

Rules of the Scottish Land Court

EDINBURGH 1992

RULES OF THE SCOTTISH LAND COURT

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RULES OF THE SCOTTISH LAND COURT

Coming into force 1st November 1992

DEFINITIONS

1. In the construction of these Rules (unless the context otherwise requires) -
 - (a) The word 'Court' shall mean the Scottish Land Court and shall include the Full Court and any Divisional Court; the expression 'Full Court' shall mean the Court constituted for hearing appeals under Section 25(5) of the Small Landholders (Scotland) Act 1911 and the expression 'Divisional Court' shall mean any member or any two members sitting or acting with any legal assessor by virtue of any powers delegated under the said Subsection either by a quorum of the whole Court or by these Rules.
 - (b) The word 'Chairman' shall mean the Chairman of the Court.
 - (c) The expression 'Principal Clerk' shall mean the Principal Clerk and Legal Secretary to the Court and shall include (except for the purposes of Rule 102) every person who for the time being is authorised or deputed in the absence of the Principal Clerk to discharge the duties of Principal Clerk to the Court.
 - (d) The word 'Auditor' shall mean the Auditor of the Land Court, who is the Principal Clerk.
 - (e) The word 'Order' shall include decree, award and determination in any proceeding before the Court.
 - (f) The word 'month' shall, in the computation of time for the purposes of these Rules and of any Order made by the Court, mean calendar month.

(g) The word 'revaluation' shall mean the fixing of a second and every subsequent Fair Rent or Equitable Rent for a holding.

(h) The word 'hearing' shall include trial proof and debate in any Application or any proceeding accessory or incidental thereto.

(i) The word 'landlord' shall mean any person for the time being entitled to receive the rents and profits or to take possession of any holding and shall include the trustees, executors, administrators, assignees legatee, disponee or next-of-kin, spouse, guardian, curator bonis, trustee in bankruptcy or judicial factor of a landlord.

(j) The word 'person' shall include any body or association of persons incorporated or unincorporated.

(k) The expression "Final Order" shall mean an Order of the the Court which, either by itself or taken along with a previous Order or Orders, disposes of the subject-matter of the Application though all the questions of law or of fact arising in the Application shall not have been decided and though expenses, if found due, shall not have been modified, taxed or decerned for.

OFFICE AND SITTINGS OF THE COURT

2. The office of the Court in Edinburgh shall be open to the public *on* every day of the year from 9 o'clock am until 4 o'clock pm except Saturdays, Sundays, public holidays and any other days on which the office may be closed by Order of the Court.

3. The Court shall hold sittings for the purpose of hearing Applications, including Appeals and Motions for Rehearing, at such places as they shall from time to time intimate to parties.

4. Any sitting and any hearing in any Application or proceeding may be postponed or adjourned either to a fixed day or to a day to be afterwards fixed by the Court.

PROCEDURE

Applications

5. All Applications to the Court shall be framed as nearly as reasonably may be in accordance with the forms provided by the Court. These forms, with relative copy forms for service, may be procured by intending Applicants from the Court free of charge. They may be varied and the initial conclusions altered, supplemented or combined, so far as necessary to adapt the forms to any special case or to Applications for which no special form has been issued

6. No Application shall be incompetent solely on the ground that a declaratory Order only is applied for.

7. Except as otherwise provided, Applications shall be signed by the Applicant or by a solicitor or counsel or, whether an Applicant is furth of Scotland, by any person duly authorised in writing, on his behalf. Applications by a landlord may be signed by his factor.

8. Where an Applicant cannot sign his name and is not represented by a solicitor, he may instead adhibit his X or mark in the presence of at least one witness above eighteen years of age who shall certify in writing on the Application that it was read over and explained to the Applicant before his mark was adhibited.

9. All Applications shall be addressed to the Land Court at their office at 126 George Street, Edinburgh, EH2 4HH and shall be posted, or delivered to, the said office, together with (1) (except in the cases provided for under Rules 17, 18 and 22 and in Applications where no service is necessary, eg joint Applications by landlord and tenant) a copy, or as many copies as are required, duly completed, for service on the Respondent or Respondents

and (2) the appropriate fee, as specified in the current Table of Court Fees a copy of which is available from the Principal Clerk.

10. Tenants who hold pasture, grazing or other rights in common or whose holdings are situated in the same township and on the estate of the same landlord may join as Applicants, or be called by their landlord as Respondents, in one Application to fix fair rents for their holdings.

Service. Intimation. Etc

11. If an Application, posted or delivered as aforesaid, appears to be in proper form and if the appropriate fee in accordance with the Table of Court Fees has been paid (unless the Application is one in which the Court fees fall to be assessed by the Court), the Principal Clerk shall, after satisfying himself of the accuracy of the service copy or copies lodged along with the Application, effect service of the Application by transmitting such copy or copies, duly certified, by first class recorded delivery service or registered post letter to the Respondent, or each Respondent, at the address, or addresses, stated in the Application.

12. Any notice, order, summons or proceeding in any Application shall similarly be served or intimated by first class recorded delivery service or registered post letter containing a certified copy of such notice, order, summons or proceeding, directed by the Principal Clerk (or by an Applicant or Respondent if so ordered) to the person, or persons, on or to whom such service or intimation is required.

13. Any period which begins to run from service or intimation shall be reckoned from the expiry of twenty-four hours after the time of posting such recorded delivery service or registered letter.

14. Service on, or intimation to, a landlord may be effected by first class recorded delivery service or registered post letter containing a certified copy of the Application, order, notice, summons or proceeding, of which service or intimation is required, directed to him at the

address of his factor or the solicitor to whom the tenant, or other Applicant or Applicants, has usually paid rent.

15. Service on, or intimation to, any association, board, firm, company or corporation may be effected in like manner by first class recorded delivery service or registered post letter containing a certified copy as aforesaid, directed to such association, board, firm, company or corporation under the name or description which they ordinarily use, at the principal office or place of business or (if the principal office or place of business be situated outwith Scotland) at any office or place within Scotland (including the office of a clerk, secretary or representative) where they carry on business.

16. In every case where a party to an Application is represented by a solicitor, any order, summons, notice or other proceeding may be served on, or intimated to, such party in like manner by first class recorded delivery service or registered post letter directed to such solicitor at his office or place of business, unless and until the other parties and the Principal Clerk are notified that such solicitor no longer acts for such party.

17. In any Application where a Respondent's address is unknown to the Applicant the Court may allow or direct the Applicant to give notice of intimation of the Application, or any proceeding therein, by the publication in a newspaper circulating in the area of the holding of the Respondent, or of the last known address of the Respondent or elsewhere of an advertisement in such form as the Court may order.

Prior to allowing or directing intimation by way of an advertisement in a newspaper, the Applicant will satisfy the Court that he has taken all reasonable steps to trace the whereabouts of the Respondent.

Where intimation is made by way of an advertisement, the Applicant will lodge a copy of the newspaper containing said advertisement with the Principal Clerk.

If, after intimation by advertisement as aforesaid, the address of the Respondent becomes

known, the Court may allow the Application to be amended subject to such condition as to re-service, intimation and expenses as seems just.

18. In any Application for resumption of, or otherwise relating to, common grazings, when the number of persons called as Respondents, or to whom intimation is ordered, exceeds twenty, the Court may allow the Applicant, or Applicants, or other parties, as the case may be, to give notice or intimation of the Application or any proceeding therein to all such persons by advertisement in each of two successive weeks in any newspaper circulating in the district or by service of such notice or intimation on the clerk to the grazings committee or in such other manner as the Court may think sufficient, in substitution for intimation or service wade by recorded delivery service or registered post letter by the Principal Clerk to or on each Respondent so called or each person to whom intimation is so ordered.

19. If any person who is named as a Respondent or who has an interest to intervene in, or who it is proposed should be made a party to, an Application has no known factor or solicitor and no known residence or place of business within Scotland, but has a known residence or place of business outwith Scotland, notice or intimation of such Application, or of any order or proceeding therein, shall be given to him by first class recorded delivery service or registered post letter containing a certified copy thereof directed to such residence or place of business.

20. The receipt of the Post Office for a first class recorded delivery service or registered post letter duly directed, which is certified by the Principal Clerk or is otherwise proved to have contained a true copy of the Application, order, notice, summons or proceeding intended to be served on, or intimated to, the person to whom such recorded delivery service or registered post letter was directed, shall be sufficient prima facie proof of due service on, or intimation to, such person of such Application, order, summons, notice or proceeding having been effected at the time at which said recorded delivery service or registered post letter would have been delivered in ordinary course of post. A first class recorded delivery service or registered post letter shall be deemed, until the contrary is proved, to have been duly directed to the person on or to whom service or intimation was intended to be so made, when

it has been directed to him either (1) at the address stated by him in any Application or pleading or proceeding in the Application or (2) at the address of his factor or solicitor or (3) at his last known residence or place of business.

21. When intimation is made under Rule 17 or 18 copies of the newspaper containing the advertisement shall be deemed prima facie proof of such intimation.

22. Any person named as a Respondent in an Application or made a party thereto, may by a signed endorsement on the Application or by statement in open Court or by letter to the Applicant or other party moving, or entitled to move, for service or intimation or to the Principal Clerk, agree to dispense with service or intimation of such Application or order, summons, notice or proceeding therein.

23. No party who appears in court or lodges objections or answers or other pleading shall be entitled to state any objection to the regularity of the service on, or of the intimation to, himself.

24. If there has been any insufficiency of, or irregularity in, any service on, or intimation to, a person who has not appeared in Court or lodged objections or answers or other pleading or if it seems expedient that service or intimation of any Application, order, notice, summons or proceeding on or to any person should be made of new or in any other or further manner than by first class recorded delivery service or registered post letter as aforesaid, the Court may authorise or direct new, or further, service or intimation accordingly, on such conditions as the Court may think proper, in any manner allowed by the law and practice of Scotland.

25. As soon as an Application has been received by the Principal Clerk, it shall be deemed to be in dependence before the Court and shall not be abandoned or withdrawn without leave of the Court on such conditions as to expenses or otherwise as the Court may think just.

Process

26. Any party to an Application or his solicitor or other authorised representative may (1)

require the Principal Clerk to exhibit the Application, or any part of the process therein, in his custody at the office of the Court during office hours, , free of charge; (2) make a handwritten copy of the Application or any order pronounced therein or any answers, minutes, writings, plans or other documents in process in such custody at the said office, during office hours, and under supervision of the Principal Clerk, free of charge. Where a party to an Application or his solicitor or other authorised representative obtains from the Principal Clerk a photocopy of the Application or any Order pronounced therein, or any answers, minutes, writings, plans or other documents in process, the Principal Clerk will be entitled to charge a fee therefor in terms of the Court's current Table of Fees.

27. No person shall be allowed, without leave of the Court, to borrow the principal Application or any original deed, writing, plan, document or other production forming part of the process therein: but the Principal Clerk may, when duly requested, issue a certified copy, or copies, thereof to any party to an Application or his solicitor or other authorised representative at the charge specified in the Table of Court Fees.

28. Any solicitor acting for a party to an Application may borrow (1) any part or parts of the process therein, other than those specified in the preceding Rule and (2) also the part or parts so specified, by leave of the Court, or by permission of the Principal Clerk, in each case upon granting a borrowing receipt and undertaking to return the productions borrowed to the office of the Court within 48 hours after demand by the Principal Clerk.

29. After the issue of a Final Order in any Application the *Principal* Clerk shall, if he considers it appropriate, return any productions lodged by any party to that party or his agents upon the granting of an appropriate receipt.

CONSIGNATION

30. In any Application which raises questions regarding any claims for payment of money which the Court has power to decide, any party may consign a sum of money in Court to be dealt with according as the rights of parties may be determined in course of the proceedings.

31. Any sum of money which a party desires, or has been ordered, to consign shall be consigned in the hands of the Principal Clerk in the same manner as in an ordinary action in the Sheriff Court and shall be held by the Principal Clerk subject to the directions of the Court. No consigned money shall be paid or uplifted without leave of the Court or the consent in writing of all parties interested.

TIME LIMITS

32. Any period limited in these Rules, or in any Order, for any act or proceeding, which expires on a Saturday, Sunday, public holiday or any other day on which the office of the Court is closed by Order of the Court, shall be extended to the next lawful day.

33. Any period limited by an Order for any act or proceeding may be extended by the Court, on cause shown, either before or after the expiry of such period.

PLEADINGS

34. A Respondent is not required to lodge Answers unless, and until, Answers are ordered by the Court. Answers, Replies, Objections or other written pleadings shall be lodged by hand, by post or by FAX with the Principal Clerk, unless otherwise directed by the Court, and the Principal Clerk shall note receipt of the same on the Application. If Answers ordered by the Court are not lodge within the time specified in the Order the Principal Clerk shall certify to that effect on the Application.

35. The Court may, at any stage of an Application, order any party therein to lodge a statement or pleadings, where this has not been done, or to revise his statement or pleadings, and also to make specific any statement, answer or reply contained in his Application,

Objections, Answers or other pleadings, relating to material facts disputed; and either to admit or deny definitely any statement, made by any opposing party in that party's Application or Answers or Objections or other pleadings, relating to disputed material facts, when the Court is of opinion that such statement or pleadings, specification, admission or denial is necessary to define, or determine, the real matter or matters in dispute; or to withdraw or expunge any irrelevant and improper matter contained in his Application, Answers, Replies, Objections or other pleadings.

36. All Answers, Replies, Objections or other pleadings shall be subscribed as provided for under Rules 7 and 8.

37. Where a party is represented by a solicitor or factor who lodges any Answers, Replies, Objections or other pleadings by hand or by post he shall be obliged to lodge, at the same time, a copy thereof for each of the other parties to the Application.

Amendment, Conjunction, Etc

38. The Court may, either of their own accord or on the motion of any person interested, at any time before a Final Order has been pronounced in an Application and upon such terms or conditions as to notice, intimation or service and expenses or otherwise, as the Court shall think proper,

- (a) Amend any error, omission or defect in the Application or any pleadings or proceeding therein;
- (b) Qualify, restrict, enlarge, or add new conclusions to, the conclusions of the Application, notwithstanding that, by such amendment or addition, additional or alternative remedies may be sought or a larger sum of money or an additional area of land or other interests in land may thereby be subjected to the adjudication of the Court;
- (c) Strike out the names of any persons who have, improperly or unnecessarily, been made parties to the Application;

- (d) Substitute or add the names or proper characters of any persons as Applicants or Respondents who ought to have been, but were not, made parties, Applicant or Respondent as the case may be, or not made parties in their proper character, representative, individual or otherwise;
- (e) Substitute or add the names of any persons as parties, Applicant or Respondent as the case may be, who by reason of any assignation or renunciation by, or the marriage, sequestration or death of, any of the parties to the Application, or of any other event occurring during its dependence, have acquired any right or interest, or become subject to any liability, in respect of the matters to which the Application relates;

and, when necessary to enable the Court effectually to determine, or adjudicate on, the real matters in dispute, such amendments or additions shall be made or allowed.

39. Where the same, or similar, questions of law or fact arise in, or where there is a relation between, two or more depending Applications, the Court (1) may sist one or more of such Applications and appoint the other Application or Applications to proceed or (2) where it appears more convenient that they should be heard together, may conjoin such Applications and dispose of them, either together or separately, as may be found expedient.

40. The Court may appoint a curator ad litem to any party in an Application who is under the age of 16 years or is of defective capacity and has no known curator or other guardian.

ADMISSIONS, WITNESSES, PRODUCTION OF DOCUMENTS, ETC

41. As soon as an Order appointing a time and place for hearing has been pronounced in any Application, any party thereto shall be entitled, unless the Order limits the hearing to matters of law or procedure,

(1) to call upon any opposing party by written notice, delivered or transmitted by first class recorded delivery service or registered post letter, not less than seven days before the time so appointed, to admit, but only as between the parties giving and receiving such notice and solely for the purposes of the particular Application, any specific fact or facts stated in such notice and relating to the subject-matter of the Application. If the party so called upon unnecessarily refuses or delays to admit such specific fact or facts, he may be found liable in the expenses incurred in proving any specific fact which he so refused or delayed to admit; and

(2) to move the Court to grant a summons requiring the persons therein named and designed to attend at such appointed time and place, and any adjourned hearing, for the purpose of (a) giving evidence and/or (b) producing the writings, documents, business books, plans or articles therein specified or described.

42. Further, on special cause shown or of their own accord the Court may, at any stage of the proceedings in an Application-

(1) Order any party thereto (a) to lodge in process all writings, documents, business books, plans or articles in his possession or under his control, whether founded on by such party or not, relating to any matter in dispute therein, which are specified or described in such Order and (b) to state whether all or any writings, documents, business books, plans or articles specified or described such Order are, or have at any time been, in his possession or under his control and whether he has parted with the same and what has become of them or any of them; and

(2) Order any person to attend the Court at a fixed time and place, or a time and place to be afterwards notified to such person, and to produce all writings, documents, business books, plans or articles in his possession, or under his control, which are specified or described in such Order, the production of which may be deemed by the Court material and proper for the determination of matters in dispute.

43. All writings, plans, books, or excerpts from books, or other documents or productions which are founded on in any Application or in any Answers, Objections, Minutes or other pleadings, or certified copies thereof, shall be lodged in process along with such Application or Answers, Objections, Minutes or other pleadings.

44. All writings, plans, books, or excerpts from books, or other documents or productions which any party intends to refer to or to use or put in evidence at any hearing shall, if in his possession or under his control, be lodged in process by such a party at least seven clear days before the time appointed for such hearing and the party lodging the same shall forthwith intimate to the other parties to the Application that he has done so. Any party to an Application lodging any such production shall be obliged to lodge, with the principal production, as many copies thereof for use by the Court as may be directed by or agreed with the Principal Clerk.

45. The Court may allow any Answers, Objections, Minutes or other pleadings and any writing, plan, book, or excerpt from a book, or other document or productions, which ought to have been, but were not, timeously lodged, to be received or to be referred to or to be used or put in evidence at the hearing, if satisfied that such omission was in the circumstances excusable, upon such conditions as to expenses, adjournment, further allowance of proof or otherwise as the Court may think proper.

46. When an Application or pleading or other original document has been lost or destroyed, a copy thereof proved and authenticated to the satisfaction of the Court may be substituted for the original to all effects and purposes.

47. If any Applicant or Respondent fails to lodge any statement or pleading or to produce any writing, plan, book, or excerpt from a book, or other document or article, which the Court have ordered to be lodged or produced, or to obey any Order of Court (a) where the Applicant is the party in default, the Application may be in respect thereof dismissed, with expenses (b) where the Respondent is the party in default, any pleas, objections or claims stated by him

may be in respect thereof repelled, with expenses or (c) the party in default, whether Applicant or Respondent, may be merely found liable in expenses occasioned by such default.

48. A copy of any Order summoning persons therein named to attend the Court for the purpose of giving evidence and/or producing documents, which has been certified by the Principal Clerk or by the solicitor of the party who obtained it as correct, in so far as concerns the person on or to whom the said Order is to be served, intimated or directed, shall be held as equivalent to the original Order to all effects and purposes.

49. Parties may, orally in open Court or by letters or Minutes, renounce proof or dispense with a hearing, either generally or as regards particular matters or questions.

HEARING

50. At the time and place appointed for the hearing of an Application the parties shall lead or tender such oral and documentary evidence as they desire to lead or tender on any matters of fact in dispute, unless the hearing has been, by Order, limited to matters of law or procedure.

51. When the Application is called in Court at the appointed time and place,

(a) if no appearance is made by or on behalf of an Applicant, but appearance is made by or on behalf of a Respondent, (1) the Application may be continued (2) the Application may be dismissed in respect of such failure to appear, with or without expenses or (3) the Respondent may proceed, on any matters of fact in dispute, to lead evidence, so far as consistent with the terms of the Order appointing a hearing, or as allowed by the Court, and may thereafter move for an Order disposing of the subject-matter of the Application;

(b) if no appearance is made by or on behalf of a Respondent, but appearance is made

by or on behalf of an Applicant, (1) the Application may be continued (2) any defence, objection or claim pleaded by such Respondent may be repelled in respect of such failure to appear, with or without expenses or (3) the Applicant may proceed to lead evidence, so far as consistent with the terms of the Order appointing a hearing, or as allowed by the Court, either on any matters of fact in dispute or only on matters in regard to which the burden of proof rests upon him and may thereafter move for an Order disposing of the subject-matter of the Application;

(c) if no appearance is made by any party, the Application may be continued indefinitely or dismissed, as the Court may think proper.

52. Any person who, after being warned by the Court, (a) wilfully disobeys any Summons or Order of the Court to attend in open Court for the purpose of producing documents and/or of giving evidence or (b) having attended, wilfully refuses to be sworn or to affirm or to answer any proper question or to produce any book, or excerpt from a book, writing or plan or other document or article, which he has been lawfully required to produce, may be found liable in payment of expenses occasioned by any adjournment which such disobedience or refusal renders necessary and may also be dealt with by the Court for contempt of court.

53. The Court may call and examine, or grant commission to examine, as a witness in the cause any person whose evidence appears to them to be necessary for the purpose of determining the matters in dispute, though such person has not been called or adduced by any of the parties, and may direct his fees and expenses as a witness to be paid by the parties, or any of them, in such proportion as the Court may determine, as part of the expenses of the Application.

EVIDENCE

54. Evidence shall be taken, unless otherwise agreed by parties, upon oath or affirmation.

55. Any consent or undertaking in an Application may be given by or on behalf of any party or parties thereto in letters or Minutes or verbally, either in open Court or during an inspection made by a member or members of the Court, of the lands or other subjects to which the Application relates, provided that, where such verbal consent or undertaking forms the basis of, or a material element in, any Order of Court, its tenor shall be set out in such Order or in a note appended thereto.

56. All relevant objections to any deed or writing which is founded on in any Application may be stated and maintained by way of exception and shall for the purposes of the Application be disposed of by the Court without the necessity of proceedings being sisted in order that a reduction may be brought in the appropriate Court, unless the Court think it necessary or more convenient in the circumstances that the party challenging such deed or writing should proceed by reduction.

57. Notes of evidence may be taken down by the Court or, where all parties so desire, by a shorthand writer appointed by the Court, whose fee shall be fixed by the Court and may be ordered to be paid by the parties equally or in such proportions as the Court may think fit. Such notes of evidence may be used by the Court in any Appeal in, or Rehearing of, the Application.

Evidence on Commission

58. The Court may, at any stage of the proceedings in an Application, order that the evidence of any witness whose evidence is in danger of being lost or who is resident furth of Scotland or who by reason of age or infirmity or remoteness of place or residence or other reasonable cause is unable to attend at the time and place fixed for hearing the Application or at any adjourned hearing shall be taken on commission, with or without interrogatories, by any member of the Court and/or the Principal Clerk, or any Depute~Clerk of Court or other qualified person or persons delegated or appointed for this purpose, and shall be reported to the Court.

59. The Court may, of consent of parties, or where satisfied that such course is expedient in the interests of all parties, remit to one of their number or to the Principal Clerk or any Depute-Clerk of Court or other qualified person to take the whole evidence in the cause and report it to the Court.

APPOINTMENT OF REPORTERS, ASSESSORS, ETC

60. The Court may, either of their own accord or on the motion of any party, at any time before a Final Order has been pronounced in an Application (1) if they consider that all, or any, of the material facts in dispute may be appropriately so ascertained, remit to any person specially qualified by skill and experience to enquire into such matters of fact and to report and may, upon such report or a further report, after affording parties an opportunity of being heard or of lodging written pleadings, if they so desire, proceed, without further inquiry or evidence, to determine the said matters of fact and any questions arising thereon or to make such other Order as the Court think just (2) if they consider that the assistance of one or more persons specially qualified by skill and experience is desirable for the better disposal of the matters in dispute, may appoint one or more such persons to act as assessors and sit with the Court at any hearing or inspect the lands or buildings or other subjects to which the Application relates. Such reporters, valuers or assessors shall be appointed by the Court and shall receive remuneration for their services out of funds provided by Parliament at such rates as the Treasury may sanction.

INSPECTION

61. The Court, and any assessor, valuer, surveyor or other official authorised in writing by the Court, may at any time and from time to time, during reasonable hours on any lawful day, enter upon and inspect all or any lands or buildings after notice to the parties, either in writing or verbally in open Court, to enable them to have an opportunity of attending or being represented, at the inspection.

ABANDONMENT

62. Any Applicant or Respondent may, at any time before final decision upon, or dismissal of, the Application, abandon or withdraw his Application or Answers or Objections or pleadings by leave of the Court on such conditions as to expenses or otherwise as the Court may consider just.

FALLING ASLEEP AND WAKENING

63. If no Order has been pronounced in an Application for a year and a day it shall be held to have fallen asleep.

64. The Court may either of consent of all the parties or on the motion of one of the parties duly intimated to the other parties pronounce an Order waking the Application and thereafter proceed with it.

REOPENING

65. Where, by reason of the failure of an Applicant or Respondent to lodge any statement or pleading or to produce any writing, plan, book or excerpt from a book, or other document or article or to appear at a hearing or to obey any Order of Court or by reason of any other default, an Order has been pronounced (1) dismissing the Application or (2) repelling any pleas or objections or claims, the party in such default may within thirty days from the date of intimation of such Order move the Court to be reopened against such Order; and the Court, if satisfied that such default occurred through mistake or inadvertence or was in the circumstances excusable, may, upon such terms and conditions as to expenses or further hearing or otherwise as they shall think just, recall such Order and appoint the Application to proceed as if such default had not occurred.

66. When a party, who has obtained any Order in his favour upon terms or conditions therein expressed, has failed within the time limited by such Order or by any subsequent Order (or, if no time has been so limited, then within such time as the Court think reasonable) to perform or comply with such terms or conditions, it shall be competent for

any party in whose interest such terms or conditions were imposed to move the Court in the Application before it has been disposed of by a Final Order, or afterwards in a Rehearing, to recall or vary such Order.

APPEAL AGAINST DIVISIONAL COURT ORDER

67. Any competent Appeal to the Full Court against an Order by a Divisional Court shall be taken by a note dated and signed by the appellant or his solicitor or counsel or factor or by any person duly authorised in writing on behalf of the appellant.

68. Such note shall be delivered, or transmitted by first class recorded delivery service or registered post letter, to the Principal Clerk and shall be in the following or similar terms:

‘The Applicant, (or Respondent or other Party) appeals to the Full Court in the Application Record No....., Region (or •.,..., District) or (.,..., Islands Area) on the following grounds, namely,

Dated

Signature

The Appellant shall at the same time (1) lodge a statement setting forth the grounds on which the Appeal is to be maintained (2) lodge with the Principal Clerk a copy of the said note and statement for service, by the Principal Clerk, *on* each of the other parties and (3) pay to the Principal Clerk the fee specified in the Table of Court Fees.

69. At least two weeks prior to the hearing of an Appeal the Appellant shall lodge a Note with the Principal Clerk stating whether or not he desires that proof, or additional proof

should be led or allowed at the hearing of the appeal or that the subjects should be inspected or reinspected.

70. Any party who has lodged an Appeal in terms of Rule No. 67 may, on cause shown, apply for leave to amend his grounds of Appeal at any time.

71. It shall not be competent to take any Appeal after the expiry of one month from the date of intimation to parties of the Order complained of.

72. It shall not be competent to take any Appeal except to the Full Court or against any Order other than

(a) A Final Order, or

(b) An Order against which the Court which pronounced it has granted leave to appeal.

73. The Full Court may give judgement in any Appeal -

(a) Without ordering either written pleadings or a hearing, where all parties so agree

(b) Upon written pleadings only, where all parties so agree.

Except as above provided, the Court shall appoint a time and place at which parties shall be heard on the Appeal.

74. Every competent Appeal shall submit to review at the instance not only of the Appellant but of every other party appearing in the Appeal the whole Orders pronounced in the Application, to the effect of enabling the Full Court to do justice between the parties without hindrance from the terms of any previous Order.

75. In the event of an Appellant obtaining leave to withdraw or abandon his Appeal, any other party appearing in the Appeal may insist in such Appeal (if otherwise competent) in the same manner and to the same effect as if it had originally been taken by himself.

76. When the Order appealed against is a Final Order, the Application shall not be remitted to the Court which pronounced it, unless special circumstances render a remit expedient, but shall be completely decided by the Full Court.

77. When the Order appealed against is an Order appealed by leave of the Court, the taking of the Appeal shall not stay procedure before the said Court in the Application. The said Court may make such interim Order, or Orders, concerning the preservation of evidence, consignment or payment of money, custody or production of documents or other like matters as just regard to the manner in which the final decision is likely to affect the parties' interests may require. Such interim Order or Orders shall not be subject to review except by the Full Court when the Appeal is heard or determined.

RE-HEARING

78. Any party to an Application whose interests are directly affected by a Final Order pronounced in an Application may move the Court, on one or more of the grounds enumerated in Rule 82, to order that the Application shall be reheard, in whole or in part, upon such terms or conditions as to expenses, or otherwise, as the Court shall think right.

79. Such motion shall be made by a note dated and signed by the party moving or his solicitor or counsel or factor or by any person duly authorised in writing on behalf of such party.

80. Such note shall be delivered, or transmitted by first class recorded delivery service or registered post letter, to the Principal Clerk and shall be in the following or similar terms:

"The Applicant, (or Respondent or other party) moves for a Rehearing of the Application Record No. Region (or District) (or

..... Islands Area), in which a Final Order was pronounced on (insert date) on the following grounds, namely".

Dated

Signature

The party moving shall at the same time (1) lodge with the Principal Clerk a statement specifying (a) whether the whole, or a part (and, if so, what part), of the Final Order is craved to be varied, amended or recalled, (b) whether it is desired that proof should be led or allowed at the Rehearing and, if so, (c) to what points proof is to be directed and (d) whether it is desired that the land, or other subjects, to which the Application relates, should be inspected or re-inspected (2) lodge with the Principal Clerk a copy of the said note and statement for service by the Principal Clerk, on each of the other parties and (3) pay to the Principal Clerk the fee specified in the Table of Court Fees.

81. It shall not be competent to move for Rehearing after the expiry of three months from the date of intimation to parties of the Final Order in the Application except (1) where all the parties whose interests may be directly affected concur in the motion or (2) where leave to move is granted on special cause shown.

82. A motion for Rehearing may be made upon one or more of the following grounds

- (1) that the Order or Orders sought to be varied, recalled or annulled
 - (a) proceeded upon essential error, either shared by all the parties, or induced by one or more of the opposing parties, or
 - (b) were obtained or procured by fraud or fabrication of documents or subornation of perjury or other like misconduct on the part of one or more of the opposing parties in course of the Application;
- (2) that pertinent and important evidence as to disputed matters of fact was tendered and erroneously rejected or disallowed;

- (3) that the party moving is prepared to adduce pertinent and important evidence, of the tenor set forth in his statement, which was unknown to, and could not reasonably have been discovered by, him before a Final Order was pronounced;
- (4) that the opposing party or parties has or have, without reasonable excuse, failed substantially to fulfil or comply with conditions imposed in the interest of the party moving by the Order or Orders sought to be varied or recalled;
- (5) that owing to a change of circumstances the Final Order sought to be recalled has not been given effect to or is no longer appropriate.

83. Every motion for Rehearing or for leave to move for Rehearing and every Rehearing ordered shall be determined, or adjudicated on, by the Full Court.

84. The Court may dispose of the motion for Rehearing or for leave to move for Rehearing, either after hearing parties or, if parties agree to dispense with a hearing, on their written pleadings only.

85. Where the Court, having regard to any of the grounds mentioned in Rule 82, are satisfied that if the Order or Orders complained of are allowed to stand, a substantial wrong, or miscarriage of justice, which cannot by any other process be so conveniently remedied or set right, is likely to be thereby occasioned, they may order a rehearing of the Application, in whole or in part, in such manner and on such terms and conditions as they shall think just.

86. Neither a motion for Rehearing nor an Order granting a Rehearing nor any subsequent procedure therein shall have the effect of staying proceedings under, or implement of, the Order or Orders complained of, unless it be so ordered.

87. In any Appeal or Rehearing the Court may vary, recall or annul any Orders appealed or complained against either (a) in whole or (b) in so far only as affecting any separate and

distinct part of the matters in dispute or (c) as between some of the parties only, and may make any Order or Orders which should have been made and also such other or further Order or Orders as they may think necessary to deal with any change of circumstances occurring after the date of the Order or Orders appealed or complained against, or to set right any substantial error, omission, defect, wrong or miscarriage of justice, and that upon such terms and conditions as they shall think just.

SPECIAL CASE

88. Any party to an Application who intends to require that a special case shall be stated on any question, or questions, of law for the opinion of a Division of the Court of Session shall, within one month after the date of intimation to parties of the decision complained of, lodge with the Principal Clerk a requisition to that effect, and also a draft statement of the case specifying (a) the facts out of which such question, or questions, of law are alleged to have arisen (b) the decision complained of (c) in what respect and to what extent such decision is maintained to be erroneous in point of law and (d) the question, or questions, of law proposed to be submitted to the Court of Session.

89. The said party shall at the same time lodge with the Principal Clerk a copy of the said requisition and draft statement of the case for service, by the Principal Clerk, on each of the parties in the Application. Any of these parties may, within three weeks after intimation of such copy or copies, lodge with the Principal Clerk a note of any proposed alterations, or observations, on the said draft statement and question or questions which they may deem necessary.

90. After adjustment by parties or the Court, the draft case shall be settled by the Court or the Chairman and returned by the Principal Clerk to the party making the requisition, in order that a fair copy of the same may be made for lodging. The fair copy special case and the settled draft shall, within fourteen days after the settled draft has been posted to such party, be lodged with the Principal Clerk in order that the special case may be authenticated by the Court.

91. On the special case being authenticated in terms of Rule 105, the Principal Clerk shall transmit the same, with relative productions, if any, which have been made part of the case, to the Deputy Principal Clerk of the Court of Session and shall notify such transmission to the parties thereto.

Within fourteen days after the receipt of the special case by the said Deputy Principal Clerk of Session, or, where such fourteen days expire during a vacation or recess of the Court of Session, then on or before the first sederunt day of the Court of Session thereafter ensuing, the party on whose requisition the special case has been stated shall lodge the same, together with any productions made part of the case, in the General Department of the Court of Session, along with a process and copies of productions for the use of the Court in terms of Rules of the Court of Session Nos. 20 and 26(b) and shall at the same time intimate the lodging of the special case to the opposite party or his solicitor and deliver to him at least ten copies of the said case; and shall also deliver three copies of the said case to the Principal Clerk of the Land Court.

In the event of such party failing to lodge the special case within the time above prescribed, any other party thereto may within the like period of time from such failure, lodge the special case and also lodge copies with the Principal Clerk of the Land Court all in like manner.

In the event of the special case not being lodged as above prescribed, the special case shall, unless the Court of Session otherwise orders, be deemed to have been withdrawn or abandoned by all the parties thereto and shall be re-transmitted by the Deputy Principal Clerk of Session to the Principal Clerk of the Land Court; and the Land Court may thereafter determine any questions of expenses relating to the preparation and settling of the special case and shall otherwise proceed where any further procedure is necessary or expedient, as if no special case had been required.

92. Neither the requisition for a special case nor any subsequent proceeding therein shall

have the effect of staying procedure in the Application, or Applications, in course of which the said question, or questions, of law are alleged to have arisen, unless it be so ordered.

93. The party on whose requisition the special case has been stated, whom failing the other party or parties thereto, shall, as soon as reasonably may be after the Court of Session has pronounced opinion upon the question, or questions, of law therein set forth, take the proper steps to cause a certified copy of the said opinion together with the relative productions, if any, to be transmitted to the Principal Clerk of the Land Court

94. When the opinion of the Court of Session has been received by the Principal Clerk, the Land Court shall, if and in so far as necessary, bring their decision on the matters in regard to which the said question or questions of law have arisen into conformity with the said opinion.

EXPENSES

95. In all proceedings before the Court the fees stated in the current Table of Fees payable to solicitors in ordinary Sheriff Court actions shall be the fees and emoluments ordinarily chargeable by, and payable to, solicitors for all professional services rendered in connection with an Application, but subject to the power of the Court, which is hereby reserved, to deal in such manner with expenses as shall in each case seem just. No higher fees or remuneration shall (unless specially sanctioned by the Court) be recoverable or be allowed between party and party or (except on such sanction or under special written agreement) between solicitor and client.

96. The Court may sanction the employment of counsel in Applications of difficulty and general importance and fix the fees payable or chargeable in such cases.

97. Accounts of expenses, charged by solicitors against clients, or awarded by the Court as between party and party, in relation to any proceeding before the Court may be remitted for taxation and report by the Auditor. Expenses may be modified at a fixed sum by the Court as between party and party.

98. When any person other than a solicitor or counsel appears by leave of the Court on behalf of any party or parties to an Application, the Court may allow, or direct the Auditor to allow, him reasonable outlays and also a remuneration for time and trouble proportionate to his services and the value of the cause.

99. In any Application the Court may make an award of expenses (and outlays) in favour of a party litigant and where expenses of a party litigant are ordered to be paid by any other party to the Application the Auditor of Court may allow as expenses such sums as appear to him to be reasonable, having regard to all the circumstances in respect of:-

- a. work done which was reasonably required in connection with the case, up to a maximum of two-thirds of the sum allowable to a solicitor for that work under the current Table of Fees for solicitor, and
- b. outlays reasonably incurred for the proper conduct of the case.

Without prejudice to the generality of the above, the circumstances to which the Auditor of Court will have regard in determining what sum, if any, to allow in respect of any work done may include (1) the nature of the work; (2) the time taken and the time reasonably required to do the work; (3) the amount of time spent in respect of which there was no loss of earnings; (4) the amount of any earnings lost during the time required to do the work; (5) the importance of the case to the party litigant, and (6) the complexity of the issues involved in the case.

100. When two or more Applications involving similar questions and arising with respect to holdings which are held under the same landlord are heard at the same sitting, whether formally conjoined or not, the Court may award to the solicitor, or the person appearing by leave of the Court, who conducts the same, an inclusive fee or remuneration in respect of all the Applications in which he so appears and may settle the proportions in which it shall be paid by the respective parties.

ORDERS OF THE COURT, ETC

101. Every Order shall be in writing and shall be signed by at least one member of the Court and initialled by the Principal Clerk or one of the Clerks of Court.

102. Any one member of the Court or the Principal Clerk may sign, and power is hereby delegated to each member or the Principal Clerk, to sign for the Court any Order which merely (a) appoints answers, replies, objections, minutes, statements or other pleadings or documents or articles founded on by a party to be lodged with the Principal Clerk or (b) directs any service, notice or intimation to be made or given on or to any party or parties or (c) grants a summons to attend a sitting of the Court for the purpose of giving evidence and/or producing documents or articles or (d) fixes or alters the date of any sitting of the Court or hearing or (e) requires borrowed productions to be returned. Any one member of the Court may sign and power is hereby delegated to each member to sign for the Court any Final Order in an unopposed Application and any Order which (a) interpones authority or effect to a joint minute for parties or (b) allows any Application or Appeal or motion for Rehearing or other proceeding therein to be, by consent of all parties, amended or abandoned or withdrawn as the case may be, or the like. Such signature by any one member or the Principal Clerk shall in these cases be sufficient.

103. Any verbal, clerical or casual error or omission or informality in an Order may be corrected or supplied *de recenti*, or of consent of parties, by the member or members of Court or the Principal Clerk who signed it.

104. Every Order which disposes of the subject-matter of an Application or of any separate controverted part thereof, otherwise than by consent of parties, shall be signed by the member, or members, of the Court by whom the case, or such separate part thereof, has been considered and determined; provided that in the event of a difference of opinion among such members it shall be competent for the minority to omit signing the Order and to record dissent from any of the findings in the Order by note appended thereto; and the signatures of

the majority shall in that case be sufficient.

105. All extracts or copies of Orders by the Court, required for the purpose of being used in any proceeding before any court of law, arbiter, public department or any public authority whatever, and all special cases stated shall be authenticated by the signature of the Chairman or of the Principal Clerk and sealed with the seal of the Court before being issued from the office.

106. The Principal Clerk shall at the request of any interested party issue, free of charge, an extract of any Order pronounced by the Court provided that, where applicable, the time limit for lodging an appeal in terms of Rule No. 71 has passed. Every such extract shall include a warrant for execution in the following terms:- "and the Court grant warrant for all lawful execution hereon".

GENERAL

107. In matters of procedure or evidence which are not provided for by statute or by these Rules the Court shall have regard to the general practice of courts of law so far as applicable and appropriate to the conduct of its business.