

1974 No. 845 (S.73)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment) 1974

Made - - - 14th May 1974

Coming into Operation 1st October 1974

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a), and of all other powers competent to them in that behalf, do hereby enact and declare as follows—

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

- (1) Rule 72 is hereby amended by deletion of the first four lines down to and including the words “provided that” and by the substitution of the following—“In all summonses the induciae shall be fourteen days after the date of the execution of service, provided that :”
- (2) Rule 159(1) is hereby amended by the deletion of sub-paragraphs (b), (c), (d) and (e) thereof and by the substitution of the following—
 - “(b) where resident on the mainland of Scotland, or at an address unknown to the pursuer or beyond the mainland of Scotland but within Europe, fourteen days.
 - (c) where the citation is postal, the induciae shall be reckoned from twenty-four hours after the date of posting.
 - (d) where under heads (a) or (b) 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.”
- (3) Rule 192 is hereby deleted and there shall be substituted therefor :

“192. 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 fourteen days after the date of service, unless the person to be served is resident in a country outside Europe, in which case if the citation is personal the induciae shall be three weeks, and if the citation is postal, the induciae shall be six weeks”
- (4) Form 1 appended to the Rules of Court(b) is hereby amended by the deletion from line six of the second paragraph thereof of the words “the (seventh [or fourteenth]) day”, and by the substitution therefor of “the (fourteenth) day”.

(a) 1933 c. 41.

(b) S.I. 1965/321 (1965 I p. 803)

- (5) At the end of rule 132(c) there shall be inserted the following new Rule—

“132(d). Legally aided cases—Where such a sum of money as is referred to in Rule 131 becomes payable to a person under legal disability to whom, or on whose behalf, a legal aid certificate has at any time been issued in respect of such action of damages the provisions of Rule 6 of the Act of Sederunt (Legal Aid Rules) 1958(c) shall have effect, but it shall be open to the Law Society of Scotland to apply to the Court for the appointment of a factor in terms of Rule 132 hereof.”

- (6) At the end of Rule 89 there shall be inserted a new Section and a new Rule as follows—

“

SECTION 3(A)—INTERIM PAYMENTS

89A(1) Interim Payment of Damages—

- (a) In any action of damages for personal injuries, the pursuer may at any time after defences have been lodged apply to the Court for an order for interim payment of damages by the defender or defenders, or where there are two or more of them against any one of them.
- (b) Such application shall be made by way of motion, on an *induciae* of fourteen days.
- (c) If on hearing the application and any opposition thereto by the defender or defenders, the Court is satisfied—
- (i) that the defender or defenders have admitted liability in the pursuer's action, or
 - (ii) that, if the action proceeded to proof, the pursuer would succeed in the action on the question of liability without any substantial finding of contributory negligence on his part or on the part of any person in respect of whose injury or death the pursuer's claim arises, and would obtain decree for damages against the defender or defenders, or where there are two or more of them, against any one of them, the Court may, if it thinks fit, order the defender, or where there are two or more of them any one or more of the defenders to make an interim payment to the pursuer of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the pursuer. Such payment may be ordered to be made in one sum or otherwise as the Court thinks fit.
- (d) No order shall be made against a defender under this Rule of Court unless it appears to the Court that the defender concerned is either a person who is insured in respect of the pursuer's claim, or is a public authority, or is a person whose means and resources are such as to enable him to make the interim payment.
- (e) Notwithstanding the making or refusal or an order for an interim payment, a second or subsequent application may be made upon cause shown by reason of a change of circum-

stances.

- (f) Subject only to the provisions of Rules 131 to 134 hereof any interim payments shall be paid to the pursuer, unless the Court otherwise directs.
- (g) The provisions of the Rule shall apply *mutatis mutandis* to a counter-claim for damages for personal injury made by any defender.
- (h) For the purposes of this Rule the words 'personal injuries' shall include any disease and any impairment of a person's physical or mental condition.

89A(2). Adjustment on final decree—Where a defender has made an interim payment under Rule 89(1), the Court may make such order, when final decree is pronounced, with respect to the interim payment as may be necessary for giving effect to the defender's final liability to the pursuer and in particular may order—

- (a) Repayment by the pursuer of any sum by which the interim payment exceeds the amount which that defender is liable to pay the pursuer, or
 - (b) payment by any other defender or Third Party of any part of the interim payment which the defender who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the pursuer's claim.
- (7) Rule 268(a) is hereby amended by adding at the end thereof the words—
'and shall specify the name and address of the solicitors in Edinburgh who will be acting for the appellant in the appeal'.
 - (8) Rule 269(a) is hereby amended by the deletion from the first line thereof of the words 'seven days' and by the substitution therefor of the words 'fourteen days'.
 - (9) Rule 269(b) is hereby amended by the deletion from the first, eleventh and seventeenth lines thereof of the words 'fourteen days' and by the substitution therefor of the words 'twenty-eight days'.
 - (10) Rule 269(b) is hereby further amended by the deletion from the fourteenth line thereof of the words 'seven days' and by the substitution therefor of the words 'fourteen days'."

2. This Act may be cited as the Act of Sederunt (Rules of Court Amendment) 1974 and shall come into operation on 1st October 1974.

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

G. C. Emslie,

I. P. D.

Edinburgh.

14th May 1974.

EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of Court (*a*) by providing that the shortest induciae for Summonses and Petitions shall be fourteen days; (*b*) by providing that the Law Society of Scotland may apply to the Court for the appointment of a factor to administer money payable to persons under legal disability to whom or on whose behalf a legal aid certificate has at any time been issued, (*c*) by providing that in the circumstances narrated orders for interim payments of damages may be made by the Court and (*d*) by providing that the note of appeal in appeals from Inferior Courts under Rule 267 shall specify the name and address of the appellants' Edinburgh Solicitor in the appeal and by extending from seven to fourteen days and from fourteen to twenty eight days respectively the periods for entering appearance etc. provided by Rule 269.

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