

CHAPTER 45

ACTIONS OF DIVISION AND SALE

Remit to reporter to examine property

45.1.-(1) In an action of division and sale of heritable property, the court shall, in accordance with paragraph (2), remit to a reporter to examine the property and to report to the court-

- (a) whether the property is capable of division in a manner equitable to the interests of the pro indiviso proprietors and, if so, how such division may be effected; and
- (b) in the event that the property is to be sold-
 - (i) whether the property should be sold as a whole or in lots and, if in lots, what those lots should be;
 - (ii) whether the property should be exposed for sale by public roup or private bargain;
 - (iii) whether the sale should be subject to any upset or minimum price and, if so, the amount;
 - (iv) the manner and extent to which the property should be advertised for sale; and
 - (v) any other matter which the reporter considers pertinent to a sale of the property.

(2) A remit under paragraph (1) shall be made-

- (a) where the action is undefended, on the motion of the pursuer at any time after the period for lodging defences has expired;
- (b) where the action is defended-
 - (i) at the closing of the record, on the motion of any party to the action;
 - (ii) on the court finding, after a hearing on the Procedure Roll or a proof, that the pursuer is entitled to bring and insist in the action of division and sale; or
 - (iii) at such other time as the court thinks fit.

(3) On completion of a report made under paragraph (1), the reporter shall send the report, with a copy for each party, to the Deputy Principal Clerk.

(4) On receipt of such a report, the Deputy Principal Clerk shall-

- (a) cause the report to be lodged in process; and
- (b) give written intimation to each party that this has been done and that he may uplift a copy of the report from the process.

(5) After the lodging of such a report, any party may apply by motion for further procedure or for approval of the report.

(6) At the hearing of a motion under paragraph (5), the court may-

- (a) in the event of challenge to any part of the report, order a note of objection to the report and answers to the note to be lodged within such period as the court thinks fit; or
- (b) in the absence of such challenge, order that the property be divided or sold, as the case may be, in accordance with the recommendations of the reporter, subject to such modification, if any, as the court thinks fit.

(7) Where, in accordance with paragraph (6)(a), the lodging of a note of objection and answers has been ordered, the cause shall be put out on the By Order Roll before the Lord Ordinary after the expiry of the period for lodging the note of objection and answers; and the court may make such order for further procedure as it thinks fit.

Division or sale of property

45.2.-(1) Where the court orders the division or sale of heritable property, it shall direct that the division or sale, as the case may be, shall be conducted under the oversight and direction of the Deputy Principal Clerk or any other fit person whom it may appoint for that purpose.

(2) The Deputy Principal Clerk or person appointed under paragraph (1), as the case may be, may report any matter of difficulty arising in the course of the division or sale to the court.

(3) At a hearing on a report made under paragraph (2), the court may give such directions as it thinks fit, including authority to the Deputy Principal Clerk to sign, on behalf of any proprietor, a disposition of his interest in the property.

(4) On the conclusion of a sale of property-

- (a) the proceeds of the sale, under deduction of the expenses of the sale, shall be consigned into court; and
- (b) The Deputy Principal Clerk or the person appointed under paragraph (1), as the case may be, shall lodge in process a report of the sale and a proposed scheme of division of the proceeds of sale.

(5) At the hearing of a motion for approval of a report of the sale of property lodged under paragraph (4) and the proposed scheme of division, the court may-

- (a) approve the report and scheme of division, and direct that payment of the proceeds of sale be made in terms of the report;
- (b) deal with any question as to the expenses of process or of sale; and
- (c) make such other order as it thinks fit.