

## 1976 No. 476 (S.44)

**SHERIFF COURT, SCOTLAND**  
**Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976**

*Made* - - - - - 24th March 1976  
*Coming into Operation* 1st September 1976

The Lords of Council and Session, under and by virtue of the powers conferred on them by section 32 of the Sheriff Courts (Scotland) Act 1971(a) and of all other powers competent to them in that behalf do hereby enact and declare:—

*Citation and commencement*

1. This Act of Sederunt may be cited as the Act of Sederunt (Summary Cause Rules, Sheriff Court) 1976 and shall come into operation on 1st September 1976.

*Interpretation*

2.—(1) In this Act of Sederunt unless the context otherwise requires—“the Act of 1907” means the Sheriff Courts (Scotland) Act 1907(b) as amended; “the Act of 1971” means the Sheriff Courts (Scotland) Act 1971; “summary cause” means the summary cause defined in section 35(1) of the Act of 1971.

(2) Other expressions used in this Act of Sederunt to which meanings have been assigned by the Act of 1907 shall, unless the context otherwise requires, have the same meaning in this Act of Sederunt as in that Act.

(3) References in the Schedule to this Act of Sederunt to a rule shall, unless the context otherwise requires, be construed as a reference to a rule contained in that Schedule and any reference in a rule contained in that Schedule to a paragraph shall be construed as a reference to a paragraph of that rule.

(4) A form referred to by letter means the form so lettered in the Schedule to this Act of Sederunt and any provision requiring the use of such a form shall be construed as a requirement to use that form subject to such combination with other forms or to such variation as the particular circumstances require.

(5) In this Act of Sederunt any reference to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment.

(6) The Interpretation Act 1889(c) shall apply for the interpretation of this Act of Sederunt as it applies for the interpretation of an Act of Parliament.

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(a) 1971 c. 58.

(b) 1907 c. 51.

(c) 1889 c. 63.

*Procedure in summary causes*

3.—(1) The rules for regulating the procedure in a summary cause shall be the rules set out in the Schedule to this Act of Sederunt.

(2) Rules 11, 26, 68(c), 69, 76, 77, 84, 110 to 114, 126, 151, 172, 173 and 175 of the rules contained in Schedule I to the Act of 1907 shall apply to a summary cause in so far as they are not inconsistent with the rules set out in the Schedule to this Act of Sederunt. The remaining provisions of the said Schedule I shall not apply to a summary cause.

*Intimation*

4. Except where the context otherwise requires any provision in the Schedule to this Act of Sederunt requiring papers to be sent to or any intimation to be made to any party, applicant or claimant shall be construed as if the reference to the party, applicant or claimant included a reference to the solicitor representing that party, applicant or claimant.

*Dispensing power of sheriff*

5. The Sheriff may in his discretion relieve any party from the consequences of any failure to comply with the provisions of the rules set out in the Schedule to this Act of Sederunt which failure is shown to be due to mistake, oversight or other cause, not being wilful non-observance of the said rules on such terms and conditions as appear to be just; and in any such case the Sheriff 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.

*Transitional*

6. It shall not be competent to raise an action in the sheriff's small debt court or commence proceedings in a summary cause within the meaning of the Act of 1907 as originally enacted, after the date of the coming into operation of this Act of Sederunt, but where before that date such action has been raised or such proceedings have been commenced such action or proceedings shall proceed according to the law and practice in force immediately before the coming into operation of this Act of Sederunt.

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

G. C. EMSLIE,  
I.P.D.

Edinburgh,  
24th March 1976.

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**SCHEDULE****RULES FOR REGULATING THE PROCEDURE OF THE  
SUMMARY CAUSE****PART I****GENERAL RULES***Form of Summons*

1. A summons may be in one of the forms A to I.

*Statement of Claim*

2. There shall be appended or annexed to the summons a statement of claim containing a concise statement of the facts which form the ground of action including, where appropriate, a note of the nature of any contract founded upon or any relevant statutory provisions. Without prejudice to the foregoing generality, where the cause arises from the supply of goods or services the goods or services, and the date or dates on which they were supplied shall be specified.

*Signature and Effect of Summons*

- 3.—(1) The summons shall be signed by the sheriff clerk:  
Provided that—

- (a) when the normal period of notice specified in rule 4 has been altered it shall be signed by the sheriff, and
- (b) when the sheriff clerk has for any reason refused to sign the summons it may be signed by the sheriff.

- (2) The signed summons shall be warrant for service on the defender and when the necessary provisions are included in the summons it shall be warrant (a) for arrestment on the dependence of the action, and (b) for arrestment to found jurisdiction.

*Period of Notice*

4. The first calling of a cause, the date of which is defined in rule 18(1), or the return day defined in rule 51 shall not take place until notice of the summons has been given to the defender as follows—

- (a) 14 days when the defender is resident within the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland;
- (b) 28 days when the defender is resident outwith the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland but within Europe;
- (c) 42 days when the defender is outwith Europe:

Provided that the sheriff may, on cause shown, reduce the said periods on condition that—

- (i) a minimum period of 2 days' notice of the summons is given, and
- (ii) the summons is served personally.

*Form of Citation and Certificate Thereof*

5. Citation shall be given in form J and the certificate of citation shall be in form K and the said forms shall be annexed or attached to the summons or a copy thereof. When citation is by an officer of court, the certificate of citation shall be signed by him and shall specify whether the citation was personal or, if otherwise, the mode of citation and the name of any person to whom the citation was delivered. When citation is effected in terms of sub-paragraphs (c), (d) or (e) or rule 6(1) the certificate shall also contain a statement of the mode of service previously attempted and the circumstances which prevented such service from being effected.

*Citation and Service by Officer of Court*

6.—(1) Any summons, decree, charge, warrant or other order or writ following upon such summons or decree issued in a summary cause may be validly served by an officer of court—

- (a) by being served personally upon the defender,
- (b) by being left in the hands of an inmate of or employee at the defender's dwelling place or place of business,
- (c) by being introduced into the defender's dwelling place or place of business by means of a letterbox or by other lawful means,
- (d) by being affixed to the door of the defender's dwelling place or place of business, or
- (e) by being left in the hands of an inmate of, being introduced by means of a letterbox or by other lawful means into, or being affixed to the door of, the defender's last known dwelling place:

Provided that service in a manner specified in sub-paragraphs (c), (d) or (e) above shall be valid only where an officer of court has already attempted unsuccessfully to effect service at those premises in a manner specified in sub-paragraphs (a) or (b) above or is satisfied that the defender has within a period of 40 days removed from those premises, his place of dwelling at the time being not known, and the officer has thereafter sent to the address at which after diligent inquiries he thinks it most likely that the defender may be found or to the defender's last known address, a letter by ordinary post containing a copy of such summons, decree, charge, warrant or other order or writ.

(2) In proceedings in or following upon a summary cause it shall be necessary for any officer of court to be accompanied by a witness.

(3) In this rule the expression 'officer of court' includes a Sheriff Officer, but does not include a Messenger-at-Arms.

*Citation of a Minor*

7. Service in ordinary form on a minor and his parent or other curator or the tutor of a pupil, if known to the pursuer, shall be good and sufficient service for every purpose of law. Where the curator or tutor is not known, service shall be effected in ordinary form on the minor or pupil and the facts shall be notified at the first calling to the court which may order such further procedure as it thinks fit including, without prejudice to the foregoing generality, advertisement under the provisions of rule 8(1) and appointment of a curator *ad litem*.

*Citation of Persons Whose Address is Unknown*

8.—(1) When a defender's address is unknown to the pursuer citation of the defender by the publication in a newspaper circulating in the area of the

defender's last known address of an advertisement in form L shall be deemed to be good and sufficient service for every purpose of law, and when citation is effected in this way the period of notice shall start to run on the day of publication.

(2) Where the address of a defender who has been cited in terms of paragraph (1) becomes known after the cause has commenced, the sheriff may allow the summons to be amended subject to such conditions as to re-service, intimation or expenses as he thinks fit.

*Citation of Persons Resident Outwith Scotland*

9.—(1) (a) Service upon a defender whose known residence or place of business is outwith Scotland but within the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland may be effected either personally or by posting a copy of the summons in a registered or recorded delivery letter to the defender at his residence or place of business,

(b) service upon a defender whose residence or place of business is outwith the United Kingdom, the Isle of Man, the Channel Islands and the Republic of Ireland may be effected either personally or by posting separately in Scotland and in the country in which the defender is resident or has a place of business a copy of the summons in a registered or recorded delivery letter or the nearest equivalent thereof which the available postal services permit addressed to the defender at his residence or place of business:

Provided that where the defender resides or has a place of business outwith Europe the summons posted in Scotland shall be posted air-mail,

(c) service in accordance with this rule shall be deemed to be good and sufficient service for every purpose of law.

(2) For the purposes of this rule personal service shall include service in accordance with the rules for personal service under the domestic law of that part of the United Kingdom in which the service is to be effected; service by the British Consul or his duly authorised depute or assistant in the country of residence or place of business of the defender; and service in accordance with any convention on service abroad of judicial documents in civil matters to which the United Kingdom and the country of residence or place of business of the defender are signatories.

(3) Posting in Scotland for the purposes of this rule shall be effected by a solicitor or an officer of court. The forms for citation and certificate of citation referred to in rule 5 shall be used for the purposes of this rule but a translation of the citation in a language of the country of the defender's residence or place of business shall be attached if appropriate.

(4) On the face of the envelope used for postal service under this rule to a person resident or having a place of business outwith the United Kingdom, the Isle of Man, the Channel Islands or the Republic of Ireland there shall be written or printed a notice, with a translation where appropriate in a language of the country of the defender's residence or place of business, in the same or similar terms as that required in the case of ordinary service by registered letter.

*Postal Citation*

10.—(1) In any case in which it is competent to serve or intimate any document or to cite any person by recorded delivery, such service, intimation or citation, when made by recorded delivery, shall only be competent if it is made by recorded delivery first class service.

(2) Notwithstanding the provisions of section 4(2) of the Citation Amendment (Scotland) Act 1882(a) in all cases of postal service the period of notice shall start to run on the day of posting.

(3) The certificate of citation in the case of postal service shall have annexed to it any relevant postal receipts.

*Endorsation of Summons by Sheriff Clerk of Defender's Residence  
Not Necessary*

11. Any summons, charge, warrant, arrestment or any order or writ following upon a summons or decree may in any competent manner be served, enforced or otherwise lawfully executed within any sheriff court district without endorsation by the sheriff clerk of that district and, if executed by an officer, may be so executed by an officer of the court which granted the summons, or by an officer of the sheriff court district within which it is to be executed.

*Re-service*

12.—(1) If it appears to the court that there has been any failure or irregularity in service upon a defender, the court may upon such conditions as seem just authorise the pursuer to re-serve the summons.

(2) Where re-service has been ordered in accordance with paragraph (1) or rule 8 the cause shall proceed thereafter as if it were a new cause.

*Defender Appearing Barred from Objecting to Citation*

13. Except where jurisdiction has been constituted by arrestment to found jurisdiction a party who appears or is represented may not object to the regularity of the service and the appearance shall be deemed to remedy any defect in the service.

*Evidence of Publication*

14. In every case where advertisement in a newspaper is required for the purpose of service a copy of the newspaper containing the said advertisement shall be lodged together with a certificate signed by a solicitor or officer of court that the said newspaper circulated in the vicinity of the address concerned.

*Return of Summons*

15. The summons together with the relative certificate of citation shall be returned to the sheriff clerk at least 24 hours before the date of the first calling as defined in rule 18(1), and a breach of this provision may result in the dismissal of the cause.

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(a) 1882 c. 77.

*Book of Summary Causes*

16.—(1) The sheriff clerk shall keep a book to be known as the Book of Summary Causes in which shall be entered a note of all summary causes and minutes under rules 19(1) and 92(1), setting forth the following particulars where appropriate—

- (a) the names and designations of the parties,
- (b) whether they are present or absent at the calling of the cause, and the names of their representatives,
- (c) the nature of the cause,
- (d) the amount of any claim,
- (e) the date of issue of the summons,
- (f) the mode of citation,
- (g) the date of the return day,
- (h) whether a notice of intention to appear has been lodged,
- (i) any minute by the pursuer under rule 54 or 55(1),
- (j) any interlocutors issued, and
- (k) the final decree with the date thereof

which Book shall be signed each court day by the sheriff.

(2) The Book of Summary Causes may be made up of separate rolls each roll relating solely to proceedings of a particular description of summary cause.

(3) The Book of Summary Causes kept by the sheriff clerk shall be open for inspection during office hours to all concerned without fee.

*Representation*

17.—(1) Except as hereinafter provided a party who does not elect to conduct his own cause shall be represented by an advocate or solicitor.

(2) A party shall be entitled to be represented by a person other than an advocate or solicitor at the first calling of a summary cause, and, unless the court at that calling otherwise directs, at any subsequent diet where the cause is not defended on the merits or on the amount of the sum due: Provided that the court in that cause is satisfied that the person is a suitable representative and is duly authorised to represent the party.

*First Calling*

18.—(1) The date of the first calling of a summary cause is the date stated in the summons when the defender, if he wishes to defend the action, is required to appear. The first calling and any continuation thereof may be before the sheriff clerk.

(2) If the first calling or any continuation thereof is before the sheriff clerk he shall, on the motion of any party, and may, of his own accord, order that it be called before the sheriff on that or a subsequent day and for the purposes of paragraph (3) such calling before the sheriff shall not be a continuation.

(3) No continuation of the first calling shall be granted except—

- (a) on the joint motion of the parties, or

(b) on the motion of any party where the court in terms of rule 21 has granted leave to the defender to serve a counter claim within 7 days of the first calling, or

(c) if the court in all the circumstances considers it necessary,

when the court may continue the first calling on one occasion only to a roll not later than the first roll occurring after the expiry of 28 days.

(4) If it appears to the sheriff that the cause is clearly incompetent or that there is a patent defect of jurisdiction he may grant decree of dismissal with expenses.

(5) If the pursuer does not appear or is not represented at the first calling or at any continuation thereof at which the defender is present or represented and no defence has been stated the court shall grant decree of absolvitor with expenses.

(6) If the defender does not appear or is not represented at the first calling or at any continuation thereof and has not stated a defence or if the court is satisfied that he does not intend to defend the cause on the merits or on the amount of the sum due the court may grant decree with expenses against him.

(7) Where a defence is stated at the first calling or at any continuation thereof the court shall, subject to the provisions of paragraph (4), fix a diet of proof which proof shall be deemed to be a proof *habili modo* and the parties shall not be heard on any question of law other than questions relating to admissibility of evidence until the facts have been ascertained by proof or by the admission of parties or by a combination of these.

#### *Recall of Decree*

19.—(1) At any time within 14 days of the grant of decree of absolvitor in terms of rule 18(5) the pursuer, or at any time not later than 14 days after the execution of the charge or execution of arrestment, whichever first occurs, following on the grant of decree in terms of rule 18(6) the defender, may apply for the recall of such decree by lodging with the sheriff clerk a minute in form M.

(2) On lodging the minute the minuter shall consign the sum of £5 in the hands of the sheriff clerk who shall thereupon fix a date time and place for the hearing of the minute. Not less than 7 days before the hearing the minuter shall serve upon the other party a copy of the said minute and intimate to him the date of the hearing.

(3) At the hearing the court shall recall the decree so far as not implemented whereupon the cause shall proceed in all respects as if the hearing were a first calling.

(4) Except where the sheriff orders that the consigned money be repaid to the minuter the other party shall be entitled to it.

(5) The sheriff may make such order as to expenses as he thinks fit.

(6) A minute to recall a decree granted in terms of rule 18(6) when duly lodged and intimated in accordance with the foregoing paragraphs shall operate as a sist of diligence. On intimation of such a minute the pursuer shall forthwith return the summons to the sheriff clerk.



*Defence*

20. At the first calling or at any continuation thereof the defender shall state his defence which shall at that time be noted on the summons by the court:

Provided that the court may on cause shown grant leave to the defender in addition to lodge within 14 days of such leave being granted a supplementary note of his defence.

*Counter Claim*

21. Where any defender intends to plead any counter claim he shall serve a copy of such counter claim containing a statement of claim specifying the origin of debt or ground of claim on the pursuer at least 7 days before the first calling or any continuation thereof or, with leave of the court granted at the first calling on cause shown within 7 days thereafter, failing which the counter claim, except with the pursuer's consent, shall not be pleaded as such.

*Transfer to Another Court*

22. A cause may be transferred to any other court, whether in the same sheriffdom or not, if the sheriff considers that it is expedient that this be done and a cause so transferred shall proceed in all respects as if it had originally been brought in that court.

*Remit Between Summary and Ordinary Rolls*

23.—(1) Where a direction has been made that an ordinary cause be treated as a summary cause the initial writ shall be deemed to be a summary cause summons and the cause shall be remitted to a summary cause roll occurring not more than 7 days after the date of the direction:

Provided that if no appropriate summary cause roll occurs within that period the remit shall be to the roll first occurring.

(2) Where a direction has been made that a summary cause be treated as an ordinary cause the cause shall be remitted to the ordinary cause roll first occurring not sooner than 7 days after the date of the direction.

*Productions*

24. All productions which are intended to be used or put in evidence at a proof shall be lodged with the sheriff clerk not later than 7 days before the diet of proof and notice of the lodging thereof shall at the same time be sent to the other party. An inventory in duplicate of the said productions shall also be lodged. Any productions borrowed, receipts for which shall be entered in the principal copy of the inventory of productions, which copy shall be retained by the sheriff clerk, shall be returned not later than noon on the day preceding the date of the proof. Such productions may be borrowed only by a solicitor or by his duly authorised clerk for whom he shall be responsible. No productions other than those timeously lodged shall be used or put in evidence at the proof unless by consent of parties or by permission of the presiding sheriff on cause shown to his satisfaction and on such terms as to expenses or otherwise as to him seem proper.

*Penalty for Failure to Return Borrowed Productions*

25. When a solicitor has borrowed a production and fails to return it for any diet at which it is required the sheriff may impose upon such solicitor a

fine not exceeding £5 which shall be payable to the sheriff clerk for behoof of the Crown and shall be recoverable by civil diligence. An order imposing a fine under this rule shall not be subject to review except that the sheriff who granted it may on cause shown recall it.

*Documents Lost or Destroyed*

26. When any summons, statement of claim, counter claim or note of defence, any book or document recording interlocutors or deliverances of the court or any document lodged with the sheriff clerk in connection with a summary cause is lost or destroyed, a copy thereof, authenticated in such manner as the sheriff may require, may be substituted and shall, for the purposes of the cause, including the use of diligence, be equivalent to the original.

*Alteration of Summons etc.*

27. At any time not later than 7 days before the date fixed for the diet of proof in any cause, or at such time thereafter as he in special circumstances may allow, the sheriff may, on the motion of any party to permit alteration of the summons, statement of claim, counter claim or note of defence, grant that motion:

Provided that—

- (a) if all parties are present or represented when the motion is made he is satisfied that reasonable notice of the motion has been given to the other parties, and
- (b) if any of the parties is not present or represented when the motion is made, he may require such re-service or intimation or make such provision as to expenses as seems proper.

*Decree by Default and Dismissal*

28.—(1) If in a summary cause after a defence has been stated has failed—

- (a) to appear or be represented at any diet, or
- (b) to implement an order of court

the cause shall be continued to a diet on the first appropriate summary cause roll occurring not earlier than 14 days from such failure. The date of that diet together with a note of the reasons therefor and of the fact that decree by default may be granted if no appearance is made at that diet or if the said order has not by then been implemented shall be intimated by the sheriff clerk to any party who has failed to attend the diet specified in (a) above.

(2) If a party also fails—

- (a) to appear or be represented at the continued diet, or
- (b) to implement the said order by the date of the continued diet, or
- (c) to appear at any further diet appointed at the continued diet

decree by default as craved or of absolvitor may be granted.

(3) If all parties fail to appear or be represented at any diet the sheriff, unless sufficient reason appears to the contrary, shall dismiss the cause.

*Citation of Witnesses*

29. The summons or the copy served on the defender shall be sufficient warrant for the citation of witnesses and havers, the period of notice required to be given to such witnesses or havers being not less than 7 days.

*Form of Citation and Execution Thereof*

30. The citation of a witness or haver shall be in form N and the certificate thereof shall be in form O and a solicitor who cites a witness or haver shall be personally liable for the fees of the witness or haver.

*Failure to Answer Citation*

31. A witness or haver who fails to answer a citation after having been properly cited and offered his travelling expenses if he has asked for them may be ordered by the sheriff to pay a penalty not exceeding £10 unless a reasonable excuse is offered and sustained. The sheriff may grant decree for payment of the said penalty in favour of the party on whose behalf the witness or haver was cited.

*Second Diligence Against Witnesses Failing to Attend*

32. The sheriff may grant second diligence to compel the attendance of a witness or haver under pain of arrest and imprisonment until caution can be found as the sheriff may require for his due attendance. The warrant for a second diligence shall be effective in any sheriffdom without endorsement and the expenses thereof may be decreed for against the witness or haver.

*Procedure for Restricted Proof and Reference to Oath*

33.—(1) Where any party desires to plead that proof be restricted to the writ or oath of any person that party shall lodge a minute to that effect signed by himself or his solicitor and shall also give notice in writing signed by himself or his solicitor to his opponent at least 14 days before the diet of proof: Provided that the sheriff at the proof may on cause shown dispense with such notice.

(2) Where any party desires to refer any matter to his opponent's oath he shall lodge a minute to that effect signed by himself or his solicitor. If the party to whose oath reference has been made fails to appear at the diet for taking his deposition the sheriff may hold him as confessed and grant decree accordingly.

*Preservation, and Obtaining, of Evidence*

34.—(1) Evidence in danger of being lost may be taken to lie *in retentis* and, if satisfied that it is desirable so to do, the sheriff may, upon the motion of any party at any time, either take it himself, or grant authority to a commissioner to take it.

(2) The evidence of any witness or haver resident beyond the sheriffdom, or who although resident within the sheriffdom resides at some place remote from the court in which the diet of proof is to be held, or who is by reason of illness, age, infirmity or other sufficient cause unable to attend the diet of proof, may be taken in the same manner as is provided in paragraph (1).

(3) Evidence referred to in paragraphs (1) and (2) whether before the sheriff or a commissioner may be taken down by the sheriff or the commissioner or by a clerk or shorthand writer nominated by the sheriff or commissioner to whom the oath *de fidei administratione* shall be administered and such evidence may be recorded in narrative form or by question and answer as the sheriff or commissioner shall direct and the extended notes of such evidence certified by such clerk or shorthand writer shall be the notes of such oral evidence.

#### *Remit to Person of Skill*

35. The sheriff may remit to any person of skill, or other person, to report on any matter of fact; and, when such remit is made of consent of both parties, the report of such person shall be final and conclusive with respect to the matter of the remit. When such a remit is made upon the motion of either party, the expense attending its execution shall in the first instance be paid by the party moving for it. When the remit is on joint motion, or by the sheriff of his own accord, the expense shall in the first instance be paid by the parties equally, unless the sheriff otherwise orders.

#### *Abandonment of Cause*

36. A pursuer may at any diet, before an order granting absolvitor or dismissing the cause has been pronounced, offer to abandon the cause, in which case the sheriff shall thereupon fix the amount to be paid by the pursuer of the defender's expenses and continue the cause to the first appropriate summary cause roll occurring not sooner than 14 days thereafter. Where the pursuer makes payment to the defender of that amount before the continued diet the sheriff shall dismiss the cause unless the pursuer consents to absolvitor. Where the pursuer fails to pay that amount the defender shall be entitled to decree of absolvitor with expenses.

#### *Diligence for Recovery of Documents*

37. At any time after a proof has been allowed the sheriff, on application being made to him by any party, may grant commission and diligence for the recovery of such documents referred to in a specification lodged by the party as the sheriff deems relevant to the cause.

#### *Optional Procedure before Executing Commission and Diligence*

38.—(1) 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 haver, serve upon such party, or parties, or haver, an order with certificate attached in form P.

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

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

(4) When the order, certificate in terms thereof and inventoried documents (if any) are received by the sheriff clerk, official intimation shall be given by him forthwith 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 documents until after the expiry of 7 days from the date of such official intimation.

(5) 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 in normal form, notwithstanding his adoption in the first instance of the foregoing procedure by order.

(6) In the event of the production under such order as aforesaid of extracts from books whether such extracts are certified or not, the sheriff may, on cause shown, 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 sheriff 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.

#### *Confidentiality*

39. In any cause in which, either under the optional procedure provided in rule 38 or in the execution of a commission and diligence in normal form, 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 sheriff obtained on the application of the party serving the order, or executing the commission and diligence, after opportunity has been given to the party, parties or haver, making production, to be heard.

#### *Warrant for Production of Original Documents from Public Records*

40.—(1) Where any party to a cause desires to obtain from the Keeper of the Registers of Scotland or from the Keeper of the Records of Scotland production of the originals of any register or deed in his custody, he shall apply by written motion to the sheriff before whom the cause depends, after 7 days notice of the intention to make such application has been given in writing to the Keeper in charge of the originals.

(2) Upon such application the sheriff may, by interlocutor, certify that it is necessary for the ends of justice that the application should be granted, and the party may make application by letter (enclosing a copy of the interlocutor duly certified by the sheriff clerk) addressed to the Principal Clerk of Session for an order from the Lords of Council and Session authorising the Keeper to exhibit the original of any register or deed to the sheriff, and that in the hands of an officer to be selected by the said Keeper.

(3) The Principal Clerk of Session shall submit the same to a Lord Ordinary in Chambers, who, if satisfied, shall grant a warrant on behalf of the Lords of Council and Session. A certified copy of said warrant shall be served upon the Keeper.

(4) The expense attending the transmission and exhibition of such original register or deed shall be defrayed in the first instance by the party or parties on whose application they are exhibited.

*Challenge of Documents*

41.—(1) When a deed or writing is founded on by any party in a cause all objections thereto may be stated and maintained without the necessity of bringing a reduction thereof.

(2) The sheriff may, where an objection is so stated and where an action of reduction would be competent, order the objector to find caution, or to make consignation as he directs.

*Conduct of Proof or Hearing*

42. The pursuer shall lead in the proof unless the sheriff on the motion of any of the parties which has been intimated to the other parties not less than 7 days before the diet of proof directs otherwise.

*Notes of Evidence, etc.*

43.—(1) The sheriff who presides at the proof may make a note of the facts upon which parties are agreed or the parties or their solicitors may, and shall if required by the sheriff, lodge a joint minute of admissions signed by them, of the facts upon which they have reached agreement.

(2) The sheriff shall make for his own use notes of the evidence led at the proof, including any evidence the admissibility of which is objected to, and of the nature of any such objection and he shall retain these notes until after the expiry of the period during which an appeal is competent.

*Objections to Admissibility of Evidence*

44. Where in the course of a proof an objection is made to the admissibility of any evidence and that line of evidence is not abandoned by the party pursuing it, the sheriff shall, except where he is of the opinion that the evidence is clearly irrelevant or scandalous, note the terms of the objection and allow the evidence to be led reserving the question of its admissibility to be decided by him at the close of the proof.

*Documents, etc., Referred to During Proof*

45. Documents or other productions referred to during a proof, the record of any evidence taken in accordance with rule 34, any joint minute of admissions and the report of any person of skill to whom a matter has been remitted shall be retained in the custody of the sheriff clerk until after the expiry of the period during which an appeal is competent.

*Parties to be Heard at Close of Proof*

46.—(1) The sheriff shall hear the parties or their solicitors on all matters connected with the cause including liability for expenses at the close of the proof or at a subsequent diet if for any reason the sheriff continues the cause to such a diet:

Provided that if any party moves that the question of expenses be heard after the sheriff has given his decision the sheriff may grant that motion.

(2) At the conclusion of that hearing the sheriff may either pronounce his decision or reserve judgment in which latter case he shall within 28 days thereof give his decision in writing and the sheriff clerk shall forthwith intimate it to the parties.

*Arrestment*

47. An arrestment to found jurisdiction or an arrestment on the dependence of an action used prior to service shall fall, unless the summons shall have been served within 42 days from the date of execution of the arrestment. When such an arrestment has been executed, the party using it or his solicitor shall forthwith report the execution to the sheriff clerk the certificate of execution being on the same paper as the summons.

*Recall and Restriction of Arrestment*

48. A party may have any arrestment on the dependence of an action loosed on paying into court, or finding caution to the satisfaction of the sheriff clerk in respect of, the whole sum claimed together with the sum of £10 for expenses and a certificate granted by the sheriff clerk of such payment into court or finding of caution shall operate as a warrant for the release of the sum or subjects arrested. A party by minute duly intimated to the other party may apply at any time to the sheriff to recall or restrict any arrestment on the dependence, with or without consignment. Where the sheriff grants such an application in whole or in part, the sheriff clerk shall issue an appropriate certificate when any conditions imposed by the sheriff have been complied with, and such certificate shall operate as a warrant for release of the sum or subjects arrested to the extent indicated by said certificate.

## PART II

## SPECIAL RULES

*General*

49. The provisions of Part I of these rules shall apply to the summary causes for which special rules are provided in this Part, except in so far as these provisions are inconsistent with the special rules.

## ACTION FOR PAYMENT OF MONEY

*General*

50. All actions for payment of money as described in section 35(1)(a) of the Act of 1971 shall be subject to the provisions of rules 51 to 56.

*Notice of Intention to Appear*

51. Where the defender intends to defend the action or dispute the amount of the claim or wishes to admit the claim but to make oral representations about payment he shall lodge a notice of intention to appear in form Q on or before the return day being the last day specified in the summons for the return to the sheriff clerk of the notice of intention to appear.

*Notice of Offer to Pay by Instalments*

52. Where the defender admits the claim and does not intend to appear but wishes to make a written offer to pay by instalments he may lodge a notice of offer to pay by instalments in form R on or before the return day referred to in rule 51.

*First Calling*

53.—(1) The date of the first calling shall be 7 days after the date specified for the return day.

(2) A first calling of a cause shall be held only where a notice of intention to appear or a notice of offer to pay by instalments has been lodged and the offer has not been accepted by the pursuer, and the procedure at that calling and subsequently shall be in accordance with Part I of these rules. At that calling the court shall consider the terms of any notice of offer to pay by instalments which has not been accepted by the pursuer.

*Acceptance of Written Offer to Pay by Instalments*

54. Where a notice of offer to pay by instalments has been lodged in accordance with rule 52 the cause shall not be called in court if before the date specified in the summons for the first calling the pursuer enters a minute in the Book of Summary Causes accepting the offer and decree in terms of that minute may be granted on the date so specified.

*No Notice by Defender*

55.—(1) Where neither a notice of intention to appear nor a notice of offer to pay by instalments has been lodged in accordance with rules 51 and 52, the cause shall not be called in court and, if before the date specified in the summons for the first calling the pursuer enters a minute in the Book of Summary Causes, decree or other order in terms of that minute may be granted on the date so specified.

(2) A decree granted in terms of paragraph (1) shall be subject to recall in accordance with the provisions of rule 19.

(3) If the pursuer does not enter a minute in the Book of Summary Causes in accordance with paragraph (1) the court shall dismiss the cause.

*Shortened Period of Notice*

56. The provisions of rules 51 to 55 shall not apply to the actions referred to in rule 50 where the sheriff has reduced the period of notice in accordance with the proviso to rule 4.

ACTION OF MULTIPLEPOINDING

*Pursuer in Multiplepoinding*

57. A summary cause of multiplepoinding may be raised by any party holding or having an interest in or claim on the fund or subject *in medio* and the sheriff may allow the pursuer his expenses preferably out of the fund *in medio*.

*Service of Summons*

58. The summons shall be served on the claimants so far as known to the pursuer and also on the holder of the fund or subject *in medio* where the pursuer is not the holder.

*First Calling*

59. If no defence or objection to the extent of the fund or subject *in medio* has been stated or if any defence stated has been repelled or objection to the extent of the fund or subject *in medio* dealt with, the court shall order claims in form S to be lodged within 14 days and shall continue the cause to a claims diet at which all parties may appear or be represented.



*Claims Diet*

60.—(1) At the claims diet if there is no competition between the claimants who appear, the sheriff may ordain the holder of the fund or subject *in medio* to make it over to the claimants in terms of their claims or otherwise and subject to such provisions as to expenses as he directs.

(2) If there is competition between the claimants who appear at the claims diet the sheriff shall fix a diet of proof and shall state the order in which the claimants shall lead at the proof.

*Diet of Proof*

61. At the conclusion of a diet of proof fixed under the provisions of rule 60(2) the sheriff shall dispose of the cause and may order the holder of the fund or subject *in medio* or the sheriff clerk to make it over to such claimants, and in such quantity or amount as he may determine or otherwise as may be appropriate, and shall deal with all questions of expenses.

*Advertisement*

62. At any stage in the multiplepointing if it appears to the sheriff that there may be other potential claimants who are not parties to the cause he may order such advertisement or intimation of the order for claims as he thinks proper.

*Consignation*

63. At any stage in a cause of multiplepointing the sheriff may order that the fund or subject *in medio* be consigned in the hands of the sheriff clerk or order that any subject *in medio* be sold and the proceeds of sale consigned in the hands of the sheriff clerk.

## ACTION OF FURTHCOMING

*Expenses Included in Claim*

64. The expenses of bringing a summary cause for furthcoming including the expenses of the arrestment shall be deemed to be part of the arrestor's claim which may be made good out of the arrested fund or subject.

## ACTION OF COUNT RECKONING AND PAYMENT

*First Calling and Defences*

65.—(1) If at the first calling in an action of count reckoning and payment a defence is stated and is not repelled on the grounds that it is clearly incompetent, a proof on the questions raised by the defence shall be fixed.

(2) If at the first calling liability to account is admitted, or at any diet the defence stated has been repelled, the court shall order accounts to be lodged within 14 days and continue the cause to an accounting diet at which parties must appear or be represented.

*Accounting Diet*

66. At the accounting diet, if there be any objection to the accounts which cannot be disposed of by argument at that diet, the sheriff shall fix a proof.

*Diet of Proof*

67. At the conclusion of a proof fixed under the provisions of rule 66 the sheriff shall dispose of the cause and deal with all questions of expenses as he thinks fit.

## RECOVERY OF POSSESSION OF HERITABLE PROPERTY

*Action Raised Under Section 38 of the Act of 1907*

68. A summary cause for the recovery of possession of heritable property raised under section 38 of the Act of 1907 may be at the instance of a proprietor or his factor or any other person by law authorised to pursue a process of removing.

*Effect of Decree*

69. When decree for the recovery of possession is granted it shall have the same force and effect as a decree of removing, or a decree of ejection, or a summary warrant of ejection, or a warrant for summary ejection in common form, or a decree pronounced in a summary application for removing, in terms of sections 36, 37 and 38 respectively of the Act of 1907.

*Preservation of Defender's Goods and Effects*

70. When decree is pronounced and the defender is neither present nor represented, the sheriff may give such directions as he deems proper for the preservation of the defender's goods and effects.

## ACTION FOR DELIVERY

*Diligence of Decree*

71. In an action for delivery the court may, when granting decree, grant warrant to search for and take possession of goods and to open shut and lockfast places. This warrant shall only apply to premises occupied by the defender and may only be executed after the expiry of a charge following upon the decree for delivery.

## ACTION OF SEQUESTRATION FOR RENT

*General*

72. Actions of sequestration for rent or in security of rent may be brought as summary causes whether they be brought after the term of payment or *currente termino*.

*Appraisal, Inventory and Execution of Citation*

73.—(1) The officer when he executes the warrant for sequestration shall have the effects appraised by one person who may also be a witness to the sequestration.

(2) An inventory or list of the sequestered effects with the appraisal shall be given to or left for the tenant who shall be cited thereafter in accordance with rule 5.

(3) The certificate of citation and sequestration with the appraisal shall be returned to the sheriff clerk within 7 days of such citation.

*Procedure After Calling*

74.—(1) After hearing the cause the sheriff shall dispose of it as he thinks fit and may either recall the sequestration in whole or in part, or grant decree for the rent found due and grant warrant for the sale of the sequestrated effects.

(2) Where warrant for sale of the sequestrated effects has been granted the sale shall be carried out by an officer of court or by such other person as the sheriff may direct by public roup at such place as the sheriff may direct and after advertisement in a newspaper circulating in the district.

(3) Any proceeds of the sale surplus to the sum decerned for, the expenses awarded and the expenses of the sale, shall be returned to the owner, or if he cannot be found, consigned in the hands of the sheriff clerk.

(4) If the effects are not sold, they shall be delivered to the creditor at the appraised value to the amount of the sum decerned for and expenses, and the expenses of the sequestration and sale.

*Sale to be Reported Within 14 Days*

75. A report of the proceedings in the sequestration and sale of proceeds, or of delivery of the effects, shall be made by the officer to the sheriff clerk within 14 days of the date of sale or delivery.

*Recall of Sequestration*

76. If the tenant either pays to the landlord the rent due, with the expenses of raising the summons and sequestrating, or consigns the rent due, with a sum determined by the sheriff clerk to cover expenses, in the hands of the sheriff clerk the sheriff clerk shall recall the sequestration by appropriately endorsing the summons or the defender's copy thereof.

*Warrant to Eject and Re-let Where Premises Displenished*

77. If the officer who has executed a warrant for sale, or who was instructed to execute such a warrant, reports to the court that the premises are displenished the landlord may apply to the court to obtain a warrant to cite the defender to a fixed diet at which the sheriff may make such order as to ejection, re-letting, security, expenses or otherwise as he considers appropriate. Where a warrant to re-let is granted the rent accruing thereafter shall only be exigible for such period as the tenant continues to occupy the premises.

*Warrant to Sequester, etc.*

78. All warrants to sequester inventory sell eject or re-let shall be deemed to include authority, if need be, to open shut and lockfast places for the purpose of carrying such warrants into execution.

## ACTION FOR INTERIM ALIMENT

*Recall or Variation of Decree for Aliment*

79. Applications for the recall or variation of any decree for payment of aliment pronounced in the small debt court under the Small Debt Acts or in a summary cause under the Act of 1971 shall be made by summons.

## MONEYLENDERS ACTION

*Application of Act of Sederunt*

80. The provisions of the Act of Sederunt to regulate procedure in actions in the Sheriff Court brought by persons registered under the Moneylenders Acts 1900–1927(a) shall apply *mutatis mutandis* to all summary causes brought by persons registered under the Moneylenders Acts 1900–1927 for the recovery of sums lent by such persons as if all references to a small debt action were references to a summary cause.

## PART III

## APPEALS

*Appeal to the Sheriff Principal*

81.—(1) To appeal to the sheriff principal the appellant shall lodge with the sheriff clerk not later than 14 days after the date of the final decree, a note of appeal requesting a stated case and at the same time he shall intimate to the other parties the lodging of this note of appeal.

(2) Within 14 days of the lodging of the note of appeal the sheriff shall prepare and issue a draft stated case containing his findings-in-fact, his findings-in-law and a note stating the reasons for his decisions in law, and when questions of admissibility or sufficiency of evidence have arisen, a description of the evidence led at the proof to which these questions relate. A copy of the draft stated case shall be sent forthwith by the sheriff clerk to each of the parties.

(3) Within 14 days of the issue of the draft stated case each of the parties shall lodge with the sheriff clerk a note of the questions of law which he wishes to raise during the appeal, and a note of any adjustments he desires to have made on the draft stated case. At the same time he shall send a copy of the note of questions of law and of the note of adjustments, if any, to the other parties.

(4) No party when challenging the decree appealed against shall be allowed during the hearing of the appeal to raise any questions of law of which notice has not been given. The questions of law may relate to matters which were not raised during the proof or at the hearing thereafter.

(5) Within 14 days after the latest date on which any notes of questions of law or of adjustments (if any) are lodged the sheriff, after considering these notes, shall state and sign the case which shall include the questions of law stated by each of the parties.

(6) The sheriff clerk shall put before the sheriff principal all the documents and productions in the case, and the stated case, send to the parties a copy of the stated case, and inform them in writing of the date, time and place of the hearing by the sheriff principal of the appeal.

*Effect of and Abandonment of Appeal*

82. When a note of appeal has been lodged it shall be available to and may be insisted on by all other parties in the cause notwithstanding that they may not have lodged separate appeals. After a note of appeal has been lodged,

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(a) S.R. & O. 1933/112 (Rev. XX, p. 868: 1933, p. 1793).

the appellant shall not be at liberty to withdraw it without the consent of the other parties which may be incorporated in a joint minute or by leave of the sheriff principal and on such terms as to expenses or otherwise as to him seems proper.

#### *Hearing of Appeal*

83.—(1) The sheriff principal shall hear the parties or their solicitors orally on all matters connected with the appeal including liability for expenses: Provided that if any party moves that the question of liability for expenses be heard after the sheriff principal has given his decision the sheriff principal may grant that motion.

(2) The sheriff principal may adhere to or vary the decree appealed against or he may recall that decree and substitute another decree therefor. If in his discretion he considers it desirable he may remit to the sheriff for further findings-in-fact or for further information. At the conclusion of the hearing the sheriff principal may either pronounce his decision or reserve judgment in which latter case he shall give his decision in writing and the sheriff clerk shall forthwith intimate it to the parties.

#### *Appeal to the Court of Session*

84.—(1) To obtain a certificate that a cause is suitable for appeal to the Court of Session an application for a certificate of suitability by the sheriff principal in form T shall be lodged with the sheriff clerk within 14 days of the date of the final decree.

(2) The sheriff clerk shall put the application for a certificate of suitability before the sheriff principal who without any further hearing of the parties or their solicitors shall grant or refuse the certificate.

(3) The sheriff clerk shall inform the applicant in writing of the sheriff principal's decision and if the certificate is granted the applicant if he wishes to pursue the appeal shall not later than 21 days after the granting of the certificate, lodge with the sheriff clerk a note of appeal, written and signed by him or his solicitor on a separate sheet, and bearing the date on which it is signed, as nearly as may be in the following terms: — "The (pursuer, defender or other party) appeals to the Court of Session"; all in terms of rule 268(a) of the Act of Sederunt (Rules of Court, consolidation and amendment) 1965(a) as amended (b) (hereinafter referred to as the Rules of Court).

(4) Within 4 days after the lodging of a note of appeal to the Court of Session the sheriff clerk shall transmit to the Deputy Principal Clerk the note of appeal together with the documents put before the sheriff principal in terms of rule 81(6), and a certified copy of the sheriff principal's final decree and of any written statement of the grounds of his decision made in terms of rule 86, all of which, for the purposes of rule 268(b) of the Rules of Court, shall be deemed to be the process.

(5) The certificate of the intimation made by the sheriff clerk in terms of rule 268(c) of the Rules of Court shall be sub-joined to the note of appeal.

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(a) S.I. 1965/321 (1965 I, p. 803).

(b) There is no amendment which relates expressly to the subject matter of these Rules.

*Sheriff to Regulate Interim Possession*

85. Notwithstanding an appeal the sheriff shall have power to regulate all matters relating to interim possession, to make any order for the preservation of any property to which the action relates or for its sale, if perishable, or for the preservation of evidence, or to make in his discretion any interim order which a due regard for the interests of the parties may require. Such orders shall not be subject to review except by the appellate court at the hearing of the appeal.

## PART IV

## DECREE

*Pronouncement of Decision*

86. The sheriff principal if he pronounces his decision at the conclusion of the hearing of the appeal and the sheriff if he pronounces his decision at the conclusion of the hearing referred to in rule 46 shall state briefly the grounds of his decision including the reason for his decision on any questions of law or of admissibility of evidence. If the decision is pronounced after reserving judgment he shall give to the sheriff clerk a statement of his decision along with a brief note of the foregoing matters a copy of which shall be sent by the sheriff clerk to each of the parties along with the copy of the decision.

*Final Decree*

87.—(1) The decree of the sheriff principal or the sheriff shall be pronounced, where expenses are awarded, only after expenses have been dealt with in accordance with rule 88 and shall include a decree for payment thereof.

(2) The sheriff principal or sheriff may, if he thinks fit, on the application of the solicitor of any party to whom expenses may be awarded, made at or before the time of the final decree being pronounced grant decree in favour of that solicitor for the expenses of the cause.

*Expenses*

88.—(1) The fees and outlays of solicitors, including the fees or expenses of witnesses shall, subject to the approval of the sheriff, be fixed by the sheriff clerk in accordance with the statutory table of fees appropriate to the summary cause.

(2) A party litigant, who is not represented, and who would have been found entitled to expenses if he had been represented, may be awarded his reasonable outlays in respect of the preparation of his case including his travelling expenses, any loss of wages or earnings resulting from his attendances at the court, and the fees, if any, travelling expenses and loss of wages or earnings resulting from attendance at court of his witnesses, together with any other outlays or expenses to which he may be found entitled by virtue of the Litigants in Person (Costs and Expenses) Act 1975(a) or any enactment under that Act.

(3) In every cause including an appeal where expenses are awarded the sheriff clerk shall in open court or in private hear the parties or their solicitors on the claims for expenses including fees, if any, and outlays.

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(a) 1975 c. 47.

(4) Except where the sheriff principal or the sheriff has reserved judgment or where he orders otherwise, the hearing on the claim for expenses shall take place immediately he pronounces his decision. When this hearing is not held immediately the sheriff clerk shall fix the date, time and place when he shall hear the parties or their solicitors in private thereon. The successful party's account of expenses shall be sent to the sheriff clerk and to each of the other parties at least 7 days before this hearing.

(5) The sheriff clerk shall fix the amount of these expenses and shall report his decision to the sheriff principal or the sheriff in open court for his approval at a diet which the sheriff clerk has intimated to the parties. The sheriff principal or the sheriff, after hearing parties or their solicitors if objections are stated, shall pronounce final decree including decree for payment of expenses as approved by him. In an appeal the sheriff may pronounce this decree on behalf of the sheriff principal.

*Extract of Decree*

89.—(1) Extract of a decree signed by the sheriff clerk may be issued only after the lapse of 14 days from the granting of the decree:  
Provided that if an appeal has been lodged the extract may not be issued until the appeal has been disposed of.

(2) The extract decree which may be written on the summons or on a separate paper may be in one of the forms U1 to U14 and shall be warrant for all lawful diligence proceeding thereon.

PART V

MISCELLANEOUS

*Poidings*

90. The references in sections 23 and 25 of the Debtors (Scotland) Act 1838(a) to "2 valuator" and "witnesses" shall for the purpose of any poiding following on a summary cause be substituted by references to "1 valuator" and "witness".

*Charge*

91.—(1) Any charge following on a decree granted in a summary cause shall be for a period of 14 days.

(2) If any decree is not enforced by poiding within a year from a charge for payment given thereon such decree shall not be enforced without a new charge being given.

*Applications in Same Cause for Variation, etc. of Decree*

92.—(1) Where by virtue of any enactment the sheriff, without a new summary cause being initiated, may order—

- (a) a decree granted in a summary cause to be varied, discharged or rescinded, or
- (b) the execution of that decree in so far as it has not already been executed to be sisted or suspended

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(a) 1838 c. 114.

the party requesting the court to make such an order shall do so by lodging a minute to that effect.

(2) On the lodging of such a minute by the pursuer in a summary cause the sheriff clerk shall grant warrant to cite the defender:

Provided that the pursuer has returned the summons and extract decree in the summary cause.

(3) On the lodging of such a minute by the defender in the summary cause the sheriff clerk shall grant warrant to cite the pursuer ordaining him to return the summons and extract decree in the summary cause and may, where appropriate, grant interim sist of execution of the decree.

(4) The minute shall be heard in court only when 7 days' notice of the minute and warrant has been given:

Provided that the sheriff may on cause shewn, alter the said period subject to there being a minimum period of 2 days.

#### *Incidental Applications*

93.—(1) Except where otherwise provided, any application incidental to a pending summary cause shall be in writing and shall only be heard after 2 days' notice has been given to the other party or parties.

(2) The sheriff clerk shall keep a book to be known as the Book of Incidental Applications in which shall be entered all applications incidental to a pending summary cause, with the exception of minutes presented under the provisions of rules 19(1) and 92(1) and minutes entered in the Book of Summary Causes under the provisions of rules 54 and 55(1). There shall be set forth in the said book the following particulars where appropriate—

- (a) the names of the parties together with a clear reference to the entry in the Book of Summary Causes relating to the Summons;
- (b) whether parties are present or absent at the hearing of the application, and the names of their representatives;
- (c) the nature of the application, and
- (d) any interlocutor issued or order made.

The said Book shall be signed by the sheriff on each day on which Incidental Applications are heard.

(3) The Book of Incidental Applications kept by the sheriff clerk shall be open for inspection during office hours to all concerned without fee.



**FORM A**

(Summons for Payment of Money)

SHERIFF COURT .....

**SUMMONS**

in the case of

A.B.

**Pursuer**

against

X.Y.

**Defender**

To the said X.Y.:—

The pursuer claims that in the circumstances described in the statement of claim herewith you should be ordered to pay him the sum of £..... and asks the court to grant a decree against you ordering you to pay that sum to the pursuer with interest at the rate of .....% annually from ..... until payment, and for payment by you of the expenses of this action.

If you do nothing in answer to this summons, the court will regard you as admitting the claim made against you and may grant decree against you for the sum claimed in your absence.

If you admit the claim and do not intend to appear in court but wish to make an offer to pay by instalments, you should lodge a notice of such offer (Form R annexed) with the sheriff clerk at the address referred to at A below on or before the Return Day referred to at B below. You are warned that the pursuer may not accept such offer and in that event, without further intimation to you, the case will be called at the place, date and time referred to at A and C below when decree may be granted against you for the sum due payable in such manner as the court directs.

If you wish

to defend the action or

to dispute the amount of the claim or

to admit the claim but make representation in person about payment

you will require to lodge a notice of intention to appear in court (Form Q annexed) with the sheriff clerk at the address referred to at A below on or before the Return Day referred to at B below and thereafter to appear at the place, date and time referred to at A and C below. If you do not so appear, the pursuer may obtain decree against you for the sum claimed in your absence.

The pursuer is hereby authorised to serve a copy of the summons on you not less than ..... days before the date when, if you wish to appear in court, you must lodge a notice of intention to do so. If the court requires to hear evidence a date shall be fixed for this purpose and all parties are hereby authorised to cite witnesses to attend on this date to give evidence. This summons is warrant for arrestment on the dependence of the action (and for arrestment to found jurisdiction).

A. Sheriff Court (address) .....

B. Return day (date) .....

C. Calling in Court (date and time) .....

**FORM B**

(Summons for payment of money—shortened period of notice only)

SHERIFF COURT .....

SUMMONS  
in the case of

A.B.

against

**Pursuer**

X.Y.

**Defender**

To the said X.Y.:—

The pursuer claims that in the circumstances described in the statement of claim herewith you should be ordered to pay him the sum of £..... and asks the court to grant a decree against you ordering you to pay that sum to the pursuer with interest at the rate of .....% annually from ..... until payment, and to pay the expenses of this action.

You are therefore required to appear at the place, date and time mentioned below to answer the above claim and take warning that if you do not so appear the pursuer may obtain decree against you in your absence.

The pursuer is hereby authorised to serve a copy of this summons on you not less than ..... days before the date on which you are required to appear. If the court requires to hear evidence a date shall be fixed for this purpose and the parties are hereby authorised to cite witnesses to attend on that date to give evidence. This Summons is warrant for arrestment on the dependence of the action (and for arrestment to found jurisdiction).

Sheriff Court at (address) .....

On (day and date) .....

At (time) .....

**FORM C**

(Summons for Recovery of Possession of Heritable Property)

SHERIFF COURT .....

SUMMONS  
in the case of

A.B.

**Pursuer**

against

X.Y.

**Defender**

To the said X.Y.:--

The pursuer claims that in the circumstances described in the statement of claim herewith he is entitled to recover possession of the property at ..... and that you refuse to delay to remove therefrom and asks the court to grant decree for removing you, your family, sub-tenants and dependants with your goods and possessions from the said property and for payment by you of the expenses of this action.

You are therefore required to appear at the place, date and time mentioned below to answer the above claim and take warning that if you do not so appear the pursuer may obtain decree against you in your absence.

The pursuer is hereby authorised to serve a copy of this summons on you not less than ..... days before the date on which you are required to appear. If the court requires to hear evidence a date shall be fixed for this purpose and the parties are hereby authorised to cite witnesses to attend on that date to give evidence.

Sheriff Court at (address) .....

On (day and date) .....

At (time) .....

**FORM D**

(Summons of Sequestration for Rent)

SHERIFF COURT .....

**SUMMONS**

in the case of

A.B.

**Pursuer**

against

X.Y.

**Defender**

To the said X.Y.:—

The pursuer claims that in the circumstances described in the statement of claim herewith you owe [and/or will owe] him the sum of £..... as rent for the premises at ..... and that you refuse or delay to make payment and asks the court to grant warrant to list, value, sequestrate, and if need be secure the goods and effects within the said premises; to grant a decree ordering you to pay the said sum to the pursuer and the expenses of this action; and to grant warrant to sell the said goods and effects in payment of the said rent and expenses.

You are therefore required to appear at the place, date and time mentioned below to answer the above claim and take warning that if you do not so appear the pursuer may obtain decree against you in your absence.

The pursuer is hereby authorised to sequestrate inventory and appraise your effects and thereafter to serve a copy of this summons on you not less than ..... days before the date on which you are required to appear. If the court requires to hear evidence a date shall be fixed for this purpose and the parties are hereby authorised to cite witnesses for both parties to attend to give evidence on that date.

Sheriff Court at (address) .....

On (day and date) .....

At (time) .....

**FORM E**

(Summons of Multiplepinding)

SHERIFF COURT .....

SUMMONS  
in the case of

A.B.

against

**Pursuer**

C.D.

E.F.

G.H.

**Defenders and/or**

**Claimants**

and I.J.

To the said C.D., E.F., G.H. and I.J.:—

The pursuer claims that in the circumstances described in the statement of claim herewith (pursuer/first named defender) is the holder of a fund or subject valued at £..... on which competing claims are being made by the said C.D., E.F., G.H. and I.J.; the pursuer asks the court to grant a decree finding the holder of the fund or subject liable to make a single payment or delivery of the fund or subject, under deduction of the expenses of the action, to whomsoever shall be found by the court to be entitled thereto.

You are therefore all required to appear at the place, date and time mentioned below to put forward your interest and take warning that if you do not so appear the case may proceed without your interest being considered.

The pursuer is hereby authorised to serve a copy of this summons on you not less than ..... days before the date on which you are required to appear. If the court requires to hear evidence a date shall be fixed for this purpose and the parties are hereby authorised to cite witnesses to attend to give evidence on that date.

Sheriff Court at (address) .....

On (day and date) .....

At (time) .....

**FORM F**

(Summons of Furthcoming)

SHERIFF COURT .....

**SUMMONS**

in the case of

A.B.		<b>Pursuer</b>
	against	
X.Y.		<b>Arrestee</b>
	and	
C.D.		<b>Common Debtor</b>

To the said X.Y. and C.D.: -

The pursuer claims that in the circumstances described in the statement of claim herewith you the said C.D. are due to him the sum of £..... and that he lawfully arrested in the hands of you the said X.Y. the goods or money described overleaf to the value of £..... which ought to be made forthcoming to him; and asks the court to order you the said X.Y. and you the said C.D. for your interest to make forthcoming, pay and deliver to the pursuer the money, goods and effects arrested or so much thereof as will pay the sum of £..... owing to the pursuer, together with the expenses of this action. In the event of the arrested funds being insufficient to meet the expenses of this action, the pursuer claims these expenses from you, the said C.D.

You are both therefore required to appear at the place, date and time mentioned below to answer the above claim and take warning that if you do not so appear the pursuer may obtain decree against you in your absence.

The pursuer is hereby authorised to serve a copy of this summons on you not less than ..... days before the date on which you are required to appear. If the court requires to hear evidence a date shall be fixed for this purpose and the parties are hereby authorised to cite witnesses to attend to give evidence on that date.

Sheriff Court at (address) .....

On (day and date) .....

At (time) .....

**FORM G**

(Summons for Delivery)

SHERIFF COURT .....**SUMMONS**

in the case of

**A.B.****Pursuer**

against

**X.Y.****Defender**

To the said X.Y.:—

The pursuer claims that in the circumstances described in the statement of claim herewith he has right to possession of the article(s) there listed and asks the court to grant decree ordering you to deliver the said article(s) to the pursuer (or, alternatively, in the event of non-delivery ordering you to pay to the pursuer the sum of £..... with interest at the rate of .....% per annum from ..... until payment) and to pay the expenses of this action.

You are therefore required to appear at the place, date and time mentioned below to answer the above claim and take warning that if you do not so appear the pursuer may obtain decree against you in your absence.

The pursuer is hereby authorised to serve a copy of this summons on you not less than ..... days before the date on which you are required to appear. If the court requires to hear evidence a date shall be fixed for this purpose and the parties are hereby authorised to cite witnesses to attend to give evidence on that date. This summons is warrant for arrestment on the dependence of the action (and for arrestment to found jurisdiction).

Sheriff Court at (address) .....

On (day and date) .....

At (time) .....

**FORM H**

(Summons for Implement)

SHERIFF COURT .....

**SUMMONS**

in the case of

A.B.

against

**Pursuer**

X.Y.

**Defender**

To the said X.Y.:--

The pursuer claims that in the circumstances described in the statement of claim herewith you are obliged to .....

and asks the court to grant decree against you ordering you to implement the said obligation (or, alternatively, ordering you to pay the sum of £..... to the pursuer with interest at the rate of .....% annually from the date of decree until payment) and to pay the expenses of this action.

You are therefore required to appear at the place, date and time mentioned below to answer the above claim and take warning that if you do not so appear the pursuer may obtain decree against you in your absence.

The pursuer is hereby authorised to serve a copy of this summons on you not less than ..... days before the date on which you are required to appear. If the court requires to hear evidence a date shall be fixed for this purpose and the parties are hereby authorised to cite witnesses to attend to give evidence on that date. This summons is warrant for arrestment on the dependence of the action (and for arrestment to found jurisdiction).

Sheriff Court at (address) .....

On (day and date) .....

At (time) .....



**FORM I**

(Summons for Count, Reckoning and Payment)

SHERIFF COURT .....

SUMMONS  
in the case of

A.B.

against

**Pursuer**

X.Y.

**Defender**

To the said X.Y.:—

The pursuer claims that in the circumstances described in the statement of claim herewith you have intromitted with (describe the fund or estate) in which the pursuer has an interest and asks the court to grant decree for count and reckoning with him for your said intromissions and for payment to the pursuer by you of the balance found due to him (or otherwise of the sum of £.....) with interest at the rate of .....% annually from the date of decree until payment and for payment by you of the expenses of this action.

You are therefore required to appear at the place, date and time mentioned below to answer the above claim and to lodge accounts of your said intromissions, or to show cause why you should not do so, and take warning that if you do not so appear decree may be pronounced in your absence.

The pursuer is hereby authorised to serve a copy of this summons on you not less than ..... days before the date on which you are required to appear. If the court requires to hear evidence a date shall be fixed for this purpose and the parties are hereby authorised to cite witnesses to attend to give evidence on that date. This summons is warrant for arrestment on the dependence of the action (and for arrestment to found jurisdiction).

Sheriff Court at (address) .....

On (day and date) .....

At (time) .....

**FORM J**

X.Y. defender, you are hereby served with a copy of the above (or attached) summons.

To be signed by pursuer's solicitor  
or officer of court.

**NOTE:**

(1) If you intend to attend court you may do so in person or be represented by a legally qualified person or, subject to the approval of the court at the first calling of the case, by some other person having your authority.

(2) If you are ordered to pay a sum of money by instalments any failure to pay such instalments at the proper time may result in your forfeiting the right to pay by instalments and the whole amount outstanding will then become due.

(3) If decree is granted against you this amongst other things may lead to the arrestment of your wages and/or the seizure of your possessions.

**FORM K**

(Place and date) I ..... hereby certify that upon the ..... day of ..... I duly cited X.Y. the defender to answer to the foregoing summons. This I did by (set forth the mode of service).

To be signed by pursuer's solicitor  
or officer of court.

**FORM L**

A summary cause has been raised in ..... Sheriff Court  
by A.B. pursuer against C.D. defender, whose last known address was

.....

(The cause will be called in court on ..... at .....).

If the said C.D. wishes to defend the cause he should immediately contact  
the sheriff clerk ..... Tel. No:.....

To be signed by pursuer's solicitor  
or officer of court.

**FORM M**

Sheriff Court .....

No. of Case .....

..... against .....

The (pursuer or defender) moves the court to recall the decree pronounced on  
..... 19..... in this case. [and in which execution of the  
charge/arrestment was effected on ..... 19.....].

To be signed by party or  
his solicitor.

**FORM N**

A.B. (design) you are required to attend at ..... Sheriff Court on  
..... 19..... at ..... as a witness for the  
..... in the action at the instance of C.D. (design)  
against E.F. (design) (and to bring with you ..... ) and  
if you fail to attend you may be ordered to pay a penalty not exceeding £10.

To be signed by pursuer's solicitor  
or officer of court.

**FORM O**

I certify that on ..... 19....., I duly cited A.B. (design)  
to attend at ..... Sheriff Court on ..... 19.....  
at .....as a witness for the ..... in the action at the  
instance of C.D. (design) against E.F. (design) (and I required him to bring  
with him .....). This I did by .....

To be signed by pursuer's solicitor  
or officer of court.

**FORM P**

(Order of Court and Certificate in  
Optional Procedure for Recovery of Documents)

Order by the Sheriff Court at .....

In the cause (reference No.)

in which

A.B. (design) is **Pursuer**

and

C.D. (design) is **Defender**

To (name and designation of party or parties or haver, from whom the documents are sought to be recovered)

Take notice that you are hereby required to produce to the sheriff clerk at ..... within 7 days of the service upon you of this order—

- (1) this order itself which must be produced intact;
- (2) a certificate signed and completed in terms of the form appended hereto; 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 certificate.

Production may be made either by lodging the above at the said office of the sheriff clerk, or by registered or recorded delivery letter or registered postal packet enclosing the same, and addressed to the said sheriff 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".

## CERTIFICATE

I hereby certify with reference to the order of the sheriff court at ..... in the cause (reference No.) and the relative specification of documents, served upon me and marked respectively X.Y.—

- (1) that the documents which are produced and which are enumerated in the inventory signed by me and marked Z, are the whole documents in my possession falling under the specification

or

that I have no documents in my possession falling within the specification.

- (2) that, to the best of my knowledge and belief, there are in existence other documents falling within the specification, but not in my possession, namely (describe them by reference to one or more of the descriptions of documents in the specification), which were last seen by me on or about (date), at (place), in the hands of (name and address of the person)

or

that I know of the existence of no documents in the possession of any person, other than myself, which fall within the specification.

(Signed)

**FORM Q**

SHERIFF COURT .....

No. of case .....

..... against .....

I intend to attend court on ø

- \* to defend the action
- \* to dispute the amount claimed
- \* to admit the claim and make representations
- \* in person about payment

To be signed by defender or his solicitor.

ø Date of calling to be inserted here by pursuer

\* Delete as appropriate

**FORM R**

SHERIFF COURT .....

No. of case .....

Date of calling .....

..... against .....

I do not intend to attend court. I admit the claim and offer to pay the sum due in instalments of £..... per week. I understand that if the pursuer is not prepared to accept this offer the case will call in ..... Sheriff Court on ..... at ..... when, without any further intimation to me, the court may grant decree against me for the sum due, payable in a lump sum or in such instalments as the court directs.

To be signed by defender or his solicitor.

**FORM S**

I, E.F., hereby claim to be preferred on the fund in the multiplepounding raised in the name of A.B. against C.D. for £..... of principal due to me by [state the ground of claim, including a reference to any document founded upon in support thereof] with interest from ..... with expenses.

To be signed by claimant or his solicitor.

**FORM T**

A.B., pursuer, in the summary cause at his instance against C.D. hereby moves the sheriff principal to certify that the cause is suitable for appeal to the Court of Session.

To be signed by pursuer or his solicitor.

**FORM U1****Extract Decree for payment**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff granted decree ..... against the ..... defender(s) for payment to the pursuer(s) of the sum of £..... with interest at the rate of .....% annually from ..... until payment and £..... of expenses: and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U2****Extract Decree for payment (Instalment)**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff granted decree ..... against the ..... defender(s) for payment to the pursuer(s) of the sum of £..... with interest at the rate of .....% annually from ..... until payment and £..... of expenses, payable by instalments of ..... per ..... the first instalment being payable upon the ..... day of ..... 19... and continuing thereafter by a regular payment of said instalments till the whole of said sums be paid, and if the defender allows any instalment to remain unpaid until the date when the next instalment becomes due, then the right to pay by instalments shall cease and, in that event, granted Warrant for all lawful execution hereon for the whole sums for which decree was granted so far as unpaid after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U3****Extract Decree for recovery of possession of heritable property**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff granted Warrant for Ejecting the defender [and others mentioned in the summons] from the subject specified, such Ejection not being sooner than (date) at 12 noon: and granted decree against the defender for payment to the pursuer of £..... of expenses: and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk



**FORM U4****Extract Decree and Warrant to Sell in Sequestration and Sale**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff granted Decree against the defender for payment to the pursuer of £..... and £..... of expenses: and granted Warrant for all lawful execution hereon after a charge of 14 days: and further, the Sheriff granted Warrant to any Officer of Court forthwith to sell, by Public Roup, as much of the Sequestrated Effects as shall satisfy and pay the said sum of rent with the Expenses.

Date of Extract Decree

Sheriff Clerk

**FORM U5****Extract Warrant for Ejection and Warrant to Re-Let (Sequestration and Sale)**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff Granted Warrant for Ejecting the defender from the premises specified, they being displenished, and granted Warrant to the pursuer to re-let the said premises: and granted decree against the defender for payment to the pursuer of £..... of expenses: and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U6****Extract Decree (Multiplepounding etc)**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff

Date of Extract Decree

Sheriff Clerk

**FORM U7****Extract Decree against Arrestee for the Principal Sum and Expenses (Furthcoming)**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the Arrestee (name) ..... and the Common Debtor (name) ..... the Sheriff granted decree against the Arrestee to make furthcoming, pay and deliver to the pursuer the sum of £..... and £..... of expenses: and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U8**

**Extract Decree against Arrestee for the Principal Sum and against Common Debtor for Expenses (Furthcoming)**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the Arrestee (name) ..... and the Common Debtor (name) ..... the Sheriff granted decree against the Arrestee to make furthcoming, pay and deliver to the pursuer the sum of £.....: and granted decree against the Common Debtor for £....., of expenses: and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U9**

**Extract Decree of Delivery**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff granted decree against the defender for delivery to the pursuer of and granted decree against the defender for payment to the pursuer of £..... of expenses; and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U10**

**Extract Decree of Delivery and Warrant to search and open lockfast places**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff granted decree against the defender for delivery to the pursuer of ..... and granted decree against the defender for payment to the pursuer of £..... of expenses: and granted Warrant for all lawful execution hereon after a charge of 14 days: and further, the Sheriff granted Warrant to Officers of Court to search for and take possession of goods in the possession of the defender and to open shut and lockfast places occupied by the defender after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U11****Extract Decree for payment failing delivery**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) against the defender(s) (name) ..... the Sheriff, in respect that the defender has failed to deliver in accordance with the preceding decree, granted decree against the defender for payment to the pursuer(s) of the sum of £..... claimed as the alternative crave with interest at the rate of .....% annually from ..... until payment with expenses as previously decerned for and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U12****Extract Decree for Interim Aliment**

(Place, date) In this summary cause summons at the instance of the said pursuer against the defender (name) ..... the Sheriff granted decree ..... against the defender for payment to the pursuer of aliment *ad interim* at the rate of ..... and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U13****Extract Decree of Dismissal**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) (name) ..... against the defender(s) (name) ..... the Sheriff dismissed the cause ..... and granted decree against the said pursuer(s) for payment to the said defender(s) of the sum of £..... of expenses; and granted Warrant for all lawful execution hereon after the charge of 14 days.

Date of Extract Decree

Sheriff Clerk

**FORM U14****Extract Decree of Absolvitor**

(Place, date) In this summary cause summons at the instance of the said pursuer(s) (name) ..... against the defender(s) (name) ..... the Sheriff assolized the ..... defender(s) from the cause and granted decree against the said pursuer(s) for payment to the said defender(s) of the sum of £..... of expenses; and granted Warrant for all lawful execution hereon after a charge of 14 days.

Date of Extract Decree

Sheriff Clerk Depute

## EXPLANATORY NOTE

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

This Act of Sederunt makes provision for the procedure to be followed in summary causes within the meaning of section 35(1) of the Sheriff Courts (Scotland) Act 1971 from 1st September 1976 when the provisions of that Act relating to summary causes come into operation.

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