

## CHAPTER 51

### ACTIONS OF MULTIPLEPOINDING

#### Application of this Chapter

**51.1.** This Chapter applies to an action of multiplepoinding.

#### Parties to actions of multiplepoinding

**51.2.**-(1) An action of multiplepoinding may be brought by any person holding, or having an interest in, or claim on, the fund *in medio*, in his own name.

(2) The pursuer shall call as defenders to such an action-

- (a) all persons so far as known to him as having an interest in the fund *in medio*; and
- (b) where he is not the holder of the fund, the holder of that fund.

#### Condescence of fund *in medio*

**51.3.**-(1) Where the pursuer is the holder of the fund *in medio*, he shall include a detailed statement of the fund in the condescence annexed to the summons.

(2) Where the pursuer is not the holder of the fund *in medio*, the holder shall, unless he has lodged defences in accordance with rule 51.4 (objections to actions of multiplepoinding), lodge in process a condescence of the fund *in medio*, stating-

- (a) any claim or lien which he may profess to have on that fund, and
- (b) all persons so far as known to him as having an interest in the fund,

within 7 days after the date on which the summons has called.

#### Objections to actions of multiplepoinding

**51.4.**-(1) Any objection to an action of multiplepoinding on any ground shall be made by lodging defences.

(2) Where the holder of a fund *in medio* lodges defences under paragraph (1), he shall, notwithstanding his objection to the action, disclose all persons so far as known to him and reasonably ascertainable who have an interest in that fund.

(3) On defences being lodged under paragraph (1), the pursuer shall comply with rule 22.1 (making up open records); and the action shall proceed for the purpose of determining the objection stated in the defences as an ordinary action.

(4) Where the holder of the fund *in medio* has lodged defences, the court shall, on determining those defences without dismissing the action, ordain the holder of the fund to lodge a condescence of the fund *in medio* stating any claim or lien which he may profess to have on that fund, within such period as it thinks fit.

#### Advertisement for objections to condescence and claims

**51.5.**-(1) The pursuer may-

- (a) after the expiry of the period for lodging defences without defences having been lodged, or
- (b) where defences have been lodged, after those defences have been repelled and, where an order is made under rule 51.4(4), the condescence of the fund has been lodged,

apply by motion for the orders mentioned in paragraph (2).

- (2) The orders referred to in paragraph (1) are-
  - (a) the ordaining of any objection to the condescence of the fund *in medio* and claims on the fund to be lodged within such period as the court thinks fit; and
  - (b) advertisement of the call for any objection and claims in such newspapers or other publications and for such number of insertions as the court thinks fit.
- (3) An advertisement ordered under paragraph (1) shall be in Form 51.5.

#### **Form of objection to condescence and claims**

**51.6.**-(1) An objection to a condescence of the fund *in medio* shall be made by lodging defences.

(2) A claim on the fund *in medio* shall be made in the form of a condescence, claim and appropriate pleas-in-law.

(3) On lodging a condescence and claim, a claimant shall lodge his ground of debt and all other documents supporting his claim.

- (4) Where a person intends to-
  - (a) object to the condescence on the fund *in medio*, and
  - (b) make a claim on the fund,

he shall lodge defences and a separate condescence and claim.

#### **Procedure following call for objections**

**51.7.**-(1) Where defences are lodged under rule 51.6 (form of objection to condescence and claims), an open record shall be made up on the condescence and such objection, and the pursuer shall comply with rule 22.1 (making up open records); and the cause shall proceed for the purposes of determining the objection as an ordinary action.

(2) No order shall be pronounced in relation to any claims on the fund *in medio* until any defences under rule 51.6 have been disposed of and the condescence of the fund *in medio* approved.

(3) Where the court disposes of defences, or where no defences have been lodged under rule 51.6, the court shall-

- (a) approve the condescence of the fund *in medio*, subject to such alteration as it may make in disposing of any objection;
- (b) find the pursuer, or where he is not the holder of the fund, the holder, liable only in once and single payment;
- (c) make such further order, if any, for claims as it thinks fit.

#### **Advertisement of dependence of actions**

**51.8.** The court may, at its own instance or on the motion of a party, at any time order-

- (a) such advertisement of the dependence of the action as it thinks fit; and
- (b) intimation of the dependence of the action to any person not called as a defender.

#### **Evidence of advertisement and intimation**

**51.9.** Where the court orders advertisement or intimation under this Chapter, the party required to make such advertisement or intimation shall lodge in process, as the case may be-

- (a) a copy of the newspaper or other publication containing the advertisement or a certificate of publication by the publisher stating the date of publication and the text of the advertisement; or
- (b) the certificate of intimation.

#### **Consignation of fund and discharge of holder**

**51.10.**-(1) On approval of the condescence of the fund *in medio*, the holder of the fund may apply by motion for-

- (a) a finding that he is entitled to his expenses out of the fund; and
- (b) authority to consign the fund into court, after deduction of his expenses as taxed by the Auditor.

(2) Where consignation is made by virtue of an authority under paragraph (1)(b), the holder of the fund may apply by motion for his exoneration and discharge.

#### **Claims not timeously lodged**

**51.11.**-(1) A claimant who fails to lodge his claim within the period specified in the order under rule 51.5(2)(a) (order for any objections and for claims) may apply by motion to have his claim received.

(2) The court may allow such a claim to be received on such conditions as to expenses, if any, as it thinks fit.

#### **Procedure following approval of fund *in medio***

**51.12.**-(1) After the condescence of the fund *in medio* has been approved, and it appears that there is no competition, the court may, on the motion of any claimant, rank and prefer the parties who have lodged claims.

(2) After the condescence of the fund *in medio* has been approved and where there is competition-

- (a) any party may apply by motion for an order to print a record in the competition and, on such an order being made, an open record shall be made up on the condescences and claims and the pursuer shall comply with rule 22.1 (making up open records); and the action shall proceed for the purpose of determining the competition as an ordinary action; and
- (b) during the period of adjustment, a claimant may adjust his condescence to state any objection to any other claim.

(3) When pronouncing any decree of ranking on the fund *in medio*, the court may determine any question of expenses; and, where it finds any party entitled to expenses out of the fund *in medio*, notwithstanding rule 42.1(1)(b) (decerniture for expenses as taxed) it shall not at the same time decern for payment of those expenses.

#### **Decrees for payment**

**51.13.**-(1) No decree for payment out of the fund *in medio*, whether consigned into court or not, following an order for ranking (whether for aught yet seen or otherwise) shall be made until-

- (a) all accounts of expenses found payable out of the fund *in medio* have been taxed and the report of the Auditor on those accounts has been approved; and
- (b) the certificate referred to in rule 8.1(1)(b) (Inland Revenue certificate of taxes or duties paid) has been lodged.

(2) Where the fund *in medio* has been consigned into court, any decree for payment out of the fund shall include-

- (a) warrant to the bank, on production of a certified copy of the interlocutor granting decree, to pay to each party the sums for which he has been ranked; and
- (b) warrant to the Accountant of Court, on production of a certified copy of the interlocutor granting decree, to endorse and deliver the consignment receipt to the bank in order that the payments may be made.

**Reclaiming by claimant against ranking for aught yet seen**

**51.14.**-(1) A claimant, who has failed to lodge his claim on the fund *in medio* before a ranking for aught yet seen, may reclaim against the interlocutor making such ranking at any time while the action is depending.

(2) The Division of the Inner House before which a motion for review of an interlocutor is brought under paragraph (1) may recall that interlocutor and remit the cause to the Lord Ordinary to receive the claim on such conditions as to expenses, if any, as it thinks fit.

**Exoneration of holder where no consignment**

**51.15.** Where the holder of the fund *in medio* has not been exonerated and discharged, he may-

- (a) following a decree for payment,
- (b) on production of the receipts of the persons entitled to payment under that decree, and
- (c) on consignment of any balance of the fund remaining,

apply by motion for his exoneration and discharge.