

2006 No. 292

SHERIFF COURT

Act of Sederunt (Chancery Procedure Rules) 2006

Made - - - - *26th May 2006*

Coming into force - - *2nd June 2006*

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 51 of the Titles to Land Consolidation (Scotland) Act 1868(a), section 32 of the Sheriff Courts (Scotland) Act 1971(b) and of all other powers enabling them in that behalf, having approved draft rules submitted to them by the Sheriff Court Rules Council in accordance with section 34 of the said Act of 1971, do hereby enact and declare:

Citation and commencement

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Chancery Procedure Rules) 2006 and shall come into force on 2nd June 2006.

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

Chancery Procedure Rules

2.—(1) The Schedule to this Act of Sederunt shall have effect for the purpose of providing rules for the form and service of applications and petitions presented to the Sheriff of Chancery, and for connected purposes.

(2) The Act of Sederunt (Chancery Procedure Rules) 1996(c) is revoked.

BRIAN GILL
Lord Justice Clerk
I.P.D.

Edinburgh
26th May 2006

(a) 1868 c.101. Section 51 was amended by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 asp 5, schedule 13, paragraph 1.
(b) 1971 c.58; section 32 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), Schedule 2, paragraph 12, the Civil Evidence (Scotland) Act 1988 (c.32), section 2(4), the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 18(2), the Adults with Incapacity (Scotland) Act 2000 (asp 4), schedule 5, paragraph 13, and the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17), section 43, and the Vulnerable Witnesses (Scotland) Act 2004 (asp 3), section 14(2), and was extended by the Child Support Act 1991 (c.48), sections 39(2) and 49.
(c) S.I. 1996/2184.

CHANCERY PROCEDURE RULES

Citation

1. These Rules may be cited as the Chancery Procedure Rules.

Application and interpretation

- 2.—(1) These Rules apply to—

- (a) applications to the Sheriff of Chancery under section 26A or 26B of the 1868 Act; and
- (b) petitions to the Sheriff of Chancery under section 10 of the 1874 Act.

- (2) In these Rules—

“the 1868 Act” means the Titles to Land Consolidation (Scotland) Act 1868^(a);

“the 1874 Act” means the Conveyancing (Scotland) Act 1874^(b); and

“sheriff clerk of Chancery” includes the sheriff clerk depute of Chancery.

- (3) Where there is a reference to the use of a form in these Rules, that form in the Appendix to these Rules, or a form substantially to the same effect, shall be used with such variation as circumstances may require.

Form and subscription

3. The application or petition shall be—

- (a) in one or other of Forms 1 to 11, as the case may be; and
- (b) subscribed by the applicant or petitioner or his solicitor, as the case may be.

Publication

- 4.—(1) Subject to rule 5 (evidence), the application or petition shall not be proceed until the expiry of 21 days from the date of publication.

(2) Publication of the application or petition shall be by display of a copy of the petition on the walls of court.

- (3) Publication of the application or petition shall be made—

- (a) in the case of an application for declarator under section 26A of the 1868 Act to which paragraph (a)(i) of that section applies (deceased domiciled in Scotland)—

- (i) in the sheriff court of the sheriff court district in which the deceased died domiciled;
or

- (ii) where the deceased died domiciled in Scotland but had at the time of death no fixed or known domicile in any sheriff court district, in the sheriff court at Edinburgh;

- (b) in the case of an application for declarator under section 26B of the 1868 Act to which paragraph (c)(i) of that section (trust governed by the law of Scotland) applies, in the sheriff court at Edinburgh; or

- (c) in the case of any other application or petition, in the sheriff court of each sheriff court district in which the lands which are the subject of the application or petition are situated.

(a) 1868 c.101 (31 and 32 Vict.).

(b) 1874 c.94 (37 and 38 Vict.).

(4) On publication, the sheriff clerk shall send to the sheriff clerk of Chancery a certificate in Form 12.

Evidence

5.—(1) Evidence may be received at any time after an application or petition is accepted for publication.

(2) Any written statement (including an affidavit) or report, admissible under section 2(1)(b) of the Civil Evidence (Scotland) Act 1988^(a), may be recorded in evidence without being spoken to by a witness notwithstanding that it was made before the application or petition was accepted for publication.

^(a) 1988 c.32.

APPENDIX

Form 1

Rule 2(3)

Application by eldest son for declarator under section 26A(b)(i) of the Titles to Land Consolidation (Scotland) Act 1868

The application of [A.B.] (*design*)

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*) and had at the time of his death his ordinary or principal domicile in the Sheriffdom of (*insert name of sheriffdom*).

2. The applicant is the eldest son born to [C.D.] and is accordingly his nearest lawful heir in general.

MAY IT THEREFORE please your Lordship to grant declarator under section 26A(b)(i) of the Titles to Land Consolidation (Scotland) Act 1868 that the applicant is the heir in general to [C.D.].

(*Signed*)

[A.B.], Applicant

[or [X.Y.] Agent for applicant (*designation and business address*)]

Form 2

Application by eldest son of eldest son for declarator under section 26A(b)(i) of the Titles to Land Consolidation (Scotland) Act 1868

The application of [A.B.] (*design*)

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*) and had at the time of his death his ordinary or principal domicile in the Sheriffdom of (*insert name of sheriffdom*).
2. The eldest son ever born to [C.D.] was [E.F.] (*design*), who predeceased [C.D.], having died intestate on or about (*date*) [*or: who survived [C.D.] but died intestate on or about (date)*].
3. The applicant is the eldest son ever born to the said [E.F.] and is accordingly the nearest lawful heir in general to [C.D.].

MAY IT THEREFORE please your Lordship to grant declarator under section 26A(b)(i) of the Titles to Land Consolidation (Scotland) Act 1868 that the applicant is the heir in general to [C.D.].

(*Signed*)

[A.B.], Applicant

[or [X.Y.] Agent for applicant (*designation and business address*)]

Form 3

Application by eldest surviving son for declarator under section 26A(b)(i) of the Titles to Land Consolidation (Scotland) Act 1868

The application of [A.B.] (*design*)

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*) and had at the time of his death his ordinary or principal domicile in the Sheriffdom of (*insert name of sheriffdom*).
2. The eldest son ever born to [C.D.] was [E.F.] (*design*), who predeceased [C.D.], having died intestate on or about (*date*) without issue [*or: predeceased by his issue*].
3. The next eldest son ever born to [C.D.] is the applicant who is accordingly the nearest lawful heir in general to [C.D.].

MAY IT THEREFORE please your Lordship to grant declarator under section 26A(b)(i) of the Titles to Land Consolidation (Scotland) Act 1868 that the applicant is the heir in general to [C.D.].

(*Signed*)

[A.B.], Applicant

[or [X.Y.] Agent for applicant (*designation and business address*)]

Form 4

Application by only child for declarator under section 26A(b)(i) of the Titles to Land Consolidation (Scotland) Act 1868

The application of [A.B.] (*design*)

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*) and had at the time of his death his ordinary or principal domicile in the Sheriffdom of (*insert name of sheriffdom*).

2. The applicant is the only child ever born to [C.D.] and is accordingly nearest lawful heir in general to [C.D.].

MAY IT THEREFORE please your Lordship to grant declarator under section 26A(b)(i) of the Titles to Land Consolidation (Scotland) Act 1868 that the applicant is the heir in general to [C.D.].

(*Signed*)

[A.B.], Applicant

[or [X.Y.] Agent for applicant (*designation and business address*)]

Form 5

Application by eldest son for declarator under section 26A(b)(ii) of the Titles to Land Consolidation (Scotland) Act 1868

The application of [A.B.] (*design*)

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*). At the time of his death [C.D.] was the owner of ALL and WHOLE (*insert description of lands including reference to relevant title deeds*).

2. The applicant is the eldest son ever born to [C.D.] and is accordingly the nearest lawful heir to [C.D.] in the lands specified above.

MAY IT THEREFORE please your Lordship to grant declarator under section 26A(b)(ii) of the Titles to Land Consolidation (Scotland) Act 1868 that the applicant is the heir to the lands specified above.

(*Signed*)

[A.B.], Applicant

[or [X.Y.] Agent for applicant (*designation and business address*)]

Form 6

Application by eldest surviving son for declarator under section 26A(b)(ii) of the Titles to Land Consolidation (Scotland) Act 1868

The application of [A.B.] (*design*)

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*). At the time of his death [C.D.] was the owner of ALL and WHOLE (*insert description of lands including reference to relevant title deeds*).

2. The eldest son ever born to [C.D.] was [E.F.](*design*) who predeceased [C.D.] having died on or about (*date*) without issue [*or pre-deceased by his issue*].

3. The applicant is the next eldest son ever born to the said [C.D.] and is accordingly the nearest lawful heir to [C.D.] in the lands specified above.

MAY IT THEREFORE please your Lordship to grant declarator under section 26A(b)(ii) of the Titles to Land Consolidation (Scotland) Act 1868 that the applicant is the heir to the lands specified above.

(*Signed*)

[A.B.], Applicant

[or [X.Y.] Agent for applicant (*designation and business address*)]

Form 7

**Application by daughters as heirs portioners for declarator under section 26A(b)(ii) of the
Titles to Land Consolidation (Scotland) Act 1868**

The application of [A.B.] (*design*) and [C.D.] (*design*)

1. The late [E.F.] (*design*) died intestate at (*place*) on or about (*date*). At the time of his death [E.F.] was the owner of ALL and WHOLE (*insert description of lands including reference to relevant title deeds*).

2. [E.F.] never had a son.

3. The applicants are the only daughters ever born to [E.F.] and are accordingly the nearest lawful heirs portioners to [E.F.] in the lands specified above.

MAY IT THEREFORE please your Lordship to grant declarator under section 26A(b)(ii) of the Titles to Land Consolidation (Scotland) Act 1868 that the applicants are the heirs portioners to the lands specified above.

(*Signed*)

[A.B.], Applicant

[or [X.Y.] Agent for applicant (*designation and business address*)]

Form 8

Application for declarator under section 26B of the Titles to Land Consolidation (Scotland) Act 1868

The application of [A.B.] (*design*)

1. The late [C.D.] (*design*) died at (*place*) on or about (*date*). At the time of his death he was the last surviving trustee named in, or assumed under, the (*here describe the deed of trust*).
2. The trust deed provides for the heir of the last surviving trustee to be a trustee.
3. The trust is governed by the law of Scotland [*or Lands subject to the trust and to which this application relates are situated in Scotland (here give details of the lands)*].
4. The applicant has succeeded as heir to the deceased [C.D.] (*here give details of the basis upon which the applicant has succeeded as heir*).

MAY IT THEREFORE please your Lordship to grant declarator under section 26B of the Titles to Land Consolidation (Scotland) Act 1868 that the applicant is the heir of the deceased [C.D.] and accordingly is a trustee under the said trust.

(*Signed*)

[A.B.], Applicant

[*or [X.Y.] Agent for applicant (designation and business address)*]

Form 9

Petition by heir for completion of title

The petition of [A.B.] (*design*)

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*) vest and seised in [*or in a share (e.g. one half pro indiviso) of*] ALL and WHOLE (*insert description of lands, including reference to the deeds giving title to [C.D.]*).

2. On the death of [C.D.] he was succeeded by [E.F.] (*design*), the eldest son ever born to [C.D.] as his heir in the lands specified above. [*Or, if relatives nearer in the line of succession have predeceased [C.D.]: On the death of [C.D.] he was succeeded by [E.F.], the second eldest son ever born to [C.D.] as his heir in the lands, [G.H.] the eldest son ever born to [C.D.] having predeceased [C.D.] without issue.*].

3. [E.F.] died on or about (*date*) being vested only with a personal right in the lands specified above [*or to his share (e.g. one half pro indiviso) of the lands specified above*] and was succeeded by the petitioner, the eldest son ever born to [E.F.] [*or otherwise as above*], as his nearest lawful heir in the lands specified above.

MAY IT THEREFORE please your Lordship to find the facts set forth above proved and that the petitioner is entitled under section 10 of the Conveyancing (Scotland) Act 1874 to complete title to the lands specified above.

(*Signed*)

[A.B.], Petitioner

[*or [X.Y.] Agent for petitioner (designation and business address)*]

Form 10

Petition by executor for completion of title

The petition of [A.B.] (*design*) as executor of [E.F.]

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*) vest and seised in [*or in a share (e.g. one half pro indiviso) of*] ALL and WHOLE (*insert description of lands, including reference to the deeds giving title to [C.D.]*).

2. On the death of [C.D.] he was succeeded by [E.F.] (*design*), the eldest son ever born to [C.D.] as his heir in the lands specified above. [*Or, if relatives nearer in the line of succession have predeceased [C.D.]: On the death of [C.D.] he was succeeded by [E.F.], the second eldest son ever born to [C.D.] as his heir in the lands, [G.H.] the eldest son ever born to [C.D.] having predeceased [C.D.] without issue.*].

3. [E.F.] died intestate [*or testate*] on or about (*date*) having only a personal right in the lands specified above. The petitioner was appointed executor as (*specify in which capacity [A.B.] was appointed*) of [E.F.] conform to decree of the Sheriff of (*insert name of sheriffdom*) at (*place*) dated (*date*) [*or, as the case may be*]. An inventory of the estate of [E.F.] was given up and recorded in the Court Books of the Commissariat of (*specify*) and confirmation thereof was issued on (*date*) in favour of the petitioner as executor. Under paragraph 2 of Schedule 2 to the Succession (Scotland) Act 1964 the petitioner as executor is the heir of [E.F.] for the purposes of section 10 of the Conveyancing (Scotland) Act 1874.

MAY IT THEREFORE please your Lordship to find the facts set forth above proved and that the petitioner as executor is entitled under section 10 of the Conveyancing (Scotland) Act 1874 to complete title to the lands specified above.

(*Signed*)

[A.B.], Petitioner

[*or [X.Y.] Agent for petitioner (designation and business address)*]

Form 11

Application for declarator in respect of specified lands and petition for completion of title

The application and petition of [A.B.] (*design*)

1. The late [C.D.] (*design*) died intestate at (*place*) on or about (*date*) vest and seised in [*or* in a share (e.g. one half *pro indiviso*) of] ALL and WHOLE (*insert description of lands, including reference to the deeds giving title to [C.D.]*).

2. [C.D.] never had a son.

3. [E.F.] (*design*) and [G.H.] (*design*) were the only daughters ever born to [C.D.].

4. [E.F.] predeceased [C.D.] having died on or about (*date*).

5. The applicant and petitioner is the eldest son ever born to [E.F.] and is accordingly one of the two nearest lawful heirs to [C.D.], and as such is heir to [C.D.] in a one half *pro indiviso* share of the lands specified above.

6. On the death of [C.D.] he was succeeded by [G.H.] as his other heir portioner and therefore as such heir in the other half *pro indiviso* share of the lands specified above.

7. [G.H.] died on or about (*date*) having only a personal right to her one half *pro indiviso* share of the lands specified above.

8. [G.H.] conveyed her whole estate heritable and moveable to her husband [I.J.] (*design*), by her will dated (*date*) and registered (*specify date and place of registration*). An extract is produced herewith.

9. [I.J.] survived [G.H.] but died on or about (*date*) never having completed title to the one half *pro indiviso* share of the subjects specified above.

10. [I.J.] conveyed his whole estate heritable and moveable to the applicant and petitioner by his will dated (*date*) and registered (*specify place and date of registration*). An extract is produced herewith.

MAY IT THEREFORE please your Lordship to—

(1) grant declarator under section 26A(b)(ii) of the Titles to Land Consolidation (Scotland) Act 1868 that [A.B.] is the heir to a one half *pro indiviso* share of the lands specified above; and

(2) find the facts set forth above proved and that [A.B.] is entitled under section 10 of the Conveyancing (Scotland) Act 1874 to complete title to the other one half *pro indiviso* share of the lands specified above.

(Signed)

[A.B.], Applicant and petitioner

[*or* [X.Y.] Agent for applicant and petitioner
(*designation and business address*)]

Certificate of publication

At (*place*) on (*date*)

I hereby certify that the application [*and/or* petition] to the Sheriff of Chancery by the undernoted applicant [*and/or* petitioner] was displayed on the walls of the sheriff court at (*place*) in the Sheriffdom of (*specify sheriffdom*) on (*date*).

(Signed)

Sheriff Clerk Depute

Note:–

Applicant/petitioner (*design*)

*Application for declarator under section 26A of the 1868 Act

*Application for declarator under section 26B of the 1868 Act

*Petition for completion of title under section 10 of the 1874 Act

*Delete where not applicable

EXPLANATORY NOTE

(This note is not part of the Act of Sederunt)

This Act of Sederunt sets out the rules for applications to the sheriff under sections 26A and 26B of the Titles to Land Consolidation (Scotland) Act 1868 (inserted by the Abolition of Feudal Tenure (Scotland) Act 2000) and petitions under section 10 of the Conveyancing (Scotland) Act 1874. Those provisions apply to rights of succession in respect of deceased persons who died before 10th September 1964.

£3.00

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