

CHAPTER 21

SUMMARY DECREES

Application of this Chapter

21.1. This Chapter applies to any action other than-

- (a) a family action within the meaning of rule 49.1(1);
- (b) an action of multiplepounding;
- (c) an action of proving the tenor; or
- (d) an action under the Presumption of Death (Scotland) Act 1977 (a).

Applications for summary decree

21.2.(1) Subject to paragraphs (2) to (5) of this rule, a pursuer may, at any time after a defender has lodged defences while the action is depending before the court, apply by motion for summary decree against that defender on the ground that there is no defence to the action, or a part of it, disclosed in the defences.

(2) In applying for summary decree, the pursuer may move the court-

- (a) to grant decree in terms of all or any of the conclusions of the summons;
- (b) to pronounce an interlocutor sustaining or repelling a plea-in-law; or
- (c) to dispose of the whole or a part of the subject-matter of the action.

(3) The pursuer shall-

- (a) intimate a motion under paragraph (1) by registered post or the first class recorded delivery service to every other party not less than 14 days before the motion is enrolled; and
- (b) on enrolling the motion, lodge in process-
 - (i) a copy of each letter of intimation; and
 - (ii) a certificate of intimation by post in Form 16.4 in respect of each letter of intimation.

(4) On a motion under paragraph (1), the court may-

- (a) if satisfied that there is no defence to the action disclosed or to any part of it to which the motion relates, grant the motion for summary decree in whole or in part, as the case may be; or
- (b) Ordain any party, or a partner, director, officer or office-bearer of, any party-
 - (i) to produce any relevant document or article; or
 - (ii) to lodge an affidavit in support of any assertion of fact made in the pleadings or at the bar.

(5) Notwithstanding the refusal of all or part of a motion for summary decree, a subsequent motion may be made where there has been a change of circumstances.

Application of summary decree to counterclaims etc.

21.3.-(1) Where a defender has lodged a counterclaim-

- (a) he may apply by motion for summary decree against the pursuer on that counterclaim on the ground that there is no defence to the counterclaim, or a part of it, disclosed in the answers to it; and
- (b) paragraphs (2) to (5) of rule 21.2 shall, with the necessary modifications, apply to a motion by a defender under this paragraph as they apply to a motion by a pursuer under paragraph (1) of that rule.

(2) Where a defender or third party has made a claim against another defender or third party who has lodged defences or answers, as the case may be-

- (a) he may apply by motion for summary decree against that other defender or third party on the ground that there is no defence to his claim, or a part of it, disclosed in the defences or answers, as the case may be; and
- (b) paragraphs (2) to (5) of rule 21.2 shall, with the necessary modifications, apply to a motion by a defender or third party under this paragraph as they apply to a motion by a pursuer under paragraph (1) of that rule.