

## 1985 No. 227 (S. 21)

## COURT OF SESSION, SCOTLAND

**Act of Sederunt (Rules of Court Amendment No. 1) (Optional Procedure in Certain Actions of Reparation) 1985**

*Made* - - - - - 19th February 1985  
*Coming into operation* 24th September 1985

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

*Citation and commencement*

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 1) (Optional Procedure in Certain Actions of Reparation) 1985 and shall come into operation on 24th September 1985.

(2) This Act of Sederunt shall be inserted in the Books of Sederunt.

*Amendment to Rules of Court*

2.—(1) The Rules of Court (b) shall be amended as follows.

(2) After rule 188D, insert the following section—

## “SECTION 11

*OPTIONAL PROCEDURE IN CERTAIN ACTIONS OF REPARATION***188E Application and interpretation**

(1) The provisions of this section apply to an action of reparation for personal injuries or for the death of a relative in which election has been made to adopt the procedure in this section.

(2) Subject to the provisions of this section, the other provisions of the rules of court, so far as applicable, apply to the practice and procedure to which this section applies.

(3) In this section, a form referred to by number means the form so numbered in the Appendix to the rules, or a form substantially to the like effect, with such variation as circumstances may require.

**188F Summons**

(1) A pursuer may elect to adopt the procedure in this section by serving a summons with condescendence and pleas-in-law annexed in Form 27A.

(a) 1933 c.41.

(b) S.I. 1965/321.

(2) A summons in Form 27A under this rule shall be on the official printed Form 1 together with the official printed backing.

(3) A summons served under this rule—

(a) shall constitute a waiver by the pursuer of his right to jury trial;

(b) shall not, subject to rule 188I, affect any right of a defender to apply for jury trial.

#### **188G Induciae**

(1) Subject to paragraph (2), the *induciae* of a summons served under rule 188F shall be 28 days after the execution of service.

(2) Where the defender is domiciled outside Europe, the *induciae* of a summons served under rule 188F shall be 42 days after the execution of service.

#### **188H Defences**

Defences shall be in the form of brief answers to the condescence annexed to the summons, together with any necessary pleas-in-law.

#### **188I Application by defender for jury trial**

(1) If a defender intends to apply for jury trial, he shall, at the same time as lodging his defences, lodge a minute stating his intention to apply for jury trial.

(2) Where a defender does not lodge a minute under paragraph (1), he shall be held to have waived his right to jury trial.

(3) Where the defender lodges a minute under paragraph (1), the pursuer shall make up an open record in accordance with rule 90(1) and the action shall proceed as an ordinary action.

#### **188J Diet roll**

(1) Within 14 days after defences have been lodged, the action shall be sent to the diet roll and put out for hearing on a specified date.

(2) Any hearing on the diet roll shall be heard before a Lord Ordinary.

(3) The appearance of the cause for hearing on a particular date on the diet roll shall not affect the right of any party to apply to the court by motion.

(4) When an action has been sent to the diet roll, all motions enrolled in the cause shall be heard on the diet roll.

(5) An open record shall not be made up unless so ordered by the court, and rules 90 and 90A shall not apply to any such action.

(6) At the first or any subsequent hearing on the diet roll, the court may make such order or orders as it thinks fit for the further progress of the action, and in particular—

(a) may—

(i) on special cause shown, allow a specified period of adjustment on the motion of any party;

(ii) on special cause shown, allow an amendment on the motion of any party;

- (iii) on special cause shown on the motion of any party, ordain another party to give further specification of his case in the pleadings;
- (iv) on special cause shown, or of its own motion, because the difficulty or complexity of the case makes the action unsuitable for the procedure under this section, order that the action proceed as an ordinary action and appoint the cause to the adjustment roll;
- (v) on cause shown, allow a party to bring in a third party to the action under rule 85, provided that no allowance of a third party notice, except on special cause shown, may be given after the final appearance on the diet roll;
- (vi) on special cause shown, appoint the action to be heard on the procedure roll; or
- (vii) remit to a man of skill;
- (b) must, where adjustment has not been allowed or the period for adjustment has expired, appoint the action to a proof or a proof before answer as appropriate—
  - (i) on the question of liability and quantum of damages; or
  - (ii) where liability is admitted, on the question of quantum of damages; or
  - (iii) where quantum of damages is agreed, on the question of liability; and
  - (iv) where there is an issue on a third party notice, on that issue at the same time or thereafter;
- (c) where an action requires to be heard again on the diet roll, shall appoint the action to be heard on a specified date for further orders.

(7) On allowance of a hearing on the procedure roll or a proof or proof before answer, the court shall determine whether a closed record of the pleadings of the parties shall be made up.

(8) Where the court orders a closed record to be made up in any action, the provisions of rule 91 (except paragraph (7)) shall not apply to that action.

#### **188K Inspection and recovery of documents**

(1) Without prejudice to rule 188M, within 14 days of the interlocutor pronouncing an order for a proof or proof before answer, each party to the action shall intimate to any other party a list of the documents which are or have been in his possession or control relating to the matters in issue between them.

(2) A party who has received a list of documents from another party may inspect those documents, which are in the possession or control of the party intimating the list, within 7 days at a time and place fixed by the party intimating the list which is reasonable to both parties.

(3) Nothing in this rule shall affect—

- (a) the law relating, or the right of a party, to object to the inspection of a document on the ground of privilege or confidentiality; or

- (b) the right of a party to apply under rule 95 for a commission and diligence for recovery of documents or under rule 95A for an order under section 1 of the Administration of Justice (Scotland) Act 1972 (a).

**188L Exchange of list of witnesses**

(1) Within 28 days after the interlocutor pronouncing an order for a proof or proof before answer, each party to the action shall intimate to any other party a list of witnesses whom he intends to call to give evidence.

(2) A party who seeks to call as a witness a person not on his list intimated under paragraph (1), and any other party objects, shall seek leave of the court to do so, which leave may be granted on such conditions, if any, as the court thinks fit.

**188M Exchange of reports of skilled witnesses**

(1) Not later than 28 days before a proof or a proof before answer, a party shall disclose the substance of any evidence of a skilled witness to the other parties in the form of a written report.

(2) Where a report is not agreed, a party may call as skilled witnesses those witnesses the substance of whose evidence has been disclosed in accordance with paragraph (1) of this rule.

(3) The number of skilled witnesses for any party shall be limited to one medical expert and one expert of any other kind, except on cause shown.

**188N Evidence generally**

(1) Where possible, parties shall agree photographs, sketch plans and any statement or document not in dispute.

(2) A party may apply by motion for certain specified evidence to be received by way of affidavit, and the court may make such order as it thinks fit.

(3) A party may apply by motion for a specified statement or document to be admitted as evidence without calling as a witness the maker of the statement or document, and the court may make such order and on such conditions, if any, as it thinks fit.

**188P Reclaiming**

Notwithstanding the provisions of paragraphs (b) and (c) of rule 264, an interlocutor pronounced in the diet roll which does not dispose of, either by itself or taken with a previous interlocutor, the whole subject matter of the action, may be reclaimed against only with leave of the Lord Ordinary or Vacation Judge not later than 7 days after the date on which the interlocutor was pronounced.”.

(3) In the Appendix (forms), after form 27, insert form 27A in the Schedule to this Act of Sederunt.

*Emslie,*  
Lord President  
I.P.D.

Edinburgh  
19th February 1985.

(a) 1972 c.59.

## SCHEDULE

FORM 27A

rule 188F

**Form of summons, condescendence and pleas-in-law in an action for reparation  
(optional procedure)**

IN THE COURT OF SESSION

## SUMMONS

(Action for Reparation (Optional Procedure))

AB (*designation and address*), Pursuer

against

CD (*designation and address*), Defender[*Address, Charge and Warrants as in Form 1*][*Back of first page*]

## CONCLUSIONS

FIRST. For payment by the defender to the pursuer of the sum of (£ ) STERLING, or such other greater or smaller sum as to the court shall seem proper, with interest, at the rate of interest in rule of court 66 applicable at the date of decree, from the date of decree to follow hereon until payment.

SECOND. For the expenses of the action.

[*Next page*]

## CONDESCENDENCE

I. The pursuer is (*state date of birth; in an action for personal injuries, state occupation and relation to defender; or, in an action for the death of a relative, state relation to the deceased*). The defender is (*state occupation*).

[II. *In the case of an action for the death of a relative, The deceased was (state dates of birth, marriage and death, occupation and relation to defender)*].

III. (*In numbered articles, each new part of the averments in a separate article, state briefly the facts relied on as causing the accident or death*).

[[IV.] *In the case of fault at common law. The accident [or death of the deceased] was caused by the fault and negligence of the defender at common law. The defender was in breach of his duty to take reasonable care for the safety of the pursuer [or the deceased] or as may be (no other specification of particular duties or breaches is normally required)*].

[[V.] *In the case of breach of statutory duty. Further and in any event the [or The] accident [or death of the deceased] was caused by the breach by the defender of a statutory duty. The defender was in breach of the duty imposed upon him by (state provision of enactment; no other specification of the duty or breach is normally required)*].

[VI.] As a result of the accident [or the death of the deceased] the pursuer suffered loss, injury and damage. (*State briefly, in an action for personal injuries, the injuries sustained and consequent damage suffered, loss of past and/or future earnings, any other relevant loss and whether credit is to be given for any National Insurance benefits received; or, in an action for death of a relative, the loss of society, loss of support and earnings of the deceased*).

[V.] The defender has been called upon to make reparation to the pursuer but delays or refuses to do so.

## PLEAS-IN-LAW

1. The pursuer having suffered loss, injury and damage through the fault and negligence [and][or breach of statutory duty] of the defender is entitled to reparation therefor from him.

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2. The sum sued for being a reasonable estimate of the loss, injury and damage sustained by the pursuer, decree therefor should be pronounced in that sum.

IN RESPECT WHEREOF

*(Signed)*

*(Address)*

Solicitor for Pursuer.

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EXPLANATORY NOTE

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

This Act of Sederunt amends the Rules of the Court of Session by making provision for an optional procedure which may be used in actions of reparation for personal injuries or for the death of a relative. This procedure comes into force on the first day of the Winter Session, 24th September 1985.

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