlocutor of the Lord Ordinary in any proceedings under this rule shall be final and binding only on the parties thereto, and shall not be subject to review by reclaiming or otherwise.

(*m*) In the event of the death, illness or retirement of the Lord Ordinary before a dispute or question has been determined, it shall be competent for the parties to apply by joint minute lodged in the process for the cause to be referred to another Lord Ordinary named in the said joint minute, and the cause shall thereupon be transferred to such Lord Ordinary, who shall take up the procedure at the point which had been reached before his predecessor; provided that the Lord Ordinary to whom the cause is so referred may rehear the evidence of all or any of the witnesses heard by his predecessor.

(*n*) It shall be competent to the parties to any cause in dependence in the Outer House (not affecting the status of any person), at any stage prior to the hearing of the cause in precedure roll, or, where there is no such hearing, prior to the diet of proof or trial, to agree that the cause shall be heard, tried or determined by a particular Lord Ordinary in accordance with the provisions of section 10 of the Act. The agreement of parties to this effect

shall be signified by a joint minute in the form set forth in Form 28. Upon such joint minute being lodge in process, the Lord Ordinary shall pronounce an interlocutor directing that the cause shall proceed before the particular Lord Ordinary named in the joint minute as a cause under section 10 of the Act, and thereafter the provisions of paragraphs (*d*) to (*m*) of this rule shall apply to further procedure in the cause; provided that, in paragraph (*d*), the date of such interlocutor shall be substituted for the date of lodging of the petition, and the word "petition" in paragraphs (*d*) and (*e*) shall mean the record or other document containing the pleadings of the parties.

(*o*) For the purposes of section 10 of the Act and the provisions of this rule a dispute or question affecting status shall include any dispute or question which would be the proper subject of, or might depend on, the decision in

(i) an action of divorce, or of nullity of marriage, or of declarator of marriage, or of separation a mensa et thoro, or of adherence;

(ii) an action of putting to silence, or of declarator of legitimacy or bastardy;

(iii) an action of aliment not depending on contractual obligation;

(iv) an action for custody of children;

(v) an action of declarator of domicile; or

(vi) an action which raises questions of the capacity of an individual or corporation to act or contract.

Section 6

Petitions by Trustees for Directions (Administration of Justice (Scotland) Act, 1933, Section 17 (vi.))

245. Scope of application

It shall be competent for the trustees under any trust deed, as defined by the Trusts (Scotland) Act, 1921 (11 and 12 Geo. V. cap. 58), or for a majority and quorum of them, to make application to the Court for direction on questions relating to the investment, distribution, management or administration of the trust estate under their charge, or as to the exercise of any power vested in, or as to the performance of any duty imposed on, them, notwithstanding that such direction may affect contingent interests in the trust estate whether of persons in existence at, or of persons who may be born after, the date of such direction.

246. Form of petition and procedure

(*a*) Such application shall be made by petition signed by counsel and presented to the Inner House and lodged in the Petition Department. The petition, after such narrative as may be necessary, shall set forth clearly and succinctly the question or questions upon which the direction of the Court is asked and may include in an appendix any relevant documents.

(*b*) The Court may order intimation of the petition to creditors, beneficiaries, or other persons interested in the subject matter of the petition; and if any of such parties wish to appear, either in support of, or in opposition to, the petition, they may lodge a minute setting forth their position within such period as the Court may direct.

(*c*) The petition shall be disposed of in the summer roll; but the Court may order such enquiry by proof before a judge of the Inner House, or by remit to a reporter, or by affidavit, as may be considered necessary.

(*d*) The Court shall dispose of all questions of expenses, and any direction pronounced by the Court on the petition shall be in the form of an interlocutor which shall be extractable in common form.

(*e*) The provisions of sections 59 and 60 of the Court of Session Act, 1868 (31 and 32 Vict. cap. 100), shall apply to petitions under this section.

SECTION 7

PETITIONS FOR SUSPENSION, SUSPENSION AND INTERDICT, AND SUSPENSION AND LIBERATION

247. Form of petition: lodging of papers

The provisions of Rules 209 and 212 shall apply to all petitions for suspension, suspension and interdict, and suspension and liberation; provided that to the narrative or statement of facts there shall be appended a note of the petitioner's pleas-in-law. It shall not be necessary in any such petition as aforesaid to make offer of caution or consignation.

248. Signature of Petition

All petitions as aforesaid shall be signed by the petitioner's solicitor, and no further or other signature shall be required.

249. Interim Orders and Intimation

(*a*) All petitions as aforesaid shall be presented to the Outer House and lodged in the Petition Department. They shall then be brought forthwith by the Deputy Principal Clerk or a Clerk instructed by him before a Lord Ordinary, sitting either in court or in chambers. If any interim order is desired, such clerk shall be accompanied by the petitioner's counsel, or by his solicitor, or by both counsel and solicitor. The Lord Ordinary shall by interlocutor order intimation and answers on such induciae as he may fix; and, if moved for, may pronounce such interim order as may be meet and convenient in the circumstances of the cause, either with or without caution, consignation or other condition, as the Lord Ordinary may see fit. Intimation shall be made by serving a full copy of the petition, along with a copy of the interlocutor, on the respondent.

(*b*) In cases in which a caveat has been lodged for the respondent, the Lord Ordinary, on the petition being brought before him by the Deputy Principal Clerk, or by a clerk instructed by him, shall fix an immediate hearing of parties before himself.

(*c*) After hearing of parties on the petition and answers (in the event of answers being lodged under the order referred to in paragraph (*a*) of this rule), or after the hearing fixed by the Lord Ordinary (in the event of a caveat having been lodged for the respondent), the Lord Ordinary may make such interim order, or further interim order as may be meet and convenient in the circumstances, either with or without caution, consignation or other condition, or may vary or recall any interim order, as he may see fit.

(*d*) The principal petition shall not be given up to the petitioner either for carrying to the Lord Ordinary, or thereafter for intimation; but one of the clerks of the Petition Department shall, in all cases, attend the Lord Ordinary with the petition, when an order is to be pronounced.

(*e*) The time allowed for answering a petition shall not begin to run till the date of intimation of the order; and, if the interlocutor ordering intimation shall contain an interim sist of execution, or interim interdict or interim liberation

on caution or consignation and caution or consignation shall not have been received by the Deputy Principal Clerk of the Petition Department at said date, then the said time shall not begin to run till the date when caution or consignation shall be received; provided that (subject always to the power of the Court to prorogate the time for finding caution or making consignation) the petition may be refused if caution shall not be found or consignation made within fourteen days.

(*f*) Generally, the Lord Ordinary before whom the petition depends may deal with and dispose of the same in any of the ways hitherto competent in the Bill Chamber, except that an interlocutor "continuing the petition for trial of the cause on the merits" shall take the place of the interlocutor "passing the note" formerly in use. The Lord Ordinary may continue the petition for trial of the cause on the merits, either as regards the whole of the petition or only as regards a part thereof if he shall so deem proper, and may refuse the petition in whole or in part.

250. Petitions for suspension of Inferior Court Decrees in absence under £20

All petitions for suspension of decrees pronounced by inferior courts in absence of defenders, in causes under £20 value, shall be remitted by the Lord Ordinary to the inferior court if it be competent, with any instructions which the Lord Ordinary may consider necessary.

251. Caution: general provisions

(a) *Obligations of cautioners and attestors.*—All bonds of caution in petitions for suspension, suspension and interdict, or suspension and liberation, shall oblige the cautioner, his heirs and executors, for payment of the sums or doing of the deeds for which he has become cautioner to the parties to whom he is bound, as validly and in the same manner as the parties for whom he is cautioner, their heirs and successors, are obliged themselves; and the attestors shall be taken bound as cautioners for the cautioner, and liable subsidiarie in their order, as fully as the cautioners themselves.

(b) *Form of bond of caution.*—Every bond of caution, whether in cases of juratory or common caution in the Petition Department, shall be extended by or by direction of the Deputy Principal Clerk of the Petition Department in the proper form, and shall contain the necessary clauses adapted to the regulations herein prescribed; and in cases of juratory caution along with the bond the said clerk shall give out a form of the oath to be taken and subscribed by the petitioner and a form of the inventory and enactment thereon.

(c) *Where cautioner insolvent.*—In any case in which caution has been or may hereafter be found, it shall be competent to the party entitled to the benefit thereof, in case the cautioner shall have been sequestrated or become notour bankrupt, or have executed a trust disposition for behoof of his creditors, or have called a meeting of his creditors to consider the state of his affairs, or shall have died unrepresented, to present a note, the same being previously intimated in common form, stating the circumstances which have emerged, and praying the Court to order new caution to be found; and the Court shall pronounce such order thereon as the justice of the case shall require.

252. Caution in petitions for suspension of decree or charge

(*a*) In petitions for suspension caution shall be taken not only for obedience to the charge, but also for refunding to the charger such expenses as the Court may modify at the discussing of the suspension.

(*b*) Bonds of caution in petitions for suspension shall be conceived alternatively, viz. to pay or to perform to the charger, or to any other person unto whom payment or performance shall be decerned to be made, by the decree to follow on the said suspension.

253. Juratory caution

In case of a petition for suspension, or for suspension and interdict, or for suspension and liberation being presented on juratory caution, the Lord Ordinary shall, when he appoints the petition to be answered, name a commissioner to take the petitioner's deposition; and the petitioner shall intimate to the opposite party, or his solicitor, to attend at the time and place fixed by the commissioner in order that they may have an opportunity of cross-interrogating him, if they see fit, whether he have any lands in property or liferent, or bonds, bills, or contracts containing sums of money; and, in case he acknowledge the same, he shall condescend thereon, and depone that he has no other lands, bonds, bills or contracts containing sums of money belonging to him: and the petitioner shall also lodge with the Deputy Principal Clerk of the Petition Department (i) the bond of caution; (ii) a full inventory of his subjects and effects of every kind; (iii) an enactment subjoined to the inventory, bearing that he will not dilapidate any of his property, and that he will not dispose of the same, or uplift any of the debts due to him, without consent of the respondent or his solicitor, or the authority of the judge (under pain of imprisonment, or being otherwise punished as being guilty of fraud), till the petition be discussed, and till there be an opportunity of doing diligence for any expenses that may ultimately be found due by him: and further, the petitioner shall lodge in the hands of the said clerk the vouchers of any debts due to him, and the title deeds of any heritable subject belonging to him, so far as the same be in his possession or within his power; and the petitioner shall also grant a special disposition to the respondent (if so required) of any heritable subject he may be possessed of, and an assignation of all debts or other rights due to him, for the respondent's further security; the said disposition and assignation to be made out at the expense of the respondent, and by his solicitor, and the same with the said vouchers and title deeds, if so deposited, to remain in the hands of the said clerk, subject to the directions of the Court, till the petition be discussed; and until all such lodgment shall be made it shall not be necessary for the opposite party to give in his answers.

254. Intimation of production of writs, and certificate of intimation

When any paper is lodged by a party prior to the pronouncement of an interlocutor continuing the cause for trial thereof on the merits, or refusing the petition (before the cause shall be so continued), his solicitor shall give notice in writing on the same day to the solicitor for the other party that such paper is in the clerk's hands; and a certificate of such intimation shall be lodged in the Petition Department, otherwise the said paper shall not be laid before the Lord Ordinary who is to advise the petition.

255. Petition for suspension of decree of inferior court

(a) *Production of process.*—In all cases in which the Lord Ordinary shall think it expedient, before continuing or refusing a petition to which it is competent to appoint answers to be made, to order production of the proceedings in the inferior court brought under his review, the petitioner shall, within such time as the Lord Ordinary may direct, produce to the clerk of

the inferior court a certified copy of the interlocutor ordering such production. Should the petitioner fail to do so, the petition shall be refused and expenses be found due. On production to the clerk of any inferior court of a copy duly certified by or under the direction of the Deputy Principal Clerk of the Petition Department of an interlocutor of the Lord Ordinary ordering the process before such court to be produced, such clerk shall be bound to transmit the whole steps of process, conform to inventory, to the Deputy Principal Clerk of the Petition Department.

(b) *Interlocutor refusing suspension after proof in inferior court.*—The Lord Ordinary, when he refuses a petition for suspension of a judgment of an inferior court proceeding on a proof, shall, on reviewing such judgment, distinctly specify in his interlocutor the several facts material to the case which he finds to be established by the proof, and express how far his judgment proceeds on the matter of fact so found, or on the matter of law, and the several points of law which he means to decide.

256. When petition refused on failure to find caution, or to comply with conditions

When any petition for suspension, or for suspension and interdict, or for suspension and liberation, shall (during either session or vacation) be refused, in respect that caution has not been found, or consignation made, or upon any ground not on the merits; and likewise when any such petition shall by interlocutor have been continued for trial of the cause on the merits and a certificate of no caution or consignation, or of other failure to implement any condition of such interlocutor, has been issued, it shall be competent, on payment of previous expenses, to present a second petition, the procedure upon which shall be the same as is provided with regard to petitions for suspension, suspension and interdict, or suspension and liberation, as the case may be.

257. Certificate of refusal of petition

In all petitions for suspension, suspension and interdict, or suspension and liberation, when refused, the certificate of refusal shall not be issued till forty-eight hours after the entry of the refusal in the minute book.

258. When interlocutor continuing the petition for trial of the cause on the merits takes effect

(*a*) When a petition for suspension, suspension and interdict, or suspension and liberation, is continued by interlocutor for the trial of the cause on the merits, in cases in which caution is to be found or consignation to be made, or conditions to be implemented, in terms of the interlocutor continuing the petition for trial of the cause on the merits, such interlocutor shall not take effect until caution has been found or consignation made or the conditions implemented.

(*b*) When a petition for suspension, or for suspension and interdict, or for suspension and liberation, has been continued for trial of the cause on the merits on caution or consignation, or on any condition requiring to be implemented before the interlocutor takes effect, the opposite party shall not be entitled to a certificate of no caution or consignation, or other failure to implement such condition, without intimating to the party that he is to apply to the Deputy Principal Clerk of the Petition Department for such certificate; and the Deputy Principal Clerk shall not give out the certificate until the expiry of twenty-four hours after such intimation.

259. Final judgment in certain cases.

Where a petition for suspension, suspension and interdict, or suspension and liberation, has been lodged, and no appearance has been entered, and no answers have been lodged, the Lord Ordinary shall have power, without continuing the petition for trial of the cause on the merits, to pronounce a final judgment, in whole or in part, granting the prayer of the petition, suspending the charge, sisting execution, or declaring the interim interdict to be perpetual, or the interim liberation to be final; and the Lord Ordinary shall have power to award expenses against the respondent and to decern for the taxed amount thereof.

260. Procedure after the petition has been continued for trial

Not later than seven days after the day on which (1) the Lord Ordinary's interlocutor continuing the petition for trial of the cause on the merits becomes final, and (2) caution or consignation, if ordered, has been found or made, or the conditions defined in such interlocutor have been implemented, the petitioner shall deliver at least two copies of the open record (consisting of the petition and answers), which may be in manuscript, typescript or print, to the solicitor of the respondent (or to each of the solicitors of the respondents if more than one), and shall also lodge two copies in the office of the Petition Department: the case shall then appear in the adjustment roll as provided in paragraph (*b*) of Rule 115 of Chapter II of these Rules, and the proceedings shall thereafter be the same as in an ordinary action.

SECTION 8

261. Petitions under Administration of Justice Act, 1920, section 9

(*a*) An application to the Court of Session under section 9 of the above-mentioned Act, for enforcement of judgments obtained in superior courts in any part of His Majesty's Dominions outside the United Kingdom, to which Part II of the above-mentioned Act extends, shall be made by petition to the Outer House. The petition shall specify the full name, title, trade or business, and usual or last known place of abode of the judgment creditor and judgment debtor respectively. There shall be produced with the petition the judgment or a certified copy thereof.

(*b*) The Lord Ordinary, on being satisfied by affidavit or otherwise that the application falls within the requirements of the statute, may grant warrant for the registration of the judgment.

(*c*) The warrant for registration shall specify a date before which the judgment debtor is to be entitled to apply to the Lord Ordinary to set aside the registration. In fixing the said date regard shall be had to the place of residence of the judgment debtor.

(*d*) Upon presentation of a certified copy of the warrant for registration to the Keeper of the Registers and Records of Scotland, along with the judgment or certified copy judgment, the Keeper shall immediately register the same in the Register of Deeds in the Books of the Lords of Council and Session. Extract of the registered judgment shall be superseded until a certificate is granted by the Deputy Principal Clerk of the Petition Department in terms of paragraph (*f*) of this Rule.

(*e*) Notice of the registration shall immediately be intimated to the judgment debtor in the following or similar terms:

"I hereby give you notice that a judgment (*specify same*) has been registered in the Register of Deeds in the books of the Lords of Council and

Session, and that if you intend to apply to have the registration set aside you must do so before (*specify date*)."

or in such other terms, and in such manner, as the Court may direct.

The execution of such intimation shall be returned to the Deputy Principal Clerk of the Petition Department.

(*f*) If no application is made within the specified time to have the registration set aside, or if such an application has been made and refused, the Deputy Principal Clerk of the Petition Department shall grant a certificate to that effect. Extract of the registered judgment shall thereupon be issued. The warrant for diligence shall be in common form, and shall be executed upon a charge of fifteen days, or such other period as the Lord Ordinary may fix.

(*g*) If the application to have the registration set aside is granted, a certificate to that effect by the Deputy Principal Clerk of the Petition Department shall be a sufficient warrant to the Keeper of the Registers and Records of Scotland to cancel the registration and return the judgment to the creditor or his solicitor.

(*h*) An application to the Court under section 10 of the Act for a certified copy of a judgment obtained in the Court of Session for enforcement in some part of His Majesty's Dominions outside the United Kingdom shall be made by petition to the Outer House. There shall be lodged with the petition an extract decree setting forth the judgment. The Court, on being satisfied by affidavit or other proper evidence that the judgment debtor is resident in some part of His Majesty's Dominions outside the United Kingdom to which Part II of the Act extends, shall pronounce an order ordaining the Deputy Principal Clerk of the Petition Department to issue a certified copy of the judgment under the seal of the Court. The Certificate shall be in the following terms:—

" I certify that the foregoing extract decree is a true copy of a judgment obtained in the Court of Session, and this certificate is issued in accordance with section 10 of the Administration of Justice Act, 1920, and in obedience to an order by Lord , dated ( ),

(*Signed*) Deputy Principal Clerk of the Petition Department of the Office of the Court of Session at Edinburgh."

262. Petitions under the Foreign Judgments (Reciprocal Enforcement) Act, 1933

1. An application under section 2 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (hereinafter called " the Act "), to have a foreign judgment to which Part I of the Act applies registered in the Books of Council and Session may be made by petition to the Outer House.

2.—(1) An application for registration shall be supported by an affidavit of the facts—

(*a*) exhibiting a certified copy of the judgment issued by the original court and authenticated by its seal and a translation of the judgment certified by a Notary Public or authenticated by affidavit.

(*b*) stating to the best of the information and belief of the deponent—

(i) that the applicant is entitled to enforce the judgment;

(ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or, if the judgment has been satisfied in part, what the amount is in respect of which it remains unsatisfied;

(iii) that at the date of the application the judgment can be enforced by execution in the country of the original court;

(iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 4 of the Act.

(*c*) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration;

and shall be accompanied by such other evidence with respect to the matters referred to in sub-paragraph (iii) of paragraph (*b*) or paragaph (*c*) above as may be required having regard to the provisions of the Order in Council extending the Act to the country of the original court.

(2) Where the sum payable under the judgment is expressed in a currency other than the currency of the United Kingdom, the affidavit shall also state the amount which that sum represents in the currency of the United Kingdom calculated at the rate of exchange prevailing at the date of the judgment.

(3) The affidavit shall also state the full name, title, trade or business and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

(4) Where a judgment is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit shall state the provisions in respect of which it is sought to register the judgment.

3. Save as otherwise provided by any relevant Order in Council, the Court may, in respect to an appication for registration, order the judgment creditor to find security for the expenses of the application and of any proceedings which may thereafter be brought to set aside the registration.

4. The affidavit, if any, shall be intituled:—

" In the matter of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, and in the matter of a judgment of the (*describing the Court*) obtained in (*describing the cause or matter*) and dated the day of 19 ".

5.—(1) The Court on being satisfied that the application falls within the requirements of the Act may grant warrant for the registration of the judgment.

(2) Every order granting warrant as aforesaid shall state the period within which after service of the notice of registration as after-mentioned an application may be made to set aside the registration.

(3) In fixing the period within which application may be made to set aside the registration, the Court shall have regard in the case of a judgment debtor furth of Scotland to the periods for superseding extract of a decree in absence laid down in Rule 114.

(4) The Court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

6. There shall be kept in the Petition Department of the Court by, or under the direction of, the Deputy Principal Clerk of that Department, a register of the judgments ordered to be registered under the Act.

7. Upon presentation of a certified copy of the warrant for registration to the Keeper of the Registers and Records of Scotland, along with the judgment or certified copy judgment, the Keeper shall immediately register the same in

the Register of Deeds in the Books of the Lords of Council and Session. Extract of the registered judgment shall be superseded until a certificate is granted by the Deputy Principal Clerk of the Petition Department in terms of paragraph 11 of this Rule.

8.—(1) Notice in writing of the registration of a judgment must be served on the judgment debtor—

(*a*) if within Scotland by personal service as in the case of a summons, unless some other mode of service is ordered by the Court;

(*b*) if furth of Scotland by edictal citation in accordance with Rule 104.

(2) The notice of registration shall state—

(*a*) full particulars of the judgment registered and the order for registration;

(*b*) the name and address of the judgment creditor or of his solicitor or agent;

(*c*) the right of the judgment debtor to apply on the grounds provided in the Act to have the registration set aside; and

(*d*) in accordance with the terms of the order giving leave to register, within what time from the date of service of the notice an application to set aside may be made:

and subject to these requirements shall be as near as may be in the form laid down in Rule 261 (*e*).

Certificate of execution of the notice of registration shall be returned to the Deputy Principal Clerk of the Petition Department, and, if certificate of execution is not so returned, the judgment creditor shall not be at liberty to do diligence on the judgment without the leave of the Court.

9.—(1) An application to set aside the registration of a judgment shall be made by Petition to the Outer House in ordinary form supported by affidavit.

(2) On any such application the Court may order such enquiry as may be necessary.

10.—(1) A registered judgment shall not be extracted until after the expiration of the period which, in accordance with the provisions of paragraph 5 (3) of this rule, is specified in the order giving leave to register as the period within which an application may be made to set aside the registration, or, if an order is made extending the period so specified, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, the judgment shall not be extracted until such application has been disposed of.

11. If no application is made within the specified time to have the registration set aside, or if such an application has been made and refused, the Deputy Principal Clerk of the Petition Department shall grant a certificate to that effect. Extract of the registered judgment shall thereupon be issued. The warrant for diligence shall be in common form, and shall be executed upon a charge of fifteen days or such other period as the Lord Ordinary may fix.

12. If any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under the foreign judgment under the law of that country, that question shall be determined in accordance with such provisions, if any, in that behalf, as are contained in the Order in Council extending the Act to that country.

13.—(1) An application under section 10 of the Act for a certified copy of a judgment obtained in the Court of Session shall be made by petition to the Outer House. There shall be lodged with the Petition an extract decree setting forth the judgment. The Court on being satisfied, by affidavit or other proper evidence, that the requirements of the Act have been satisfied shall pronounce an order ordaining the Deputy Principal Clerk of the Petition Department to issue a certified copy of the judgment. The certificate shall be under the seal of the Court and shall be in the following terms—

" I certify that the foregoing extract decree is a true copy of a judgment obtained in the Court of Session and this certificate is issued in accordance with section 10 of the Foreign Judgments (Reciprocal Enforcement) Act, 1933, and in obedience to an order by Lord dated .

" (Signed)

" Deputy Principal Clerk of the Petition Department of the Office of the Court of Session at Edinburgh ".

(2) There shall be issued along with the foregoing certificate the following further certificate also under the seal of the Court and certified by the Deputy Principal Clerk of the Petition Department:—

A certificate enumerating and identifying and having annexed to it copies of the summons or petition, by which the proceedings were instituted, showing the manner in which the summons or petition was served on the defender or respondent and whether the defender or respondent appeared thereto, and the objections made to the jurisdiction, if any, the pleadings, if any, in the proceedings, a copy of the opinions, if any, of the judge or judges who took part in the judgment, and such other particulars as it may be necessary to give to the foreign tribunal in which it is sought to obtain execution of the judgment. Copies of the foregoing documents shall be supplied where necessary by the solicitor of the person making the application.

14. These Rules shall, in relation to any judgment, have effect subject to any such provisions contained in the Order in Council extending the Act to the country of the original court as are declared by the Order in Council to be necessary for giving effect to the agreement made between His Majesty and that country in relation to matters for which provision is made by these Rules.

SECTION 9

PETITIONS AND OTHER PROCEEDINGS UNDER THE PATENTS AND DESIGNS ACTS, 1907 TO 1932

263. Definitions

In this Section of these Rules:—

" The Act " means " the Patents and Designs Act, 1907, as amended ".

" The Comptroller " means " the Comptroller-General of Patents, Designs and Trade Marks ".

" The Solicitor " means " the Solicitor to the Board of Trade in London ".

264. Petitions under section 18 of the Act

In all petitions for extension of patents presented under section 18 of the Act, the following provisions shall apply:—

(*a*) Subject to the provisions of this Section, all such petitions shall be Outer House petitions, and the procedure prescribed for Outer House petitions in this Chapter of these Rules shall apply mutatis mutandis.

(*b*) Any party intending to present such a petition shall advertise his intention to do so twice in each of the "*Edinburgh Gazette*" and the "*London Gazette*", and once in each of the "*Scotsman*", "*Glasgow Herald*" and the "*Times*" newspapers.

(*c*) In such advertisements the applicant shall state the object of his petition, and the date on which it is to be presented. He shall also give notice therein that any person desirous of objecting to the granting of the petition must within fourteen days after said date lodge in the Petition Department a notice intimating that he intends to lodge answers.

(*d*) A copy of the advertisement prescribed above shall be forwarded to the Solicitor at the same time as the first advertisement is sent to either of the "*Gazettes*".

(*e*) On or before the day of lodging the petition, two copies thereof shall be sent to the Solicitor, and along with the petition there shall be lodged a certificate of posting said copies.

(*f*) There shall be lodged along with the petition a certificate by the applicant or his solicitor that advertisements have been published in conformity herewith, and copies of such advertisements certified by the publishers shall be produced.

(*g*) Two printed copies of the specification of the patent shall be produced along with the petition.

(*h*) The petition shall be served on any person who has lodged a notice under paragraph (*c*) of this rule, and on the Comptroller, and the Court may order such further intimation, advertisement and service as may seem fit.

(*i*) The petitioner shall lodge in process, along with his petition, two copies of the balance-sheet of expenditure and receipts relating to said patent, on which he intends to found, and the Court shall not hear parties in the case until four weeks from the date of lodging shall have expired, unless on special cause shown.

(*j*) The petitioner shall also at the same time furnish three copies of the above-mentioned specification, and also of the said balance-sheet, to the Solicitor, and shall, upon receiving two days' notice, give the Solicitor or any person deputed by him for the purpose reasonable facilities for inspecting and taking extracts from the books of account by reference to which it is proposed to verify said balance-sheet or from which the materials for making up the same have been derived.

(*k*) Any person who has lodged answers shall be entitled, at his own expense, to obtain from the petitioner copies of said balance-sheet.

265. Amendment of specification under section 22 of the Act

Where a patentee applies under section 22 of the Act for leave to amend his specification pendente lite, the following provisions shall apply:—

(*a*) The application shall be made by motion in the proceedings before the Court, and may be made at any stage of such proceedings, whether in the Outer House or in the Inner House. Notice of such motion, together with a King's Printer's copy of the specification showing in red ink the amendment proposed to be made, shall be served on the parties to such proceedings, and in the first instance upon such parties only, and a similar amended copy of the specification shall at the same time be lodged in process.

(*b*) On the hearing of such motion the Court shall decide whether, and on what terms as to expenses or otherwise, the application shall be allowed to proceed.

(*c*) If the application be allowed to proceed, the applicant shall forthwith serve the Comptroller with a copy of the notice of motion together with such copy specification as aforesaid, and also a copy of the order allowing the application to proceed, and also with the name and address of the applicant's solicitor; and the proposed amendment shall be advertised in the "Official Journal (Patents)", such advertisement stating that any person desiring to oppose the amendment must within fourteen days of the issue of the advertisement give notice in writing of such desire to the applicant's solicitor, whose name and address for that purpose shall be also stated in the advertisement. Any person giving such notice shall be entitled to be heard upon the hearing of the motion.

(*d*) Within seven days after the receipt of any such notice the applicant shall, if the person giving such notice shall have stated therein an address for service within the United Kingdom, serve on such person a copy of the notice of motion together with such copy of the specification as aforesaid, and also a copy of the order allowing the application to proceed. Such service shall be made by registered letter sent to such person through the post at his address for service.

(*e*) The Court shall then, not later than seven days after such service, appoint a day to hear the applicant and all parties desiring and entitled to be heard, and shall, after such hearing, if the application can be disposed of without evidence, dispose thereof, or if evidence is necessary, appoint a date for hearing evidence, and shall take the evidence, hear parties and dispose of the application.

(*f*) Where the Court allows a specification to be amended, the applicant shall forthwith lodge with the Comptroller an office copy of the order allowing such amendment, and the Comptroller shall advertise the same once at least in the "Official Journal (Patents)." The applicant shall also, if required so to do by the Court or by the Comptroller, leave at the Patent Office a new specification and drawings as amended, the same being prepared as far as may be in accordance with the rules of the Patent Office for the time being in force.

266. Application for Revocation or Relief

The provisions of Rule 110 of these Rules shall apply mutatis mutandis in the case of an application by a defender for revocation of a patent under section 32 of the Act or for relief under section 36, sub-section (2), of the Act.

267. References to the Court under sections 29 and 58A of the Act.

Where a dispute between a Government Department and a patentee or the proprietor of a registered design is referred to the Court under section 29 and section 58A of the Act, the following provisions shall apply:—

(*a*) The application shall proceed as an Outer House petition, and the procedure prescribed for Outer House petitions in this Chapter of these Rules shall apply mutatis mutandis.

(*b*) The Court shall appoint service of the petition to be made on the Lord Advocate as representing the Government Department or Departments concerned, or on the patentee or proprietor of the registered design, as the case may be, and shall order such further intimation or service as shall seem proper.

(*c*) It shall be in the power of the Court to remit to a reporter, in such terms as the Court may direct, any question raised by the proceedings, including any disputed issue of fact.

268. Expenses

In all proceedings under the Act the expenses of parties, including the Comptroller and the Solicitor, shall be in the discretion of the Court.

269. General power of court to direct procedure

Notwithstanding the provisions contained in this Section of this Chapter, the Court may (on cause shown and if it thinks fit) give such other or different directions in matters of procedure and practice as may be considered just and expedient in the circumstances.

CHAPTER V

INNER HOUSE

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SECTION 1

RECLAIMING

270. Scope of this Section

The provisions of this Section of this Chapter shall apply with regard to all interlocutors pronounced in the Outer House, or by the Vacation Judge, which it is desired to submit to the Inner House for review.

271. Mode of reclaiming

(*a*) Any party to a cause who is dissatisfied with such an interlocutor may, subject to the provisions herein contained, reclaim against the same by a motion (enrolled in the motion-sheet) for the review of such interlocutor by the Inner House, such motion to be as nearly as may be in terms of Form 29.

(*b*) All such motions shall be enrolled, made, and intimated, in the same way as is directed in paragraphs (*a*), (*b*), and (*c*), of Rule 118.

(*c*) The enrolment of a motion under the preceding paragraphs of this rule shall have the same effect as a reclaiming note according to the law and practice as defined in section 52 of the Court of Session Act, 1868.

(*d*) When in any Reclaiming Motion or Appeal the parties are agreed that on any separate branch of the case the interlocutor appealed against is not to be submitted for review, it shall not be necessary to reproduce the notes of evidence or documents relating to such separate branch.

272. Objections to competency

(*a*) If before one o'clock on the first business day after the day on which the enrolment is made (on Saturdays before twelve o'clock) the motion, as appearing in the motion-sheet, is not marked with the words " Opposed as incompetent " (which marking, if made, shall bear its date, and shall be signed by the solicitor or solicitors making the same, or by his or their clerk or clerks on his or their behalf), the motion shall be brought forthwith before one or other Division of the Inner House in chambers; and such Division may, without hearing any party, either send the cause to the summar or short roll (as may be appropriate), or direct the same to be heard in the single bills, and the cause shall be so heard.

(*b*) If before one o'clock on the day after the day on which the enrolment is made (on Saturday before twelve o'clock) an objection to the motion shall be marked in manner foresaid, the cause shall be put out in the single bills on the earliest available sederunt day.

(*c*) When a cause is called in the single bills on account of an objection (marked in manner foresaid) to the competency of reclaiming, or when the cause is heard in the summar roll on an objection to competency which has been reserved in single bills, and the objection is not maintained, the Court may find the objector liable in any expense occasioned by the enrolment and hearing.

273. Reclaiming days, and leave to reclaim

(*a*) Any interlocutor disposing (either by itself, or taken along with a previous interlocutor or interlocutors) of the whole subject matter of the cause, pronounced in any cause initiated in the Outer House either by summons or by petition, may be reclaimed against, without leave, not later than the twenty-first day (whether in session, vacation or recess) after the day on which the said interlocutor is pronounced.

(*b*) In any cause an interlocutor disposing of part of the merits of the cause, or allowing or refusing proof or jury trial (but, in case of refusal, without disposing of the whole merits of the cause), or limiting the mode of proof, or adjusting issues for jury trial, or allowing jury trial without issues, or granting or refusing interim interdict or interim liberation, or sisting execution or procedure, may be reclaimed against, without leave, not later than the fourteenth day (whether in session, vacation or recess) after the day on which the said interlocutor is pronounced.

(*c*) In any cause, any interlocutor allowing or refusing in whole or in part a commission and diligence for the recovery of documents applied for after calling of the Summons and any other interlocutor (not being a decree in absence nor a decree by default, nor one of the interlocutors dealt with in the immediately preceding paragraphs of this rule) may be reclaimed against, with leave of the Lord Ordinary who pronounced the same, or (in vacation or recess) with leave of the Vacation Judge, not later than the seventh day (whether in session, vacation or recess) after the day on which the said interlocutor is pronounced; provided that (i) it shall not be competent to ask or obtain leave except during the currency of the reclaiming days; (ii) it shall not be competent to reclaim against the grant or refusal of leave by the Lord Ordinary or the Vacation Judge and (iii) such leave shall not, standing the interlocutor reclaimed against, excuse obedience to or implement of the interlocutor, unless by order of the Lord Ordinary, or one or other Division, or (in vacation) of the Vacation Judge.

(*d*) In any case of mistake or inadvertence, the Court may, in its discretion, allow a motion for review to be received and proceed, though not enrolled within the reclaiming days defined in the preceding paragraphs of this rule, but only on such conditions as to expenses as the Court may think proper.

(*e*) Notwithstanding the foregoing provisions, it shall be competent to reclaim, without leave, against a decree by default at any time before extract; and where the default has been in failing to lodge a paper, the paper must be lodged on or before the enrolment of the motion for review; otherwise the motion shall be refused. No decree by default shall be recalled except upon such conditions as to expenses or otherwise as the Court may think proper.

(*f*) Paragraphs (*a*), (*b*) and (*c*) of this rule shall not apply to interlocutors pronounced in the winding up of a company and, subject to paragraphs (*d*) and (*e*) of this rule, and to the other rules of this section, section 224 of the Companies Act (or, in the case of a winding up commenced before 1st November, 1929, section 181 of the Companies (Consolidation) Act, 1908) shall continue to apply to all such interlocutors.

(*g*) It shall not be competent for any party to a petition for suspension, suspension and interdict, or suspension and liberation, to reclaim against any interlocutor awarding expenses in respect of a certificate of no caution or consignation; and the fact that an interlocutor has been reclaimed against shall not prevent the issue of a certificate of refusal nor hinder the interlocutor submitted to review from being carried into effect unless the Court shall, on cause shewn, stay proceedings.

SECTION 2

SPECIAL CASES

274. To be presented and heard in the Inner House

(*a*) All special cases under section 63 of the Court of Session Act, 1868, shall be presented to the Inner House, and shall be lodged in the General Department.

(*b*) On being so lodged, any such special case shall (without passing through single bills) be heard in due course in the summar or short roll of one or other Division of the Inner House.

275. Appointment of curator ad litem to party incapax

(*a*) If any of the parties to a special case, as presented, is incapax in respect of non-age, insanity, or otherwise, it shall be the duty of the other parties (which duty may be performed by any of them), on presentation of the special case, to enrol a motion in the motion-sheet for appointment of an advocate as curator ad litem to such incapax; and it shall be competent for the Court to appoint such curator ad litem.

(*b*) Any such curator ad litem appointed as aforesaid shall be given all necessary facilities by the other parties; and, if he is satisfied that the special case is fully and accurately stated in reference to the interests of the incapax, he may sign it (with or without amendments consented to by him and the other parties), as curator ad litem. If he is not given all necessary facilities by the other parties, or is not satisfied that the special case is fully and accurately stated in reference to the interests of the incapax, it shall be his duty to report orally to the Division by whom he was appointed; and such Division may then recall his appointment and dispose of the special case as shall seem just.

(*c*) It shall not be competent to award expenses against such curator ad litem in any circumstances, but he shall be entitled to his expenses as may be directed by the Court.

SECTION 3

APPEALS FROM INFERIOR COURTS GENERALLY (INCLUDING LYON COURT, SHERIFF COURTS, DEAN OF GUILD COURTS, ETC.)

276. Scope of section

Subject always to the provisions contained in Rules 285 to 297 the rules contained in this Section shall, notwithstanding any provision in any Act of Parliament to the contrary, apply with regard to all appeals from any interlocutor, judgment or determination (including decrees of removing)

pronounced by any inferior court (other than the Land Court) which may competently be submitted for review to the Court of Session, or to a judge thereof.

277. Time and mode of appeal: transmission: intimation

(*a*) All appeals shall be taken within such time as may be prescribed by any law or practice regulating appeals from the inferior court, or (if there is no such law or practice) not later than twenty-one days after the date of the interlocutor, judgment or determination appealed against; and shall be by note of appeal written by the appellant or his solicitor on the interlocutor sheet, minute of Court, or other written record containing the interlocutor, judgment or determination appealed against, or on a separate sheet lodged with the clerk of the inferior court; and such note of appeal shall be as nearly as may be in the following terms:—" The (*pursuer, applicant, claimant, defender, respondent, or other party*) appeals to the Court of Session "; and such note of appeal shall be signed by the appellant or his solicitor, and shall bear the date on which it is signed.

(*b*) Within four days after an appeal shall have been taken in manner foresaid, the clerk of the inferior court or tribunal shall transmit the process to the Deputy Principal Clerk of the General Department, who, on receipt of the same, shall subjoin to the note of appeal a marking of the date on which it is received; provided that, in an appeal from any tribunal whose proceedings are minuted or recorded in official books, copies of such proceedings certified by the clerk to such tribunal shall be transmitted as aforesaid in lieu of the process above referred to, and shall (as so transmitted and received) be the equivalent of such process, and shall in all such cases be accompanied by a separate note of appeal in manner provided in paragraph (*a*) of this rule.

(*c*) Within the said four days, the clerk of the inferior court or tribunal shall send written notice of the appeal to the other party or parties, or to his or their solicitor or solicitors and certify on the interlocutor sheet that he has done so; provided that failure to give such notice shall not invalidate the appeal, but the Court may give such remedy for any disadvantage or inconvenience thereby occasioned as may in the circumstances be considered proper or necessary.

278. Entering appearance: lodging: abandonment

(*a*) Within seven days of the receipt in the General Department of the process in an appeal, the parties, or the Edinburgh solicitors for the parties, shall cause to be written on the interlocutor sheet, minute of court, or other written record containing the interlocutor, judgment or determination appealed against, or on the separate sheet referred to in paragraph (*a*) of Rule 277, their names and addresses, and (in the case of parties' solicitors) shall specify the parties for whom they respectively act.

(*b*) Within fourteen days of the receipt in the General Department of the process in an appeal, the appellant shall (whether in session or in vacation) make up and lodge a process as prescribed in Rule 23, which shall include the inferior court process (detailed in the inventory and duplicate inventory of the Court of Session process): and he shall also lodge therewith a copy of the record containing any amendments allowed since the closing of the record, or other pleadings in the cause, interlocutors or other orders, and note of appeal, and deliver at least ten copies thereof to the solicitor of the respondent,

or to each of the solicitors of the respondents (if more than one); and, if the appellant shall fail within the said period of fourteen days to lodge and deliver the papers required as aforesaid, he shall be held to have abandoned his appeal and shall not be entitled to insist therein except upon being reponed as hereinafter provided; provided however that, within seven days after receipt in the General Department of the process in an appeal, the appellant may enrol a motion in the motion-sheet for a sist of process, and if, on cause shewn, the Court or Vacation Judge grants such sist, the running of the said fourteen days shall be postponed until the sist is recalled. An unopposed motion for the recall of such sist may, in vacation or recess, be disposed of by the Vacation Judge.

(*c*) At the time when the appellant lodges the process and other papers in terms of the immediately preceding paragraph of this rule, he shall enrol in the motion-sheet and intimate to the respondent a motion to have the appeal put out for hearing.

279. Objections to competency

(*a*) If, on the day after the day on which the enrolment is made in terms of paragraph (*c*) of the immediately preceding rule, the respondent shall not mark the motion, as appearing in the motion-sheet, with the words " Opposed as incompetent " (which marking, if made, shall bear its date, and shall be signed by the solicitor or solicitors making the same, or by his or their clerk or clerks on his or their behalf) the motion shall, on the earliest available sederunt day, be brought before one or other Division of the Inner House in chambers; and such Division may, without hearing any party, either send the cause to the summar or short roll (as may be appropriate), or, if the Division thinks proper, direct the same to be heard in single bills, and the same shall be so heard.

(*b*) If, on the day after the day on which the enrolment is made, an objection to the motion shall be marked in manner foresaid, the cause shall be put out for hearing in the single bills on the earliest available sederunt day.

280. Reponing

It shall be lawful for the appellant, within seven days after the appeal has been held to be abandoned in accordance with paragraph (*b*) of Rule 278, to lodge with the Deputy Principal Clerk of the General Department a written motion to be reponed. The motion shall then be put out in the single bills before one or other Division of the Inner House, or before the Vacation Judge (as the case may be), and shall only be granted upon cause shewn, and upon such conditions as to payment of expenses to the respondent, or otherwise, as shall seem just.

281. Respondent may proceed with abandoned appeal: retransmission of abandoned appeal

(*a*) It shall be lawful for the respondent, within seven days after the appeal has been held to be abandoned in accordance with paragraph (*b*) of Rule 278, to lodge a copy of the record and others, as provided in said paragraph (*b*), and thereafter to insist in the appeal as if it had been taken by himself; in which case the appellant shall also be entitled to insist in the appeal; and the provisions regulating appeals by an appellant shall apply equally to appeals insisted in under this section by the respondent.

(*b*) On the expiry of the said period of seven days after the appeal has been held to be abandoned as aforesaid, if the appellant shall not have

been reponed and if the respondent does not insist in the appeal, or on receipt by the Deputy Principal Clerk of the General Department of a letter signed by the solicitors for both parties stating that the appellant has abandoned the appeal, the judgment or judgments complained of shall become final, and shall be treated in all respects as if no appeal had been taken against the same; and the Deputy Principal Clerk of the General Department shall cause the process to be retransmitted to the clerk of the inferior court; provided always that before retransmitting the process the said Deputy Principal Clerk shall cause to be engrossed upon the interlocutor sheet, minute of Court, or other written record containing the interlocutor, judgment or determination appealed against, or on the separate sheet referred to in paragraph (*a*) of Rule 277, a certificate in these terms:—" (*Date*) Retransmitted in respect of the abandonment of the appeal "—and, in respect of such certificate, the inferior court shall, on a motion being made to that effect, grant decree for payment to the respondent in the appeal of the sum of £3 3s. 0d. of expenses.

282. Appeals against interlocutor applying verdict

(*a*) In appeals against interlocutors applying verdicts of juries in a sheriff court, it shall not be necessary to lodge copies of the notes of evidence unless an order appointing the same to be lodged shall be made by the Court.

(*b*) If, in any such appeal, the Court shall order a new trial, it shall be the duty of the party wishing to proceed with the cause in the sheriff court to furnish the sheriff-clerk with a certified copy of the interlocutor making such order, and also to borrow the sheriff court process and transmit the same to the sheriff-clerk.

SECTION 4

CAUSES REMITTED FROM SHERIFF COURTS

283. Application for remit: intimation: remit by sheriff ex proprio motu: remission of process

(*a*) The party desiring the cause to be remitted shall cause to be written on the interlocutor sheet in the sheriff court a note in the following terms:—" The pursuer (*or* defender *or other party*) requires the cause to be remitted to the Court of Session "—; and the said note shall be signed by the party making the application, or his solicitor, and shall bear the date on which it is signed.

(*b*) The sheriff-clerk shall, within four days after the date of such application being made, send written notice of such application to the opposite party, or his solicitor, provided that the failure to give such notice shall not invalidate the remission, but the Court may give such remedy for any disadvantage or inconvenience thereby occasioned as may in the circumstances be thought proper.

(*c*) Where such application shall have been made, or in cases where the sheriff has ex proprio motu pronounced an interlocutor remitting the cause to the Court of Session, the sheriff-clerk shall, within four days thereafter, transmit the process to the Deputy Principal Clerk of the General Department, who shall cause to be written on the interlocutor sheet a note of the day on which it is received.

284. Procedure in remitted causes

(*a*) Upon the process being so transmitted, the provisions of Rules 278 to 281 with regard to appeals from inferior courts shall apply mutatis mutandis; provided that:—

(i) The enrolment referred to in paragraph (*c*) of Rule 278 shall be made by the party at whose instance the remission has been made, or, in cases

in which the remission is made by the sheriff ex proprio motu, by the pursuer in the cause;

(ii) If the remit is for jury trial, the proposed issue or issues (together with five copies of the same for the use of the Court) shall be lodged along with the process, and intimated to the solicitor or solicitors for the other party or parties by delivery of a copy to him or them; and the procedure thereafter shall be as directed in paragraphs (*c*), (*d*), (*e*), and (*f*) of Rule 134, with the substitution of " five copies for the use of the Court " for " a copy for the use of the Court ", and of " Division " for " Lord Ordinary ", and Summar roll " for " procedure roll ". If the motion is for trial of the cause by jury without issues, the procedure shall be as directed by Rule 135, with the substitution of the words " If the motion is " for the words " If at the closing of the record any party to the cause applies ". If it appears from any of the motions enrolled in the motion-sheet and the relative markings that the parties are at variance with regard to any of the matters enumerated in paragraph (*a*) of Rule 136, said Rule 136 shall mutatis mutandis apply, with the substitution of " summar roll " for " procedure roll "; provided that, if the cause is considered by the Court to be unsuitable for jury trial, the Court may send it back to the sheriff for proof, or remit the same for proof to a Lord Ordinary or to one of the judges of the Division before which the cause depends, as in the discretion of the Court is thought best.

(iii) The objections referred to in Rule 279 shall include objections to the competency of the remission, and any objections having for their object the retransmission of the cause.

(iv) In the event of an application for remission of the cause being abandoned, or held to be abandoned, the docquet on the interlocutor sheet referred to in Rule 281 shall be in the following terms:—" Retransmitted in respect of the abandonment of the remission ".

(*b*) Should the party desiring the cause to be remitted (or in the case of a remit by the sheriff ex proprio motu, the pursuer) fail to proceed in manner provided by paragraph (*b*) of Rule 278 (as applied to causes remitted from a sheriff court) within fourteen days after the process has been received in the General Department, and so be held to have abandoned the remit, it shall be competent for any other party to the cause to proceed as provided by Rule 281 within the seven days succeeding; or otherwise, it shall be competent for the party desiring the cause to be remitted (or, in the case of a remit by the sheriff ex proprio motu, the pursuer) to move the Court or the Vacation Judge (as the case may be) at any time within the said seven days to be reponed on cause shown, in the same manner and subject to the same conditions as are directed in Rule 280 in the case of an appeal.

(*c*) On the expiry of the said seven days without reponing, the Deputy Principal Clerk of the General Department shall cause the process to be retransmitted to the sheriff-clerk as a cause in which the remission has been abandoned, with a docquet on the interlocutor sheet in the terms of paragraph (*a*) (iv) of this Rule; and, in respect of such docquet, the sheriff shall, on motion made, pronounce such order as may be just, and grant decree for payment to the respondent of the sum of £3 3s. 0d. of expenses.

SECTION 5

APPEALS BY WAY OF STATED CASE, SPECIAL CASE, SUBMISSION AND REFERENCE UNDER CERTAIN STATUTES

285.—(i) Appeals under (*a*) the Representation of the People Act, 1918, section 14 (2); (*b*) the Workmen's Compensation Act, 1925, section 49; (*c*) the Pensions Appeal Tribunals Act, 1943, section 6; (*d*) the Local Government

(Scotland)Act, 1947, section 201, and (e) the Cinematograph Films Act, 1927, section 9, shall be regulated by Rules 290, 291, 292, 293, and 294 respectively, and appeals under the Finance (1909-10) Act, 1910, and the Mining Industry Act, 1926, by Rules 337 to 344.

(ii) Subject to the provisions of the foregoing paragraph of this rule, all appeals by way of stated case, special case, case, reference or submission (hereinafter referred to as " the case ") against the decision of any court, the Secretary of State, a Minister, a department, statutory tribunal, referee or authority (hereinafter referred to as " the tribunal ") and all statutory proceedings for obtaining the opinion of the Court on a question either prior to the issue of a decision by the tribunal or by way of appeal against a decision by the tribunal, shall, subject to the provisions of the statute allowing such appeal or proceedings (hereinafter referred to as " the statute "), be regulated by the rules 286 to 289, provided that " the question " shall in the said rules be construed as " the question of law " unless the Statute allows an appeal on a question other than a question of law.

286. Preparation of the case for presentation to the Court

Where the Court is authorised to make regulations by Act of Sederunt for obtaining, settling, stating and authenticating the case for presentation to the Court, the following provisions shall have effect:—

(*a*) Any party desiring to have a case application for which must be presented prior to the issue of the decision of the tribunal may at any time prior thereto apply to the clerk of the tribunal for a case for the opinion of the Court of Session on any question, and any party desiring to have a case which may be presented following upon the issue of the decision of the tribunal may, within fourteen days after the issue thereof, similarly apply for such a case. Such applications shall be made by Minute, and shall set forth the question on which the case is applied for.

(*b*) The clerk of the tribunal shall forthwith intimate such application and the question of law on which the case is applied for to the other party, who shall be entitled within seven days after the receipt thereof to lodge a minute setting forth any additional question proposed as the subject matter of the case, and the provisions of paragraphs (*c*) and (*d*) of this rule shall apply to any such application and to any such additional question.

(*c*) If the application is presented before the facts have been ascertained by the tribunal, and if the tribunal is of opinion that it is necessary or expedient that the facts should be ascertained before the application is disposed of, it may postpone further consideration of the application until the facts have been ascertained by it.

(*d*) On consideration of any such application, whether after the facts have been ascertained or at an earlier stage (should the tribunal think it necessary or expedient then to consider it), the tribunal may, if it is of opinion that the proposed question does not arise or that a decision upon it is unnecessary for the purposes of the appeal or is frivolous, refuse to state a case on such question; but in that event it shall intimate its decision to the parties and grant a certificate to the applicant, specifying the reason of refusal and bearing the date of the refusal; and if such refusal is made after the facts have been ascertained, such certificate shall be accompanied by a note of the proposed findings in which the facts

which have been ascertained, and on which the tribunal proposes to base its decision, shall be set forth, and if such refusal is made before the facts have been ascertained, the certificate shall be accompanied by a note of, or sufficient reference to, the averments of the parties in the appeal or their admissions therein on which the refusal is based.

(*e*) If and when the tribunal decides to state a case on any application it shall cause its decision to be intimated to the parties not later than the expiry of 28 days after the date on which the application was made, and within fourteen days after the despatch of such intimation it shall cause the case to be prepared and submitted in draft to the parties; within twenty-one days from the receipt of the draft case, each party shall return it to the clerk of the tribunal with a note of any additions, alterations, or amendments which he may desire to have made thereon.

(*f*) (i) Should the parties fail to agree as to the terms of the case, or should any of them fail to return the draft case, the tribunal shall adjust the terms of the case and in any event the terms of the case shall be subject to the approval of the tribunal.

(ii) When a draft case is being settled by the tribunal, it may add thereto such further or additional findings in fact and such additional question as it may think necessary for the due disposal of the subject matter of the case.

(*g*) The case shall bear to be stated by the tribunal and shall be authenticated by the clerk thereof, who shall thereupon cause it to be delivered to the party or the party who first, applied for it.

(*h*) The party to whom the case has been so delivered—

(i) shall intimate in writing to the other party whether he intends to proceed with the case, and shall also send to him a copy of the case, within seven days after the case has been delivered to him by the clerk of the tribunal.

(ii) if he intends to proceed with the case, he shall also within the said seven days lodge the principal case in the General Department (which may be done by transmission to the Deputy Principal Clerk of the said Department), together with a certificate under the hand of himself or his solicitor of the notice having been given to the other parties; and, in the event of his failing so to lodge or transmit the case, the respondent in the appeal shall be entitled to apply to the tribunal, who, upon a motion made before it to that effect and on being satisfied of such failure, shall dispose of the proceedings, and may, if one party only has applied for a stated case, find him liable in payment to the other party of the sum of £3 3s. of expenses.

(*j*) The party to whom the case has been delivered, if he does not intend to proceed with it, shall immediately after the expiry of seven days from the date of the delivery of the case to him return the case to the clerk of the tribunal, who shall thereupon deliver it to the other party if that party had also applied for a case, and that other party shall thereupon be entitled to proceed in the manner provided in paragraph (*h*) (ii) above.

(*k*) (i) The party to whom the case has been delivered shall, within fourteen days after the principal case has been received by the said Deputy Principal Clerk, lodge in the General Department a copy of the case along with a process and copies of productions for the use of the Court in terms of Rules 23 and 29 (ii), and shall at the same time intimate the lodging

of the case to the opposite party or his Solicitor, and deliver to him at least ten copies of the case, and, if he shall fail within the said period to lodge the case as aforesaid, or to be reponed against his failure to do so by motion made to the Court during session, or to the Vacation Judge during vacation, within the following seven days, he shall be held to have abandoned his appeal.

(ii) If the other party has also applied for a stated case and has had no opportunity of proceeding with his appeal, the said Deputy Principal Clerk shall intimate to him that the party to whom the case was delivered has abandoned his appeal; and the other party shall then be entitled to proceed in the manner provided in the immediately preceding sub-paragraph; provided that the days shall be reckoned from the intimation of the abandonment; and if such party fails so to proceed he shall in like manner be held to have abandoned his appeal.

(iii) On the abandonment of the appeal by the only party, or by both parties, entitled to proceed, the said Deputy Principal Clerk shall engross upon the case and sign a certificate in the following or similar terms; (date) " Retransmitted in respect of abandonment "—and retransmit the case accordingly; and in respect of said certificate the tribunal shall, upon a motion being made before it to that effect, dispose of the proceedings, and may, if one party only has applied for a stated case, find him liable for payment to the other party in the appeal of the sum of £3 3s. of expenses.

287. Procedure for ordaining the tribunal to state a case

When the tribunal has refused to state and sign a case the party whose application has been refused may, within fourteen days from the date of such refusal, apply by a written note to one of the Divisions of the Inner House lodged in the General Department for an order upon the other party to show cause why a case should not be stated. Such note shall state shortly the nature of the case, the facts and the question which the applicant desires to raise, and shall be accompanied by the above-mentioned certificate of refusal, and the Division shall, after intimation to the other parties, dispose of it summarily. If an order is pronounced requiring the tribunal to state a case, the case shall be stated as required by the statute or these Rules, and these Rules so far as applicable shall apply to the subsequent procedure. Intimation of the decision or order shall be made to the tribunal by the despatch by registered letter of a certified copy thereof to the clerk to the tribunal by the applicant.

288. Form of stated case or special case, submission or reference

The case shall refer to the statute under which it is presented, and shall state in articulate numbered paragraphs the facts and circumstances out of which the case arises, as the same may be agreed, found, or referred (as the case may be), and shall set out the question for answer by the Court.

(*b*) The form of the case shall, as nearly as may be, be as shown in Form 31.

289. Procedure in the Court of Session

The party to whom a case has been delivered, on lodging a copy thereof in terms of Rule 286 (*k*) (i) shall at the same time enrol in the motion sheet and intimate to the opposite party a motion to have the case put out for hearing. The said motion shall, on the earliest available sederunt day, be

brought before one or other Division of the Inner House in chambers; and such Division may, without hearing any party, either send the case to the summar roll, or, if the Division thinks proper, direct the same to be heard in single bills.

(*b*) The Court may, at any time before the final disposal of the case, allow the case to be amended with consent of the parties thereto, and may remit the case for re-statement, or further statement, in whole or in part; and if, in order to the disposal of the case, any enquiry into matters of fact is competent and required, the Division before which the case depends may remit to a reporter or to one of their own number to take evidence.

290. Special cases under the Representation of the People Act, 1918, Section 14 (2)

Special cases under the Representation of the People Act, 1918, section 14 (2) shall be subject to the following provisions supplementary to the provisions of Rules 286 to 289:

(*a*) Where several persons have lodged minutes with the Sheriff-Clerk, and it appears to the sheriff that such minutes, or any two or more of them raise the same question of law or questions of law, it shall be competent for the sheriff to consolidate the appeals in one special case; and, in that event, the sheriff shall state in the special case the circumstances in which he has consolidated the appeals, and shall moreover name therein such one of the appellants as he may in his discretion select as " the appellant ". Such appellant shall supply copies of the special case as lodged to any other appellants, on their request and at their charges.

(*b*) On the special case being lodged in the General Department as aforesaid, the case shall be put out in the printed rolls of Court for hearing before the Registration Court of Appeal on the earliest available day.

(*c*) The Court shall, in its decision, specify every alteration or correction, if any, to be made upon the register in pursuance of such decision; and a copy of such decision shall, within four days, be sent by the Deputy Principal Clerk of the General Department to the registration officer.

291. Stated Cases under the Workmen's Compensation Act, 1925, section 49

(*a*) An application to a sheriff as arbitrator to state a case shall be made by minute lodged in the process within seven days after the sheriff has issued his award and such minute shall set forth the question (or questions) of law proposed as the subject-matter of the case, and shall be accompanied by such fee of Court as may be prescribed; provided always that if the sheriff, on an application for a stated case being submitted to him, is of opinion that any question of law proposed in it was not raised by the admissions made or the facts proved before him, or that the application for a case is frivolous, he may refuse to state or sign the case; but in that event he shall grant to the applicant concerned a certificate specifying the reasons and bearing the date of the refusal.

(*b*) The sheriff-clerk shall forthwith intimate such application and the question or questions of law proposed to the other parties, who shall be entitled within seven days after the receipt thereof to lodge in process a minute setting forth any additional question or questions of law proposed as the subject-matter of the case.

(*c*) Within fourteen days after the dispatch of such intimation the sheriff shall prepare the case and submit the same in draft to the parties or their solicitors: provided that, if minutes are lodged by both parties, the sheriff may prepare one case including the questions proposed by both parties. Within twenty-one days from the receipt of the draft case each party shall return the same to the sheriff-clerk with any additions, alterations or amendments which he may desire to have made thereon.

(*d*) (i) Should the parties or their solicitors fail to agree as to the terms of the case, or should either or both parties fail to return their draft case revised as above provided, the sheriff shall adjust the terms of the case.

(ii) Where a draft case is being settled by the sheriff, he may add thereto any further or additional findings in fact, and any additional question or questions of law, as he may think necessary or expedient for the due disposal of the subject-matter of the case.

(*e*) The case shall bear to be stated by the sheriff and shall be signed by him, and shall thereupon be delivered to the appellant; or, where both parties appeal, to the party who first applied for a case to be stated. The note of the sheriff (if any) explanatory of the grounds of his award shall be appended to the case.

(*f*) (i) The party to whom the case has been so delivered shall, if he intends to proceed with it, give written notice of his intention to proceed with it to the other party or parties interested, and shall at the same time send to each of such parties a copy of the case. Such notice shall be given not later than seven days after the case (as settled by the sheriff as arbitrator) has been delivered to him. He shall also within the said seven days lodge the case in the General Department (which may be done by transmission to the Deputy Principal Clerk of the said Department), together with a certificate under the hand of himself or his solicitor of the notice having been given to the other parties; and, in the event of his failing so to lodge or transmit the case, the respondent in the appeal shall be entitled to apply to the sheriff as arbitrator, who, upon a motion made before him to that effect and on being satisfied of such failure, shall dispose of the arbitration proceedings, and if one party only has applied for a stated case, find him liable for payment to the other party of the sum of £3 3s. of expenses.

(ii) If the party to whom the case has been delivered fails to proceed as aforesaid and the other party has also applied for a case, the party so failing shall, immediately after the expiry of the time within which he should have given notice of his intention to proceed, return the same to the sheriff clerk, who shall thereupon deliver it to the other party, and such party shall then be entitled to proceed in the manner provided in the immediately preceding sub-paragraph of this paragraph of this rule.

(*g*) (i) The party to whom the case has been delivered shall, within fourteen days after the case has been received by the said Deputy Principal Clerk, lodge in the General Department a copy of the case and the note (if any) of the sheriff; and, if he shall fail within the said period to lodge the case as aforesaid, or to be reponed against his failure to do so by motion made to the Court during session, or to the Vacation Judge during vacation, within the following seven days, he shall be held to have abandoned his appeal.

(ii) If the other party has also applied for a stated case and has had no opportunity of proceeding with his appeal, the said Deputy Principal Clerk shall intimate to him that the party to whom the case was delivered has abandoned his appeal; and the other party shall then be entitled to proceed

in the manner provided in the immediately preceding sub-paragraph; provided that the days shall be reckoned from the intimation of the abandonment; and if such party fails so to proceed he shall in like manner be held to have abandoned his appeal.

(iii) On the abandonment of the appeal by the only party, or by both parties, entitled to proceed, the said Deputy Principal Clerk shall engross upon the case and sign a certificate in the following or similar terms: (date) "Retransmitted in respect of abandonment"—and retransmit the case accordingly; and in respect of said certificate the sheriff shall, upon a motion being made before him to that effect, dispose of the arbitration proceedings, and if one party only has applied for a stated case find him liable for payment to the other party in the appeal of the sum of £3 3s. of expenses.

(iv) At any time after the case has been lodged as aforesaid either party may move for an order on the sheriff-clerk to transmit the process. Such application shall be made by a written note in the process, and, after intimation to the sheriff-clerk and to the other parties in the appeal may be disposed of summarily by the Court or otherwise as they think fit.

(*h*) When a sheriff has refused to state and sign a case applied for by either or both of the parties, the applicant whose case has been refused may within fourteen days from the date of such refusal apply by a written note to the Inner House, and lodged in the General Department, for an order upon the sheriff to state a case. Such note shall be accompanied by the above-mentioned certificate of refusal, and shall state shortly the nature of the cause, the facts, and the question or questions of law which the applicant desires to raise; and one or other Division shall, or (in vacation) the Vacation Judge may, after intimation to the other party or parties, dispose of it summarily. If the note is heard and disposed of by the Vacation Judge, his judgment upon it, as well as upon the question of costs, shall be final. If an order is pronounced requiring the sheriff to state and sign a case, the case shall be stated as hereinbefore provided, and these regulations shall apply to the subsequent procedure.

292A. Applications for leave to appeal from a Pensions Appeal Tribunal

(1) Applications to the Court of Session for leave to appeal from the decision of a Pensions Appeal Tribunal shall be disposed of by a single Judge nominated for that purpose from time to time by the Lord President, and the decision of such Judge on any such application shall be final.

(2) Such applications shall only be made if leave to appeal has first been refused by the Pensions Appeal Tribunal, and shall be made within twenty-eight days of the date of the decision of the Tribunal refusing such leave.

(3) Such applications shall be made by lodging in the General Department a note as nearly as may be in Form 49. A copy of said note shall at the same time be served upon the opposite party (or his solicitor), who shall within fourteen days thereafter intimate in writing to the Deputy Principal Clerk whether he desires to be heard.

(4) On the expiry of the said period of fourteen days, the note shall be brought by the Deputy Principal Clerk before the nominated judge in chambers, and the subsequent procedure shall be summary and such as the said judge in his discretion may direct. Without prejudice to the foresaid generality, it shall be competent for the said judge to grant the application without a hearing, or to dispose of it after a hearing in chambers or in open court, and at any such hearing to proceed in the absence of a party who has intimated that he does not desire to be heard; or to order written answers; or to remit to the Chairman of the Tribunal for a report on any matter.

(5) A certified copy of the interlocutor granting or refusing any such application shall be sent by the Deputy Principal Clerk to the Pensions Appeal Office and to the parties or their solicitors.

(6) The applicant for a pension shall be entitled to the reasonable expenses of successfully applying for leave to appeal, or of opposing, successfully or unsuccessfully, an application for such leave by the Minister of Pensions.

292B. Stated Cases under the Pensions Appeal Tribunals Act, section 6

(1) When leave to appeal has been granted by a Pensions Appeal Tribunal or under Rule 28A, the Chairman shall within twenty-eight days of the date of the decision granting leave to appeal prepare a draft stated case and shall within the said period send a copy thereof to the Minister of Pensions and to the claimant for a pension (or, if he has so requested, to his solicitor).

(2) Within fourteen days thereafter the Minister and the claimant shall return the draft case to the Chairman with any additions or alterations which they or either of them may desire to have made thereon.

(3) Should the parties fail to agree as to the terms of the case, or should either or both fail to return the draft case revised as above provided, the terms of the case shall be adjusted by the Chairman, and in any event the terms of the case shall be subject to the approval of the Chairman. The case shall then be signed by the Chairman and shall be sent forthwith to the appellant, or his solicitor as the case may be, or where both parties are appellants, to the party who first applied for a stated case.

(4) Subject to the provisions of this Rule, the provisions of these Rules relative to appeals by way of Stated Case shall *mutatis mutandis* apply for the purpose of regulating further procedure; provided (i) that the claimant for a pension shall be entitled to his reasonable expenses in every such appeal irrespective of the result, and (ii) that, if the appellant fails duly to prosecute the appeal, the respondent may bring the matter before the Court by written note to the Inner House lodged in the General Department, and in any such case the Court shall pronounce such order as may seem to them just.

(5) On the final disposal of any appeal the Deputy Principal Clerk shall, in accordance with such directions as the Court may give, transmit to the Pensions Appeal Office a certified copy of the interlocutor or interlocutors of the Court.

(6) If after application for leave to appeal has been made to the Pensions Appeal Tribunal, the parties agree as to the answers to the questions of law which would require to be stated by the Chairman of the Tribunal, it shall be competent for the parties to lodge a Joint Note signed by Counsel for both parties, setting forth the terms of an agreement come to by the parties as to the questions of law and the answers thereto, dispensing with the necessity for the Chairman of the Tribunal preparing a draft Stated Case, and requesting the Court to interpone authority to the terms of the agreement as set forth in said Joint Note. Any order then pronounced by the Court shall have the same force and effect as an order pronounced under the Rules of Court affecting the disposal of appeals by way of Stated Cases. The Court in making any such order shall have power to find the claimant (or appellant) entitled to his expenses in connection with the presentation of a Joint Note and incidental procedure connected therewith.

(7) When under this Rule or Rule 28A a document requires to be served on or sent to the Minister of Pensions, it should be delivered or sent to the Solicitor in Scotland for the Minister of Pensions for the time being.

293. Stated Cases under section 201 of the Local Government (Scotland) Act, 1947

(*a*) An application to the Secretary of State to state a case on any question of law arising on an interim report by the auditor shall be made in writing lodged with the Secretary of State for Scotland, Scottish Home Department, St. Andrew's House, Edinburgh, and shall state the question of law on which the stated case is applied for.

(*b*) If the application is presented before the facts have been fully ascertained by the Secretary of State, and if the Secretary of State is of opinion that it is necessary or expedient that the facts should be ascertained before the application is disposed of, he may postpone further consideration of the application until the said facts have been ascertained by him.

(*c*) On consideration of any such application, whether after the facts have been fully ascertained or at an earlier stage (should the Secretary of State think it necessary or expedient then to consider it), if the Secretary of State is of opinion that the proposed question of law does not arise, or that a decision upon it is unnecessary for the purposes of the decision of the questions raised by the interim report, or is frivolous, he may refuse to state a case on such question; but in that event he shall cause a certificate to be granted to the applicant specifying the reason of refusal and bearing the date of the refusal; and, if such refusal is made after the facts have been fully ascertained, such certificate shall be accompanied by a note of proposed findings, in which the facts which have been ascertained and on which the Secretary of State proposes to base his final award shall be set forth; and, if such refusal is made before the facts have been fully ascertained, the certificate shall be accompanied by a note of, or sufficient reference to, the statements of admissions made by the auditor or by any of the parties to whom the interim report was intimated in terms of the said section 201, on which the Secretary of State's refusal is based. The person making application, the auditor, and the said parties are hereinafter referred to as the parties concerned.

(*d*) Every person making an application for a stated case shall forthwith intimate such application and the question of law proposed therein to the other parties concerned; and any of the parties to whom such intimation is given shall be entitled within seven days after the receipt thereof to make application in writing lodged with the Secretary of State for a stated case on any additional question or questions of law proposed as the subject-matter of the case, and the provisions of the two immediately preceding paragraphs shall apply to any such application and to the proposed questions of law stated therein.

(*e*) If and when the Secretary of State decides to state a case or cases on any application, he shall cause his decision to be intimated to the parties concerned; and within fourteen days after the dispatch of such intimation the Secretary of State shall cause the case or cases to be prepared and submitted in draft to the said parties; provided that one draft case, including the questions proposed by all the parties, may be prepared if the Secretary of State thinks fit. Within twenty-one days from the receipt of the draft stated case each party shall return the same to the Secretary of State with any additions, alterations or amendments which he may desire to have made therein.

(*f*) Should the parties concerned fail to agree as to the terms of the case, or should any of them fail to return the draft case revised as above provided, the Secretary of State shall adjust the terms of the stated case.

(*g*) Where a draft case is being stated by the Secretary of State he may add thereto any further or additional proposed findings in fact and any additional question or questions of law as he may think necessary for the due disposal of the subject matter of the case.

(*h*) The case shall bear to be stated by the Secretary of State, and shall be signed by him or on his behalf, and shall thereupon be lodged by him in the General Department (which may be done by transmitting the stated case to the Deputy Principal Clerk of the General Department), together with a note of the parties' names, addresses, and solicitors (if any). At the same time the Secretary of State shall cause intimation to be made to the parties or their solicitors that the stated case has been so lodged or transmitted.

(*j*) At any hearing upon the stated case the Secretary of State may appear and be heard by counsel.

(*k*) Where the Secretary of State has refused to state and sign a case applied for by any of the parties concerned, the applicant whose case has been refused may, within fourteen days from the date of such refusal, apply by a written note to one of the Divisions of the Inner House, lodged in the General Department, for an order upon the other parties concerned to show cause why a case should not be stated. Such note shall state shortly the nature of the case, the facts and the question of law which the applicant desires to raise, and shall be accompanied by the above mentioned certificate of refusal (if any), together with the note or reference mentioned in paragraph (*c*) of this rule; and the Division shall, after intimation to the other parties concerned dispose of it summarily, and the decision thereon, and on the question of expenses, of the Division shall be final. If an order is pronounced requiring the Secretary of State to state a case, the case shall be stated as hereinbefore provided, and these regulations shall apply to the subsequent procedure. Intimation of the decision, or order (as the case may be) shall be made to the Secretary of State by the dispatch by registered letter of a certified copy thereof, by the party interested or his solicitor.

(*l*) Rules 288 and 289 shall apply to Stated Cases under this rule.

294. Appeals under the Cinematograph Films Act, 1927, section 9

(*a*) Any person aggrieved by the refusal of the Board of Trade to register a film, or to register a film as a British film, or by a decision of the Board of Trade to correct the registration of a film, and whose principal place of business is in Scotland, may, within twenty-one days of such refusal or decision, or within such further time as the Court may hold (on consideration of any appeal presented under paragraph (*b*) of this rule) to have been reasonable in the circumstances, give to the Board of Trade notice in writing requiring the matter to be referred to the Court, and the Board of Trade shall, within seven days of the receipt of the notice, (1) refer the matter to the Court by sending the notice duly endorsed as "referred" to the Deputy Principal Clerk of the General Department, and (2) give written notice to the person aggrieved that this has been done.

(*b*) Within fourteen days of the receipt by such person of the said written notice, or within such further time as the Court may hold (on consideration of any appeal presented under this paragraph) to have been reasonable in the circumstances, the person aggrieved may present an appeal against such refusal or decision of the Board of Trade to the Inner House, and lodge the same in the General Department. The provisions of Rules 288 and 289 shall thereafter apply.

SECTION 6

OTHER STATUTORY APPEALS

295. Form of Appeal.

(*a*) Subject to the supplementary provisions contained in Rules 296 and 297, all statutory appeals and applications of the nature of appeals to the Court (other than the appeals and proceedings referred to in rule 285) against a decision of the Secretary of State, a Minister, a department, statutory tribunal, referee or authority shall be taken within such time as may be prescribed by the particular statute under which the appeal is presented, or, if no time is presribed, not later than twenty-one days after the date on which the decision, order, scheme, determination, refusal, or other act of the authority or person complained of, was intimated to the appellant; and shall (notwithstanding anything in any Act of Parliament to the contrary) be by written appeal presented to the Inner House and lodged in the General Department. Any such appeal shall refer to the particular statute under which the appeal is brought, and shall specify the decision, order, scheme, determination, refusal, or other act complained of as aforesaid, and shall identify the same by the date on which it was made or done and on which it was intimated to the appellant, and by any other necessary particulars.

(*b*) Wherever possible, the decision, order determination, refusal, or other act appealed against shall be set forth in the appeal; and if the appeal is against only a part of such decision, order, scheme, determination, refusal, or other act, the part appealed against shall be specified or distinguished.

(*c*) The appeal shall state in brief numbered propositions the grounds of appeal, and shall (as lodged) be accompanied by any documents founded on by the appellant so far as in his possession or within his control.

(*d*) The form of such appeal shall, as nearly as may be, be as shown in Form 30.

(*e*) All such appeals shall, on the first available day after lodging, appear (without any enrolment in the motion-sheet) in the printed rolls of Court in the single bills of one or other Division of the Inner House for an order for intimation of the appeal to the respondent, and to such other person or persons as the Court may think proper, and appointing him or them to lodge answers (if so advised) within such induciae as the Court may fix. In vacation the order for intimation may be made by the Vacation Judge.

(*f*) The intimation shall be made by registered letter enclosing a copy of the appeal and of the interlocutor of the Court, and a notice that the induciae commence to run only on the day after the day on which the registered letter was posted.

(*g*) Answers may be lodged not later than the last day of the induciae (reckoned in accordance with such notice as aforesaid), in concise and articulate form, together with any documents founded on therein and the cause shall forthwith be enrolled in the motion sheet for further procedure.

(*h*) Rules 279 to 281 shall *mutatis mutandis* apply to such appeals.

296. Appeals under the Unemployment Insurance Act, 1935, section 84 (1) (a), and the National Health Insurance Act, 1936, section 161, provisos (i) and (iii)

(*a*) The notice of appeal shall, as nearly as may be as shown in form 41, and shall set forth the determination appealed against, and the date on which the determination was intimated to the appellant, and shall contain a crave for service on the Lord Advocate as representing the

Minister of National Insurance on fourteen days' induciae, and for an order on the said Minister to lodge in process within such induciae a statement of the facts on which his determination proceeded, together with a copy of any regulations in accordance with which such determination was made.

(*b*) Within seven days of the date of the production in process of such statement of facts, and regulations (if any) the appellant shall lodge in process a note containing answers to said statement of facts and setting forth any question submitted by him on appeal and shall enrol a motion for an order for hearing.

(*c*) All appeals under this rule shall be heard in the summar roll; provided that the Court, without prejudice to all other powers competent to them, may order further or amended statements of fact or answers thereto, and may allow the question to be altered, added to or amended on the motion of both or either of the parties, if that is necessary to enable the true question between the appellant and the Minister to be decided.

(*e*) Rule 295 (*b*), (*c*) and (*d*) shall not apply to appeals under this rule.

297. Appeals under the Finance Act, 1894, section 10

(*a*) *Preliminary procedure.*—The appellant shall, within one month from the date of the notification to him or his solicitor of the decision or claim of the commissioners, deliver to them a written appeal containing a statement of the grounds of such appeal. The statement shall specify explicitly the several grounds upon which the appellant contends that the decision or claim of the commissioners is erroneous; and, if he contends that the value put upon any property by the commissioners is excessive, he shall therein identify such property, and state the value which he contends should be put upon the same.

(*b*) *Notice by commissioners of withdrawal of decision.*—The Commissioners shall, within one month from the delivery to them of the said written appeal, notify the appellant or his solicitor whether they have withdrawn the decision or claim appealed against, or have determined to maintain the same, either in whole or in part.

(*c*) *Methods of appeal.*—The appellant may, within one month from the date of the notification by the commissioners of their determination to maintain their decision or claim either in whole or in part, or (in the event of an application being made under paragraph (*e*) of this rule) within ten days from the date of the interlocutor disposing of such application, proceed either (i) by lodging his appeal in the General Department for disposal in the Inner House; or (ii) where the value as alleged by the commissioners of the property in respect of which the dispute arises does not exceed £10,000, by presenting a petition in the sheriff court for the county within which the appellant resides or the property is situated. The provisions of Rules 286 to 289 of this Chapter shall apply in the case of an appeal to the Court of Session. In the case of a petition in a sheriff court, the sheriff shall order the petition to be served on the commissioners or on the Solicitor of Inland Revenue for Scotland on their behalf, and may, if he thinks fit, appoint answers to such petition to be lodged or parties to be heard thereon with or without answers, and may thereafter give decree granting or refusing the prayer of the petition or may take such other course with regard thereto as to him may seem proper.

(*d*) *Statements in appeal or petition.*—The appellant shall not in his appeal as lodged, or in his petition, state any grounds of appeal not specifically set forth in the statement of the grounds of appeal delivered by him, along with the appeal, to the commissioners; provided always, that the Court or sheriff

(as the case may be) may at any time, before or at the hearing, allow the appellant to amend his appeal or petition upon such terms as the Court or sheriff may think right.

(*e*) *Leave to appeal without paying duty.*—Where the appellant desires to apply for leave to bring an appeal without payment, or on part payment only, of the duty (under the provisions of subsection (4) of section 10 of the Act) he shall, within fourteen days from the date of the notification given by the commissioners, in terms of paragraph (*c*) of this rule, present a note to the Court in one or other Division thereof or the sheriff (as the case may be) craving for such leave, and shall specify therein the grounds on which his application is made, and the Court or the sheriff shall dispose of such note summarily; provided always that the prayer thereof shall not be granted without giving the commissioners an opportunity of being heard upon it.

(*f*) *Abandonment of appeal.*—If the appellant shall not proceed with his appeal as provided in paragraph (*c*) of this rule, he shall be held to have abandoned the same, and shall not be entitled to proceed thereafter with it.

(*g*) *Procedure in Court of Session and in any sheriff court.*—Except in so far as inconsistent with the provisions of this rule, or of the said Act, the Court of Exchequer (Scotland) Act, 1856, shall apply to all such appeals originating in the Court of Session; and the Sheriff Courts (Scotland) Acts, 1907 to 1939, shall apply to all such petitions originating in any sheriff court.

Section 7

Adjustment and Signing of Inner House Interlocutors

298.—(*a*) An interlocutor disposing without the hearing of parties of an unopposed motion under Rule 118 or Rule 272 shall be adjusted and signed by the judge presiding at the time when the motion is brought before the Division.

(*b*) Any other interlocutor shall be adjusted and signed by the judge who presided in the Division when the matter to be dealt with in the interlocutor was determined, or, in the event of the death, absence or disability of such judge, by the senior remaining judge of the Division which determined the matter. Such interlocutors shall be adjusted and signed as soon as reasonably practicable after the matter has been so determined, and after such consultation, if any, with the remaining members or member of that Division as the presiding judge or senior remaining judge may deem necessary.

(*c*) The judge signing an Inner House interlocutor shall be authorised to append the letters I.P.D. to his signature as conclusive evidence that the requirements of the foregoing paragraphs have been complied with.

Section 8

Inner House Judgments in Vacation or Recess

299.—(*a*) It shall be competent for judgment to be given in Vacation or Recess disposing in whole or in part, so far as appropriate without a further hearing of counsel, of any cause depending before the Inner House by the issue of an interlocutor adjusted and signed as aftermentioned together with the opinions of the judges who determined the matter.

(*b*) Any such interlocutor shall be adjusted and signed by the judge who presided in the Division when the case was heard, after such consultation if any, with the remaining members of that Division as he may deem necessary, and such judge shall be authorised to append the letters I.P.D. to his signature as conclusive evidence that the requirements of this Rule have been complied with.

CHAPTER VI

SPECIAL COURTS

Section 1.—Election Petitions ... ... Rules 300–336

Section 2.—Appeals under Finance (1909–10) Act, 1910, and the Mining Industry Act, 1926 ... ... Rules 337–344

SECTION 1

ELECTION PETITIONS

300. Presentation of petition

The presentation of an election petition shall be made by lodging it in the Petition Department and the Deputy Principal Clerk of the said Department or his assistant, on receiving the same, shall mark thereon the date of lodgment, and, if desired, grant a receipt therefor, in terms of Form 35, or in similar terms. All such petitions shall be presented to the Inner House.

301. Form of petition

An election petition shall set forth articulately in the form of a narrative in numbered paragraphs:—

(i) The right of the petitioners within section 5 of the Parliamentary Elections Act, 1868, in this Section called " the Act ";

(ii) The proceedings at and the result of the election;

(iii) The facts relied on in support of the prayer of the petition;

and shall conclude with a prayer (as for instance) that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners, where more than one; said petition being as near as may be in the form shown in Form 36.

302. Security for expenses

(*a*) The security to be given on behalf of the petitioners, if by bond of caution, as prescribed by section 6 of the Act, on presentation of the petition, shall be by lodging a bond of caution to the effect required by the statute in the hands of the Deputy Principal Clerk, which shall be as nearly as may be in the form shown in Form 37.

(*b*) In the event of the required security being by a deposit of money, in whole or in part, such deposit shall be made with the Bank of Scotland, in an account to be opened with said bank, entitled, " The Parliamentary Elections Act, 1868, Security Fund "; and lodging forthwith the deposit receipt for the amount with the Deputy Principal Clerk, and which deposit shall stand as a security for the purpose for which security is required by the said Act, subject to the order of the Court.

303. Sufficiency of Caution

When security is tendered in the form of a bond of caution, lodged as aforesaid, the sufficiency thereof shall be attested to the satisfaction of the Deputy Principal Clerk.

304. Notice of Presentation

The time for giving notice of the presentation of a petition, and of the nature of the proposed security, shall be five days, inclusive of the day of presentation.

305. Notice of Objections to Security

The time for giving notice of any objections to the security under section 8 of the Act shall be five days from the date of service of the notice of the petition, and of the nature of the security, exclusive of the day of service; and the said objections shall be lodged with the Deputy Principal Clerk within said time, in writing, and shall set forth the specific ground or grounds thereof.

306. Hearing on Objections to Security

Objections, if any, to the security shall be forthwith heard and disposed of by the Deputy Principal Clerk.

307. Deliverance on Objection

When any objection taken to the security is sustained, the Deputy Principal Clerk shall, in his deliverance to that effect, state the amount of deposit or additional deposit required to make the security sufficient, and the further prescribed time to remove the objection by such deposit shall be five days from the date of the deliverance or order; it being in the power of the party within the said time to appeal to the election judges, or either of them, as regards the amount ordered to be deposited by the Deputy Principal Clerk as aforesaid.

308. Procedure where seat claimed

When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of and the party defending the election or return shall, six days before the day appointed for trial, respectively deliver to the Deputy Principal Clerk a list of the voters intended to be objected to, and of the objections to each such voter, and the said Clerk shall allow inspection of such list to all parties concerned; and no evidence shall be allowed to be given against any vote, or in support of any objection which is not specified in the list, except by leave of the Judges, or one of them, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

309. Evidence of undue return under section 53 of Act

On the trial of a petition complaining of an undue return, and claiming the seat for some person, when the respondent intends to give evidence to prove that the election of such person was undue, under authority of section 53 of the Act, such respondent shall, six days before the day appointed for trial, deliver to the Deputy Principal Clerk a list of the objections to the election upon which he intends to rely; and no evidence shall be allowed to be given by a respondent in support of any objection to the election not specified in the list, except by leave of the Judges or one of them, upon such terms as to amendment of the list, postponement of the inquiry, and payment of expenses, as may be ordered.

310. Notice of agent's name and address for notices

With the petition the petitioner shall lodge in the Petition Department, a writing signed by him or on his behalf, giving the name of some person entitled to practice as an agent in cases of election petitions whom he authorises to act as his agent, or stating that he acts for himself, as the case may be, and in either case giving an address within three miles of the

General Post Office, Edinburgh, at which notices, addressed to him, may be left; and if no such writing be left or address given, it shall be sufficient to give notice of objection to the security, and all other requisite notices, by affixing the same to a notice board, in the Petition Department, appropriated to proceedings under the Act, and headed " Parliamentary Elections Act, 1868 ".

311. Appointment of agent by member

Any person returned as a member may, at any time after he is returned, send or leave in the Petition Department a writing, signed by him or on his behalf, appointing a person, entitled to practise as an agent in cases of election petitions, to act as his agent, in case there shall be a petition complaining of his return and election, or stating that he intends to act for himself, and in either case giving an address, within three miles from the said General Post Office, at which notices addressed to him may be left; and in default of such notice being left within a week after service of the petition, it shall be sufficient to give the requisite notice by affixing the same to the notice board in the Petition Department provided for that purpose.

312. Service of petition

(*a*) Where the respondent has named an agent, or given an address, the service of an election petition may be by delivery of a copy thereof to the agent, or by posting the same in a registered letter to the address given, so as to admit of its being delivered within the prescribed time, in the ordinary course of post.

(*b*) In other cases the service shall be personal on the respondent, unless the Judges, or one of them, upon an application made not later than five days after the petition is presented, on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service, and to cause the matter to come to the knowledge of the respondent, including (when practicable) service upon an agent for election petitions; in which case the Judges, or one of them, may order that what has been done shall be considered sufficient service, or may pronounce such other order as may be deemed just.

313. Record of agents' names

The Deputy Principal Clerk shall keep a book at his office, in which he shall enter all addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

314. Intimation to returning officer, and publication by him

The Deputy Principal Clerk, upon the presentation of the petition, shall forthwith send a copy thereof to the returning officer, in terms of section 7 of the Act, and shall also send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also the name of the respondent's agent and of the address, if any, given as prescribed; and the returning officer shall forthwith publish these particulars along with the petition.

315. Lists of election petitions under section 10 of Act

In preparing the list of election petitions in the Inner House, in terms of section 10 of the Act, the Deputy Principal Clerk shall insert the names of the agents of the petitioners and respondents, if any, and the addresses

to which notices may be sent; which list may be inspected at the Petition Department at any time during office hours, and shall be put up for that purpose upon the notice board provided as aforesaid.

316. Time and place of trial

The time and place of the trial of an election petition shall be fixed by the Judges, and notice thereof in writing shall be affixed by the Deputy Principal Clerk on the notice board in the Petition Department, and he shall send one copy thereof by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the returning officer, fifteen days before the day appointed for the trial; and the returning officer shall forthwith publish the same in the county, or burgh or burghs to which it relates.

317. Notice of Trial

The affixing of the notice of trial on the foresaid notice board shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed: Provided always, that at any time before the trial it shall be competent to any party interested to bring the matter before the Judges, or either of them, by whom the same shall be disposed of as may be deemed just.

318. Postponement of trial

Either of the Judges may, from time to time, by order made upon the application of a party to the petition, or by notice in such form as the Judge may direct to be sent to the returning officer, postpone the trial to such day as he may name, and such notice, when received, shall be forthwith made public by the returning officer.

319. Application to state special case

The application to state a special case, as provided in section 11 of the Act, shall be made by motion to either Division of the Inner House in session, or (in vacation) to the Vacation Judge; on which motion the parties shall be heard and the application be disposed of, either by adjustment of a special case when allowed, or by refusal of the application.

320. Clerk of court at trial

At any court held for the trial of an election petition, an officer, to be named by the Principal Clerk of Session, with the sanction of the Judge, shall attend and discharge the duties of clerk of court, in like manner and to the like effect as the clerks of the Circuit Courts of Justiciary, and shall, subject to the direction and orders of the presiding Judge, keep a record of the proceedings at the trial, which shall be conducted in like manner as trials are conducted in said Circuit Courts of Justiciary. And the record of the proceedings at the trial shall be transmitted by said officer to the office of the Deputy Principal Clerk.

321. Opinion of Court under section 12 of Act

When it shall appear to the Judge on the trial to be expedient that the opinion of the Court should be obtained, as provided for by section 12 of the Act, the question or questions to be submitted to the Court shall be stated in a special case adjusted at his sight.

322. Warrant to cite witnesses

For the trial of any election petition, the warrant for citation of witnesses shall be issued by the Judge on the application of any party to the trial, and shall be, as nearly as may be, in the terms shown in Form 38; and the reasonable expenses of any witness shall be ascertained by the clerk of court, and upon a certificate under his hand allowing the same, the said expenses shall, in the first instance, be paid by the party adducing such witness.

323. Interlocutory matters

All interlocutory questions and matters, except as to the sufficiency of the security, shall be made upon application in writing, to be lodged in the Petition Department, and shall be heard and disposed of by one of the Judges, or, in vacation, by the Vacation Judge.

324. Leave to withdraw petition

Notice of an application for leave to withdraw a petition shall be in writing, and signed by the petitioner or his agent. It shall state the ground on which the application for withdrawal is intended to be supported, and shall be, as nearly as may be, in the form shown in Form 39, and shall be lodged in the Petition Department.

325. Notice of application for leave to withdraw

A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by him to the respondent, and to the returning officer, who shall make it public in the county, or burgh or burghs, to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place; and such notice shall be, as nearly as may be, in the terms shown in Form 40.

326. Application to be substituted as petitioner

Any person who might have been petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the Deputy Principal Clerk of his intention to apply at the hearing to be substituted for the petitioner, but any informality in such notice shall not defeat such application if in fact made at the hearing, subject, however, to such order as to postponement of the hearing and costs as shall be just.

327. Hearing on application for leave to withdraw

The time and place for hearing such application shall be fixed by one of the Judges, who shall hear and determine the same, unless he shall deem it expedient that the same shall be heard and determined by one or other of the Divisions of the Inner House; but the time fixed for the hearing shall not be less than a week after the notice of intention to apply shall have been given to the Deputy Principal Clerk, by whom notice of such hearing shall be given to any person who shall have intimated to him his intention to apply to be substituted for the original petitioner.

328. Death of petitioner

In the event of the death of the petitioner, or surviving petitioner, notice thereof, under section 37 of the Act, shall be given by any person interested, in the same manner as notice of an application to withdraw a petition;

and the time within which application may be made to the Judges to be substituted as a petitioner shall be one calendar month, or such further time as, upon consideration of any special circumstances, the Judge may allow.

329. Death of respondent

If the respondent dies, or is summoned to Parliament as a peer of Great Britain, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a petitioner under the Act, in respect of the election to which the petition relates, may, as provided by section 38 of the Act, give notice of the fact in the county, or burgh or burghs to which it relates, by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf, with the returning officer, and a like copy with the Deputy Principal Clerk of the Petition Department.

330. Notice that respondent does not oppose

The manner and time of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the Petition Department, signed by the respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice; and upon such notice being so left, he shall forthwith send a copy thereof by post to the petitioner or his agent, and to the returning officer, who shall cause the same to be published in the county, or burgh or burghs to which it relates, and the trial of the petition shall thereupon be postponed.

331. Application to be admitted as respondent

The time for applying to be admitted as a respondent in either of the events mentioned in section 38 of the Act shall be within ten days after such notice is given, as hereinbefore directed, or such further time as the Judge may allow.

332. Roll to be kept by Deputy Principal Clerk of the Petition Department

(*a*) The Deputy Principal Clerk of the Petition Department shall keep a roll, properly headed for entering the names of all persons entitled to act as agents in cases of election petitions, and all matters relating to elections before the Court and the Judges, in terms of section 57 of the Act.

(*b*) The entry upon the roll shall be written and subscribed by the agent, or some one authorised by him, in writing, to subscribe the same on his behalf, and shall therein set forth the name, description, and address in full, of such agent.

(*c*) The Deputy Principal Clerk may allow any persons qualified to act as solicitors in the Supreme Courts to subscribe the roll; and permission to subscribe the same may be granted by the Judges to other persons entitled, according to the principles, practice, and rules of the House of Commons, to act as agents, in cases of election petitions.

333. Expenses in proceedings under the Act

When any expenses are awarded in the course of the proceedings under this Act, the award of the same shall be held equivalent to a finding of expenses in the Court of Session; and the account thereof, when lodged, shall be taxed by the Auditor of Court, and the taxed amount shall be decerned for by the Judge or by the Court.

334. Proceedings not vitiated by objection of form

No proceedings under the Parliamentary Elections Act, 1868, shall be affected or defeated by any objection of mere form.

335. Statement of particulars

Evidence need not be stated in the petition, but the Court, or either of the Judges, may, on the requisition of the respondent, order the petitioner, within such period previous to the day fixed for the trial of the petition as may in the circumstances be deemed right, to lodge in the Petition Department, and to serve on the respondent or his agent, in the manner prescribed with regard to election petitions, a written statement of such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial.

336. Evidence confined to facts in statement of particulars

No evidence shall be received at the trial except as to matters within the written statement ordered as aforesaid, and tending to support the same, or matters which have been already sufficiently set forth in the petition, except by leave of the Court or the Judge, and upon such conditions as to the postponement of the trial, payment of expenses, and otherwise, as may be ordered.

SECTION 2

APPEALS FROM THE DECISIONS OF REFEREES UNDER THE FINANCE (1909-10) ACT, 1910 (10 EDW. VII., CAP. 8.) AND THE MINING INDUSTRY ACT, 1926 (16 AND 17 GEO. V., CAP. 28.)

337. Constitution of Court

The judges of the Court of Session named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts, when they sit to hear appeals under section 33 of the Finance (1909-10) Act, 1910, in this section called " the Act," shall sit with the same powers and under the same Rules as if they were appointed to sit as an Extra Division of the Inner House to hear and dispose of such appeals; Provided always, that in appeals from the sheriff under said Act it shall not be necessary for the Court to specify in any interlocutor any findings of fact or in law upon which the judgment of the Court is founded.

338. Time for appeal

Applications to a referee to state and sign a case under the Act shall be made within twenty-one days after the receipt by the appellant of the referee's determination, and such application shall set forth the question (or questions) of law on which the opinion of the said judges is sought.

339. Procedure in appeal

(*a*) Any case stated under the Act shall refer to the particular statute under which it is presented and shall state in articulate numbered paragraphs the facts and circumstances out of which the case arises, as the same may be agreed, found, or referred (as the case may be) and shall set forth the question (or questions) for answer by the Court. The form of the case shall, as nearly as may be, be as shewn in Form 31.

(*b*) The party who has obtained a case shall within seven days after the receipt thereof transmit the same to the Deputy Principal Clerk of the General Department and at the same time transmit a copy thereof to the opposite party or his solicitor. Within fourteen days after the case has been transmitted, the party obtaining same shall lodge in the General Department the said case, along with a process and copies of reproductions for the use of the Court in terms of Rules 23 and 29 (ii), and shall at the same time intimate the lodging of the case to the opposite party or his solicitor and deliver to him at least ten copies thereof.

340. Rolls

All such appeals shall be published in the printed rolls of the Court of Session under the heading "Valuation Appeal Court;" provided always that the single bills of the Court shall be called before one of said judges sitting alone, with power always to him to refer any matter to a sitting of the full Court.

341. Extracts

The Extractor of the Court of Session shall grant extract of the judgments of the Court in common form.

342. Minute-Book

Judgments of the Court shall be read in the minute-book of the Court of Session in common form.

343. Payment of Duty

Subject to the provisions of sub-section (4) of section 10 of the Finance Act, 1894, the appellant shall not be entitled to appeal against the decision of the referee except on payment of, or giving security for, the duty claimed by the Commissioners, or such portion of it as is then payable by him.

344. Leave for Appeal without Payment

Where the appellant desires to apply for leave to bring an appeal without payment, or on part payment only of the duty under the provisions of sub-section (4) of section 10 of the Finance Act, 1894, he shall, within fourteen days from the date of the decision of the referee, present a note to the Court craving such leave, and shall specify therein the grounds on which his application is made, and such note shall be disposed of summarily: Provided always that the prayer thereof shall not be granted without giving the Commissioners an opportunity of being heard.

CHAPTER VII

FEE-FUND DUES: TABLE OF FEES

Section 1.—Fee-Fund Dues ... ... Rules 345-353
Section 2.—Table of Fees of Solicitors ... ... Rules 354-357
Section 3.—Taxation of Accounts ... ... Rules 358-360

SECTION 1

FEE-FUND DUES

345. Amount of fees chargeable.

The Clerks of Court, the Auditor of the Court of Session, the Extractor of the Court of Session, the Deputy Keeper of the Signet, and the Accountant of Court, or any officer acting for any of them, shall be entitled to charge the fees specified in the Table hereto annexed, and no other, until the same shall be altered in terms of law.

346. Fees to be collected by stamps

The said fees shall be collected by means of stamps in the manner prescribed by the Public Offices Fees Act, 1879, and any amending Act, and in accordance with any regulations or orders made from time to time by the Treasury, by virtue of the powers conferred on them by the said Act or Acts; and the officers above named shall, each in his own department, be responsible for the observance of these regulations, and the collection of all fees specified in the tables, and the due cancellation of the stamps.

347. Fees not payable by Government Departments

No fee fund dues shall be payable in the first instance by any Department of Government, but when any such Department is found entitled to expenses, fee fund dues shall be included in the Account thereof and, if recovered, shall be paid by the Department.

348. Parties suing in forma pauperis

Parties who have been allowed to sue or defend in forma pauperis shall be exempted from the payment of fees in the first instance.

349. Consistorial causes

In any consistorial cause depending in the Court of Session, in which fees have been paid by both or either of the parties, it shall be competent for the Lord Ordinary, or the Court, on cause shown, to remit the whole or any portion of such fees, and to order the same to be repaid to both or either of the litigants; and the King's and Lord Treasurer's Remembrancer for Scotland, on receiving due intimation of such order of remission and repayment from the clerk to the process, along with a note duly certified by him of the nature and amount of the fees so ordered to be remitted and repaid, shall forthwith issue a certificate to the Inland Revenue, in order that the amount paid may be refunded to such party or parties or to their known solicitors in Edinburgh.

350. Modification or remission of fees in Accountant of Court's department

It shall be competent for a factor, tutor, curator, trustee, or other official in charge of any estate under the supervision of the Accountant of Court, or

for any person beneficially interested therein, to apply by motion, presented in the Petition Department, whether in session or in vacation, praying that any of the fees exigible under the annexed table shall be modified, or entirely remitted, in respect of the poverty of the estate, or other exceptional circumstances; and the Lord Ordinary, after obtaining a report from the Accountant of Court thereon, shall dispose of the application as may be just, and his decision shall be final; and in the event of any modification or remission being granted, the same shall be intimated by the Deputy Principal Clerk of the Petition Department to the King's and Lord Treasurer's Remembrancer.

351. In this section and relative table the following words shall have the meanings undermentioned:—

" Party," except in special cases, shall include a set of persons with the same interest, for whom one and the same first paper is or has been lodged. In special cases " party " shall mean a person or persons who appear as one of the separate parties to the case. " Step " shall mean a step of process.

352. The fees for proof, deposition of party on reference, hearing, and jury trial shall, in the first instance, be payable in equal shares by the parties to the action when there are more than one. Any fraction of sixpence which occurs for the division between the parties shall be charged as sixpence payable by each party.

The Clerk of Court shall note the duration of the proof, deposition, hearing, or jury trial, on a minute of proceedings, and shall, within one week of the date of the interlocutor or verdict pronounced on the proof, deposition, hearing, or jury trial, collect the fee fund stamps payable in respect thereof, and these stamps shall be affixed to the margin of the minute. The minute of proceedings shall be a step in the process and shall only be borrowable for transmission to the Auditor of Court.

353. Fee fund account books

The books of account to be kept by the officers of Court other than the Accountant of Court, in each office in which the fees are payable, shall be in the form of the schedule hereto annexed.

FEE-FUND DUES

Table of Fees payable in the Court of Session and Offices connected therewith

Fees payable in the Court of Session and offices connected therewith regulated by the Lords of Council and Session under the Act 58 and 59 Vict. cap. 14 with the approval of the Lords Commissioners of His Majesty's Treasury.

A.—General Department

I.—*Inner House*

	£	s.	d.
1. Appeals, or any other writ or step by which a cause or proceeding is originated, ...	2	0	0
2. Special cases—			
(*a*) Where two parties only, ...	3	0	0
(*b*) Each additional party, ... Subject to a maximum of £5 per case.	1	0	0
3. Answers or other step by which a party first makes appearance in a cause, or proceeding, ...	1	0	0

	£	s.	d.
4. Minutes or notes and answers thereto, ...	0	5	0
5. Objections and answers thereto, ...	0	5	0
6. Reports by accountants, men of business, or other persons of skill, under remits by the Court, ...	0	10	0
7. Reports by judicial referees, ...	0	10	0
8. Specifications of documents called for, whether separate or appended to note for commission and diligence, ...	0	5	0
9. Certified copy interlocutor, each copy, ...	0	5	0
10. (*a*) Proof, including hearing thereafter, per hour, or part thereof, ...	0	10	0
(*b*) Report of commission, ...	0	5	0
11. Deposition of party on reference, the same fee as for proof, viz. per hour, or part thereof, ...	0	10	0
12. Hearing.—For all discussions other than in single bills, per hour, or part thereof, ...	0	5	0
13. Interrogatories, ...	0	10	0
14. Cross-interrogatories, ...	0	10	0
15. Reclaiming motions with or without appendices, ...	0	15	0
16. Appendices to reclaiming motions or other papers when lodged separately, ...	0	5	0
17. Copies of pleadings when certified by Clerk of Court, ...	0	5	0
18. Inventories of productions, including documents produced during or put in evidence at close of proof or jury trial—			
(*a*) First inventory, ...	0	5	0
(*b*) Each further inventory, for each 100 documents or part of 100 documents included therein, ...	0	5	0
NOTE.—All productions made by witnesses during the course of a proof or trial shall be detailed in an inventory prepared by the solicitor of the party in whose interest they are lodged, and fees shall be paid thereon according to the number of such productions.			
19. Bonds of judicial caution on being lodged, ...	0	10	0
20. Certified copy of proceedings for appeal to the House of Lords,	2	0	0
21. Captions—			
Marking caption when ordered, ...	0	5	0
Warrant for caption when issued	0	5	0
22. Jury causes—			
(1) Adjusted issues, ...	0	5	0
(2) Notices of motion for new trial, ...	0	15	0
(3) Citation of each jury, to include outlays of sheriff-clerk in citing and countermanding, ...	2	0	0
NOTE.—The fee stamps to be affixed to precept before transmission to the sheriff-clerk. The precept to be issued not later than ten days previous to date fixed for trial.			
(4) Note of exceptions, ...	0	15	0
(5) For time occupied by trial of the cause up to commencement of the judge's charge, per hour, or part thereof, ...	0	10	0
(6) Report of commission, ...	0	5	0
23. Brieve of cognition or precept following on any other initial writ in any proceedings before the Lord President, ...	1	0	0
NOTE.—Other steps will bear the same fees as in ordinary actions and jury causes.			

	£	s.	d.
24. Letters of request to foreign Courts, ...	0	10	0
25. Note for warrant to cite witnesses furth of Scotland, ...	0	5	0
26. Every other step or pleading in the Inner House not enumerated in this schedule, ...	0	10	0

II.—*Outer House*

1. Summonses, or other writ or step by which a cause or proceeding is originated, ...	1	0	0
2. Defences, answers, or other writ by which a party first makes appearance in a cause, ...	1	0	0
3. Closing record, each party, ...	0	10	0
4. Inventories to satisfy production, ...	0	5	0
5. Petitions and notes not being first steps of process, ...	0	5	0
6. Minutes or other incidental steps and answers thereto, ...	0	5	0
7. Objections and answers thereto, and separate counterclaims and answers thereto, ...	0	5	0
8. Reports by accountants, men of business, or other persons of skill, under remits by a Lord Ordinary, ...	0	10	0
9. Reports by judicial referees, or by Board of Control, ...	0	10	0
10. Specifications of documents called for, ...	0	5	0
11. Certified copy interlocutor, each copy, ...	0	5	0
12. (*a*) Proof, including hearing thereafter, per hour, or part thereof	0	10	0
(*b*) Report of commission, ...	0	5	0
13. Deposition of party on reference, the same fee as for proof, viz. per hour, or part thereof, ...	0	10	0
14. Hearing.—For all discussions other than in the motion roll, per hour, or part thereof, ...	0	5	0
15. Interrogatories, ...	0	10	0
16. Cross-interrogatories, ...	0	10	0
17. Condescendences and claims or interests, and revised condescendences and claims or interests in multiplepoindings, rankings, schemes of division, etc., for each separate claim where the sum claimed is upwards of £25, ...	0	5	0
18. Copies of pleadings certified by Clerk of Court, ...	0	5	0
19. Inventories of productions, including documents produced during, or put in evidence at close of proof or jury trial—			
(*a*) First inventory, ...	0	5	0
(*b*) Each further inventory, for each 100 documents or part of 100 documents included therein, ...	0	5	0
NOTE.—All productions made by witnesses during the course of a proof or trial shall be detailed in an inventory prepared by the solicitor of the party in whose interest they are lodged, and fees shall be paid thereon according to the number of such productions.			
20. Bonds of judicial caution on being lodged, ...	0	10	0
21. Captions—			
Marking caption when ordered, ...	0	5	0
Warrant for caption when issued, ...	0	5	0

	£	s.	d.
22. Jury causes—			
(1) Adjusted issues, ...	0	5	0
(2) Citation of each jury, to include outlays of sheriff-clerk in citing and countermanding, ...	2	0	0
NOTE.—The fee stamps to be affixed to precept before transmission to the sheriff-clerk. The precept to be issued not later than ten days previous to date fixed for trial.			
(3) For time occupied by trial of the cause up to commencement of the judge's charge, per hour, or part thereof ...	0	10	0
23. Letters of request to foreign Courts	0	10	0
24. Note for warrant to cite witnesses furth of Scotland, ...	0	5	0
25. Every other step or pleading in the Outer House not here enumerated, ...	0	10	0

III.—*Exchequer Causes*

1. Petition for summary decree for Crown debts or rents, ...	0	10	0
2. Petition to uplift Parliamentary deposits, ...	0	10	0
3. Cases stated under the Taxes Management Act, 1880, or the Income Tax Act, 1918, ...	0	10	0
4. Cases stated by Quarter Sessions for the opinion and judgment of the Court, ...	0	10	0
5. Case stated under Stamp Act, 1891, section 13, ...	0	10	0
6. Petition under Succession Duty Act, 1853, Section 50, ...	0	10	0
7. Answers thereto	0	10	0
8. Petition under Customs and Inland Revenue Act, 1885, Section 19 (2)	0	10	0
9. Answers thereto	0	10	0
10. Petition under Finance Act, 1894, Section 10	0	10	0
11. Answers thereto	0	10	0
(Any other writ or step of procedure the same fees as similar writs or steps under Nos. I and II.)			

B.—PETITION DEPARTMENT

1. Petitions, petitions and complaints presented to Inner House, ...	2	0	0
2. Petitions and answers in Inner House, not being first steps, ...	0	10	0
3. Petitions for sequestration, ...	1	0	0
4. Answers or objections to No. 1, ...	1	0	0
5. Certified copies of petitions for sequestration and relative interlocutors, each, ...	0	10	0
6. Minutes or notes to award sequestration or to dismiss petitions for sequestration, and other application in or connected with sequestrations, ...	0	5	0
7. Answers or objections to No. 6, ...	0	5	0
8. Every extract or certified copy of proceedings in or connected sequestrations other than certified copies under No. 4, per sheet of writing or part thereof, ...	0	2	0
9. Petitions and notes presented to the Outer House, being first steps of process and answers thereto, ...	1	0	0
10. Petitions and notes presented to the Outer House, not being first steps of process, and answers thereto, ...	0	5	0

	£	s.	d.
11. Reports by accountants, men of business, or other persons of skill under remits by the Court, ...	0	10	0
12. Minutes or other incidental steps and answers thereto, ...	0	5	0
13. Petitions for suspension, suspension and interdict, or suspension and liberation, and answers thereto, ...	1	0	0
14. Caveats when lodged or renewed, ...	0	2	6
15. Fiats, ...	0	5	0
16. Bills for loosing arrestments or inhibitions, and answers thereto...	0	5	0
17. Registering office copies of orders of English and Irish Courts	0	10	0
18. And, in addition, for each sheet of writing beyond four sheets ...	0	2	6
19. Authentication by judge of act and warrant, in terms of section 70 of the Bankruptcy (Scotland) Act, 1913, ...	0	5	0
20. In proofs—			
(*a*) Proof, including hearing thereafter, per hour, or part thereof, ...	0	10	0
(*b*) Report of commission, ...	0	5	0
21. Deposition of party on reference, the same fee as for proof, viz. per hour or part thereof, ...	0	10	0
22. Hearing.—For all discussions other than in the motion roll, per hour or part thereof, ...	0	5	0
23. Specification of documents called for, ...	0	5	0
24. Interrogatories, ...	0	10	0
25. Cross-interrogatories	0	10	0
26. Certified copy interlocutors, each, ...	0	5	0
27. Copies of proceedings other than those above specified certified by Clerk of Court, ...	0	5	0
NOTE.—This and preceding fee cover all charges for writing.			
28. Inventory of productions, including documents produced during, or put in evidence at close of proof—			
(*a*) First inventory, ...	0	5	0
(*b*) Each further inventory, for each 100 documents or part of 100 documents included therein, ...	0	5	0
NOTE.—All productions made by witnesses during the course of a proof shall be detailed in an inventory prepared by the solicitor of the party in whose interest they are lodged, and fees shall be paid thereon according to the number of such productions.			
29. Bonds of caution, ...	0	10	0
30. Extracts of decrees, and of bonds of caution, ...	0	10	0
31. And in addition for each sheet of writing beyond four sheets, ...	0	2	6
32. Certified copy of proceedings for appeal to the House of Lords,	2	0	0
33. Captions—			
Marking caption when ordered, ...	0	5	0
Warrant for caption when issued, ...	0	5	0
34. Note for warrant to cite witnesses furth of Scotland, ...	0	5	0
35. Every step or pleading not specified above, ...	0	5	0

C.—REGISTRATION APPEAL COURT AND VALUATION APPEAL COURT

1. Cases on appeal, ...	1	0	0
2. Hearing.—For all discussions other than in single bills per hour, or part thereof, ...	0	5	0

D.—Court of Trial of Election Petitions

	£	s.	d.
1. Petitions against return of Members of Parliament, ...	1	0	0
2. Statement of particulars, ...	0	10	0
3. Any other petitions, applications, answers, or objections submitted to the judges, ...	0	10	0
4. Notice of application for leave to withdraw petition, ...	0	10	0
5. Certificate of judgment, ...	0	15	0
(Any other writ or step of procedure, the same fees as similar or analogous writs or steps.)			

E.—Taxation of Expenses

For taxing accounts of expenses incurred in judicial proceedings remitted to the Auditor for taxation—

Under £50, ...	0	10	0
For every additional sum of £50, or part of £50, ...	0	10	0

Note.—These fees to be collected by Clerks of Court.

F.—Extracts

1. Extract of decree in absence—			
(*a*) Pronounced on consideration of summons or petition, without any prior remit, or proof, or other procedure, ...	1	0	0
(*b*) Pronounced on consideration of summons or petition after proof, remit or other procedure	1	10	0
(*c*) Pronounced in proceedings under Entail Acts, or in liquidations under Companies Acts, or in application for power to complete titles, or borrow money, or sell heritable or moveable estate, or to exercise other special powers	1	10	0
2. Extract of decree in foro, ...	1	10	0
Note.—The above fees are payable only on the first extract issued. When decree is extracted in duplicate, triplicate, etc., only copying fees under No. 6 of this part of the Table of Fees shall be charged.			
3. Extract of admission as a solicitor, ...	0	10	6
4. Extract of protestation, ...	0	10	6
5. Certificate under Judgments Extension Act, 1868, ...	0	5	0
6. Engrossment of extract, record copy, and certificate, each, per sheet of 250 words, ...	0	2	0
Figured work 1s. extra per sheet.			

G.—Signet Office

1. To signet any writ—			
(*a*) Presented during office hours, viz. from 3 to 4 daily, except Saturday, on which day, from 11 to 12, the office being shut on public holidays, ...	0	5	0

1. To signet any writ—*continued.*

(*b*) Presented out of office hours, viz. on Monday, Tuesday, Wednesday, Thursday, and Friday, even though holidays—

From 10 a.m. to 3 p.m., ...	0	10	0
From 7 p.m. to 8 p.m., ...	0	15	0
On Saturday, even though holiday—			
From 10 a.m. to 11 a.m., ...	0	10	0
From 2 p.m. to 3 p.m., ...	0	15	0

(NOTE.—The above fees are prescribed by the Court, but the extra hours, during which the officers of the Signet are allowed to signet any writ, are fixed, and may be varied at any time, by the Keeper of the Signet. In the event of such variation, the fees charged shall be as herein prescribed for hours before and after the ordinary office hours respectively.)

H.—EDICTAL CITATIONS

1. For access to and liberty to make excerpts or copies of writs, etc., from any record, for each year of record inspected	0	1	0
2. For extracts or copies, per sheet of 250 words, ...	0	2	0

I.—ACCOUNTANT OF COURT'S DEPARTMENT

I.—In Factories, Curatories, and Private Trusts

1. For receiving, examining, recording, and delivering up bonds of caution, ...	0	10	6
2. On lodging inventory, and adjusting same, when the estate			
(*a*) Exceeds £100, but does not exceed £500, ...	0	10	0
(*b*) Exceeds £500, but does not exceed £1,000	1	0	0
(*c*) Exceeds £1,000, for the first £1,000, ...	1	0	0
and for each £1,000, or part of £1,000, thereafter, ... but not to exceed £10, 10s.	0	10	0
3. For each search of the records of subsisting, exhausted, or new factories, or for any information therein contained, ...	0	5	0
4. For auditing each account			
(*a*) Where factor's commission is under £1, 1s., ...	0	2	6
(*b*) Where factor's commission is under £2, 2s., ...	0	5	0
(*c*) Where factor's commission is £2, 2s. and upwards, ... and in the last-named case, an additional 12½ per cent. on the factor's commission as allowed (or what would have been the factor's full commission if chargeable or fully allowed).	0	10	6
5. For discharges, reports on application for special powers or other special reports ... ... £0 10 6 to	10	10	0
6. For reports on schemes of division, ... and 10s. 6d. extra for each £1,000, or part thereof, divided.	1	1	0
7. For certificates for the Bank of England under section 66 of the Finance Act, 1916, ...	0	5	0

II.—In Bankruptcies

	£	s.	d.
8. On lodging copy act and warrant, ...	0	10	6
9. For supervising proceedings, examining and issuing acknowledgment of sederunt book, and reporting on trustee's discharge, 1 per cent. on amount divided amongst ordinary creditors, but only when total amount for division is over £100.			
10. For report on bankrupt's petition for discharge, ...	1	1	0
11. For concurrence in private sales, if £1,000 or under, and 10s. 6d. extra for each additional £1,000, or part thereof.	1	1	0
12. For special reports, ...	1	1	0
13. For reports regarding trustee commission, ... and 2 per cent. on the trustee commission as fixed, but not to exceed £10, 10s.	0	10	6
14. For each inspection of sederunt book or search of the records of subsisting, exhausted, or new sequestrations, or for any information therein contained, ...	0	5	0
15. For auditing the accounts and fixing the commission of trustees under voluntary trust deeds, 10 per cent. on commission allowed to trustee.			

III.—In Consignations

16. For lodging consignations, ...	0	2	6
17. For producing or delivering up, ... and 1s. for every £100 uplifted, but not to exceed £2, 2s.	0	2	6
18. For examining registers, ...	0	2	0

IV.—Copying Fees

19. For certified copies, each page, ...	0	2	6

SCHEDULE

Date	Cause	Writ	Section of Table under which Fee Charged	Amount

SECTION 2

TABLE OF FEES OF SOLICITORS IN THE COURT OF SESSION

General Regulations as to the Preparation and Taxation of Accounts for Judicial Proceedings

354. This Table of Fees shall regulate the taxation of Accounts in Judicial proceedings (*a*) between Party and Party (*b*) between Agent and Client, and

(*c*) between husband and wife in consistorial causes, subject to the following distinctions:—

(*a*) In a taxation between Party and Party there shall be one Account in which the whole business chargeable against the opposite party shall be stated continuously by whatever solicitor performed. General charges of limited amount only shall be allowed for items such as "Taking Instructions," "Instructions for Precognitions," "Preparation for Proof or Trial" and "Session Fee." Only such expenses shall be allowed against the opposite Party as are necessary for conducting the case in a proper manner with due regard to economy, and without any allowance beyond that indicated in the Table for preliminary trouble and investigation: provided that precognitions or reports, so far as relevant and necessary, although taken before the raising of the action of preparation of the defences, and although the case may not proceed to trial or proof, shall be allowed, including a fee for Instruction for Precognitions and expenses of obtaining the same, and copies for Counsel and Solicitors; but, in the event of the action being disposed of prior to an interlocutor being pronounced approving of issues or allowing a proof, the Auditor shall not also allow any charges for preparation of presentation of a Memorial to Counsel in connection with the case.

(*b*) In the case of a decerniture for Agent and Client expenses, the party presenting the account shall substitute for the above limited general fees detailed charges, and shall be allowed all expenses reasonable and necessary in the particular circumstances of each case, the rates of charges being regulated by the Table.

(*c*) In the case of accounts falling to be charged according to the existing practice on the consistorial scale, detailed charges shall be substituted for the limited general fees as in (*b*) *supra,* and such accounts shall be taxed on a scale intermediate between Party and Party and Agent and Client according to the particular circumstances of each case.

355. Notwithstanding that a party shall be found entitled to expenses generally, yet if, on the taxation of the account, it shall appear that there is any particular part or branch of the litigation in which such party has proved unsuccessful, or that any part of the expense has been occasioned through his own fault, he shall not be allowed the expense of such part or branch of the proceedings.

356. When a remit shall be made by the Court, whether ex proprio motu or on the motion of the parties or any of them regarding matters in the record, to an accountant, engineer or other reporter, the solicitors shall not, without special agreement and subject to the orders of Court, be personally responsible to the reporter for his remuneration, the parties alone being liable.

357. In all cases as between party and party the Court may direct that expenses shall be subject to modification, but otherwise the following rules shall apply: Without prejudice to the provisions of Section 40 of the Court of Session Act, 1868, when the pursuer in any action (not being an action for defamation or libel or an action for summary trial or an action which is only competent in the Court of Session) recovers (1) by verdict of a jury, or (2) by decerniture of the Court, any sum under £50, such pursuer shall be entitled to expenses only according to the Sheriff Court Table of Charges including Small Debt, appropriate to the sum decerned for unless the Court shall direct that, owing to the nature and importance of the action, the successful party is to obtain expenses under this Table.

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A.—General Business in the Court of Session

Applicable to all cases whether in the General Department or Petition Department of the Outer or Inner House and subject to any current Acts of Sederunt authorising temporary increases in fees

	£ s. d.
1. **Taking Instructions** to conduct case of pursuers or defenders and petitioners or respondents and parties to special or stated cases; to include preparation of slip for calling list and interlocutor sheets, inventory and duplicate inventory of process, motion sheet, and attending to all necessary steps of process up to and including the lodging of the writ whereby a party makes his first appearance in a cause, according to the nature of the case	1 1 0 to 7 7 0
Note.—Outlays for reports, including Police Reports and fees to Counsel and officers' fees for service so far as necessary for the proper conduct of the cause, to be allowed in addition.	
2. **Drawing Papers** (the sheet throughout this Table to consist of 250 words or numbers)—	
(1) Summons, Defences, Petitions, Answers, Condescendences, Counter Claims, Commissions and Diligences against witnesses or havers, Minutes, Specifications of Documents, Interrogatories, Precognitions, Memorials, Affidavits, Caveats, Statutory Notices and generally all papers where not drawn by Counsel, per sheet ...	0 7 6
(2) Bills for letters passing the signet	0 2 0
(3) Figured statements, per sheet	0 10 0
(4) Inventories of Productions, per sheet	0 4 0
Papers shall be confined as closely as possible to statements of fact without argument or quotations from authorities but reference may be made where necessary to proofs, deeds, writings or correspondence produced without the same being quoted at length; and if in any paper produced in a cause quotations of any kind exceeding one page (125 words) each in length shall be made, the same shall be chargeable only at the rate of copying instead of drawing fees. All documents charged for must be produced if required to the Auditor at the taxation of accounts of expenses.	
3. **Copying Papers**	
Written or typewritten copies—	
(1) In English, per sheet	0 2 0
(2) In any other language, per sheet	0 2 6
(3) Figured states and accounts and accounts of expenses, per sheet	0 2 6

	£	s.	d.
(4) For each additional copy thereafter up to five additional copies—			
One-half of above charges per sheet.			

Note.—(*a*) In accounts as between party and party no charge shall be allowed for a solicitor's copy of a Memorial to Counsel nor for copies of any documents not lodged in process: copies shall be allowed only of such documents as may be necessary for conducting the cause but a copy of all important Interlocutors shall be allowed for the client except as otherwise provided for in this Table.

(*b*) Where more than six copies of Session papers such as Summonses, Records, Petitions, Special or Stated Cases, are necessary these may be reproduced by duplicating process or printed and the appropriate charges recovered as outlay. If this is not done a charge for six copies only at copying rates shall be allowed. The provisions of the Act of Sederunt of 27th October 1922 shall continue to apply as regards proofs and appendices.

4. Printing and Duplicating

(1) Framing title page and index to print	0	4	0
(2) Instructing printer or Duplicating Agency	0	4	0
(3) Where copies not charged for making up sets of papers for printer or agency	0	10	0
(4) Revising Proofs—			
Printing—			
Not exceeding five pages	0	6	8
For every additional five pages or part thereof ...	0	3	4
Duplicating Process—			
Not exceeding eight pages	0	6	8
For every additional eight pages or part thereof ...	0	3	4
(5) Agency settling account of printer or Duplicating Agency	0	4	6

Note.—Where solicitor reproduces by duplicating process, the standard current charges to be allowed to him for reproduction shall be the same as if work had been given out to a duplicating agency, but he shall not be allowed to charge for making copies of any documents to be reproduced.

5. Instructing Counsel

(1) Letter or attendance with fee, £1 1s. or £2 2s. ...	0	10	0
Exceeding £2 2s. and not exceeding £5 5s.	0	13	4
Exceeding £5 5s. and not exceeding £10 10s. ...	0	15	0
Exceeding £10 10s.	1	5	0
(2) Fixing consultation with one Counsel	0	5	0
Where more than one	0	6	8

	£	s.	d.
(3) Revising papers drawn by Counsel—			
Not exceeding five sheets	0	6	8
Exceeding five sheets and not exceeding ten sheets ...	0	13	4
For every additional ten sheets or part of ten sheets ...	0	6	8
Revisal of papers drawn by Counsel to be charged according to their length as finally lodged.			
(4) Fees to Clerks of Counsel—			
(*a*) Where Counsel's fee is £1 1s.	0	2	6
Where £2 2s. to £4 4s.	0	5	0
Where £5 5s. to £10 10s.	0	7	6
Over £10 10s. 5 per cent. on amount.			
(*b*) For writings, drafts per sheet	0	1	0
For writing opinions including draft fair copy and booking per sheet	0	2	0

6. Instructions to Messengers-at-Arms

Instructing Messenger to serve, execute or intimate Summons, Petition, Citation or Diligence including examination of executions and settlement of his fee—			
(1) For the first party on whom service or intimation is made	0	5	0
(5) For each other party	0	1	0

7. Citation of Parties

Citation of a party, substituted party or third party to a cause—			
(1) First party, plus storage	0	5	0
(2) For each other party, plus storage	0	3	4
(3) Agency accepting service	0	5	0
(4) Copy deliverance (as per copying charges).			
(5) Edictal Citation—			
(*a*) Where address of party unknown. Charges as above.			
(*b*) Where intimation made to party or parties by letter, charges as above, plus Agency serving on party at Extractor's office.			
For each party	0	3	4
but not to exceed in all	0	10	0

Note.—The above charges to supersede charges noted in Citation Amendment (Scotland) Act, 1882, sections 5 and 6 and Schedule.

8. Citation of Witnesses and Havers

(1) Agency citing one witness or haver, plus postage ...	0	2	6
(2) For every witness after the first for the same diet, plus postage	0	2	0

9. Productions

Agency lodging Productions	0	4	6

10. General Attendances

Each necessary attendance at a Debate in Procedure Roll, a Proof or Jury Trial or examination of parties or havers: or visitation or inspection ordered by the Court: or at a consultation with counsel where a fee is paid with or without a Memorial: or attending the Auditor at the taxation of the Account: or accountant, surveyor, engineer, architect or other person to whom a Remit has been made by the Court: or making Searches of any public Records: or other the like attendances where these are proper or necessary or ordered by the Court.

(*a*) If in Edinburgh or neighbourhood—			
Not exceeding half an hour	0	13	4
Exceeding half an hour but not exceeding one hour	1	0	0
For each half-hour thereafter	0	10	0
(*b*) If at a distance therefrom but in Scotland for the time occupied in such business and in travelling at a rate not exceeding for a whole day of eight hours	8	0	0
Besides reasonable travelling charges and also an allowance for maintenance, the latter at a rate not exceeding per day	1	11	6
(*c*) If in England, Wales or Ireland, for the time occupied, including travelling, per day of eight hours	8	0	0
Besides reasonable travelling charges and also an allowance for maintenance, the latter at a rate not exceeding per day	1	11	6
If in London the allowance for maintenance to be at a rate not exceeding per day	2	12	6
(*d*) If during absence from Edinburgh the time necessarily occupied in actual business during any day shall exceed eight hours the Solicitor shall be allowed such additional time at the rate for each hour of	1	0	0
(*e*) Where the business can properly be performed by a local Solicitor the Auditor in taxing an Account shall allow such expenses as would have been incurred if it had been done by the nearest local Solicitor, including reasonable fees for instructing and corresponding with him unless he is satisfied that it was in the interests of the client that the Solicitor in charge of the case should attend personally.			

Allowance for time of Clerk necessarily occupied—

(*a*) If in Edinburgh or neighbourhood, per hour ...	0	6	8
(*b*) At a distance if in Scotland, per day	2	2	0
(*c*) In England, Wales or Ireland, per day	2	12	6
(*d*) In addition reasonable travelling charges and also an allowance for maintenance, the latter at a rate not exceeding per day	1	1	0

11. Correspondence where not Covered by Inclusive Fee

(1) Each letter not exceeding one page of 125 words ...	0	4	6
(2) Exceeding one page and not exceeding two	0	6	8
(3) Each page or part of a page beyond two	0	3	4
(4) Formal letters (such as transmitting papers) to be charged each	0	2	0
(5) Telegrams, including transmission and letter confirming	0	6	8
(6) Telephone conversations, including letter confirming	0	6	8
(7) Framing each circular	0	5	0
Copies as in copying charges.			
(8) Addressing and despatching circulars, not exceeding 20	0	3	0
If more in number, remainder at same rate.			
(9) Ordering advertisements—			
Each paper, including settlement of newspaper accounts	0	5	0

12. Miscellaneous: where not Covered by Inclusive Fee

(1) Borrowing whole or part of a process of not more than 40 numbers	0	4	0
Above 40 and not exceeding 100	0	6	0
Above 100	0	7	6
Returning whole or part of a process and getting Receipts scored—			
One-half of above fees.			
(2) Ordering caption for return of a process and intimating same to opposite Solicitor	0	6	8
(*a*) If process is not returned after intimation by Clerk of Court procuring caption and instructing messenger to execute	0	6	8
(*b*) When the caption is enforced the above fees to be paid by the party against whom it is directed with the Clerk of Court and messengers' fees, the several fees being marked on the back of the caption.			
(3) Where a paper, document or article is ordered or required to be lodged, enquiring if the same has done.			
To be charged once only	0	4	6
(4) Examining papers lodged by opposite party and ascertaining new matter and to what extent additional information may be required—			
Where no Memorial is prepared in consequence, the same fee as allowed for revising papers drawn by Counsel according to their length. (See A. 5 (3).)			
(5) Lodging Summons, Petitions, Defences or original step of Process whereby a party makes first appearance in a cause where fee for instructions is not charged	0	13	4
(6) Lodging and intimating each other paper and productions made therewith where charge not specially provided for	0	4	6

	£	s.	d.
(7) Procuring copy of an Interlocutor	0	4	6
(8) Ordering and procuring from Clerk any act or warrant, commission or diligence or decree or authentication of Interlocutor or order of Court where such is necessary	0	4	6
(9) Booking Interlocutor, per sheet	0	2	0
(*a*) Agency making application for and attendance before Lord Ordinary on application for commission before calling	0	13	4
(10) Attendance on a reporter with proceedings, &c., and getting him to accept Remit	0	7	6
(11) Attendance on commissioner fixing diet of proof for examination of havers, intimating same to opposite solicitor or party and writing certificate of intimation	0	12	6
(12) Arranging with opposite solicitor to attend, and attendance getting Diet of Proof or Trial fixed and delivery slip to Clerk of Court	0	10	0
If more than one opposing solicitor, for each after the first, an extra	0	2	0
(13) Attendance on reporter or Commissioner getting up Report with productions, &c., and settling his fee and clerk's fee	0	7	6
(14) Perusing and considering Reports obtained under Remit or productions made by opposite party or recovered under diligence—whether copies made later or not. To be charged according to time occupied at the rate for each hour of 13s. 4d.			
(15) Attendance directing Clerk to search for process asleep, including preparation of search note	0	6	8
(16) Procuring Account of Expenses marked by Clerk, lodging same with Auditor, getting warrant to tax and serving same with copy of Account on opposite solicitor	0	7	6
(17) Framing Account of Expenses, per sheet	0	2	6
(18) Drawing Note to Extractor for Extract, lodging same and transmitting process and procuring and examining Extract	0	12	6
(19) For meetings and correspondence between solicitors for both parties leading to a settlement by Joint Minute such reasonable fee as the circumstances of the case in the opinion of the Auditor may warrant.			
(20) Procuring Jury List	0	4	6
Note: Copies to be allowed for Counsel and solicitors in addition.			
(21) Instructing shorthand writer to attend trial or proof or diet before Commissioner, including settling account	0	5	0
(22) Agency fee funding dues of hearing or proof or other document where no charge specially provided ...	0	4	6

	£ s. d.
(23) Session Fee. At the end of each session in March and July there shall be allowed to the solicitors a fee to be called a " Session Fee " to cover instructions to Counsel to attend callings where no fee is sent; general consultations with them during the progress of the case where no charge is made and the other trouble not allowed in a case according to circumstances, including all communications between solicitor and client.	0 10 6 to 5 5 0

B.—Petition Department

(Outer House.)

1. Ordinary Business—

(1) Framing and lodging caveat (including fair copy) ...	0 12 6
(2) Procuring intimation on Walls and in Minute Book and writing certificate	0 5 0
(3) Returning certified copy with execution of service and intimation thereon	0 4 6
(4) In cases where it may be necessary to wait on Deputy Principal Clerk of Petition Department or Lord Ordinary at extra hours to procure sist or interlocutor or at a hearing before Lord Ordinary where such shall be ordered, for the first half-hour ...	0 10 0
Exceeding half an hour but not exceeding one hour ...	0 13 4
For each half-hour thereafter	0 6 8
(5) Taking out Bond of Caution, returning when executed to Clerk and intimating lodgment to opposing party	0 13 4
(6) Getting up Bond to be attested, returning when attested to Clerk and intimating	0 6 8
(7) Preparing for discussion where Counsel not employed	0 15 0
(8) Lodging and intimating to opposite party each paper or note to Lord Ordinary	0 4 6
(9) Enquiring as to whether Answers have been lodged; to be charged once only	0 4 6
(10) Procuring copy interlocutor of Lord Ordinary ...	0 4 6
Booking interlocutor, per sheet	0 2 0
(11) Where caution found through medium of Guarantee Company for trouble in connection therewith ...	1 1 0
(12) Agency transmitting process	0 4 6
(13) Enquiring as to whether caution has been found and consenting or objecting thereto	0 13 4
All other charges to be the same as for similar or analogous business in General Department.	

	£	s.	d.
2. Mercantile Sequestrations—			
(1) Taking instructions to apply for sequestration, obtaining deliverance; taking instructions to prove notour bankruptcy, drawing abbreviate of sequestration, drawing advertisement for Gazette and instructing insertion and transmitting to Sheriff Clerk. Inclusive fee	2	12	6
(2) Obtaining deliverance, declaring election of Trustee and Commissioners	0	7	6
(3) Taking out Bond of Caution, getting it signed	0	13	4
Lodging same	0	4	6
(4) Taking out Act and Warrant and transmitting to Accountant in Bankruptcy	0	12	6
(5) Drawing abbreviate of Trustee's confirmation for Register of Adjudications and copying and recording service	0	12	6
(6) Framing Note when first dividend payable and List of Commissions and lodging	0	12	6
All other charges in sequestrations to be at the same rates for similar or analogous business in Petition Department.			
3. Summary Trial under Section 10 of Administration of Justice Act, 1933—			
Charges to be allowed under this Table according to the nature of the case and procedure which takes place.			

C.—General Department

(*Outer House.*)

1. Ordinary Business—			
(1) Enrolling a cause in the Motion sheet; intimating enrolment to opposite solicitor; marking motion as opposed—			
Where only one	0	5	0
For each other	0	1	0
(2) Attendance at calling in Motion Roll where Motion opposed—			
Not exceeding half an hour	0	10	0
Exceeding half an hour but not exceeding one hour ...	0	13	4
For each half-hour thereafter	0	6	8
There shall be no charge for attendance where cause is not called or where calling proves abortive unless this shall occur without fault or neglect of the solicitor making the charge.			
(3) Attendance and enquiries in vacation as to cause at avizandum: To be charged once only	0	6	8
(4) Putting up each protestation for not calling or insisting in action including framing note	0	6	8
(5) Attendance producing Summons and obtaining certificate and thereafter on Keeper of Minute Book, getting protestation scored	0	6	8

	£	s.	d.
(6) Copy of unadjusted Record for printer or duplicating agency, per sheet	0	2	0
(7) Lodging copies of Open Record with clerk and opposite solicitor	0	6	8
(8) Revising Open Record (as in Charges for General Business).			
(9) Adjustment and closing of Record— To include borrowing and returning process for purpose of writing or noting adjustment; all attendances at Court on Adjustment Roll; procuring Interlocutors and Booking copies thereof for client; going through whole proceedings and productions and considering these with a view to closing; meetings with Counsel and correspondence with opposite solicitors and client thereanent. Inclusive Fee	2 to 8	2 to 8	0 to 0
Where client (pursuer) is without jurisdiction of Scottish Courts or where client (defender) has neither residence nor place of business within jurisdiction	3 to 9	3 to 9	0 to 0
(10) Instructing printer or duplicating agency to throw off Record as adjusted	0	5	0
(11) Revising Closed Record: one-half of revisal fees.			
(12) Lodging copies of Closed Record	0	5	0
(13) Procedure Roll— Preparing for discussion	0	13	4
Attendance before Lord Ordinary on preliminary pleas or on the merits, as under A. 10 (*a*).			
(14) Attendance at Court on each day case stands in Roll although not called	0	7	6
(15) Procuring intimation on Walls and in Minute Book and writing certificate	0	5	0
(16) Attendance enquiring for decree in absence	0	6	8
(17) Attendance lodging with Auditor account of expenses where decree in absence and uplifting account when taxed	0	6	8
(18) Undefended cases— In undefended cases where no proof is led, the pursuer's solicitor may in his option elect to charge an inclusive fee to cover all work from taking instructions up to and including obtaining extract decree. Outlays, such as Court dues and Counsel's fees, &c., shall also be allowed to an amount not exceeding £6 6s. in all, with in addition dues of extract. The option shall be exercised by pursuer's solicitor endorsing a Minute to the above effect on the principal Summons or Petition before decree is taken which Minute shall be fee-funded as an account, but taxation shall be unnecessary. Inclusive fee	7	7	0

	£	s.	d.
2. Jury Trials and Proofs—			
(1) Instructions for Precognitions	1	1	0
(*a*) To include all charges for correspondence, journeys, attendances or correspondence in connection with precognitions. In addition, reasonable travelling and personal expenses shall be allowed as for the nearest local solicitor.	to 10	10	0
(*b*) Each solicitor shall be entitled to charge for a copy of the precognitions for his own use.			
(*c*) Charges for the precognitions and attendances of witnesses present at a trial but not examined nor held as concurring with a witness who has been examined may be allowed, provided a motion to this effect is made at the close of the Proof or Trial and the Court grants the same and the witnesses' names are noted.			
(2) Instruction of skilled witnesses	0	10	6
Note.—Where a skilled witness prepares his own precognition or report the solicitor shall be allowed half drawing fees for revising and adjusting it.	to 2	2	0
(3) Preparing for Proof or Trial—			
Fee for perusing Record and productions and precognitions, &c., before Proof or Trial, and preparing for same according to time occupier and nature and importance of the case	1	1	0
	to 5	5	0
Note.—In the event of a party in a trial or proof being represented by one Counsel only allowance may be made to the solicitor should the case warrant it for the attendance of a clerk at one-half the rate chargeable for the solicitor's attendance.			
(4) Plans—			
No allowance shall be made for plans lodged in process or prepared for use of Counsel except such as are either ordered or subsequently sanctioned by the Court, prepared by mutual arrangement of parties or lodged and proved at the trial or proof.			
(5) Witnesses' Fees—			
(*a*) Professional persons, persons in managerial or like executive positions, and officers in H.M. Services or the Mercantile Marine, per day ...	3	3	0
and when detained overnight, an additional allowance per night	1	1	0
(*b*) Other witnesses who lose wages, or have to pay substitutes during their absence when giving evidence, per day	2	0	0
(*c*) Other witnesses who neither lose wages nor have to pay for a substitute, per day		15	0
In cases (*b*) and (*c*), when the witness is detained from home overnight an additional allowance per night		17	6

NOTES

1. In cases where it is necessary to employ skilled persons to make investigations prior to a proof or trial in order to qualify them to give evidence thereat, charges therefor, and for their attendance at such proof or trial, shall be allowed in addition to the ordinary witness fees of such persons at such a rate, in the discretion of the auditor, as shall be fair and reasonable for each skilled person, if the Lord Ordinary shall, on a motion made not later than the application of the verdict in the case of a Jury Trial, or the judgment of the Lord Ordinary in the case of a proof, or, if the judgment is issued in vacation, within the first seven days of the ensuing session, certify such persons for additional remuneration as skilled witnesses.

2. The above fees are maxima and are inclusive of subsistence allowance, but exclusive of travelling allowances where the witness has neither a residence nor place of business in the town where the trial or proof takes place.

3. The above fees and allowances cover all that the respective classes of persons shall be entitled to demand for their attendance, trouble and maintenance in respect of their citation to the trial or proof.

4. Receipts and vouchers for all sums stated as paid to witnesses shall be produced to the opposite party and the Auditor if required by him, otherwise the same shall not be allowed.

5. In the case of maritime witnesses detained ashore to give evidence no longer detention than 14 days shall be allowed against an opposite party, and then only when notice of intention to detain has been given.

6. As to fees of witnesses not examined, see C.2 (I) (*c*) *supra*.

7. The fees charged for witnesses examined at the trial or proof shall be stated in the body of the account in a lump sum, and the details of the charges shall be entered in a separate schedule appended to the Account as follows:—

Witnesses' Names and Designations	Where from	Number of days charged	Rate per day	Expenses and Maintenance	Total sums charged	Taxed off by Auditor

The fees for witnesses not examined shall be entered in the Schedule separately and included in the lump sum.

D.—ADMIRALTY AND COMMERCIAL CASES

Admiralty Cases

	£ s. d.
Framing Preliminary Act	0 10 6

(*a*) Fee to Counsel not exceeding one guinea for settling Preliminary Act shall also be allowed.

(*b*) All other charges to be based on this Table according to circumstances, and within the limit authorised by Rules of Court.

Commercial Cases

In commercial causes the charges shall be based on this Table, according to circumstances.

E.—SHORTHAND WRITERS

	£ s. d.
1. Attending trials, proofs and commissions, per hour	0 12 6
With a minimum fee of £1: 5:—per day.	
The above fees will be paid by the Treasury.	
No fee will be paid where intimation of postponement or settlement is made by 4 p.m. on the previous day.	
2. Extending Notes, per sheet of 250 words	0 3 0
Note.—An extra allowance will be payable where notes are extended overnight.	

3. Transcripts of Notes of Evidence will only be made on directions from the Court, and the cost thereof in defended cases will in the first instance be payable by the litigants in equal shares. Where an undefended case is continued, or where for other reasons the Court considers it necessary that the notes should be extended and so directs, the cost (except as hereinafter provided for in Poors' cases) will be borne by the pursuer in the first instance. In any case where the Notes of Evidence have not been extended, but are required for a reclaiming motion, the solicitor for the reclaimer may request the shorthand writer to extend the notes, and the transcript thereof will thereupon be lodged in process, the cost being payable in the first instance by the reclaimer.

4. *Poors' cases.*—In any case where one or both of the parties have been admitted to the benefit of the Poors' Roll, the cost of any transcripts required for the use of the Court, in so far as it would have been payable by the party or parties on the Poors' Roll, will be paid out of public funds at the rate of 3s. per sheet. Where the Court on a motion enrolled for that purpose by a party on the Poors' Roll certifies that there is reasonable ground for such party reclaiming, the cost of the transcript from which copies for the use of the Inner House are made will be paid out of public funds.

5. In any case where the Court on a motion enrolled for that purpose certifies that there is reasonable ground for reclaiming and that the reclaimer is unable, for financial reasons, to meet the cost of the necessary transcript from which copies for the use of the Inner House are made, the cost of such transcript will be paid out of public funds.

6. *Carbon Copies.*—Where Notes of Evidence have been directed to be supplied for the use of the Court, carbon copies may be made available to litigants at a cost of 1s. per sheet payable to the shorthand writer by the litigants obtaining the said copies. If parties agree, no application to the Court for such carbon copies need be made, but if any party objects to carbon copies being made available, then an application to the Court, by motion enrolled in the Motion sheet or made at the Bar during the progress of the proof or, trial, must be made, and the Lord Ordinary's decision will be final.

F.—Inner House

Petition and General Department

	£ s. d.
1. Enrolling motion for review in Motion Sheet and intimating to opposite solicitor and marking motion opposed as incompetent and intimating to opposite solicitor—	
where only one	0 5 0
for each additional one	0 1 0
Attendance at Court at opposed motions as under C. 1(2).	
2. Entering appearance in Remitted Cause	0 4 6
3. Examining Records in Remitted Cases and appendices lodged by opposite solicitor. One-half charges for revising proofs as under A. 4 (4).	
4. Agency lodging copies of Records, Petitions, Appendices or other documents for use of Judges, &c.	0 5 0
5. Attendance at Court on each day case stands in Summar or Short Roll although not called	0 7 6
6. Preparing for discussion in Summar or Short Roll	0 13 4 to 2 2 0
If discussion shall exceed two hours, for each additional half-hour	0 10 0
7. Attending discussions, if same shall not exceed two hours ...	2 0 0
8. Attending advising, as in charges under A. 10 (*a*).	
9. Agency intimating each incidental Petition, Note or Minute requiring intimation by Rules of Court including certificate of intimation	0 6 8
If more than one party, for each additional intimation ...	0 1 0
10. Procuring intimation on Walls and in Minute Book and writing certificate	0 5 0
11. Lodging Petition, Stated case, special case or document whereby a party makes a first appearance in a cause	0 13 4
Note.—All other charges to be at same rates for similar or analogous business in General Department.	

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Section 3

Taxation of Accounts

358. Transmission to Auditor

When expenses are found due to a party and a remit is made to the Auditor of Court to tax the account thereof, the account, having prefixed thereto a copy of the interlocutor making the remit, shall be lodged in the appropriate department of the Court and transmitted to the Auditor, who shall thereafter fix a diet for the taxation thereof. A copy of the said account, with intimation of the diet fixed by the Auditor, shall be served on the solicitor for the party or parties found liable in expenses. The Solicitor for the party found entitled to expenses shall produce at the diet of taxation the process, or such part thereof as may be necessary for the taxation of the account, together with vouchers and drafts or copies of all documents, papers and plans necessary to vouch his account.

359. Auditor's Report and Objections thereto

All parties to a cause shall be entitled to state objections to the Report of the Auditor on the taxation of an Account of Expenses. The objections shall be by note, shall be stated shortly without entering into argument, and shall be lodged within seven days of the date of the Auditor's Report on the Account. The party on lodging the Note of Objections shall at the same time enrol a motion to have the objections sustained, and shall send a copy of the Note to the other parties and to the Auditor. The Motion may be marked as " opposed " in accordance with Rule 118 (*e*) by any party, and the Court may on hearing parties either sustain or repel the objections or direct that the objections be answered in writing or viva voce at the Bar, and shall thereafter deal with the objections as it may think proper and may find any of the parties liable in the expenses of the motion. All such interlocutors of the Court shall be final unless reclaimed against with leave of the Court within seven days. It shall be the duty of the party lodging the Account for taxation to uplift the Account from the Auditor, and return it to process immediately after the taxation, and if no objections are lodged to the Report he may enrol for approval thereof on the lapse of seven days from the date of the Report.

360. Summary Application for Taxation of Solicitors' Accounts

(*a*) It shall be competent to either a client or a solicitor to make application to the Court, by enrolment in the motion sheet, to have the account of the solicitor remitted to the Auditor of the Court for taxation, which remit shall, on intimation of the said motion having been made to the opposing party, be forthwith granted. The Auditor shall thereafter report upon the said account to the Court, and the parties shall be entitled to state objections to the said report in accordance with Rule 359. The amount of the account as taxed or altered by the Court shall alone form a charge against the client, and a precept or decree, on a charge of fifteen days, may issue accordingly, in which only the report and interlocutor shall be inserted.

(*b*) The procedure referred to in paragraph (*a*) of this Rule may take place either during the dependence of a process in Court or following upon an extracted decree of Court.

(*c*) Notwithstanding paragraphs (*a*) and (*b*) of this Rule, a solicitor or his representatives may sue by summons payment of an account of expenses due by a client, in which case the Court shall remit the account to the Auditor of Court, and no decree shall be pronounced, either in absence or after hearing parties, without a report having been made by the Auditor.

APPENDIX

FORMS

FORM 1

Summons and Backing

(N.B.—This is the official printed form which, along with the official printed backing (see below), must be used for all summonses.

(*This space will contain the letter and number assigned to the Summons on being lodged for calling.*)

In the Court of Session

A.B. (*designation and address*) Pursuer ;

against

C.D. (*designation and address*) Defender.

George the Sixth, by the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, To the said C.D.

Whereas by this Summons, the pursuer craves the Lords of our Council and Session to pronounce a decree against you in terms of the conclusions appended hereto, We therefore charge you that, if you have any good reason why such decree should not be pronounced, you cause appearance to be entered on your behalf in the Office of the Court, New Register House, Edinburgh, on the calling of the summons in Court, which will be not earlier that the (*seventh* [*or fourteenth*])day from the date of service upon you of this Summons ; and take warning that, if appearance is not so entered on your behalf, the Pursuer may proceed to obtain decree against you in your absence.

This summons is warrant for *arrestment to found jurisdiction, arrestment or inhibition on the dependence, or to dismantle a specified ship as may be required.* (*See also paragraphs* (*b*) *and* (*c*) *of Rule* 22 *of Chapter III.*)

(Given under our Signet at Edinburgh.)

(*Signed*) (*name and address of pursuer's Edinburgh Solicitor.*)

(*Here follow the Conclusion in the short form or forms shewn in Form* 2, *followed by the Condescendence and Note of Pleas-in-Law.*)

Backing of Summons

(*This space will contain the letter and number assigned to the Summons on being lodged for calling.*)

Summons

A.B. Pursuer ;

against

C.D. Defender.

Action of (*Here state nature of action, as in the headings of the forms of conclusion shewn in Form* 2.)

(*name of pursuer's Edinburgh Solicitor.*)

FORM 2

Forms of Conclusion

N.B.—A conclusion for interest and expenses is given as an illustration in Example (1). *In other cases where conclusions for interest or expenses are appropriate these will be varied as required.*

(1) *Action for payment.*—For payment to the pursuer by the defender (*jointly and severally, or severally, or otherwise as may be appropriate*) of the sum of with interest thereon at the rate of five per centum per annum from the day of , until payment and expenses of the action.

(2) *Action of damages.*—For payment to the pursuer by the defender of the sum of .

(3) *Action of reduction.*—For production and reduction of (*specify deed to be set aside*).

(4) *Action of declarator.*—For declarator (*state declarator asked as in present practice*).

(5) *Action of count, reckoning and payment.*—For count and reckoning with the pursuer for the defender's intromissions with (*describe fund or estate*) and for payment to the pursuer by the defender of the balance found due to him, or otherwise of the sum of .

(6) *Action of proving the tenor.*—For declarator that (*the lost deed*) was of the tenor following (*set out the terms of the lost deed*), and that the decree to be pronounced herein shall be equivalent to the original deed.

(7) *Action of multiplepoinding and exoneration.*—For distribution of (*describe the fund in medio*) among the claimants found entitled thereto, and exoneration (*of the holder of the fund*).

(8) *Action of furthcoming.*—For payment to the pursuer by the defender of or of such sum as may be owing by the defender to (*the common debtor*) and arrested in his hands by the pursuer, or at least of so much thereof with interest at five per cent. per annum from the date of citation until payment as shall satisfy the pursuer in the principal sum of

or

For delivery to the pursuer or to such person as our Lords of Council and Session may appoint of the moveables belonging to or owing by the defender to (*the common debtor*) and arrested in his hands by the pursuer; and for warrant for the sale of such moveables under such conditions as may be directed; and for furthcoming and payment to the pursuer of the proceeds thereof, or at least of so much thereof as shall satisfy the pursuer in the principal sum (*etc. as above*).

(9) *Admiralty action in rem.*—For declarator that the pursuer has a lien over the.....(*the ship*) for the sum of £ in respect of (*state the basis of the lien, as e.g. the collision—giving date—to which the preliminary act for the pursuer lodged herewith relates*); And for declarator that the pursuer's said lien to the extent of the said sum of £ with interest thereon at from to is preferable to the right of all others having or pretending to have rights in the said ship; And for warrant to sell the said.....(*ship*) on said lien being declared, and to apply the proceeds in satisfaction of the said lien in or towards payment of the said sum of £ and interest.

(10) *Action of Declarator of Marriage.*—For declarator that the pursuer and defender were lawfully married to one another by (*here specify mode in which marriage was contracted, as e.g.* (1) *interchange of consent de presenti* (*time and place*), *or* (2) *cohabitation habit and repute* (*time and place*), *or* (3) *promise* (*time*) *subsequente copula at* (*time and place*)).

(11) *Action of Declarator of Nullity of Marriage.*—For declarator that a pretended marriage between the pursuer and defender at (*place*) on (*date*) is null by reason of (*here specify ground of nullity as e.g.* (1) *the defender's impotency, or* (2) *the parties being within the forbidden degrees or* (3) *the defender being married to or* (4) *non-age of one of the parties or* (5) *insanity of one of the parties or* (6) *non-residence in Scotland of both the parties prior to the marriage.*)

(12) *Action of Declarator of Legitimacy.*—For declarator that (*name and designation*) is (*or was*) the lawful son (*or daughter*) of (*name and designation*).

(13) *Action of Declarator of legitimation per subsequens matrimonium.*—For declarator that , who was born on (*date*) is (*or was*) the child of (*name and designation*) and (*name and designation*) and was legitimated by the subsequent marriage of the said and on (*date*). (*Add conclusion for aliment, if appropriate.*)

(14) *Action of Declarator of Bastardy.*—For declarator that (*name and designation*) is a bastard and is not the lawful child of (*name and designation*).

(15) *Action of Separation a mensa et thoro.*—For separation of the defencer from the pursuer a mensa et thoro on the ground of (*the defender's cruelty to the pursuer or the defender's adultery*).

(16) *Action of Divorce for adultery.*—For divorce of the defender from the pursuer on the ground of the defender's adultery (*and where, but only where, there is a conclusion for damages or expenses or both against the person with whom the defender committed adultery, add*), with the co-defender.

(17) *Action of Divorce for desertion.*—For divorce of the defender from the pursuer on the ground of the desertion of the pursuer by the defender for a period of three years or more.

(*a*) For divorce of the defender from the pursuer on the ground that the defender is incurably insane.

(*b*) For divorce of the defender from the pursuer on the ground that the defender has been guilty of cruelty towards the pursuer.

(*c*) For divorce of the defender from the pursuer on the ground that the defender has been guilty of sodomy (or bestiality) since the date of the marriage.

(18) *Action of Adherence.*—For decree ordaining the defender to adhere to the pursuer and cohabit with her as his wife (*or* with him as her husband).

(19) *Action of Putting to silence.*—For decree ordaining the defender to desist from asserting that he (*or* she) is the husband (*or* wife *or* child *or other relative*) of the pursuer, and putting her (*or* him) to silence thereanent.

(20) *Conclusion for custody of children in action for separation or divorce.*—For custody of and , the pupil children of the marriage, and payment by the defender to the pursuer of (*specify rate of aliment*) as aliment for each child while in the custody of the pursuer and unable to earn a livelihood; and for leave to either party to apply to the Court thereanent until (*insert date when youngest child will attain puberty*).

(21) *Action for salvage.*—For payment to the pursuer by the defender of the sum of £ for salvage services performed by the pursuer to the vessel on the day of or for such an amount of salvage as to the Court may seem just or (*in the case of a summons for apportionment*) for payment to the pursuer of an equitable proportion of the above award of £ . (*Here refer to the agreement under which the total amount of the salvage award was fixed.*)

(22) *Action of Implement.*—For decree ordaining the defender (*state the order craved and add such alternative conclusions as may be appropriate*).

(23) *Adjudication for debt.*—(*a*) *Lands.*—For adjudication of the heritable property of the defender after specified, vizt. All and Whole (*describe subjects*) from the defender to the pursuer. (b) *Heritable securities.*—For adjudication of a bond and disposition in security (*describe the bond*) and of the subjects contained in the said bond, vizt. All and Whole (*describe the subjects*) form the defender to the pursuer for payment of (*describe debts*), during the non-redemption of the said lands and others.

(24) *Adjudication in implement.*—For adjudication from the defender of All and Whole (*describe subjects*) and all rights of the defender therein and the rents thereof from and after the term of (*date of entry under missives*) in implement of missives of sale (*dated*) between the defender and the pursuer and for declarator that the said lands and others belong to the pursuer and his heirs and assignees; and for decree ordaining the defender to free and relieve the said lands and others of all burdens and incumbrances affecting the same of all feuduties, cess, minister's stipend, and public and parochial burdens affecting the said lands at and preceding the pursuer's said term of entry, or otherwise for payment of the sum of (*state amount*) or such sum as may be required for that purpose.

(25) *Declarator and division or sale.*—For declarator that the pursuer is entitled to insist in an action of division and sale of All and Whole (*describe subjects by reference or otherwise*); and for division of the said subjects between the pursuer and the defender, or if the division of the said subjects is found to be impracticable or inexpedient for declarator that the same should be sold and the proceeds divided between the pursuer and the defender, and for warrant to sell accordingly; and for allocation of the expenses of the sale and of this process between the pursuer and the defender.

(26) *Maills and Duties under Heritable Securities Act,* 1894.—For declarator that the pursuer has right to the rents, maills, and duties of the subjects and others specified in the bond and disposition in security for , granted by in favour of dated and recorded in the register or at least so much of the said rents, maills, and duties as will satisfy and pay the pursuer the principal sum of , with interest thereon at the rate of per centum per annum from the day of 19 liquidate penalty and termly failures, all as specified and contained in the said bond and disposition in security dated and recorded as aforesaid.

(*Intimation to tenants in form of Schedule B of* 1894 *Act.*)

(27) *Poinding of the Ground.*—(a) *Against debtor in possession.*—For warrant to poind and distrain all moveable goods and effects poindable or distrainable belonging to the defender which are or shall happen to be upon the ground of the lands and others described and contained in the bond and disposition in security (*or where the action proceeds on a real burden, the disposition or other writ by which it is constituted*) aftermentioned, vizt. All and Whole (*describe subjects*): And for payment thereof to the pursuer of the amount of the principal sum of £ liquidate penalty and termly failures, with interest on said principal sum from the term of and in time coming during the not redemption conform to bond and disposition in security dated and recorded in the Division of the General Register of Sasines applicable to the county of the both days of , granted by the defender in favour of the pursuer (*or where the pursuer is not the original bondholder,* in favour of and to which the pursuer has now right in virtue of (*describe title*)).

(b) *Against debtor and tenants.*—For warrant to poind and distrain all moveable goods and effects poindable or distrainable of the defender principal debtor and of the defenders and his tenants or possessors of the lands and others aftermentioned which are or shall happen to be upon

the grounds of the said lands and others described and contained in the bond and disposition in security aftermentioned, vizt. All and Whole (*give description of subjects sufficient to identify them*) but in so far as relates to the said tenants and possessors to the amount only of the respective rents due or that may become due by them and for payment thereof to the pursuer to the amount of the principal sum of £ liquidate penalty and termly failures specified and contained in the bond and disposition in security dated and recorded in the Division of the General Register of Sasines applicable to the county of the both days of granted by the defender A.B. in favour of the pursuer, with interest from the term of and in time coming during the not redemption.

FORM 3

Form of Citation and Execution when service is by registered letter

Citation

In His Majesty's name and authority, the summons of which the foregoing is a full copy is hereby served upon you (*name designation and address of defender*) by me (*name designation and Edinburgh address*), solicitor for the pursuer.

The number of days on the expiry of which, in terms of the said summons, you are charged to cause notice of appearance to be entered on your behalf is reckoned from twenty-four hours after the date of posting hereof.

(*Signed*) (*Solicitor for the pursuer*).

Dated this day of

Execution

This summons executed by me (*name designation and Edinburgh address*), solicitor for the pursuer, against the defender(s) by posting, on (*date*) between the hours of and at the post office, a copy of the same to him or them, with citation subjoined, in a registered letter addressed as follows (*address*) and the post office receipt for the said registered letter accompanies this execution.

(*Signed*) (*Solicitor for the pursuer*).

FORM 4

Form of Citation when service is edictal

Citation

In His Majesty's name and authority, the summons of which the foregoing is a full copy is hereby served edictally upon you the said by me (*name designation and Edinburgh address*), solicitor for the pursuer.

Dated this day of

(*Signed*) (*Solicitor for the pursuer*).

FORM 5

Form of Notice to additional or substituted defender

To (*designation and address*)

Take notice that in the action in which is the pursuer and is the defender, a copy of the record in which (as now amended) is herewith enclosed, your name has, by order of the Court dated , been added (*or substituted*) as a defender to the said action; and the conclusions of the action, originally directed against the said are now (*also*) directed against you. If you desire to defend the said action you are charged to lodge defences thereto in the office of the Court of Session, New Register House, Edinburgh, within days from the date of service hereof, under certification that, if you fail to do so, the said may proceed and obtain decree against you in absence.

Dated this day of

(*Signed*) (*Solicitor for the pursuer*).

FORM 6

Example of enrolment in Motion Sheet, and of marking therein

..... 1948.

On behalf of the pursuer—for commission and diligence for recovery of documents, conform to specification lodged of this date—Intimated to defender—p. W.X. (*pursuer's Counsel*).

(*Signed*) (*Signature of pursuer's solicitor, or of his clerk*).

..... 1948.

On behalf of the defender—pursuer's motion of ..... 1948 opposed—p. (*defender's Counsel*).

(*Signed*) (*Signature of defender's solicitor, or of his clerk*).

FORM 7

Form of Order of Court and Affidavit in Optional Procedure for recovery of documents

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Order by the Court of Session at Edinburgh

In the Cause (*year and Serial Number*)

in which

A.B. (*designed*) is Pursuer

and

C.D. (*designed*) is Defender

To (*name and designation of party or parties or third-party haver, from whom the documents are sought to be recovered*)

Take notice that you are hereby required to produce to the Deputy Principal Clerk of the General Department of the Court of Session, New Register House, Edinburgh, within seven days of the service upon you of this Order,

(1) This Order itself which must be produced intact;

(2) Your Affidavit sworn, in terms of the form appended hereto, before any person authorised to take affidavits; and

(3) All documents in your possession falling within the specification enclosed herewith, together with a list or inventory of such documents signed by you as relative to this Order and your Affidavit.

Production may be made either by lodging the above at the said office of the Court of Session, or by registered letter or registered postal packet enclosing the same, and addressed to the said Deputy Principal Clerk at said office.

(*Signature and business address of the solicitor of the party in whose favour Commission and Diligence has been granted.*)

(*Date*)

NOTE.—If you claim confidentiality for any of the documents produced by you, such documents must nevertheless be produced, but may be placed in a special sealed enclosure by themselves, marked " Confidential ".

Affidavit

At.....the.....day of....., 19 . Before and in presence of.....compeared.....who, being solemnly sworn and interrogated with reference to the order of the Court of Session in the cause (*year and serial number*) and relative specification of documents, served upon me and marked respectively X and Y, depones as follows :—

(1) (That the documents which are produced and which are enumerated in the inventory signed by the deponent and marked Z, are the whole documents in his possession falling under the Specification).

or

(that he has no documents in his possession falling within the Specification).

(2) (that, to the best of his knowledge and belief, there are in existence other documents falling within the Specification, but not in his possession, namely (*describe them by reference to one or more of the descriptions of documents in the Specification*), which were last seen by him on or about (*date*), at (*place*), in the hands of (*name and address of the person*))

or

(that he knows of the existence of no documents in the possession of any person, other than himself, which fall within the Specification).

All which is truth as the deponent shall answer to God.

(*Signature of person making the affidavit.*)

(*Signature of person administering oath.*)

FORM 8

Form of Minute for Letters of Request

Minute for A.B., pursuer (*or* defender) in causa A.B. against C.D.

Counsel for the pursuer (*or* defender), stated that the following persons, viz. (*state names and designations, including place of residence of proposed witnesses*), are material witnesses for the pursuer (*or* defender), in support of the claim (*or* defence) in this action, and prayed the Court to issue a letter of request addressed to (*state the judge or tribunal within whose jurisdiction the witnesses are resident*) to take the evidence of said witnesses.

(*Signed by Counsel.*)

FORM 9

Form of Letter of Request

Whereas an action is now pending in the Court of Session, Supreme Court of Scotland, in which A.B. is pursuer, and C.D. is defender, and whereas it has been represented to the said Court that it is necessary, for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath, that is to say :—

E.F., of
G.H., of
and I.J., of

and it appearing that such witnesses are resident within the jurisdiction of your honourable Court :

Now I, the Right Honourable as the President of the Division of said Court (*or* I, the Honourable Lord , one of the Judges of said Court), have the honour to request, and do hereby request, that for the reasons aforesaid, and for the assistance of the said Court, you as the President and judges of the said , or some one or more of you, will be pleased to summon the said witnesses to attend at such time and place as you shall appoint before some one or more of you, or such other person as, according to the procedure of your Court, is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request in the presence of the solicitors, procurators or attorneys of the pursuer and defender, or such of them as shall, on due notice given, attend such examination.

And I have further the honour to request that you will be pleased to cause the answers by the said witnesses to the said interrogatories to be reduced to writing, and all books, letters, papers, and documents produced upon such examination, to be duly marked for identification ; and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same through His Majesty's Secretary of State for Foreign Affairs, for transmission to the said Court of Session.

(*Signed by the Judge.*)

(*Address of Foreign Court.*)
(*Date*)

FORM 10

Notice to be endorsed on the Citation served on a woman summoned to serve as a juror

NOTICE

The person on whom this citation is served may apply to be exempted from service under it on account of unfitness, for medical reasons, to attend and serve on a jury : Provided that notice of application for exemption is given to the Principal Clerk of Session, Parliament House, Edinburgh, as soon as possible after receipt of this citation, and in any event (unless on special cause shown) not later than the third day before the diet of trial or enquiry mentioned in this citation : And that such application is supported by evidence (by a medical certificate or otherwise) vouching to the satisfaction of the said Clerk that the applicant is or will be, for medical reasons, unfit to attend and serve as a juror at the trial.

FORM 11

Specimen of filling-in of the Official Printed Form of Summons in an Admiralty Action in rem

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In the Court of Session

Admiralty Action in rem

A.B. (*designation and address*) Pursuer ;

against

The Owners of the S.S. Q.R. Defenders

George the Sixth, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King Defender of the Faith, to E.F. (*name and address*) only known owner or party interested in S.S. Q.R. of the port of L. and others, the owners and parties interested in the said S.S. Q.R. Defenders *or* to G.H. Master of and representing the owners of the S.S. Q.R. of the port of L. Defender. (*Vary as required if the action is directed against owners of cargo.*)

Whereas etc. (*as in Form* 1).

or

(*Where the Pursuer is not in a position to call as defenders the owners of or parties interested or the master.*)



In the Court of Session

Admiralty Action in rem

A.B. (*designation and address*) Pursuer ;

against

The S.S. Q.R. and the owners thereof and other parties interested therein Defenders

George the Sixth, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, to the owners of the S.S. Q.R. of the port of L. and others interested therein, Defenders. (*Vary as required.*)

Whereas etc. (*as in Form* 1).

FORM 12

Specimen of filling-in of the Official Printed Form of Summons in an Admiralty Action in personam



In the Court of Session

Admiralty Action *in personam*

A. B. (*designation and address*) Pursuer;

against

E. F. the Master of the S.S. Q. R., Defender

George the Sixth, by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, to E. F. (*designation and address*) Master of the S.S. Q. R. of the port of L. presently at M. as representing the owners thereof against whom arrestments have been used *ad fundandam jurisdictionem*, Defender. (*Vary as required if the action is directed against owners of cargo.*)

Whereas etc. (*as in Form 1*).

FORM 13

Form of Preliminary Act in Ship-Collision Cases

In the action in which are Pursuers;

and

are Defenders.

Preliminary Act

for

Pursuer (*or* Defender)

(*a*) The names of the vessels which came into collision and the names of their masters;

(*b*) The time of the collision;

(*c*) The place of the collision;

(*d*) The direction and force of the wind;

(*e*) The state of the weather;

(*f*) The state and force of the tide;

(*g*) The magnetic course and speed of the vessel when the other was first seen;

(*h*) The lights, if any, carried by her;

(*i*) The distance and bearing of the other vessel when first seen;

(*k*) The lights, if any, of the other vessel which were first seen;

(*l*) What combination of lights (if any) of the other vessel, other than those first seen, came into view before the collision;

(*m*) What measures were taken, and when, to avoid the collision;

(*n*) The parts of each vessel which first came into contact;

(*o*) What sound signals (if any) were given and when;

(*p*) What sound signals (if any) were heard from the other vessel and when.

(*Signed by Counsel*)

(*Dated*)

FORM 14

Form of intimation to alleged adulterer (not being a co-defender) in action of divorce or separation

(*a*) To (*name and address as in warrant*)

Take notice that in an action a copy of the summons in which is prefixed hereto you are alleged to have committed adultery with the defender on the occasions therein specified and that if so advised you may within seven days after the expiry of days from the date of service hereof [*or if the warrant is executed contemporaneously with citation of the defender* within seven days after the calling of the summons in Court which will not be earlier than days from the date of service hereof] apply to the Court for leave to appear as a party in order to dispute the truth of the averments made against you.

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (*insert date of posting*).

(*Signed*) A.B.,
Messenger at Arms *or* Solicitor.

FORM 15

Form of intimation to children and next of kin in consistorial causes

(*a*) To (*name and address as in warrant*).

Take notice that an action a copy of the summons in which is prefixed hereto has been raised against your (*father, mother, brother, or other relative as the case may be*) and that if you know of his (*or* her) present address you are requested to forward the same to the Deputy Principal Clerk, General Department, New Register House, Edinburgh, forthwith; and that in any event you may if you so desire apply to the Court for leave to state defences to the action within seven days after the expiry of days from the date of service hereof (*or if the warrant is executed contemporaneously with citation of the defender* within seven days after the calling of the summons in Court which will not be earlier than days from the date of service hereof).

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (*insert date of posting*).

(*Signed*) A.B.,
Messenger at Arms *or* Solicitor.

FORM 16

Form of letter of Request (Consistorial Causes).
Letter of Request

To

The Principal Clerk of Session,
Edinburgh.

I (We) request that search be made in the records of Court for information as to the granting of a decree of divorce in the action at the instance of (*name designation and address*) Pursuer against (*name designation and address*) Defender, granted on (*date or approximate date*).

Should the above decree of divorce be traced I (we) desire a certificate evidencing that it was granted and I (we) enclose fee of five shillings.

(*Signed*) A.B.

(*Address and date*).

FORM 17

Form of Certificate

Court of Session,
Parliament House,
Edinburgh.
(*date*).

To A.B. (*name and address of the writer of the Letter of Request*).

I hereby certify that on the day of 19 the Court of Session in Scotland pronounced a decree of divorce dissolving the marriage of A.B. (*designation and address*) and C.D. (*designation and address*) in an action in which the said A.B. was Pursuer and the said C.D. was Defender.

Signed

Principal Clerk of Session.

FORM 18

Form of Petition and Backing

(*This space will contain the letter and number assigned to the petition on being lodged.*)

Unto the Right Honourable the Lords of Council and Session,

The Petition of A.B. (*name, designation, and address, of petitioner*), Humbly sheweth

That (*here set forth in numbered paragraphs the facts and circumstances which form the grounds of the petition*)

May it therefore please your Lordships to (*add prayer as in present practice*)

According to Justice,

(*Signature of Counsel*).

Backing of Petition

(*This space will contain the letter and number assiged to the petition on being lodged.*)

The Petition
of
A.B.
for

(*here describe shortly the nature or object of the petition*).
R.S. (*name of petitioner's solicitor*).

FORM 19

Specimen of Form 19 *filled in for petition under section* 163 *of the Bankruptcy* (*Scotland*) *Act*, 1913

Unto the Right Honourable the Lords of Council and Session,

The Petition of (*here state the names and designations of the petitioners, and whether they apply in the character of creditors or of persons having interest in the succession of the party deceased*).

Humbly sheweth

1. (*Name and design the party deceased*) died on the day of and left no settlement appointing trustees or other parties to manage his estate, or part thereof (or that the trustees or other parties appointed by him to manage his estate have not accepted or acted).

2. The petitioner (*or* petitioners) (*here state, if creditors, the nature and amount of the debt due to them by the deceased, and how constituted, vouched or established, and referring to the evidence of the existence of the debt, as produced with the petition, or, if persons having an interest in the succession, the nature of their interest in the succession*).

3. The estate of the said deceased , so far as known to the petitioner (*or* petitioners), consists of (*here state the nature of the estate, whether heritable or moveable, stock in trade, interest in a partnership, professional business, or whatever else it may be. State any other facts which may appear to be of importance to the particular case*).

4. The following persons are, to the best of the petitioner's knowledge and belief, the legal representatives of the deceased, or have an interest in his estate (*here state the names and designations of those persons, their degree of relationship, or the nature of their interest in the succession*).

5. The following persons are, to the best of the petitioner's knowledge and belief, all the creditors of the deceased (*name and design them*).

6. The petitioner is (*or* petitioners are) entitled, under section 163 of the Bankruptcy (Scotland) Act, 1913, to make the present application for the appointment of a judicial factor over the estate of the said deceased, with the powers therein conferred and respectfully suggest (*name and designation*) as a fit and proper person for the office.

May it therefore please your Lordships to appoint intimation of this petition to be made on the walls and in the minute-book, in common form, and in the *Edinburgh Gazette*, and to be served upon the said and to ordain and all parties claiming interest to lodge answers hereto if so advised within fourteen days after such intimation and service; and thereafter, on resuming consideration of the same, to appoint the said or such fit person as to your Lordships shall seem proper to be judicial factor on the estate of the said deceased , and that with all the powers of the statute, he always finding caution before extract, and to find the petitioner entitled to the expenses of this application and the procedure following thereon out of the factory estate, and to decern; or to do otherwise in the premises as to your Lordships shall seem proper.

(*Signed by Counsel.*)

FORM 20

Form of Citation and Execution of Service

I, , Enrolled Solicitor, by virtue of a Deliverance dated the day of 19 years, pronounced by Lord upon the Petition given in and presented for and in name of the therein named and designed do hereby, in His Majesty's name and authority, and in name and authority of the said Lord , lawfully serve the foregoing copy of said Petition and Deliverance upon you (*name and designation*) that you may not pretend ignorance of the same, and desire and require you to lodge answers to said Petition, if so advised within days from the date of this my service in terms of said Deliverance.

This I do upon the day of 19 years, being the date of the posting of this service and requisition. The period within which you are required to lodge answers, if so advised, is reckoned from 24 hours after posting hereof.

Signed

Address

Form of Execution of Service

This Petition with Deliverance annexed executed by me Enrolled Solicitor, upon the within designed by posting on the day of , 19 , between the hours of and o'clock (after)noon at the Post Office, Edinburgh, a copy of the same, with citation subjoined, to (him or them) in a registered letter (*or* registered letters) addressed to his (*or* their) last known address as follows :—
and also edictally on the said A.B. and C. by posting on the said date between the said hours at the said Post Office a copy of the same for him (*or* them) with citation subjoined in a registered letter (*or* registered letters) addressed as follows :—The Principal Extractor of the Court of Session, H.M. New Register House, Edinburgh, and the post office receipts for said registered letters accompany this execution.

Signed

Address

FORM 21

Form of intimation to be inserted in the Edinburgh Gazette under paragraph (b) of Rule 219

To the creditors and other persons interested in the succession of the deceased. (*naming and designing him*).

A Petition has been presented to the Court of Session by , a creditor (*or* creditors), to the amount required (or by having an interest in the succession of the said deceased , the said deceased having left no settlement appointing trustees, or other parties having power to manage his estate (*or as the case may be*, the trustees, under the deceased's settlement, not accepting or acting), praying, under the Act 3 and 4 George V cap. 20, section 163, for the appointment of a judicial factor upon said estate; and which Petition will be again moved in Court, on or after the day of , of all which notice is hereby given.

(*Signature and address of petitioner's solicitor.*)

(*Date*)

FORM 22

Form of Intimation to be inserted in the Edinburgh Gazette under paragraph (d) of Rule 219

To the creditors and other persons interested in the succession of the deceased (*designing him*).

A.B. (*naming and designing him*), having been appointed by the Court of Session judicial factor on the estate of the said deceased under the Act 3 and 4 George V cap 20, section 163, requires all the lawful creditors of the said and other persons interested in his estate, to lodge with the judicial factor, , within four

months after the date of this notice, a statement of their claims as creditors of the deceased, or as otherwise interested in his estate; with such vouchers or other written evidence as they may have to found upon in support of their claims; in order to the same being considered and reported upon by the judicial factor.

(*Signature and address of judicial factor*).

(*Date*)

FORM 23

Form of Intimation to be inserted in the Edinburgh Gazette under paragraph (h) of Rule 219

To the creditors and other persons interested in the succession of the deceased (*designing him*).

A.B., , judicial factor upon the estate of the said deceased , hereby intimates that he has prepared and lodged in Court a state of funds and scheme of division of the said estate, to be considered and approved of by the Court, of which all concerned are hereby required to take notice.

(*Signature and address of judicial factor.*)

(*Date*)

FORM 24

Form of Intimation to be inserted in the Edinburgh Gazette under paragraph (p) of Rule 219

To the creditors and other persons interested in the succession of the deceased (*designing him*).

A.B., , judicial factor on the estate of the deceased , has presented a petition to the Court of Session, for his discharge of the office of judicial factor, of which notice is hereby given, and that the petition will be again moved in Court on or after the day of .

(*Signature and address of judicial factor.*)

(*Date*)

FORM 25

Form of Statement by Liquidator of a Company under section 284 of the Companies Act, 1929

(Copies of this form are obtainable at the Post Office, 11, Parliament Square, Edinburgh, and at other Post Offices where companies forms are ordinarily sold at the price of twopence per copy, with a charge of one penny for each continuation sheet.)

Form No. 92 (Scot.).

No. of Company.....

THE COMPANIES ACT, 1929

Liquidator's Statement of Account under Section 284 and relative Rules of Court.

Name of Company.....
.....Limited.

Nature of proceedings (whether winding up voluntary, or by or under the supervision of the court).

Date of commencement of winding up.....

Date to which statement is brought down.....
.....

Name and address of liquidator.....

Realizations				Disbursements			
Date	Of whom received	Nature of Assets Realized	Amount	Date	To whom paid	Nature of Disbursements	Amount
			£ s. d.				£ s. d.
		Brought forward				Brought forward	
		Carried forward				Carried forward	

Note.—No balance should be shown on this Account, but only the total Realizations and Disbursements, which should be carried forward to the next Account.

ANALYSIS OF BALANCE

	£ s. d.
Total Realizations	
Total Disbursements	
Balance	

The Balance is made up as follows :—

(1) Cash in hands of liquidator ... ...

	£ s. d.
(2) Total payments into Bank, including balance at date of commencement of winding up (as per Bank Book) ...	
Total withdrawn from Bank	
Balance at Bank	

(3) Amount of the estimated assets and liabilities at the date of the commencement of the winding up.	Assets (after deducting amounts charged to secured creditors and debenture holders)... £ Secured creditors £ Liabilities— Debenture holders... £ Unsecured creditors £
(4) Total amount of the capital paid up at the date of the commencement of the winding up.	Paid up in cash ... £ Issued as paid up otherwise than for cash ... ... £
(5) General description and estimated value of outstanding assets (if any).	
(6) Causes which delay the termination of the winding up.	
(7) Period within which the winding up may probably be completed.	
(8) Date of payment of last premium paid to a guarantee company in respect of the liquidator's bond of caution, and the amount thereof.	
Date when the next payment of premium falls due.	

Note.—Where there have been no realizations or no disbursements since the period covered by the previous Statement of Account (if any), the liquidator shall here give a certificate to that effect.

(*Signature of Liquidator*).....

Dated the day of 19

FORM 26

Form of petition for adoption order as filled in on official printed form

Unto the Right Honourable the Lords of Council and Session

Petition

of

A.B. (*name, designation and address*), and (*if wife also petitioner*) C.D. (*name, designation and address*)

for

authority to adopt

E.F. (*name, as in birth certificate, or name by which child is ordinarily known, and address*)

Humbly sheweth,

1. The petitioner (*or* petitioners) is (*or* are) desirous of adopting the said E.F. under the provisions of the Adoption of Children (Scotland) Act, 1930.

2. The petitioner (*or* petitioners) is (*or* are) domiciled in Scotland and resides (*or* reside) at

3. The petitioner(s) occupation(s) (*or* are) :—

4. The petitioner(s) is (*or* are) married (*or* unmarried, widow or widower. *If married, state whether spouse resides with, or apart from, the petitioner*).

5. The petitioner is years of age (*and, if wife also a petitioner*, the said C.D. is years of age).

6. The petitioner (*or* petitioners) has (*or* have) resident with him (*or* them the following persons, namely :—

7. The petitioner (and his wife) is (*or* are respectively) related to the said E.F. as follows :—(*or* the petitioner(s) is not (are not, nor is either of them) related to the said E.F.

8. The said E.F. is—

(*a*) of the sex,
(*b*) unmarried,
(*c*) a child of and ,
(*d*) a British subject,
(*e*) years of age, having been born on the day of 19 at in the County of ,
(*f*) resident at ,
(*g*) now in the actual custody of of in the County of ,
(*h*) has the following tutors, curators or guardians (*names and addresses*),
(*i*) entitled to the following property, namely .

9. of in the County of and of in the County of is (are) liable to contribute to the support of the said E.F.

10. The said E.F. has not been the subject of an Adoption Order or of a Petition for an Adoption Order, save that (*state Order and Petition if any*).

11. The petitioner(s) is (*or* are) prepared to undertake, if an order is made on this Petition, to make for the said E.F. the following provision, namely :—

(The petitioner(s) will, if required, secure the above provision by bond or otherwise as the Court may require).

12. Consents to this Petition have been obtained from the following persons, namely :—

(*a*) (Child, if a minor)
(*b*) (Parents)
(*c*) (Tutor or curator)
(*d*) (Actual custodian of child)
(*e*) (Person or persons liable to contribute to support of child)
(*f*) (Spouse of petitioner)

13. The petitioner(s) has not (have not nor has either of them) received or agreed to receive and no person has made or agreed to make or give to the petitioner(s) (or either of them) any payment or reward in consideration of the adoption of the said E.F. except as follows, viz. :—

14. This petition is presented under the provisions of the Adoption of Children (Scotland) Act, 1930, and Chapter IV of the Rules of Court, Rules 33 to 39.

May it therefore please your Lordships to dispense with intimation other than in the Minute Book and to order this petition to be served by registered letter post or otherwise on the said E.F. and such other person or persons as your Lordships (*or* the Court) may think proper, and to appoint them to lodge answers hereto, if so advised, within seven

days, and to appoint a curator ad litem to.....the child sought to be adopted in terms of the said Act and relative Rules of Court and direct him to report and thereafter, on resuming consideration hereof, together with such answers (if any) and the report by the said curator ad litem to pronounce an order authorising the petitioner(s) to adopt the said male (*or* female) child E.F. in terms of the Adoption of Children (Scotland) Act, 1930, on such terms and conditions (if any) as your Lordships may think fit, and to direct the Registrar General for Scotland to make an entry regarding the said adoption in the Adopted Children Register in the form set out in the Schedule to the said Act, giving the name.....as the christian and..... as the surname of the said adopted child in column 1 of the said Schedule; and, further, upon proof to the satisfaction of your Lordships in the course of the proceedings to follow hereon, to find that the said child was born on the said day of in the year and is identical with the said E.F. to whom an entry numbered and made on the day of in the year in the Register of Births for the Registration District of..... in the County of.....relates, and to direct the said Registrar General (to cause such birth entry to be marked with the word "adopted" and) *inserted only where the child was born in Scotland* to include the above-mentioned date of birth in the entry recording the adoption in the manner indicated in the Schedule to the said Act; and to pronounce such other or further orders or directions upon such matters, including the expenses of this Petition, as your Lordships may think fit.

FORM 27

Form of Consent relative to Petition for Adoption Order

In Petition

A.B. for adoption order adopting C.D.

I (*full name, designation and address*), being:—

(*a*) the child if a minor,
(*b*) the father of the said child,
(*c*) the mother of the said child,
(*d*) tutor, curator or guardian of the said child,
(*e*) a person having the actual custody of the said child,
(*f*) a person liable to contribute to the support of the said child,
(*g*) the spouse of the petitioner,

hereby state that I understand the nature and effect of the Adoption Order for which application is made (and (*in the case of the father and mother*) that I understand that the effect of the order will be permanently to deprive me of my parental rights.) I do not desire any further intimation of the petition proceedings nor to be heard in relation thereto. And I hereby consent to the making of an Adoption Order in favour of the petitioner(s).

In witness whereof I have signed this consent on the day of 19 , at

(*Signature*)

Signed in the presence of (*two witnesses, giving names, designations and addresses*).

FORM 28

Form of Joint Minute consenting to Summary Trial under 23 and 24 Geo. V, § 10

Parties concur in craving that the cause shall be remitted to Lord for determination by him under section 10 of the Administration of Justice (Scotland) Act, 1933.

(*To be signed by Counsel for all parties.*)

FORM 29

Forms of (a) reclaiming, and (b) objection to competency

1948.

(a) On behalf of the defender—for review by the Inner House of the Lord Ordinary's interlocutor of 1948—Intimated to pursuer, p. Y.Z. (*defender's Counsel*).

(*Signed*) O.P. (*Signature of defender's Solicitor, or of his Clerk*).

(*b*) On behalf of the pursuer—defender's motion of 1948, opposed as incompetent—p. W.X. (*pursuer's Counsel*).

(*Signed*) M.N. (*Signature of pursuer's Solicitor, or of his Clerk*).

FORM 30

Form of written Appeal (or application in the nature of appeal) under particular statutes

(*This space will contain the letter and number assigned to the appeal on being lodged.*)

Appeal

to

The Court of Session

Under (*quote the particular statute and section thereof*)

By

(*name, designation and address of appellant*)

Against

An (*order, determination, or as the case may be*) of (*name the authority or tribunal*) dated (*give date*), and communicated to the appellant on (*date*), in the following terms :—(*quote the order or determination*).

The appellant appeals against the foregoing (*order, determination, etc.*) on the following grounds.

Grounds of Appeal.

(*State the grounds articulately in numbered paragraphs.*)

(*Signed*) M.N. (*Signature of appellant, or appellant's solicitor*).

(*Date*).

FORM 31

Form of Case (stated, special or referred) under certain statutes

(*This space will contain the letter and number assigned to the case on being lodged.*)

Case

for

The Court of Session

Under (*quote the particular statute and section thereof*)

(*names, designations, and addresses of parties or party*)

(*Narrate the facts and circumstances out of which the case arises, articulately and in numbered paragraphs, and set out the question or questions for answer by the Court.*)

(*Signed*) M.N., etc. (*Signature of person stating or referring case.*)

(*Date*)

FORM 32

Intimation with regard to unborrowed productions in unextracted processes

SIR,

M. v. N.

I hereby intimate to you that the process in the above cause is about to be transmitted to the Keeper of the Registers and Records of Scotland and that there are productions in the process which it is necessary for you to borrow up within one calendar month from the date hereof, under certification that any productions remaining unborrowed after expiry of said month will be destroyed or otherwise disposed of as may be directed by the Principal Clerk of Session.—I am,

Your obedient servant,

Clerk of Court.

No. H.M. New Register House,
Edinburgh (*date*).

FORM 33

Form of affidavit for benefit of Poor's Roll



COURT OF SESSION, SCOTLAND

AFFIDAVIT

At the day of one thousand nine hundred and years : In Presence of(*a*)

(*a*) Insert name and qualification (County or City) of Commissioner.

(*b*) Insert name, designation and address of applicant.

Compeared(*b*) who, being solemnly sworn, depones :—

That is an applicant for the benefit of the Poor's Roll to enable to carry on a lawsuit about to be brought or(*c*) presently pending before the Court of Session at the instance of(*d*) against(*e*)

(*c*) Delete words inapplicable.

(*d*) & (*e*) Insert names, designations and addresses.

That is years of age.

(*f*) Delete word inapplicable.

That is(*f*) unmarried *or* married.

That has children aged respectively.

(*g*) Delete word inapplicable. (If partially, state to what extent.)

That the following persons are(*g*) wholly *or* partially maintained by , namely :—

(*h*) Here specify property and possessions of every description, including money invested or in bank.

(*h*)That is possessed of

(*i*) State occupation and employer's name and address.

(*j*) Say how long applicant has been in present employment.

(*k*) State amount.

That is employed as(*i*) by and has been employed for(*j*) at a weekly wage of(*k*)

(*i*) State occupation and employer's name and address.

(*l*) State period of last employment.

(*m*) State amount.

Or That is at present out of employment and has been unemployed since , but when last employed was employed as(*i*)

That was last employed for(*l*) at a weekly wage of(*m*)

(*n*) Here specify other sources of income and full amount received per week; also amount of any pension, unemployment benefit or other State or local relief grant.

That is in receipt of(*n*)

(*o*) If any, give particulars as to case and Court.

That has not at present any other lawsuit depending before the Court of Session or any other Court(*o*).

All which is truth as the deponent shall answer to God.

Signature of Applicant.

Signature of Commissioner.

FORM 34

Printed Form of Application for benefit of Poor's Roll : Form of certificate of intimation : Form of Report of Reporters

Unto the Right Honourable the Lords of Council and Session

The Application
of
for
Admission to the Benefit of the Poor's Roll

Humbly Sheweth :

That the applicant is desirous of admission to the benefit of the Poor's Roll to enable to carry on a lawsuit before the Court of Session at the instance of against

An affidavit setting forth the circumstances of the applicant is produced herewith.

May it therefore please your Lordships to find the applicant entitled to the benefit of the Poor's Roll.

.....
Solicitor for the Poor.

.....19 . Transmitted of this date to Mr. Solicitor.

.....
Clerk of Court.

CERTIFICATE OF INTIMATION

* Edinburgh 19 . I certify that intimation in terms of the Rules of Court was made to on , 19 . *Delete Certificate(s) not applicable

.....
Solicitor.

* I certify that the address of the adverse party is not known, and for that reason no intimation hereof has been made to the said party.

.....
Solicitor.

* Edinburgh 19 . Amended Memorandum intimated of this date.

.....
Solicitor.

REPORT OF REPORTERS ON PROBABILIS CAUSA.

Edinburgh 19 . The reporters on the probabilis causa litigandi of applicants for the benefit of the Poor's Roll having considered this application beg humbly to report that in their opinion the applicant has a probabilis causa litigandi and merits the benefit of the Poor's Roll.

MOTION

Edinburgh 19 . The applicant moves the Court to find entitled to the benefit of the Poor's Roll.

.....
Solicitor for Applicant.

INTERLOCUTOR

Edinburgh 19 . The Lords find the applicant entitled to the benefit of the Poor's Roll and remit to Mr. Advocate and Mr. Solicitor to conduct the cause.

FORM 35

Form of receipt for Election Petition

Parliamentary Elections Act 1868

New Register House, Edinburgh.

Received on the day of at the office of the Court of Session, a petition touching the election of a member of Parliament for the signed by (*names of petitioners*).

Deputy Principal Clerk.

FORM 36

Form of Election Petition

Parliamentary Elections Act, 1868

Election for (*state place*) holden on the day of 19 .

The petition of A. (*name and designation*), *or* of A., B., and C. (*names and designations*), whose names are subscribed hereto.

1. Your petitioner A., who voted (*or* had a right to vote, *as the case may be*) at the above election (*or* claims to have had a right to be returned at the above election, *or* was a candidate at the above election), and your petitioner B. (*here state in like manner the right of each petitioner*).

2. And your petitioners state that the election was holden on the day of when A.B. and C.D. were candidates, and the Returning Officer has returned A.B. as being duly elected.

3. And your petitioners say that (*state the facts on which the petitioners rely*).

Wherefore your petitioners pray that it may be determined that the said A.B. was not duly elected or returned, and that the election was void (*or* that the said C.D. was duly elected, and ought to have been returned, *as the case may be*).

In respect whereof, etc.

(*Signed by Petitioners*).

FORM 37

Form of Bond of Caution in Election Petition

Parliamentary Elections Act, 1868

We, A.B. and C.D. (*names and designations*), considering that a petition has been presented by E.F., complaining of an undue return (*or* undue election *as the case may be*) of G.H. as a member to serve in Parliament for the county of (*or* burgh of) (*or* district of burghs) upon the day of 19 , and that by section 6 of the Parliamentary Elections Act, 1868, it is provided that security for the payment of all costs, charges, and expenses that may become payable by the petitioner in terms of the said Act, shall, on presentation of such petition, be given on behalf of the petitioners to the amount of £1,000; and that by the Rules of the Court of Session for the trial of election petitions under the said Act, it is prescribed that the security so to be given on behalf of the petitioners may be by lodging a bond of caution, in terms of the said Act; and seeing that we, the said parties, are willing to grant such bond, therefore we, the said parties, as cautioners, sureties, and full debtors for and with the said E.F., petitioner, do hereby bind and oblige ourselves, conjunctly and

severally, and our respective heirs, executors, and successors whomsoever, that the said E.F., petitioner, shall make payment of all costs, charges, and expenses that may become payable by him to any person or persons, by virtue of any decree to be pronounced in the said petition; and that to the amount of £1,000 sterling, with one-fifth part more of liquidate penalty in case of failure; and we consent to the registration hereof in the books of Council and Session, that all necessary execution may pass hereon in due and competent form, as effeirs. In witness whereof, etc.

FORM 38

Form of warrant to cite witnesses in Election Petition

Parliamentary Elections, Act, 1868

(*Place and date*).

Having considered the foregoing note (*to be given in by the applicant*) grants warrant to all officers of the law for citing the above-named persons (*name them*) to attend the Court, for the trial of the election petition mentioned in the said note, to be held at within (*name court-house*) on the day of 19 , at o'clock forenoon (*or* forthwith, *as the case may be*), to be severally examined as witnesses in the manner of the said petition, and to attend the said Court until their examination shall have been completed.

(*Signed*)

Judge of the said Court.

FORM 39

Form of application for withdrawal of Election Petition
Parliamentary Elections Act, 1868

County (*or burgh or district of burghs*) of petition of presented the day of 19 .

The petitioner proposes to withdraw his petition on the following grounds. (*state grounds*), and prays that a day may be appointed for hearing his application.

Dated the day of 19 .

(*To be signed by the Petitioner or his Agent.*)

FORM 40

Form of notice of proposed withdrawal of Election Petition

Parliamentary Elections Act, 1868

In the election petition for in which is petitioner and is respondent.

Notice is hereby given, that the above petitioner has, on the day of 19 , lodged at the office of the Principal Clerk of Session notice of application to withdraw his petition, of which the following is a copy :—(*Set it out.*) And take notice, that by the Act and by the Rules made by the Judges, any person who might have been a petitioner, in respect of the said election, may, within five days after the said notice, give notice in writing of his intention on the hearing, to apply for leave to be substituted as a petitioner.

(*Signed by the Petitioner or his Solicitor.*)

FORM 41

Notice of Appeal to the Court of Session under the Unemployment Act, 1935, section 84 (1) (a) and the National Health Insurance Act, 1936, section 161 (1) (iii)

by

(Name, designation and address of appellant)

against

A decision of the Minister of Labour, dated (*give date*) and communicated to the appellant on (*date*) in the following terms:—(*Quote the decision or determination*).

The appellant craves warrant for serving a copy of this notice on the Lord Advocate as representing the Minister of Labour (*or* as representing the Ministry of National Insurance) and appointing him within fourteen days of the date of service to lodge in the process herein a statement of the facts on which said decision proceeded and a copy of the regulations (if any) in accordance with which the same was made.

(Signature of appellant or appellant's solicitor.)

(Place, date.)

FORM 42

Execution of Charge

Upon the day of in the year ,
I, Messenger-at-Arms (*or other officer of Court entitled to execute diligence thereon*), by virtue of the within Extract and warrant at the instance of the within named and designed A. against the also within named and designed B., passed, and in His Majesty's name and authority lawfully charged the said B. to make payment of the within mentioned sum or sums of money, principal, interest and expenses (*or* to implement and perform the obligations within mentioned, *or both to pay and perform as the Extract and Warrant may require*) (*add* " so far as incumbent upon him " *if there be other debtors or obligants in the Extract*) and that to the said A. within days next after the date of my said charge under the pain of (poinding *or* imprisonment).

This I did by delivery to (*or* leaving for *as the case may be*) the said B. personally a full copy of the within Extract, before and in presence of C. witness to the premises.

(Officer's signature.)

(Witness' signature.)

FORM 43

Form for Transmission to Medical Officer of Asylum, Institution, or Home

To (*insert name and address*).

In accordance with the Rules of Court a copy of a summons at the instance of (*name and address*) against (*name and address*) is sent herewith and you are requested to deliver it personally to the said
and to explain the contents or purport thereof to him (*or her*) unless you are satisfied that such delivery or explanation would be dangerous to his (*or her*) health or mental condition. You are further requested to complete and return to me in the enclosed stamped and addressed envelope the certificate appended hereto, striking out what is not applicable.

(To be signed by Pursuer's Solicitor.)

(Address and date.)

FORM 44

Form of Certificate by Medical Officer of Asylum, Institution, or Home

I (*name and designation*) certify on soul and conscience that, having had transmitted to me a copy Summons of divorce at the instance of (*name and designation*) Pursuer, against (*name and designation*) Defender, (*a*) I have on the day of personally delivered a copy thereof to the said defender who is under my care at (*address*) and I have explained the contents or purport thereof to him (*or her*).

or

(*b*) I have not delivered a copy thereof to the said defender who is under my care at (*address*) and I have not explained the contents or purport thereof to him (*or her*) and that for the following reasons (*state reasons*).

(*Signature and designation.*)

(*Address and date*)

FORM 45

Form of Intimation to Children and Next-of-Kin

To (*name and address as in warrant*).

Take notice that an action, a copy of the summons in which is prefixed hereto, has been raised against (*name and designation*) your (*father, mother, brother, sister or other relative as the case may be*) and that you may if you so desire apply to the Court for leave to state defences to the action within seven days after the calling of the summons in Court which will not be earlier than seven days from the date of service hereof.

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (*insert date of posting*).

(*Address.*)

(*Signed*) A.B.
Messenger-at-Arms *or* Solicitor.

FORM 46

Form of Intimation to Person with whom Sodomy is alleged to have been committed

To (*name and address as in warrant*)

Take notice that in an action, a copy of the summons in which is prefixed hereto, the defender is alleged to have committed sodomy with you on the occasions therein specified and that if so advised you may within seven days after the expiry of days from the date of service hereof (*or if the warrant is executed contemporaneously with citation of the defender* within seven days after the calling of the summons in Court which will not be earlier than days from the date of service hereof) apply to the Court for leave to appear as a party in order to dispute the truth of the averments made against you.

The date of service hereof is reckoned as commencing on the expiry of 24 hours after the date of posting hereof.

Dated this (*insert date of posting*).

(*Address.*)

(Signed) A.B.
Messenger-at-Arms *or* Solicitor.

FORM 47

Form of Letter of Request (Consistorial Causes)

Letter of Request

To
The Principal Clerk of Session,
Parliament House,
Edinburgh.

I (We) request that search be made in the records of Court for information as to the granting of a decree of dissolution of marriage in the Petition in which (*name, designation and address*) was Petitioner and (*name, designation and address*) was Respondent, granted on (*date or approximate date*).

Should the above decree of dissolution of marriage be traced I (we) desire a certificate evidencing that it was granted and I (we) enclose fee of five shillings.

(Signed) A.B.

(*Address and date.*)

FORM 48

Court of Session,
Parliament House,
Edinburgh.

(*Date.*)

To A.B. (*name and address of the writer of the Letter of Request*).

I hereby certify that on the day of 19 , the Court of Session in Scotland pronounced a decree dissolving the marriage of A.B. (*designation and address*) and D.C. (*designation and address*) in a Petition in which the said A.B. was Petitioner and the said C.D. was Respondent.

(Signed)
Principal Clerk of Session.

FORM 49

Form of Application for Leave to Appeal

Pensions Appeal Tribunals Act, 1943
Note
by
A.B. (name and design the applicant)
OR the Minister of Pensions
for
Leave to Appeal.

1. On . . . . the Pensions Appeal Tribunal refused the applicant's (OR the Minister's) application for leave to appeal against their decision dated . . . . refusing a pension to the applicant (OR finding that the applicant was entitled to a pension on the grounds of attributability, OR as the case may be).

2 A copy of the Statement of the Case is produced herewith. (*N.B. a copy is obtainable from the Pensions Appeal Office*).

3. The reasons given by the Tribunal for their decision on the merits were as follows:—

(QUOTE)

4. The reasons given by the Tribunal for refusing leave to appeal were as follows:—

(QUOTE)

5. The grounds of this application are—(state briefly in propositional form and without reproducing evidence the point or points of law on which it is maintained that the Tribunal erred).

In respect whereof

380 F.l 5

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